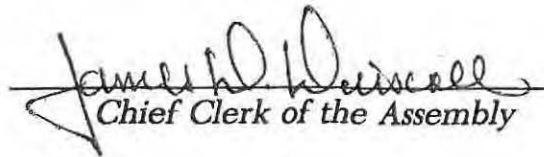


Assembly Bill No. 314

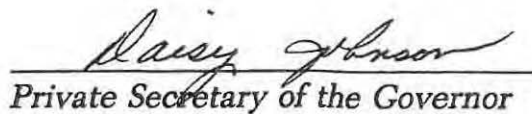
Passed the Assembly August 30, 1985


Chief Clerk of the Assembly

Passed the Senate August 27, 1985


Secretary of the Senate

This bill was received by the Governor this 17th
day of September, 1985, at 11 o'clock A.M.


Private Secretary of the Governor

CHAPTER _____

An act to amend Section 11018.1 of, to repeal and add Sections 11003, 11003.1, 11003.2, and 11004 of, and to repeal Section 11003.3 of, the Business and Professions Code, to amend Section 1133 of, to add Section 783.1 to, to repeal and add Section 783 of, to repeal and add Title 6 (commencing with Section 1350) of Part 4 of Division 2 of, to repeal Sections 846.6 and 1725 of, and to repeal Chapter 2 (commencing with Section 1730) of Part 4 of Division 3 of, the Civil Code, and to repeal and add Section 374 of the Code of Civil Procedure, relating to land subdivisions.

LEGISLATIVE COUNSEL'S DIGEST

AB 314, Davis. Common interest developments.

(1) Existing law specifies the method of creation and essential attributes of condominium projects, including the incidents of a condominium grant. Certain other types of common interest subdivisions are defined by existing law primarily for purposes of regulation under the Subdivision Map Act and the public report requirements contained in the so-called Subdivided Lands Law.

This bill would enact the Davis-Stirling Common Interest Development Act, which would contain provisions respecting the creation and essential attributes of common interest developments, including community apartment projects, condominium projects, planned developments, and stock cooperatives, as defined. The bill would require that a declaration filed in connection with the creation of a common interest development include a legal description of the development, identification of the form of ownership, the name of the development's association, and the restrictions on use intended to be enforceable as equitable servitudes. The bill would define the separate interests that are alienable for each type of common interest development.

The bill would delete existing provisions specifying alternative management schemes for condominiums and

would require all common interest developments to be managed by a specified association with prescribed basic responsibilities and authority. The bill would allocate maintenance responsibilities as between the association and the owners of the separate interests where the declaration does not otherwise provide. The bill would revise the existing requirement for extending covenants or restrictions of common interest developments to require approval by more than 50% of the votes in the association, rather than by more than 50% of the property owners as under existing law and would authorize amendment of the declaration by court order under specified circumstances. The bill would require all amendments to be recorded, as prescribed, in order to become effective.

The bill would specify alterations, improvements, and modifications which may be made by the owner of a separate interest in a common interest development and would revise the provisions applicable to condominium units. The bill would recodify provisions granting owners of condominium units in buildings rights of ingress, egress, and support through the common areas, and would authorize recorded declarations to grant the same rights to owners of separate interests in other types of common interest developments. The bill would limit, as specified, the amount of regular and special assessments levied by the board of directors of a common interest development. The bill would make ownership of the common areas of planned developments by tenancy in common, unless otherwise provided in the declaration. The bill would extend indefinitely existing requirements for financial statements of common interest developments that would otherwise expire July 1, 1989.

The bill would revise existing law on delinquent payment of assessments of common interest developments to (a) make the assessment delinquent 15 days, rather than 30 days, after it becomes due, (b) authorize a maximum penalty for delinquent payment of 10% of the delinquent assessment or \$10, whichever is greater (subject to limitations in the development's declaration), rather than the existing maximum penalty

