Supreme Court case no. S211596

SUPREME COURT of CALIFORNIA

Tract 19051 Homeowners Association et al.,
Plaintiffs and Appellants,

v.

Maurice Kemp et al.,
Defendants and Respondents

MOTION/REQUEST FOR JUDICIAL NOTICE

TURNER LAW FIRM, APC
Keith J. Turner [SBN152685]
429 Santa Monica Blvd., Suite 500
Santa Monica, California 90401
Phone: 310.454.6190
Fax: 310.882.5563
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Attorneys for Defendant, Court of Appeal Respondent and Supreme Court Petitioner Eric Yeldell

SUPREME COURT
FILED

NOV - 1 2013

Frank A. McGuire Clerk

Deputy

Supreme Court case no. S211596

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Attorneys for Defendant, Court of Appeal Respondent and Supreme Court Petitioner Eric Yeldell

MOTION/REQUEST FOR JUDICIAL NOTICE

Pursuant to rule 8.54 of the California Rules of Court, Evidence Code section 452, subdivision (d) and Evidence Code section 459, Petitioner moves and requests that the Court take judicial notice of the following legislative materials concerning the main statutory provision at issue, true and correct copies of the following documents are attached to the motion:

A. Chapter 1517 (Assembly Bill 3689), Statutes of 1990, filed with the Secretary of State on Sept. 30, 1990

B. July 18, 1990 letter from the California Building Industry Association

C. Chapter 303 (Assembly Bill 55), Statutes of 1993, filed with the Secretary of State on Aug. 26, 1993

D. Chapter 754 (Assembly Bill 1836), Statutes of 2004, filed with the Secretary of State on Sept. 24, 2004

E. Senate Rules Committee, Consent Analysis (Assembly Bill 67) dated June 23, 1994

F. Analysis prepared for the Senate Local Government Committee (Assembly Bill 67), regarding a hearing on June 22, 1994

G. Assembly HOUSING AND Community Committee Republican Analysis (Assembly Bill 67)

H. Enrolled Bill Report (AB 67)

I. Position letter from the California Building Industry Association, dated June 24, 1994, support of AB 67

This motion is based on that the Court can consider legislative history to either "buttress a plain language construction"; or if the statutory language is ambiguous, the court may "'look to a variety of extrinsic aids, including the ... legislative history.'" (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 735-736; *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 697 ["Although the plain language of the statutes dictates the result here [citation], legislative history provides additional authority"]; *In re M.M.* (2012) 54 Cal.4th 530, 536 [citation omitted].) The above materials provide additional authority that a prevailing homeowner is entitled to attorney fees under Civil Code section 1354 in an action by the homeowners association to enforce its governing documents as those of a common interest development (CID) when the homeowner prevailed because it was later determined that the subdivision was not such a development and its governing documents had not been properly reenacted.

The above materials were obtained by Legislative Intent Service, Inc. Attached this motion are true and correct copies of Declarations by the Attorneys employed by Legislative Intent Service, Inc. that obtained the above materials. As stated in those Declarations provide, Legislative Intent Service provided true and correct copies of the originals of the above listed documents.

Based on the foregoing legal authority and for the above reasons, Petitioner respectfully requests that this Court grant this request for judicial notice.

DATED: October 30, 2013

Respectfully Submitted,

By: /s/ Keith J. Turner
Keith J. Turner
Attorney for Petitioner Eric Yeldell

DECLARATION OF KEITH TURNER

I, Keith Turner, declare:

1. I am an attorney at law, licensed by the California Supreme Court to practice law before all courts of the State of California. I have personal knowledge of the matters contained in this Declaration and, if called as a witness to testify, I could and would competently testify to them.

2. This Declaration is in support of Petitioner Eric Yeldell's Motion for Judicial Notice.

3. I had LEGISLATIVE INTENT SERVICE, INC. locate and obtain all documents relevant to the enactment of the main statute at issue in this action, Civil Code section 1354. I also had LEGISLATIVE INTENT SERVICE, INC. locate and obtain all documents relevant to the enactment of Civil Code sections 1374.

4. Attached are true and correct copies of the following documents that were obtained by LEGISLATIVE INTENT SERVICE, INC.:

A. Chapter 1517 (Assembly Bill 3689), Statutes of 1990, filed with the Secretary of State on Sept. 30, 1990

B. July 18, 1990 letter from the California Building Industry Association

C. Chapter 303 (Assembly Bill 55), Statutes of 1993, filed with the Secretary of State on Aug. 26, 1993

D. Chapter 754 (Assembly Bill 1836), Statutes of 2004, filed with the Secretary of State on Sept. 24, 2004

E. Senate Rules Committee, Consent Analysis (Assembly Bill 67) [Civ. Code section 1374] dated June 23, 1994

F. Analysis prepared for the Senate Local Government Committee

(Assembly Bill 67), regarding a hearing on June 22, 1994

G. Assembly HOUSING AND Community Committee Republican Analysis (Assembly Bill 67)

H. Enrolled Bill Report (AB 67)

I. Position letter from the California Building Industry Association, dated June 24, 1994, support of AB 67

5. Also attached this Declaration as Exhibit 1, 2 and 3 are true and correct copies of the Declarations by the attorneys employed by LEGISLATIVE INTENT SERVICE, INC. that directed obtaining the above materials. As Exhibits 1, 2 and 3 provide, LEGISLATIVE INTENT SERVICE, INC. obtained and provided true and correct copies of the above listed Exhibits A through I from the original legislative source documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 30, 2013, in Los Angeles, California.

