

RESOLUTION 10-03-05

DIGEST

Common Interest Development: Enforcement of Statutes

Amends Civil Code section 1365.5 to authorize the Attorney General to enforce the duties of the board of directors of a common interest development.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to 10-02-05.

Reasons:

This resolution amends Civil Code section 1365.5 to authorize the Attorney General to enforce the duties of the board of directors of a common interest development. This resolution should be approved in principle because there is no effective enforcement mechanism contained in the statute.

The rapid increase in the number of common interest developments has significantly increased the importance of the Davis-Stirling Act, which requires an inspection and study of the areas it is the association's responsibility to repair, replace and maintain in the common areas of such developments. This problem is one which requires the intervention of the Attorney General to establish a system that will compel associations to comply with the requirements of existing law. Presently, many associations ignore these responsibilities either to avoid increased costs to homeowners or out of simple neglect. In extreme cases, such neglect presents threats to the health, safety and welfare of the occupants and their visitors in common interest developments.

Where an association fails in its duties under the Act, it will subject itself to sanctions, including potential monetary sanctions and foreclosure. Hopefully such enforcement efforts will be in the best interests of the homeowners, resulting in improved living conditions in common interest developments in which an association has failed in its duties to the community.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 1365.5 to read as follows:

- 1 § 1365.5
- 2 (a) Unless the governing documents impose more stringent standards, the board of directors of the
- 3 association shall do all of the following:
- 4 (1) Review a current reconciliation of the association's operating accounts on at least a quarterly
- 5 basis.
- 6 (2) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.
- 7 (3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses
- 8 compared to the current year's budget.
- 9 (4) Review the latest account statements prepared by the financial institutions where the association
- 10 has its operating and reserve accounts.
- 11 (5) Review an income and expense statement for the association's operating and reserve accounts
- 12 on at least a quarterly basis.
- 13 (b) The signatures of at least two persons, who shall be members of the association's board of
- 14 directors, or one officer who is not a member of the board of directors and a member of the board of
- 15 directors, shall be required for the withdrawal of moneys from the association's reserve accounts.
- 16 (c) (1) The board of directors shall not expend funds designated as reserve funds for any purpose
- 17 other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair,
- 18 restoration, replacement, or maintenance of, major components which the association is obligated to

19 repair, restore, replace, or maintain and for which the reserve fund was established.

20 (2) However, the board may authorize the temporary transfer of moneys from a reserve fund to the
21 association's general operating fund to meet short-term cashflow requirements or other expenses, if
22 the board has provided notice of the intent to consider the transfer in a notice of meeting, which shall
23 be provided as specified in Section 1363.05. The notice shall include the reasons the transfer is
24 needed, some of the options for repayment, and whether a special assessment may be considered. If
25 the board authorizes the transfer, the board shall issue a written finding, recorded in the board's
26 minutes, explaining the reasons that the transfer is needed, and describing when and how the
27 moneys will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund
28 within one year of the date of the initial transfer, except that the board may, after giving the same
29 notice required for considering a transfer, and, upon making a finding supported by documentation
30 that a temporary delay would be in the best interests of the common interest development,
31 temporarily delay the restoration. The board shall exercise prudent fiscal management in maintaining
32 the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the
33 full amount of the expended funds within the time limits required by this section. This special
34 assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion,
35 extend the date the payment on the special assessment is due. Any extension shall not prevent the
36 board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

37 (d) When the decision is made to use reserve funds or to temporarily transfer moneys from the
38 reserve fund to pay for litigation, the association shall notify the members of the association of that
39 decision in the next available mailing to all members pursuant to Section 5016 of the Corporations
40 Code, and of the availability of an accounting of those expenses. Unless the governing documents
41 impose more stringent standards, the association shall make an accounting of expenses related to
42 the litigation on at least a quarterly basis. The accounting shall be made available for inspection by
43 members of the association at the association's office.

44 (e) At least once every three years the board of directors shall cause to be conducted a reasonably
45 competent and diligent visual inspection of the accessible areas of the major components which the
46 association is obligated to repair, replace, restore, or maintain as part of a study of the reserve
47 account requirements of the common interest development if the current replacement value of the
48 major components is equal to or greater than one-half of the gross budget of the association which
49 excludes the association's reserve account for that period. The board shall review this study annually
50 and shall consider and implement necessary adjustments to the board's analysis of the reserve
51 account requirements as a result of that review.

52 The study required by this subdivision shall at a minimum include:

53 (1) Identification of the major components which the association is obligated to repair, replace,
54 restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30
55 years.

56 (2) Identification of the probable remaining useful life of the components identified in paragraph (1) as
57 of the date of the study.

58 (3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components
59 identified in paragraph (1) during and at the end of their useful life.

60 (4) An estimate of the total annual contribution necessary to defray the cost to repair, replace,
61 restore, or maintain the components identified in paragraph (1) during and at the end of their useful
62 life, after subtracting total reserve funds as of the date of the study.

63 The Attorney General of the State of California is granted authority to use his/her offices to enforce
64 this section of the Act to include appropriate sanctions. Depending upon the severity of the violation,
65 sanctions may include monetary, in addition to foreclosure

66 (f) As used in this section, "reserve accounts" means both of the following:

67 (1) Moneys that the association's board of directors has identified for use to defray the future repair or
68 replacement of, or additions to, those major components which the association is obligated to
69 maintain.

70 (2) The funds received and not yet expended or disposed from either a compensatory
71 damage award or settlement to an association from any person or entity for injuries to property, real
72 or personal, arising from any construction or design defects. These funds shall be separately

73 itemized from funds described in paragraph (1).
74 (g) As used in this section, "reserve account requirements" means the estimated funds which the
75 association's board of directors has determined are required to be available at a specified point in
76 time to repair, replace, or restore those major components which the association is obligated to
77 maintain.
78 (h) This section does not apply to an association that does not have a "common area" as defined in
79 Section 1351.

(Proposed new language underlined; language to be deleted stricken.)

PROPOSER: Beverly Hills Bar Association

STATEMENT OF REASONS

Existing Law: Provides for reserve studies of condominiums and home owners associations.

This Resolution: Attempts to put much-needed teeth into the Act for enforcement.

The Problem: There is NO current enforcement mechanism for overt violation of this code section. Pursuant to Attorney General response to an inquiry as to his jurisdiction viz a viz violation of Davis Stirling Act, the Attorney General responded as follows: The Attorney General does not review matters involving Y disagreements between directors and members over policy and procedures, and most legal actions between charities and third parties regarding contracts and torts. Also, under Corporations Code section 9230, the Attorney General has no power to investigate religious corporations. Persons with complaints in any of the foregoing categories may choose to consult a private attorney to review rights and remedies.

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

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