schedule, (c) authorize associations to recover their reasonable costs of collection, including attorneys' fees, and (d) impose interest on delinquent assessments 30 days after they are due at an annual percentage rate not to exceed 12%. The bill would revise existing law relating to collection of assessments to (1) allow assessment liens for community apartment projects and stock cooperatives, in addition to condominium projects and planned developments as under existing law, (2) delete existing provisions making the lien expire after one year and permitting a single one-year extension, (3) require the notice of assessment to designate the name of a trustee initially nominated to conduct a nonjudicial sale to satisfy the assessment lien and expressly authorize substitution of another trustee to conduct the sale, (4) expressly specify that the sale may be judicial, in lieu of a nonjudicial sale, and that an association may pursue an action against the person owing an assessment even where a lien is created, and (5) expressly authorize an association to accept a deed in lieu of foreclosure. The bill would recast, without substantial substantive change, existing requirements for disclosures to prospective purchasers of separate interests in common interest developments. The bill would require a prescribed disclosure form to be given to prospective purchasers of separate interests, in such developments with the subdivision public report.

The bill would exempt defined governing documents of a common interest development from existing statutory restrictions on the remote vesting of interests and certain other restrictions on perpetuities. The bill would grant common interest development associations standing in prescribed proceedings (a) to recover for damages to the common areas, separate interests the association is obligated to repair or maintain, and damages to the separate interests arising out of or integrally related to damages to the common areas or separate interests the association is obligated to repair or maintain and (b) to enforce the provisions of the development's governing documents.

(2) Existing law provides that, unless a contrary intent

is clearly expressed, local zoning ordinances shall be construed to treat like structures, lots, or parcels in like manner regardless of whether ownership is in the form of condominiums or community apartments, rather than leased apartments, offices, or stores.

This bill would instead provide that, unless a contrary intent is clearly expressed, local zoning ordinances shall be construed to treat like structures, lots, or parcels in like manner regardless of the form of common interest development.

The people of the State of California do enact as follows:

SECTION 1. Section 11003 of the Business and Professions Code is repealed.

SEC. 2. Section 11003 is added to the Business and Professions Code, to read:

11003. "Planned development" has the same meaning as specified in subdivision (k) of Section 1351 of the Civil Code.

SEC. 2.2. Section 11003.1 of the Business and Professions Code is repealed.

SEC. 2.5. Section 11003.1 is added to the Business and Professions Code, to read:

11003.1. "Real estate development" means a common interest development specified in subdivision (c) of Section 1351 of the Civil Code.

SEC. 3. Section 11003.2 of the Business and Professions Code is repealed.

SEC. 4. Section 11003.2 is added to the Business and Professions Code, to read:

11003.2. "Stock cooperative" has the same meaning as specified in subdivision (m) of Section 1351 of the Civil Code, except that, as used in this chapter, a "stock cooperative" does not include a limited-equity housing cooperative.

SEC. 5. Section 11003.3 of the Business and Professions Code is repealed.

SEC. 6. Section 11004 of the Business and Professions Code is repealed.

SEC. 7. Section 11004 is added to the Business and

Professions Code, to read:

11004. "Community apartment project" has the same meaning as specified in subdivision (d) of Section 1351 of the Civil Code.

SEC. 7.5. Section 11018.1 of the Business and Professions Code is amended to read:

11018.1. (a) A copy of the public report of the commissioner, when issued, shall be given to the prospective purchaser by the owner, subdivider or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision. The requirement of this section extends to lots or parcels offered by the subdivider after repossession. A receipt shall be taken from the prospective purchaser in a form and manner as set forth in regulations of the Real Estate Commissioner.

(b) A copy of the public report shall be given by the owner, subdivider or agent at any time, upon oral or written request, to any member of the public. A copy of the public report and a statement advising that a copy of the public report may be obtained from the owner, subdivider or agent at any time, upon oral or written request, shall be posted in a conspicuous place at any office where sales or leases or offers to sell or lease lots within the subdivision are regularly made.

(c) At the same time that a public report is required to be given by the owner, subdivider, or agent pursuant to subdivision (a) with respect to a real estate development, the owner, subdivider, or agent shall give the prospective purchaser a copy of the following statement:

**"COMMON INTEREST DEVELOPMENT GENERAL
INFORMATION**

The project described in the attached Subdivision Public Report is known as a common-interest development. Read the public report carefully for more information about the type of development. The development includes common areas and facilities which will be owned or operated by an owners' association.