/s/ Keith J. Turner
Keith Turner

[Proposed] Order

Petitioner's motion for judicial notice is granted. The Court takes judicial notice of Exhibits A through I attached to the motion.

Dated:_____

_____
Presiding Justice

4824-7417-3974, v. 1

CHAPTER 1517

An act to amend Sections 714, 1354, and 1366 of the Civil Code, relating to common interest developments.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3689, Hauser. Homeowners' associations: assessments.

(1) Under existing law, covenants, conditions, or restrictions contained in any document affecting transfer or sale of any interest in real property are limited in the types of restrictions that can be placed on the installation or use of solar energy systems.

This bill would modify the criteria for permissible restrictions in existing law, and state the intent of the Legislature in this regard. The bill would also request that meetings be convened on the subject to recommend standards respecting reasonableness of restrictions on solar energy systems, and to make recommendations thereon to the Legislature on or before July 1, 1991.

(2) Existing law provides that covenants and restrictions in a common interest development declaration are enforceable as equitable servitudes, as specified.

This bill would provide that in any action to enforce such a declaration, the prevailing party shall be awarded reasonable attorney's fees and costs.

(3) Under existing law, a homeowners' association is required to levy regular and special assessments sufficient to perform its obligations, as specified.

This bill would provide that the association shall not impose annual increases of regular assessments, pursuant to a specified provision governing increases in assessments, unless the board of directors of the association has prepared and distributed a pro forma operating budget to the members, as specified, or has obtained the approval of a majority of a quorum, as defined, of the owners of the association.

(4) The above changes would become operative July 1, 1991.

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

SECTION 1. It is the intent of the Legislature in enacting this act to promote the economic installation and efficient operation of solar energy systems in common interest developments, consistent with covenants, conditions, and restrictions that do not significantly increase the cost of the energy system or significantly decrease the efficiency of the energy system.

The Legislature hereby requests that meetings of interested

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RJN Exh. A

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parties be convened for the purpose of drafting standards or guidelines to define the "reasonableness" of these restrictions in clear terms, and to make recommendations to the Legislature in this regard on or before July 1, 1991.

SEC. 2. Section 714 of the Civil Code is amended to read:

714. Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property which effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

This section shall not apply to provisions which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

For the purposes of this section, "solar energy system" has the same meaning as defined in Section 801.5.

SEC. 3. Section 1354 of the Civil Code is amended to read:

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 development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both. In any action to enforce the declaration, the prevailing party shall be awarded reasonable attorney's fees and costs.

SEC. 4. Section 1366 of the Civil Code is amended to read:

1366. (a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, 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. For the purposes of this section, "quorum" means more than 50 percent of the owners of an association.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 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, constituting a quorum, 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. For the purposes of this section, quorum means more than 50 percent of the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

(1) An extraordinary expense required by an order of a court.

(2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.

(3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the proforma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(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.

SEC. 5. Sections 2, 3, and 4 of this act shall not become operative until July 1, 1991.

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VOLUME 2

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1989–90 REGULAR SESSION
1989–90 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 5, 1988

Recessed December 6, 1988	Reconvened January 3, 1989
Recessed March 16, 1989	Reconvened March 27, 1989
Recessed July 20, 1989	Reconvened August 21, 1989
Recessed September 15, 1989	Reconvened November 4, 1989
Recessed November 4, 1989	Reconvened January 3, 1990
Recessed April 5, 1990	Reconvened April 16, 1990
Recessed July 28, 1990	Reconvened August 6, 1990

Adjourned September 1, 1990

Adjourned Sine Die November 30, 1990

Legislative Days..... 264

HON. WILLIE L. BROWN
Speaker

HON. MIKE ROOS
Speaker pro Tempore

HON. JACK O'CONNELL
Assistant Speaker pro Tempore

HON. THOMAS HANNIGAN
Majority Floor Leader

HON. ROSS JOHNSON
Minority Floor Leader

Compiled Under the Direction of
R. BRIAN KIDNEY
Chief Clerk

GUNVOR L. ENGLE
History Clerk

LEGISLATIVE INTENT SERVICE (800) 666-1917

RJN Exh. A

A.B. No. 3689—Hauser.

An act to amend Sections 714, 1354, and 1366 of the Civil Code, relating to common interest developments.

1990

Mar. 1—Read first time. To print.
Mar. 4—From printer. May be heard in committee April 3.
Mar. 12—Referred to Com. on H. & C.D.
May 2—From committee chairman, with author's amendments: Amend, and re-refer to Com. on H. & C.D. Read second time and amended.
May 8—Re-referred to Com. on H. & C.D.
May 10—From committee: Do pass. (Ayes 11. Noes 0.) (May 9).
May 14—Read second time. To third reading.
May 17—Read third time, passed, and to Senate. (Ayes 62. Noes 3. Page 7454.)
May 17—In Senate. Read first time. To Com. on RLS. for assignment.
May 24—Referred to Com. on H. & U.A.
June 20—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on H. & U.A.
July 3—In committee: Set, first hearing. Hearing canceled at the request of author.
July 27—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on H. & U.A.
Aug. 10—From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 4. Noes 1.).
Aug. 13—Read second time, amended, and re-referred to Com. on APPR.
Aug. 17—Joint Rule 61 suspended.
Aug. 20—From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
Aug. 21—Read second time. To third reading.
Aug. 22—Read third time, amended. To second reading.
Aug. 23—Read second time. To third reading.
Aug. 24—Read third time, passed, and to Assembly. (Ayes 30. Noes 3. Page 7935.)
Aug. 27—In Assembly. Concurrence in Senate amendments pending.
Aug. 28—Senate amendments concurred in. To enrollment. (Ayes 74. Noes 0. Page 10042.)
Sept. 11—Enrolled and to the Governor at 4 p.m.
Sept. 29—Approved by the Governor.
Sept. 30—Chaptered by Secretary of State - Chapter 1517, Statutes of 1990.

