

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

State Assistance to Common Interest Developments

September 2004

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN December 31, 2004.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

Community associations are run by volunteer directors who may have little or no prior experience in managing real property, operating a nonprofit 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. Mistakes and misunderstandings are inevitable and may lead to serious, costly, and divisive problems.

The principal remedy for a violation of common interest development law is private litigation. Litigation is not an ideal remedy 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 proposed law would create the Common Interest Development Bureau within the Department of Consumer Affairs. The bureau would educate common interest development homeowners and board members as to their rights and obligations under the law, provide informal assistance in resolving disputes, and as a last resort, enforce the law governing common interest developments.

The bureau would be funded through a fee charged to community associations when they register with the Secretary of State every two years.

This recommendation was prepared pursuant to Resolution Chapter 92 of the Statutes of 2003.

STATE ASSISTANCE TO COMMON INTEREST DEVELOPMENTS

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
11 60% 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

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 comply with specified provisions of the Corporations Code (relating to meetings,
2 elections, document filing, record-keeping, and access to records). However, as a
3 matter of policy, the Attorney General does not pursue legal action in such cases.⁶

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

13 PROPOSED LAW

14 **Common Interest Development Bureau**

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

19 The Bureau would have two primary responsibilities:

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

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

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 The proposed law would also require that the Bureau publish all citations on its
2 website. This is similar to existing law that requires the Department of Consumer
3 Affairs to publish the disciplinary history of licensees on its website.⁹ This practice
4 would allow a potential CID home buyer to research whether a particular
5 community association has a history of violating the law.

6 **Empirical Data**

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

11 **Reduced Court Congestion**

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

17 **Cost**

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

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

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

29 A per unit fee would spread the cost of agency operations evenly among all CID
30 homeowners. A homeowner in a well-run association might object to subsidizing
31 assistance in resolving disputes within associations that are poorly managed.
32 However, the Bureau's educational services will benefit all associations. In
33 addition, agency enforcement actions will eventually produce a body of

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.

1 administrative decisions that can help fill gaps and resolve ambiguities in the law,
2 reducing the need for legal advice and the risk of litigation for all associations.¹²

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

6 **Pilot Program**

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

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

19 EXPERIENCE IN OTHER JURISDICTIONS

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

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

27 **Information and Advice**

28 *Virginia*

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

32 [Serve] as an information resource on issues relating to the governance,
33 administration and operation of common interest communities, including the laws
34 and regulations relating thereto. Such information may include nonbinding

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

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

14. Bus. & Prof. Code § 473.4.

15. Bus. & Prof. Code § 473.2.

1 interpretations of laws or regulations governing common interest communities
2 and referrals to public and private agencies offering alternative dispute resolution
3 services, with a goal of reducing and resolving conflicts among associations and
4 their members.¹⁶

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

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

10 *Great Britain*

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

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

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

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

24 **State-Assisted Mediation or Arbitration**

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

31 *Hawaii*

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

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 The Real Estate Commission also offers information and advice to condominium
2 homeowners and their boards. It publishes information on the Internet and in print,
3 and responds to specific inquiries. In 2003, the Commission answered nearly
4 26,000 requests for information or advice.

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

7 *Nevada*

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

14 *Florida*

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

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

25 **Informal Intervention**

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

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

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 (5) To compile a registry of CID associations.

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

4 **Law Enforcement**

5 *Hawaii*

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

13 *Maryland*

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

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

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

31 The Commission will provide mediation services to the parties on request. If
32 mediation fails, or is rejected by a party, the dispute goes to a hearing. The hearing
33 is conducted pursuant to standard county administrative hearing procedures. The
34 Commission may compel production of books and records and attendance of
35 witnesses, and may invoke the court's contempt power. The hearing panel may

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

25. See Haw. Rev. Stat. § 514A-83.5.

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

1 resolve the dispute, award damages, and award costs and attorney's fees in
2 appropriate situations. Its decision is binding on the parties.

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

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

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

15 *Nevada*

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

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

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

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

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

1 an audit of an association or require that a board hire a certified community
2 manager. A boardmember or other officer who has knowingly or willfully violated
3 the law can be ordered removed from office.

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

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

11 *Great Britain*

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

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

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

24 *Australia*

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

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

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

41 In 2003, there were 918 applications submitted for adjudication in New South
42 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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PROPOSED LEGISLATION

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

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:

CHAPTER 11. COMMON INTEREST DEVELOPMENT BUREAU

Article 1. Definitions

§ 1380.010. Application of definitions

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

Comment. Section 1380.010 is new.

§ 1380.020. “Bureau” defined

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

Comment. Section 1380.020 is new.

§ 1380.030. “Homeowner” defined

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

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

§ 1380.035. “Managing agent” defined

1380.035. “Managing agent” has the meaning provided in subdivision (b) of Section 1363.1.

Comment. Section 1380.035 is new.