Purchase of a lot or unit automatically entitles and obligates you as a member of the association and, in most cases, includes a beneficial interest in the areas and facilities. Since membership in the association is mandatory, you should be aware of the following information before you purchase:

Your ownership in this development and your rights and remedies as a member of its association will be controlled by governing instruments which generally include a Declaration of Restrictions (also known as CC&R's), Articles of Incorporation (or association) and bylaws. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. Study these documents carefully before entering into a contract to purchase a subdivision interest.

In order to provide funds for operation and maintenance of the common facilities, the association will levy assessments against your lot or unit. If you are delinquent in the payment of assessments, the association may enforce payment through court proceedings or your lot or unit may be liened and sold through the exercise of a power of sale. The anticipated income and expenses of the association, including the amount that you may expect to pay through assessments, are outlined in the proposed budget. Ask to see a copy of the budget if the subdivider has not already made it available for your examination.

A homeowner association provides a vehicle for the ownership and use of recreational and other common facilities which were designed to attract you to buy in this development. The association also provides a means to accomplish architectural control and to provide a base for homeowner interaction on a variety of issues. The purchaser of an interest in a common-interest development should contemplate active participation in the affairs of the association. He or she should be willing to serve on the board of directors or on committees created by the board. In short, "they" in a common interest development is "you." Unless you serve as a member of the governing board or on a committee appointed by the board, your control of the operation of

the common areas and facilities is limited to your vote as a member of the association. There are actions that can be taken by the governing body without a vote of the members of the association which can have a significant impact upon the quality of life for association members.

Until there is a sufficient number of purchasers of lots or units in a common interest development to elect a majority of the governing body, it is likely that the subdivider will effectively control the affairs of the association. It is frequently necessary and equitable that the subdivider do so during the early stages of development. It is vitally important to the owners of individual subdivision interests that the transition from subdivider to resident-owner control be accomplished in an orderly manner and in a spirit of cooperation.

When contemplating the purchase of a dwelling in a common interest development, you should consider factors beyond the attractiveness of the dwelling units themselves. Study the governing instruments and give careful thought to whether you will be able to exist happily in an atmosphere of cooperative living where the interests of the group must be taken into account as well as the interests of the individual. Remember that managing a common interest development is very much like governing a small community . . . the management can serve you well, but you will have to work for its success.”

Failure to provide the statement in accordance with this subdivision shall not be deemed a violation subject to Section 10185.

SEC. 8. Section 783 of the Civil Code is repealed.

SEC. 9. Section 783 is added to the Civil Code, to read:

783. A condominium is an estate in real property described in subdivision (f) of Section 1351. A condominium may, with respect to the duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate for life, (3) an estate for years, such as a leasehold or a subleasehold, or (4) any combination of the foregoing.

SEC. 10. Section 783.1 is added to the Civil Code, to read:

783.1. In a stock cooperative, as defined in subdivision (m) of Section 1351, both the separate interest, as defined in paragraph (4) of subdivision (l) of Section 1351, and the correlative interest in the stock cooperative corporation, however designated, are interests in real property.

SEC. 11. Section 846.6 of the Civil Code is repealed.

SEC. 12. Section 1133 of the Civil Code is amended to read:

1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket encumbrance, as defined in Section 11013 of the Business and Professions Code, but is exempt from a requirement of compliance with Section 11013.2 of the Business and Professions Code, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor cause it to be sold, or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a true copy of the following notice:

BUYER/LESSEE IS AWARE OF THE FACT THAT THE LOT, PARCEL, OR UNIT WHICH HE OR SHE IS PROPOSING TO PURCHASE OR LEASE IS SUBJECT TO A DEED OF TRUST, MORTGAGE, OR OTHER LIEN KNOWN AS A "BLANKET ENCUMBRANCE".

IF BUYER/LESSEE PURCHASES OR LEASES THIS LOT, PARCEL, OR UNIT, HE OR SHE COULD LOSE THAT INTEREST THROUGH FORECLOSURE OF THE BLANKET ENCUMBRANCE OR OTHER LEGAL PROCESS EVEN THOUGH BUYER/LESSEE IS NOT DELINQUENT IN HIS OR HER PAYMENTS OR OTHER OBLIGATIONS UNDER THE MORTGAGE, DEED OF TRUST, OR LEASE.

Date

Signature of Buyer or Lessee

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two or more lots,

parcels, or units and includes a condominium project, as defined in subdivision (f) of Section 1351, a community apartment project, as defined in subdivision (d) of Section 1351, a stock cooperative, as defined in subdivision (m) of Section 1351, and a limited equity housing cooperative, as defined in subdivision (m) of Section 1351.