LEGISLATIVE INTENT SERVICE (800) 666-1917

RJN Exh. A

CBIA

California Building Industry Association

1107 9th Street, Suite 1060
Sacramento, CA 95814
(916) 443-7933
FAX (916) 443-1960

OFFICERS

President
RICHARD L. HALL
La Linda Homes
Orange

First Vice President
DENNIS L. RUSSELL
Den-Ed Russell, Inc.
San Diego

Second Vice President
WILLIAM R. MAZZA
Mariemont Homes
Sacramento

Treasurer
O.B. JOHNSON
Continental Homes
Fresno

Secretary
BRUCE C. SMITH
Bruce Smith, Inc.
Walnut Creek

Chief Executive Officer
ROBERT RIVINIUS, CAE
Sacramento

MEMBER ASSOCIATIONS

Building Industry Association of Central California
Modesto

Building Industry Association of Central Coast
San Luis Obispo

Building Industry Association of the Delta
Stockton

Building Industry Association of Kern County
Bakersfield

Building Industry Association of Northern California
San Francisco Bay Area

Building Industry Association of San Diego County
San Diego

Building Industry Association of the San Joaquin Valley
Fresno

Building Industry Association of Southern California
Los Angeles

Building Industry Association of Superior California
Sacramento

Building Industry Association of Tulare/Kings Counties
Visalia

Building Industry Association of Tuolumne County
Sonora

July 18, 1990

Mike Krisman
c/o Assemblyman Dan Hauser
State Capitol
Sacramento, CA 95814

RE: Comments on proposed Amendment to AB 3689

Dear Mike,

The California Building Industry Association has received copies of proposed amendments to AB 3689 relating to common interest subdivisions.

Our Legislative Committee will review the legislation and proposed amendments at a meeting on July 31, in Sacramento. We will provide more detailed comments following this meeting.

However, there has been an initial negative reaction from several members and our general counsel to the amendments relating to recovery of attorney fees.

Our concern is legislating away from the American Rule that each party stands its own legal costs. There appears to be no basis for the provisions as this whole area of the law has recently been reviewed by the legislature and a select committee and no compelling need for such a provision surfaced at that time. Further, the provisions seem foreign to the issue of solar.

We intend to continue analysis of this legislation and will offer further comments soon.

Thank you for your consideration of our concerns.

Sincerely,

Dwight Hansen
Legislative Advocate

cc: James A. Edmonds, Real Estate Commissioner
Ron Kingston, California Association of Realtors

LEGISLATIVE INTENT SERVICE (800) 666-1917

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RJN Exh. B

CHAPTER 303

An act to amend Section 1354 of the Civil Code, relating to common interest developments.

[Approved by Governor August 25, 1993. Filed with Secretary of State August 26, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

AB 55, Hauser. Common interest developments: alternative dispute resolution.

Under existing law, the covenants and restrictions in the declaration of a common interest development are enforceable as equitable servitudes, and the prevailing party in any enforcement action is entitled to costs and attorney's fees.

This bill would generally require that, before a common interest development association or the owner of a separate interest therein brings an action solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not to exceed $5,000, relating to the enforcement of the governing documents of the common interest development, the association or owner shall endeavor to submit the matter to alternative dispute resolution as provided in the bill. Under the bill, any party to such a dispute may request another party to submit to alternative dispute resolution by serving a prescribed Request for Resolution. The above requirements would not be applicable where the statute of limitations would run within 120 days, or to the filing of a cross-complaint. The bill would make anything said in the course of alternative dispute resolution under the bill inadmissible in any civil action in which testimony can be compelled unless consented to by both parties, and would preclude compelling testimony or disclosure of specified related documents and any statement or admission made in the course of the alternative dispute resolution.

The bill, with certain exceptions, would require that a certificate certifying compliance with the above requirements be filed with a civil action arising out of such a dispute. Failure to file the certificate, with certain exceptions, would render the plaintiff's complaint subject to a motion to strike or demurrer.

This bill would also allow the court to stay a pending action and refer it to alternative dispute resolution, upon stipulation of the parties. In any action for declaratory relief or injunctive relief related to enforcement of the governing documents of a common interest development, the bill would entitle the prevailing party to an award of attorney's fees and costs, but would require the court to consider the prevailing party's refusal to engage in alternative dispute

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RJN Exh. C

LEGISLATIVE INTENT SERVICE (800) 666-1917

resolution in making such an award of attorney's fees and costs. The bill would require common interest development associations to provide their members annually with a summary of the provisions of the bill, as specified, and would require any Request for Resolution sent to an owner by the association to also include a copy of the provisions of the bill.

