

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Obsolete Cross-References to Former
Code of Civil Procedure Section 383

November 2004

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Obsolete Cross-References to Former Code of Civil Procedure Section 383*, 34 Cal. L. Revision Comm'n Reports 127 (2004). This is part of publication #221.

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CALIFORNIA LAW REVISION COMMISSION

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November 19, 2004

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

Recent legislation repealed Code of Civil Procedure Section 383 and relocated its substance, without change, to the Davis-Stirling Common Interest Development Act. The proposed law would update statutory cross-references to former Section 383 to reflect the relocation of its substance.

This recommendation was prepared pursuant to Resolution Chapter 192 of the Statutes of 2003.

Respectfully submitted,

William E. Weinberger
Chairperson

OBSOLETE CROSS-REFERENCES
TO FORMER CODE OF CIVIL
PROCEDURE SECTION 383

Former Code of Civil Procedure Section 383 provided that an association established to manage a common interest development can sue on behalf of its members in certain specified actions. It also provided special rules relating to comparative fault in such a suit.

In 2004, Section 383 was repealed and its substance was relocated, without change, to the Davis-Stirling Common Interest Development Act.¹

The proposed law would update statutory cross-references to former Section 383 to reflect the relocation of its substance. The proposed changes are nonsubstantive.

1. See 2004 Cal. Stat. ch. 754, §§ 4, 7. Subdivision (a) of former Section 383 is continued without substantive change in Civil Code Section 1368.3. Subdivisions (b)-(e) of former Section 383 are continued without substantive change in Civil Code Section 1368.4. See *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).

PROPOSED LEGISLATION

Civ. Code § 945 (amended). Application of requirements relating to action for construction defect

SECTION 1. Section 945 of the Civil Code is amended to read:

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their successors-in-interest. For purposes of this title, associations and others having the rights set forth in ~~Section 383 of the Code of Civil Procedure Sections 1368.3 and 1368.4~~ shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

Comment. Section 945 is amended to correct the cross-reference to former Code of Civil Procedure Section 383. This is a nonsubstantive change. The substance of former Code of Civil Procedure Section 383 is continued in Sections 1368.3 and 1368.4. See 2004 Cal. Stat. ch. 754, §§ 4, 7; *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).

Civ. Code § 1363 (amended). Community association management

SEC. 2. Section 1363 of the Civil Code is amended to read:

1363. (a) A common interest development shall be managed by an association which may be incorporated or unincorporated. The association may be referred to as a community association.

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

(c) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as

enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

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

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

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

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

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

authorization for member discipline contained in the governing documents. The board of directors shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members pursuant to this subdivision.

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

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

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

(j) Nothing in this section shall be construed to create, expand, or reduce the authority of the board of directors of an

association to impose monetary penalties on an association member for a violation of the governing documents or rules of the association.

Comment. Subdivision (c) of Section 1363 is amended to delete the cross-reference to former Code of Civil Procedure Section 383. This is a nonsubstantive change. Because the substance of former Section 383 is continued in this title, a separate reference to the powers conferred by former Section 383 is unnecessary. See Sections 1368.3, 1368.4; 2004 Cal. Stat. ch. 754, §§ 4, 7; *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).

Civ. Code § 1374 (amended). Application of Davis-Stirling Common Interest Development Act

SEC. 3. Section 1374 of the Civil Code is amended to read:

1374. Nothing in this title may be construed to apply to a development wherein there does not exist a common area as defined in subdivision (b) of Section 1351, ~~nor may this title be construed to confer standing pursuant to Section 383 of the Code of Civil Procedure to an association created for the purpose of managing a development wherein there does not exist a common area.~~

This section is declaratory of existing law.

Comment. Section 1374 is amended to delete the cross-reference to former Code of Civil Procedure Section 383. This is a nonsubstantive change. The substance of former Section 383 is continued in this title and therefore does not apply to a development that lacks a common area. Specific language making clear that former Section 383 does not confer standing on an association created for the purpose of managing such a development is no longer required. See Sections 1368.3, 1368.4; 2004 Cal. Stat. ch. 754, §§ 4, 7; *Alternative Dispute Resolution in Common Interest Developments*, 33 Cal. L. Revision Comm'n Reports 689 (2003).