(c) The failure of the buyer or lessee to sign the notice shall not invalidate any grant, conveyance, lease, or encumbrance.

(d) Any person or entity who willfully violates the provisions of this section shall be liable to the purchase of a lot or unit which is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars (\$500). In an action to enforce such liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

SEC. 13. Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code is repealed.

SEC. 14. Title 6 (commencing with Section 1350) added to Part 4 of Division 2 of the Civil Code, to read:

TITLE 6. COMMON INTEREST DEVELOPMENT:

1350. This title shall be known and may be cited as the Davis-Stirling Common Interest Development Act.

1351. As used in this title, the following terms have the following meanings:

(a) "Association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

(b) "Common area" means the entire common interest development except the separate interests therein.

(c) "Common interest development" means a residential property development:

(1) Which consists or will consist of separately owned lots, parcels, areas, or spaces with either or both of the following features:

(A) One or more additional contiguous

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noncontiguous lots, parcels, areas, or spaces owned in common by the owners of the separately owned lots, parcels, areas, or spaces.

(B) Mutual, common, or reciprocal interests in, or restrictions upon, all or a portion of these separately owned lots, parcels, areas, or spaces, or both.

(2) And, in which the owners of the separately owned lots, parcels, areas, or spaces have rights, directly or indirectly, to the beneficial use and enjoyment of the lots, parcels, areas, or spaces referred to in subparagraph (A) of paragraph (1) or any one or more of them or portions thereof or interests therein, or the interests or restrictions referred to in subparagraph (B) of paragraph (1).

The estate in a separately or commonly owned lot, parcel, area, or space may be an estate of inheritance or perpetual estate, an estate for life, an estate for years, or any combination of the foregoing.

Either common ownership of the additional contiguous or noncontiguous lots, parcels, or areas referred to in subparagraph (A) of paragraph (1) or the enjoyment of the mutual, common, or reciprocal interests in, or restrictions upon, the separately owned lots, parcels, areas, or spaces pursuant to subparagraph (B) of paragraph (1), or both, may be through ownership of shares of stock or membership in an association or otherwise. Shares of stock, if any exist, shall be deemed to be interests in a common interest development and real estate development for purposes of subdivision (f) of Section 25100 of the Corporations Code.

(d) "Community apartment project" means a common interest development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

(e) "Condominium plan" means a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate

consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged by the record owner of fee title to that property included in the condominium project. In the case of a condominium project which will terminate upon the termination of an estate for years, the certificate shall be signed and acknowledged by all lessors and lessees of the estate for years and, in the case of a condominium project subject to a life estate, the certificate shall be signed and acknowledged by all life tenants and remainder interests. The certificate shall also be signed and acknowledged by either the trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property. Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the condominium plan. A condominium plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by all the persons whose signatures would be required to record a condominium plan pursuant to this subdivision.

(f) A “condominium project” means a common interest development consisting of condominiums. A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (i) boundaries described in the recorded final map, parcel map, or condominium plan, (ii) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (iii) an entire structure containing one or more units, or (iv) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may

include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

(g) "Declarant" means the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.

(h) "Declaration" means the document, however denominated, which contains the information required by Section 1353.

(i) "Exclusive use common area" means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door frames, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(j) "Governing documents" means the declaration and any other documents, such as bylaws, operating rules of the association, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.

(k) "Planned development" means a common interest development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following

features:

(1) Any contiguous or noncontiguous lots, parcels, or areas in which owners of separately owned lots, parcels, or areas are owners in common, possessing appurtenant rights to the beneficial use and enjoyment of the commonly owned property.

(2) A power exists in the association to enforce an obligation of an owner of a separately owned lot, parcel, or area with respect to the beneficial use and enjoyment by means of an assessment which may become a lien upon the separately owned lot, parcel, or area in accordance with Section 1367.

(l) "Separate interest" has the following meanings:

(1) In a community apartment project, "separate interest" means the exclusive right to occupy an apartment, as specified in subdivision (d).

(2) In a condominium project, "separate interest" means an individual unit, as specified in subdivision (f).