Under the bill, the costs of the alternative dispute resolution would be borne by the parties.

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

SECTION 1. Section 1354 of the Civil Code is amended to read:

1354. (a) 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 development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars ($5,000), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a Request for Resolution shall have 30 days following service of the Request for Resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(c) At the time of filing a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars ($5,000), related to the enforcement of the governing documents, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with subdivision (b). The failure to file a certificate as required by subdivision (b) shall be grounds for a demurrer pursuant to Section 430.10 of the Code of Civil Procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing party certifies in writing that one of the other parties to the dispute refused alternative dispute resolution prior to the filing of the complaint, that preliminary or temporary injunctive relief is necessary, or that alternative dispute resolution is not required by subdivision (b), because the limitation period for bringing the action would have run within the 120-day period next following the filing of the action, or the court finds that dismissal of the action for failure to comply with subdivision (b) would result in substantial prejudice to one of the parties.

(d) Once a civil action specified in subdivision (a) to enforce the governing documents has been filed by either an association or an owner or member of a common interest development, upon written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed. The costs of the alternative dispute resolution shall be borne by the parties. During this referral, the action shall not be subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(e) The requirements of subdivisions (b) and (c) shall not apply to the filing of a cross-complaint.

(f) In any action specified in subdivision (a) to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by any party for attorney's fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(g) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), evidence of anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence, and testimony or disclosure of such a statement or admission may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(h) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), documents prepared for the purpose or in the course

RJN Exh. C

LEGISLATIVE INTENT SERVICE (800) 666-1917

of, or pursuant to, the alternative dispute resolution shall not be admissible in evidence, and disclosure of these documents may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(i) Members of the association shall annually be provided a summary of the provisions of this section, which specifically references this section. The summary shall include the following language:

"Failure by any member of the association to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents."

The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner specified in Section 5016 of the Corporations Code.

(j) Any Request for Resolution sent to the owner of a separate interest pursuant to subdivision (b) shall include a copy of this section.

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RJN Exh. C

LEGISLATIVE INTENT SERVICE (800) 666-1917

VOLUME 1

CALIFORNIA LEGISLATURE

AT SACRAMENTO

1993–94 REGULAR SESSION
1993–94 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,
JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 7, 1992

Recessed December 8, 1992	Reconvened January 4, 1993
Recessed April 1, 1993	Reconvened April 12, 1993
Recessed September 11, 1993	Reconvened January 3, 1994
Recessed March 24, 1994	Reconvened April 4, 1994
Recessed July 7, 1994	Reconvened August 8, 1994
Recessed August 31, 1994	Reconvened November 17, 1994
Recessed November 17, 1994	

Adjourned Sine Die November 30, 1994

Legislative Days..... 245

HON. WILLIE L. BROWN
Speaker

HON. JACK O'CONNELL
Speaker pro Tempore

HON. RICHARD POLANCO
Assistant Speaker pro Tempore

HON. THOMAS HANNIGAN
Majority Floor Leader

HON. JIM BRULTE
Minority Floor Leader

Compiled Under the Direction of
E. DOTSON WILSON
Chief Clerk

SUSAN S. FLYNN
History Clerk

LEGISLATIVE INTENT SERVICE (800) 666-1917

RJN Exh. C

A.B. No. 55—Hauser.

An act to amend Section 1354 of the Civil Code, relating to common interest developments.

1992

Dec. 17—Introduced. To print.
Dec. 23—From printer. May be heard in committee January 22.

1993

Jan. 4—Read first time.
Jan. 14—Referred to Com. on JUD.
Mar. 2—From committee chairman, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.
Mar. 3—Re-referred to Com. on JUD.
Mar. 30—From committee: Amend, and do pass as amended. (Ayes 10. Noes 0.) (March 24).
Mar. 31—Read second time and amended. Ordered returned to second reading.
April 1—Read second time. To third reading.
April 12—Read third time, passed, and to Senate. (Ayes 63. Noes 0. Page 876.)
April 12—In Senate. Read first time. To Com. on RLS. for assignment.
April 15—Referred to Com. on JUD.
May 6—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
June 2—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
June 14—In committee: Set, first hearing. Hearing canceled at the request of author.
June 28—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
June 29—In committee: Set, second hearing. Hearing canceled at the request of author.
July 2—From committee chairman, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
July 7—From committee: Do pass. (Ayes 7. Noes 0.).
July 8—Read second time. To third reading.
July 16—Read third time, passed, and to Assembly. (Ayes 36. Noes 0. Page 2447.)
July 16—In Assembly. Concurrence in Senate amendments pending.
Aug. 16—Senate amendments concurred in. To enrollment. (Ayes 72. Noes 0. Page 3376.)
Aug. 19—Enrolled and to the Governor at 11:30 a.m.
Aug. 25—Approved by the Governor.
Aug. 26—Chaptered by Secretary of State - Chapter 303, Statutes of 1993.

LEGISLATIVE INTENT SERVICE (800) 666-1917

RJN Exh. C

Assembly Bill No. 1836

CHAPTER 754

An act to amend Sections 1354 and 1357.120 of, to amend and renumber Section 1368.4 of, and to add Article 5 (commencing with Section 1363.810) to Chapter 4 of, and Article 1 (commencing with Section 1368.3) and Article 2 (commencing with Section 1369.510) to Chapter 7 of, Title 6 of Part 4 of Division 2 of, the Civil Code, and to repeal Section 383 of the Code of Civil Procedure, relating to common interest developments.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1836, Harman. Common interest developments: dispute resolution.