§ 1380.040. “Person” defined

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

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

Article 2. Administration

§ 1380.100. Legislative findings and declarations

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.

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

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

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

35 (e) The costs of the Common Interest Development Bureau shall be borne
36 entirely by common interest development homeowners, through imposition of a
37 biennial fee.

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

1 **§ 1380.110. Common Interest Development Bureau**

2 1380.110. (a) There is in the Department of Consumer Affairs the Common
3 Interest Development Bureau, under the supervision and control of the director of
4 the Department of Consumer Affairs.

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

8 (c) The bureau shall adopt rules governing its practices and procedures. A rule
9 adopted under this subdivision is subject to Chapter 3.5 (commencing with Section
10 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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

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

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

24 **Comment.** Section 1380.110 is new. Subdivision (c) authorizes the Bureau to adopt rules
25 governing its practices and procedures. Such rules are subject to the rulemaking requirements of
26 the Administrative Procedure Act.

27 Subdivision (d) provides that information or advice provided by the bureau has no binding
28 effect and is not a regulation under the rulemaking provisions of the Administrative Procedure
29 Act.

30 Subdivision (e) immunizes the bureau from liability for any information or advice that it
31 provides or fails to provide. Provisions immunizing state agencies from liability for information
32 disclosure are common. See, e.g., Bus. & Prof. Code § 10176.1 (Department of Real Estate);
33 Health & Safety Code § 1799.105 (poison control center); Ins. Code § 932 (insurance bureau).

34 See also Section 1380.020 ("bureau" defined); Bus. & Prof. Code §§ Sections 10 (delegation of
35 powers or duties), 310 (powers and duties of the director).

36 **§ 1380.120. Fee**

37 1380.120. (a) On filing information with the Secretary of State pursuant to
38 subdivision (a) of Section 1363.6, a community association shall submit a
39 Common Interest Development Bureau Fee, in addition to the fee submitted
40 pursuant to Section 1363.6. Failure to submit the Common Interest Development
41 Bureau Fee is deemed noncompliance with Section 1363.6. This subdivision does
42 not apply to either of the following types of association:

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

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

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

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

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

18 See also Sections 1351(l) ("separate interest" defined), 1363(a) ("community association"
19 defined), 1380.020 ("bureau" defined).

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

28 § 1380.130. Deposit and use of funds

29 1380.130. (a) Common Interest Development Bureau fee revenue received by
30 the Secretary of State and fee revenue received by the bureau shall be transferred
31 to the State Treasurer and placed in the Fee Account of the Common Interest
32 Development Bureau Fund, which is hereby created. All funds in the Fee Account
33 are continuously appropriated to the bureau, to be used exclusively for
34 expenditures necessary for the proper administration of this chapter.

35 (b) Money paid to the bureau that is attributable to administrative fines imposed
36 by the bureau, or cost recovery by the bureau from enforcement actions and case
37 settlements, shall be transferred to the State Treasurer and placed into the Penalty
38 Account of the Common Interest Development Bureau Fund, which is hereby
39 created. Funds in the Penalty Account shall, upon appropriation by the Legislature,
40 be available exclusively for expenditures necessary for the proper administration
41 of this chapter.

42 **Comment.** Section 1380.130 is new. See also Sections 1380.020 ("bureau" defined), 1380.120
43 (Common Interest Development Bureau fee).

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

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

7 (4) Any other information that the bureau determines would be useful to a
8 community association or homeowner.

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

12 **Comment.** Section 1380.220 is new. See also Sections 1351(c) ("common interest
13 development" defined), 1363(a) ("community association" defined), 1380.020 ("bureau"
14 defined), 1380.030 ("homeowner" defined).

15 § 1380.230. Director and managing agent certification

16 1380.230. Within 60 days of assuming office or providing services as a
17 managing agent, a community association director or managing agent shall certify
18 to the bureau, in writing, that the director or managing agent has read each of the
19 following:

20 (a) The declaration, articles of incorporation or association, and by-laws of the
21 association.

22 (b) This title or, if the bureau prepares a detailed summary of the requirements of
23 this title, that summary.

24 **Comment.** Section 1380.230 is new. See also Sections 1363(a) ("community association"
25 defined), 1380.020 ("bureau" defined), 1380.035 ("managing agent" defined).

26 Article 4. Dispute Resolution

27 § 1380.300. Mediation

28 1380.300. Any person may request the bureau's assistance in resolving a dispute
29 involving the law governing common interest developments or the governing
30 documents of a common interest development. On receipt of a request for
31 assistance the bureau shall, within the limits of its resources, investigate the
32 dispute, confer with the interested parties, and assist in efforts to resolve the
33 dispute by mutual agreement of the parties.

34 **Comment.** Section 1380.300 is new. See also Sections 1351(c) ("common interest
35 development" defined), 1351(j) ("governing documents" defined), 1380.020 ("bureau" defined),
36 1380.040 ("person" defined).