(3) In a planned development, "separate interest" means a separately owned lot, parcel, or area, as specified, in subdivision (k).

(4) In a stock cooperative, "separate interest" means the exclusive right to occupy a portion of the real property, as specified in subdivision (m).

Unless the declaration or condominium plan, if any exists, otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the separate interest are part of the separate interest and any other portions of the walls, floors, or ceilings are part of the common areas.

(m) "Stock cooperative" means a common interest development in which a corporation is formed or availed of primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners' interest in the corporation, whether evidenced by a share of stock, a certificate of

membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f), Section 25100 of the Corporations Code.

A "stock cooperative" includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 33007.5 of the Health and Safety Code.

1352. This title applies and a common interest development is created whenever a separate interest coupled with an interest in the common area or membership in the association is conveyed, provided, all of the following are recorded:

- (a) A declaration.
- (b) A condominium plan, if any exists.
- (c) A final map or parcel map, if Division 2 (commencing with Section 66410) of Title 7 of the Government Code requires the recording of either a final map or parcel map for the common interest development.

1353. (a) The declaration shall contain a legal description of the common interest development, and a statement that the common interest development is a community apartment project, condominium project, planned development, stock cooperative, or combination thereof. The declaration shall additionally set forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.

(b) The declaration may contain any other matters the original signator of the declaration or the owners consider appropriate.

1354. The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the project. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

1355. The declaration may be amended pursuant to

the governing documents or this title. Except as provided in Section 1356, an amendment is effective after (1) the approval of the percentage of owners required by the governing documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the officer designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and (3) that writing has been recorded in each county in which a portion of the common interest development is located.

1356. (a) If in order to amend a declaration, the declaration requires owners having more than 50 percent of the votes in the association, in a single class voting structure, or owners having more than 50 percent of the votes in more than one class in a voting structure with more than one class, to vote in favor of the amendment, the association, or any owner of a separate interest, may petition the superior court of the county in which the common interest development is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the association members in the manner provided in the declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing declaration, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

- (1) The governing documents.
- (2) A complete text of the amendment.
- (3) Copies of any notice and solicitation materials utilized in the solicitation of owner approvals.
- (4) A short explanation of the reason for the amendment.
- (5) Any other documentation relevant to the court's determination.

(b) Upon filing the petition, the court shall set the matter for hearing and issue an ex parte order setting forth the manner in which notice shall be given.

(c) The court may, but shall not be required to, grant the petition if it finds all of the following:

(1) The petitioner has given not less than 15 days written notice of the court hearing to all members of the association, to any mortgagee of a mortgage or beneficiary of a deed of trust who is entitled to notice under the terms of the declaration, and to the city, county, or city and county in which the common interest development is located that is entitled to notice under the terms of the declaration.

(2) Balloting on the proposed amendment was conducted in accordance with all applicable provisions of the governing documents.

(3) A reasonably diligent effort was made to permit all eligible members to vote on the proposed amendment.

(4) Owners having more than 50 percent of the votes, in a single class voting structure, voted in favor of the amendment. In a voting structure with more than one class, where the declaration requires a majority of more than one class to vote in favor of the amendment, owners having more than 50 percent of the votes of each class required by the declaration to vote in favor of the amendment voted in favor of the amendment.

(5) The amendment is reasonable.

(6) Granting the petition is not improper for any reason stated in subdivision (d).

(d) If the court makes the findings required by subdivision (c), any order issued pursuant to this section may confirm the amendment as being validly approved on the basis of the affirmative votes actually received during the balloting period or the order may dispense with any requirement relating to quorums or to the number or percentage of votes needed for approval of the amendment that would otherwise exist under the governing documents.

(e) Subdivisions (a) to (d), inclusive, notwithstanding, the court shall not be empowered by this section to approve any amendment to the declaration that:

(1) Would change provisions in the declaration requiring the approval of owners having more than 50

percent of the votes in more than one class to vote in favor of an amendment, unless owners having more than 50 percent of the votes in each affected class approve the amendment.

(2) Would eliminate any special rights, preferences, or privileges designated in the declaration as belonging to the declarant, without the consent of the declarant.

(3) Would impair the security interest of a mortgagee of a mortgage or the beneficiary of a deed of trust without the approval of the percentage of the mortgagees and beneficiaries specified in the declaration, if the declaration requires the approval of a specific percentage of the mortgagees and beneficiaries.