Existing law provides that a common interest development association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings, in various circumstances, including enforcement of the governing documents. The Davis-Stirling Common Interest Development Act requires, before a common interest development association or an owner of a separate interest therein brings certain actions related to the enforcement of the development's governing documents, that the parties endeavor to submit their dispute to alternative dispute resolution, as specified. Existing law defines and regulates operating rules in connection with common interest development associations and applies them to association procedures for resolution of assessment disputes.

This bill would revise and recast the provisions described above relating to dispute resolution. The bill would specify that a common interest development association and an owner of a separate interest may enforce governing documents other than the declaration. The bill would create a new dispute resolution procedure for conflicts between an association and a member, to be applied when the dispute concerns specified subjects. The bill would require an association to provide a fair, reasonable, and expeditious procedure for resolving these disputes, as defined by certain minimum standards, and would provide a procedure for associations that do not have a procedure of their own that meets the minimum standards, among them that the member not be charged a fee to participate in the process. The bill would also require that the association provide notice of its dispute resolution process, as specified.

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This bill would revise the existing dispute resolution provisions, described above, to clarify their application to other nonjudicial processes and to broaden their applicability to include actions enforcing the Davis-Stirling Common Interest Development Act and the Nonprofit Mutual Benefit Corporation Law. Among other things, the bill would also provide for the tolling of a statute of limitations in certain circumstances, expand the permissible methods of service of a request to submit a dispute to the resolution process, and change the confidentiality protections applied to these procedures. The bill would require that a common interest development association's procedures for the resolution of all disputes, not only those related to assessments, satisfy requirements regarding association operating rules. The bill would make additional technical and conforming changes.

The bill would incorporate additional changes in Section 1357.120 of the Civil Code proposed by AB 2376 that would become operative only if AB 2376 and this bill are both chaptered and become effective on or before January 1, 2005, and this bill is chaptered last.

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

SECTION 1. Section 1354 of the Civil Code is amended to read:

1354. (a) 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 development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.

(c) In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs.

SEC. 2. Section 1357.120 of the Civil Code is amended to read:

1357.120. (a) Sections 1357.130 and 1357.140 only apply to an operating rule that relates to one or more of the following subjects:

(1) Use of the common area or of an exclusive use common area.

(2) Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest.

(3) Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties.

(4) Any standards for delinquent assessment payment plans.

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(5) Any procedures adopted by the association for resolution of disputes.

(b) Sections 1357.130 and 1357.140 do not apply to the following actions by the board of directors of an association:

(1) A decision regarding maintenance of the common area.

(2) A decision on a specific matter that is not intended to apply generally.

(3) A decision setting the amount of a regular or special assessment.

(4) A rule change that is required by law, if the board of directors has no discretion as to the substantive effect of the rule change.

(5) Issuance of a document that merely repeats existing law or the governing documents.

SEC. 2.5. Section 1357.120 of the Civil Code is amended to read:

1357.120. (a) Sections 1357.130 and 1357.140 only apply to an operating rule that relates to one or more of the following subjects:

(1) Use of the common area or of an exclusive use common area.

(2) Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest.

(3) Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties.

(4) Any standards for delinquent assessment payment plans.

(5) Any procedures adopted by the association for resolution of disputes.

(6) Any procedures for reviewing and approving or disapproving a proposed physical change to a member's separate interest or to the common area.

(b) Sections 1357.130 and 1357.140 do not apply to the following actions by the board of directors of an association:

(1) A decision regarding maintenance of the common area.

(2) A decision on a specific matter that is not intended to apply generally.

(3) A decision setting the amount of a regular or special assessment.

(4) A rule change that is required by law, if the board of directors has no discretion as to the substantive effect of the rule change.

(5) Issuance of a document that merely repeats existing law or the governing documents.

SEC. 3. Article 5 (commencing with Section 1363.810) is added to Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

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Article 5. Dispute Resolution Procedure

1363.810. (a) This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the governing documents of the common interest development or association.

(b) This article supplements, and does not replace, Article 2 (commencing with Section 1369.510) of Chapter 7, relating to alternative dispute resolution as a prerequisite to an enforcement action.

1363.820. (a) An association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article.

(b) In developing a procedure pursuant to this article, an association shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development.

(c) If an association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article, the procedure provided in Section 1363.840 applies and satisfies the requirement of subdivision (a).

1363.830. A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

(a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.

(b) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the association to act on a request invoking the procedure.

(c) If the procedure is invoked by a member, the association shall participate in the procedure.

(d) If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the association's board of directors.

(e) A resolution of a dispute pursuant to the procedure, that is not in conflict with the law or the governing documents, binds the association and is judicially enforceable. An agreement reached pursuant to the procedure, that is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable.

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(f) The procedure shall provide a means by which the member and the association may explain their positions.

(g) A member of the association shall not be charged a fee to participate in the process.

1363.840. (a) This section applies in an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(2) A member of an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.

(3) The association's board of directors shall designate a member of the board to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is either consistent with the authority granted by the board of directors to its designee or the agreement is ratified by the board of directors.

(d) A member of the association may not be charged a fee to participate in the process.