37 ☞ **Note.** The proposed law does not require that a homeowner exhaust his or her association's
38 internal dispute resolution process before seeking the bureau's assistance in resolving a dispute.
39 Nothing in the proposed law precludes the bureau from requiring exhaustion, either by regulation
40 or informally. The Commission invites comment on whether exhaustion of internal remedies
41 should be required by statute.

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, the bureau may issue a
6 citation by serving it on the person responsible for the violation. Before issuing a
7 citation, the bureau shall attempt to remedy the violation informally under Section
8 1380.300.

9 (c) A citation shall cite the statute or regulation that has been violated and the
10 facts constituting the violation. The citation shall order abatement of the violation
11 and may order additional equitable relief as appropriate. If the bureau finds, by
12 clear and convincing evidence, that a violation by a director or officer involved
13 malice, oppression, or fraud, as those terms are defined in Section 3294, the
14 bureau may order removal of the director or officer from office within the
15 community association.

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

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

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

35 (g) If the bureau finds, by clear and convincing evidence, that a violation
36 involves malice, oppression, or fraud, as those terms are defined in Section 3294,
37 and that finding is not contested or is upheld after administrative and judicial
38 review, the person found responsible for the violation shall be deemed to have
39 acted in bad faith and the association shall not indemnify the person for any
40 expenses, judgments, fines, settlements or other amounts incurred in connection
41 with the proceedings.

42 **Comment.** Section 1380.310 is new. Subdivision (a) provides for investigation and informal
43 attempts to remedy a violation of the law.

1 Subdivision (b) authorizes issuance of a citation to correct a violation of law that cannot be
2 remedied by informal means. *Cf.* Bus. & Prof. Code § 125.9 (authority to issue corrective
3 citations). The bureau’s authority to order a remedy for a violation of law derives from this
4 chapter and is not limited by any provision of the governing documents of a common interest
5 development.

6 Subdivision (e) provides for Internet publication of a final citation. *Cf.* Bus. & Prof. Code § 27
7 (Internet publication of disciplinary status of Department of Consumer Affairs licensee).

8 See also Sections 1351(c) (“common interest development” defined), 1380.020 (“bureau”
9 defined), 1380.035 (“managing agent” defined), 1380.040 (“person” defined).

10 ☞ **Note.** Under Section 138.310, the bureau’s enforcement authority would be limited to disputes
11 that involve a violation of law. The bureau would not have authority to adjudicate and enforce
12 provisions of an association’s governing documents. Administrative adjudication of private
13 agreements could violate the separation of powers requirements of the State Constitution, by
14 impermissibly shifting the bureau’s purpose from enforcement of law to resolution of disputes
15 traditionally resolved in the courts. See generally *McHugh v. Santa Monica Rent Control Board*,
16 49 Cal. 3d 348, 374-75, 261 Cal. Rptr. 318, 777 P.2d 91 (1989). The Commission invites
17 comment on two related questions: (1) Whether the bureau should, as a matter of policy, be
18 authorized to adjudicate and resolve disputes involving an association’s governing documents. (2)
19 Whether such adjudicative authority would be constitutional.

20 § 1380.320. Administrative hearing

21 1380.320. A person named in a citation may contest the findings or orders
22 included in the citation by filing a written request with the bureau for an
23 administrative hearing. A hearing held pursuant to this section is subject to the
24 administrative adjudication provisions of the Administrative Procedure Act. The
25 Department of Consumer Affairs shall appoint the presiding officer, who shall be
26 qualified as an administrative law judge. The presiding officer may be an
27 employee of the Office of Administrative Hearings or of the Department of
28 Consumer Affairs but may not be an employee of the bureau.

29 **Comment.** Section 1380.320 is new. See Gov’t Code § 11400 (“administrative adjudication
30 provisions of the Administrative Procedure Act” defined).

31 See also Sections 1380.020 (“bureau” defined), 1380.040 (“person” defined); Gov’t Code §
32 11523 (judicial review of final agency decision).

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CONFORMING REVISIONS

Civ. Code § 1363.7 (added). Information on Common Interest Development Bureau

SEC 2. Section 1363.7 is added to the Civil Code, to read:
1363.7. An association shall provide its members with annual written notice of the Internet website address and toll-free telephone number of the Common Interest Development Bureau established pursuant to Chapter 11.

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

Civ. Code § 1369.510 (amended). Definitions

- 1369.510. As used in this article:
- (a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure, including mediation pursuant to Section 1380.300, that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.
 - (b) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:
 - (1) Enforcement of this title.
 - (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).
 - (3) Enforcement of the governing documents of a common interest development.

Comment. Section 1369.510 is amended to make clear that “alternative dispute resolution” includes an attempt to mediate a dispute under procedures established by the Common Interest Development Bureau.