(f) An amendment is not effective pursuant to this section until the court order and amendment have been recorded in every county in which a portion of the common interest development is located. The amendment may be acknowledged by, and the court order and amendment may be recorded by, any person designated in the declaration or by the association for that purpose, or if no one is designated for that purpose by the president of the association. Upon recordation of the amendment and court order, the declaration, amended in accordance with this section, shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by the governing documents.

(g) Within a reasonable time after the amendment is recorded the association shall mail a copy of the amendment to each member of the association, together with a statement that the amendment has been recorded.

1357. (a) The Legislature finds that there are common interest developments that have been created with deed restrictions which do not provide a means for the property owners to extend the term of the declaration. The Legislature further finds that covenants and restrictions, contained in the declaration, are an appropriate method for protecting the common plan developments and to provide for a mechanism for financial support for the upkeep of common areas including, but not limited to, roofs, roads, heating

systems, and recreational facilities. If declarations terminate prematurely, common interest developments may deteriorate and the housing supply of affordable units could be impacted adversely.

The Legislature further finds and declares that it is in the public interest to provide a vehicle for extending the term of the declaration if owners having more than 50 percent of the votes in the association choose to do so.

(b) A declaration which specifies a termination date, but which contains no provision for extension of the termination date, may be extended by the approval of owners having more than 50 percent of the votes in the association or any greater percentage specified in the declaration for an amendment thereto. If the approval of owners having more than 50 percent of the votes in the association is required to amend the declaration, the term of the declaration may be extended in accordance with Section 1356.

(c) Any amendment to a declaration made in accordance with subdivision (b) shall become effective upon recordation in accordance with Section 1355.

(d) No single extension of the terms of the declaration made pursuant to this section shall exceed the initial term of the declaration or 20 years, whichever is less. However, more than one extension may occur pursuant to this section.

1358. (a) In a community apartment project, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the community apartment project. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

(b) In a condominium project the common areas are not subject to partition, except as provided in Section 1359. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common areas. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also

includes the owner's membership interest in the association.

(c) In a planned development, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common areas, if any exist. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

(d) In a stock cooperative, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the ownership interest in the corporation, however evidenced. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

Nothing in this section prohibits the transfer of exclusive use areas, independent of any other interest in a common interest subdivision, if authorization to separately transfer exclusive use areas is expressly stated in the declaration and the transfer occurs in accordance with the terms of the declaration.

Any restrictions upon the severability of the component interests in real property which are contained in the declaration shall not be deemed conditions repugnant to the interest created within the meaning of Section 711 of the Civil Code. However, these restrictions shall not extend beyond the period in which the right to partition a project is suspended under Section 1359.

1359. (a) Except as provided in this section, the common areas in a condominium project shall remain undivided, and there shall be no judicial partition thereof. Nothing in this section shall be deemed to prohibit partition of a cotenancy in a condominium.

(b) The owner of a separate interest in a condominium project may maintain a partition action as to the entire project as if the owners of all of the separate interests in the project were tenants in common in the entire project in the same proportion as their interests in the common areas. The court shall order partition under

this subdivision only by sale of the entire condominium project and only upon a showing of one of the following:

(1) More than three years before the filing of the action, the condominium project was damaged or destroyed, so that a material part was rendered unfit for its prior use, and the condominium project has not been rebuilt or repaired substantially to its state prior to the damage or destruction.

(2) Three-fourths or more of the project is destroyed or substantially damaged and owners of separate interests holding in the aggregate more than a 50-percent interest in the common areas oppose repair or restoration of the project.

(3) The project has been in existence more than 50 years, is obsolete and uneconomic, and owners of separate interests holding in the aggregate more than a 50-percent interest in the common area oppose repair or restoration of the project.

(4) The conditions for such a sale, set forth in the declaration, have been met.

1360. (a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the owner of the separate interest may do the following:

(1) Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(A) The modifications shall be consistent with

applicable building code requirements.

(B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law.

1361. Unless the declaration otherwise provides:

(a) In a community apartment project and condominium project, and in those planned developments with common areas owned in common by the owners of the separate interests, there are appurtenant to each separate interest nonexclusive rights of ingress, egress, and support, if necessary, through the common areas. The common areas are subject to these rights.