1363.850. The notice provided pursuant to Section 1369.590 shall include a description of the internal dispute resolution process provided pursuant to this article.

SEC. 4. Article 1 (commencing with Section 1368.3) is added to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 1. Miscellaneous Provisions

1368.3. An association established to manage a common interest development has 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

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individual owners of the common interest development, in matters pertaining to the following:

(a) Enforcement of the governing documents.

(b) Damage to the common area.

(c) Damage to a separate interest that the association is obligated to maintain or repair.

(d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair.

1368.4. (a) In an action maintained by an association pursuant to subdivision (b), (c), or (d) of Section 1368.3, the amount of damages recovered by the association shall be reduced by the amount of damages allocated to the association or its managing agents in direct proportion to their percentage of fault based upon principles of comparative fault. The comparative fault of the association or its managing agents may be raised by way of defense, but shall not be the basis for a cross-action or separate action against the association or its managing agents for contribution or implied indemnity, where the only damage was sustained by the association or its members. It is the intent of the Legislature in enacting this subdivision to require that comparative fault be pleaded as an affirmative defense, rather than a separate cause of action, where the only damage was sustained by the association or its members.

(b) In an action involving damages described in subdivision (b), (c), or (d) of Section 1368.3, the defendant or cross-defendant may allege and prove the comparative fault of the association or its managing agents as a setoff to the liability of the defendant or cross-defendant even if the association is not a party to the litigation or is no longer a party whether by reason of settlement, dismissal, or otherwise.

(c) Subdivisions (a) and (b) apply to actions commenced on or after January 1, 1993.

(d) Nothing in this section affects a person's liability under Section 1431, or the liability of the association or its managing agent for an act or omission which causes damages to another.

SEC. 5. Section 1368.4 of the Civil Code is amended and renumbered to read:

1368.5. (a) Not later than 30 days prior to the filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that 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, the board of directors of the association shall provide a written notice to

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each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

(2) The options, including civil actions, that are available to address the problems.

(3) The time and place of this meeting.

(b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.

SEC. 6. Article 2 (commencing with Section 1369.510) is added to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 2. Alternative Dispute Resolution

1369.510. As used in this article:

(a) "Alternative dispute resolution" means mediation, arbitration, conciliation, or other nonjudicial procedure 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.

1369.520. (a) An association or an owner or a member of a common interest development may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of five thousand dollars ($5,000).

(c) This section does not apply to a small claims action.

(d) Except as otherwise provided by law, this section does not apply to an assessment dispute.

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1369.530. (a) Any party to a dispute may initiate the process required by Section 1369.520 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

(1) A brief description of the dispute between the parties.

(2) A request for alternative dispute resolution.

(3) A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected.

(4) If the party on whom the request is served is the owner of a separate interest, a copy of this article.

(b) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(c) A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

1369.540. (a) If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

(b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration.

(c) The costs of the alternative dispute resolution shall be borne by the parties.

1369.550. If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

(a) The period provided in Section 1369.530 for response to a Request for Resolution.

(b) If the Request for Resolution is accepted, the period provided by Section 1369.540 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 1369.540.

1369.560. (a) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions is satisfied:

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(1) Alternative dispute resolution has been completed in compliance with this article.

(2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.

(3) Preliminary or temporary injunctive relief is necessary.

(b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless the court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

1369.570. (a) After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to alternative dispute resolution. The referred action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(b) The costs of the alternative dispute resolution shall be borne by the parties.

1369.580. In an enforcement action in which fees and costs may be awarded pursuant to subdivision (c) of Section 1354, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

1369.590. (a) An association shall annually provide its members a summary of the provisions of this article that specifically references this article. The summary shall include the following language:

"Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."

(b) The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner prescribed in Section 5016 of the Corporations Code. The summary shall include a description of the association's internal dispute resolution process, as required by Section 1363.850.

SEC. 7. Section 383 of the Code of Civil Procedure is repealed.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 1357.120 of the Civil Code proposed by both this bill and AB 2376. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section

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1357.120 of the Civil Code, and (3) this bill is enacted after AB 2376, in which case Section 2 of this bill shall not become operative.

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VOLUME 2

CALIFORNIA LEGISLATURE

AT SACRAMENTO

2003-04 REGULAR SESSION

2003-04 FIRST EXTRAORDINARY SESSION

2003-04 SECOND EXTRAORDINARY SESSION

2003-04 THIRD EXTRAORDINARY SESSION

2003-04 FOURTH EXTRAORDINARY SESSION

2003-04 FIFTH EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS,
CONCURRENT RESOLUTIONS,
JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened December 2, 2002

Legislative Days 248

Calendar Days 730

Adjourned August 28, 2004

Adjourned Sine Die November 30, 2004

HON. FABIAN NUÑEZ
Speaker

HON. LELAND YEE
Speaker pro Tempore

HON. DARIO FROMMER
Majority Floor Leader

HON. SALLY LIEBER
Assistant Speaker pro Tempore

HON. KEVIN McCARTHY
Minority Floor Leader

Compiled Under the Direction of
E. DOTSON WILSON
Chief Clerk

AMY LEACH
History Clerk

RJN Exh. D

A.B. No. 1836—Harman.

An act to amend Sections 1354 and 1357.120 of, to amend and renumber Section 1368.4 of, and to add Article 5 (commencing with Section 1363.810) to Chapter 4 of, and Article 1 (commencing with Section 1368.3) and Article 2 (commencing with Section 1369.510) to Chapter 7 of, Title 6 of Part 4 of Division 2 of, the Civil Code, and to repeal Section 383 of the Code of Civil Procedure, relating to common interest developments.

2004

Jan. 22—Read first time. To print.
Jan. 23—From printer. May be heard in committee February 22.
Feb. 5—Referred to Coms. on H. & C.D. and JUD.
Mar. 24—From committee: Do pass, and re-refer to Com. on JUD. Re-referred. (Ayes 9. Noes 0.) (March 24).
April 20—In committee: Hearing postponed by committee.
May 11—From committee: Amend, and do pass as amended. To Consent Calendar. (May 4).
May 12—Read second time and amended. Ordered returned to second reading.
May 13—Read second time. To Consent Calendar.
May 20—Read third time, passed, and to Senate. (Ayes 76. Noes 0. Page 5862.)
May 20—In Senate. Read first time. To Com. on RLS. for assignment.
May 27—Referred to Coms. on H. & C.D. and JUD.
June 1—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on H. & C.D.
June 14—From committee: Amend, do pass as amended, and re-refer to Com. on JUD. (Ayes 6. Noes 0.)
June 15—Read second time, amended, and re-referred to Com. on JUD.
June 28—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
June 29—In committee: Testimony taken. Hearing postponed by committee.
June 30—Joint Rule 62(a), file notice waived. (Page 4494.)
July 2—From committee: Amend, and do pass as amended. (Ayes 7. Noes 0.)
July 6—Read second time, amended, and to third reading.
Aug. 12—Read third time, passed, and to Assembly. (Ayes 37. Noes 0. Page 4923.)
Aug. 12—In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 14 pursuant to Assembly Rule 77.
Aug. 17—Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 80. Noes 0. Page 7231.)
Aug. 25—Enrolled and presented to the Governor at 3 p.m.
Sept. 24—Approved by the Governor.
Sept. 24—Chaptered by Secretary of State - Chapter 754, Statutes of 2004.

RJN Exh. D

CONSENT

SENATE RULES COMMITTEE	Bill No.	AB 67
Office of Senate Floor Analyses 1020 N Street, Suite 524 445-6614	Author:	Hauser (D)
	Amended:	6/23/94 in Senate
	Vote Required:	21

Committee Votes:

Senate Floor Vote:

COMMITTEE: LOCAL GOVERNMENT
BILL NO.: AB 67
DATE OF HEARING: 6-22-94

SENATORS:	AYE	NO
Ayala (VC)	✓	
Calderon	✓	
Craven	✓	
Hughes	✓	
Johannessen	✓	
Kopp	✓	
McCorquodale	✓	
Presley	✓	
Russell	✓	
Thompson		
Bergeson (Ch)	✓	
TOTAL:	10	0

Assembly Floor Vote: NOT RELEVANT

SUBJECT: Common interest developments

SOURCE: Author

DIGEST: This bill clarifies that the Davis-Stirling Common Interest Development Act does not apply to common interest developments that do not have a common area.

NOTE: The bill as it left the Assembly would have withheld the power relating to nonprofit mutual benefit corporations from limited equity housing cooperatives.

ANALYSIS: A common form of commercial and residential ownership is where individual owners have the right to occupy specific spaces or living units and the common areas are shared and owned in common. Individual owners are responsible to manage and maintain their individual spaces or living units, and a community association must manage and maintain the common areas such as private streets, parking lots, roofs, exterior building walls, landscaping, and recreation areas. This form of ownership is known as a common interest development (CID).

The Davis-Stirling Common Interest Development Act regulates CIDs. A CID can be a community apartment project, condominium project, planned development, or stock cooperative. The Act requires community associations to elect a board of directors, prepare and approve an annual operating budget, collect association dues, enforce rules and regulations, and maintain the common areas. Community associations may exercise the powers granted to a nonprofit mutual benefit corporation.

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CONTINUED

The author wants to clarify and reinforce existing CID law so that it does not apply to a homeowner association that has no common area to maintain.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

DLW:sl 6/23/94 Senate Floor Analyses

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SENATE LOCAL GOVERNMENT COMMITTEE	**VERSION:**	04/21/94	A
Senator Marian Bergeson, Chairman	**SET:**	Third	B
	HEARING:	06/22/94	
	FISCAL:	No	6
Assembly Bill 67 - Hauser	**CONSULTANT:**	Yee	7

COMMON INTEREST DEVELOPMENTS

JUN 21 1994

Background and Existing Law:

A common form of commercial and residential ownership is where individual owners have the right to occupy specific spaces or living units and the common areas are shared and owned in common. Individual owners are responsible to manage and maintain their individual spaces or living units, and a community association must manage and maintain the common areas such as private streets, parking lots, roofs, exterior building walls, landscaping, and recreation areas. This form of ownership is known as a common interest development (CID).

The Davis-Stirling Common Interest Development Act regulates CIDs. A CID can be a community apartment project, condominium project, planned development, or stock cooperative. The Act requires community associations to elect a board of directors, prepare and approve an annual operating budget, collect association dues, enforce rules and regulations, and maintain the common areas. Community associations may exercise the powers granted to a nonprofit mutual benefit corporation.