(b) In a stock cooperative, and in a planned development with common areas owned by the association, there is an easement for ingress, egress, and support, if necessary, appurtenant to each separate interest. The common areas are subject to these easements.

1362. Unless the declaration otherwise provides, in a condominium project, or in a planned development in which the common areas are owned by the owners of the separate interests, the common areas are owned as tenants in common, in equal shares, one for each unit or

lot.

1363. A common interest development shall be managed by an association which may be incorporated or unincorporated. 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. An association, whether incorporated or unincorporated, may exercise the powers granted to an association by Section 374 of the Code of Civil Procedure and the powers granted to the association in this title.

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

1364. Unless otherwise provided in the declaration, the association is responsible for maintaining the common areas, other than exclusive use common areas, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common areas appurtenant to that separate interest.

1365. Unless the declaration imposes more stringent standards, financial statements shall be prepared by the association and distributed to all its members as follows:

(a) A pro forma operating budget shall be distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year. The budget shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) The identification of the total cash reserves currently set aside.

(3) The identification of the estimated remaining life of, and the methods of funding used to defray the future repair, replacement, or additions to, those major components which the association is obligated to

maintain.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

(b) A copy of a review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). The review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

1366. (a) Unless otherwise provided in the declaration, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title.

(b) In addition to any limitations placed on the board by the governing documents, the board of directors of the association may not impose, except as provided in this subdivision, a regular assessment that is more than 10 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

The provisions of this subdivision do not limit assessment increases for the following purposes:

(1) The maintenance or repair of the common areas or

other areas which the association is obligated to maintain or repair, including, but not limited to, the payment of insurance premiums, the payment of utility bills, the costs incurred in maintaining or repairing structures or improvements, and funding reserves.

(2) Addressing emergency situations.

(c) Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due. If an assessment is delinquent the association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.

(2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed 12 percent interest, commencing 30 days after the assessment becomes due.

(d) Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

1367. (a) A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied.

(b) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with

Section 1366, a description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (d) the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association. Upon payment of the sums specified in the notice of delinquent assessment, the association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

(c) A lien created pursuant to subdivision (b) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(d) A lien created pursuant to subdivision (b) may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts.

(e) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

1368. (a) Except as provided in subdivision (c), the owner of a separate interest shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the

common interest development.

(2) A copy of the most recent financial statement distributed pursuant to Section 1365.

(3) A true statement in writing from an authorized representative of the association as to the amount of any assessments levied upon the owner's interest in the common interest development which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1), (2), and (3) of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

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

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

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

1369. In a condominium project, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the condominium project or his or her agent or his or her contractor shall be the basis for the filing of a lien against any other property of any other owner in the condominium project unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or

services. However, express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the common areas, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each condominium owner. The owner of any condominium may remove his or her condominium from a lien against two or more condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien which is attributable to his or her condominium.

1370. Any deed, declaration, or condominium plan for a common interest development shall be liberally construed to facilitate the operation of the common interest development, and its provisions shall be presumed to be independent and severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2 of Part 1 of this division shall operate to invalidate any provisions of the governing documents of a common interest development.

1371. In interpreting deeds and condominium plans, the existing physical boundaries of a unit in a condominium project, when the boundaries of the unit are contained within a building, or of a unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or condominium plan, if any exists, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.

1372. Unless a contrary intent is clearly expressed, local zoning ordinances shall be construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless of whether the common interest development is a community apartment project, condominium project, planned development, or stock cooperative.

SEC. 15. Section 1725 of the Civil Code is repealed.

SEC. 16. Chapter 2 (commencing with Section 1730) of Part 4 of Division 3 of the Civil Code is repealed.

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SEC. 17. Section 374 of the Code of Civil Procedure is repealed.

SEC. 18. Section 374 is added to the Code of Civil Procedure, to read:

374. An association established to manage a common interest development pursuant to Section 1363 of the Civil Code shall have standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual owners of the common interest development, in matters pertaining to the following:

- (a) Enforcement of the governing documents.
- (b) Damage to the common areas.
- (c) Damage to the separate interests which the association is obligated to maintain or repair.
- (d) Damage to the separate interests which arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.

Approved September 21, 1985

George Dukmejian
Governor