The author wants to clarify and reinforce existing CID law so that it does not apply to a homeowner association that has no common area to maintain.

Proposed Law:

Assembly Bill 67 clarifies that the Davis-Stirling Common Interest Development Act does not apply to common interest developments that do not have a common area.

Comment:

Under the Davis-Stirling Common Interest Development Act, community associations manage and maintain the common areas residential or commercial projects. But property owners sometimes create community associations with no common maintenance areas, for fighting neighborhood crime or reviewing nearby development projects. These community

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associations are not subject to the Act. AB 67 clarifies that the Act applies only to community associations that are formed to manage and maintain developments with common areas.

Assembly Actions:

Housing & Community Development Committee:	9-0
Floor:	76-0

Support and Opposition: (06/16/94)

Support: Unknown.

Opposition: Unknown.

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ASSEMBLY HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE
REPUBLICAN ANALYSIS

AB 67 (Hauser) -- LIMITED EQUITY HOUSING COOPERATIVES
Version: 6/23/94 Lead Republican: Gil Ferguson
Analyzed: 7/5/94 Vote: Majority
Recommendation: Support

SUMMARY: Clarifies that the Davis-Stirling Common Interest Development Act does not apply to a development that does not have a common area. This is declaratory of existing law.
SENATE AMENDMENTS: Deleted language clarifying existing law that LECs are nonprofit public benefit corporations, not nonprofit mutual benefit corporations and add the above. FISCAL EFFECT: None.

TAX OR FEE INCREASE: None.

POTENTIAL EFFECTS: Will clarify whether a "common interest development" is required to apply the Davis-Stirling Act.

SUPPORT: None on File
OPPOSITION: None on File
GOVERNOR'S POSITION: Unknown.

COMMENTS:
- Supporting Argument: CIDs manage and maintain the common areas (pool, club house, etc.) of commercial and residential projects. However, unwitting property owners sometimes create community associations with no common maintenance areas for, say, fighting crime, or reviewing local development projects. For instance, staff assists with the Happy Valley Improvement Association in Contra Costa County which works to improve the neighborhood but whose members do not share common facilities.

Assembly Republican Floor vote -- IRRELEVANT DUE TO AMENDMENTS
Senate Republican Floor vote -- 7/1/94
(37-0) Ayes: All Republicans present and voting
Consultant: William Weber

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STATE AND CONSUMER SERVICES AGENCY — ENROLLED BILL REPORT

DEPARTMENT	AUTHOR	BILL NUMBER
Consumer Affairs	Hauser	AB 67

BILL SUMMARY

Existing law provides for the regulation of common interest developments (CID) through the Davis-Stirling Common Interest Development Act (Act).

AB 67 would clarify that the Davis-Stirling Common Interest Development Act does not apply to common interest developments that do not have a common area.

BACKGROUND AND SPECIFIC FINDINGS

A CID is defined as a form of property ownership in which individuals own and occupy specific units of the development but, in which exists an area that is owned and can be used by all the owners of the specific units, i.e., a "common area." Each owner is responsible for the upkeep and maintenance of his or her unit. The common area (parking lot, swimming pool, park areas, etc) is maintained by the homeowners association for the benefit of all the occupants.

The Act requires associations to elect a board of directors, collect association dues, and prepare an annual operating budget. The association is also responsible for enforcing the rules and regulations for that development.

Homeowners in subdivision developments sometimes band together and create community associations that have no common maintenance areas. These associations are created for various reasons among which are to fight neighborhood crime, or to prevent unwanted commercial development.

The author introduced this legislation to clarify that existing CID law does not apply to developments or associations that do not have a common area.

FISCAL

There is no fiscal impact to the Department of Consumer Affairs.

SUPPORT California Building Industry Association

OPPOSITION None on record

ARGUMENTS

Pro: AB 67 would clarify that existing law that relates to common interest developments, which by definition include areas intended for and under the control of the homeowner associations, does not apply to developments in which

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Vote: ASSEMBLY			Vote: SENATE		
Floor:	Aye 76	No 0	Floor:	Aye 37	No 0
Policy Committee:	Aye 9	No 0	Policy Committee:	Aye 10	No 0
Fiscal Committee:	Aye n/a	No n/a	Fiscal Committee:	Aye n/a	No n/a

RECOMMENDATION TO GOVERNOR: SIGN X VETO ___

DEPARTMENT DIRECTOR: [signature] DATE: 12 JUL 94

DEFER TO OTHER AGENCY ___

AGENCY SECRETARY: Signed by KEVIN SHELLEY Deputy Secretary Legislation DATE: JUL 12 1994

EB SCS

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homeowners have formed groups or associations in order to influence planning and development decisions in their area or to fight encroaching slum conditions.

This bill has progressed through the entire legislative process with no opposition.

Con: Opponents could argue that this is a minor technical amendment that is totally unnecessary.

RECOMMENDATION:

The Department of Consumer Affairs recommends that the Governor SIGN AB 67.

Prepared by: Rena Kimball, Analyst Telephone: 322-1203

Traci Stevens, Deputy Director Telephone: 327-5196

LEGISLATIVE INTENT SERVICE (800) 666-1917

California Building Industry Association

1107 9TH STREET, SUITE 1060 • SACRAMENTO, CA 95814 • Phone (916) 443-7933 • Fax (916) 443-1960

POSITION LETTER

DATE: June 24, 1994

TO: Assembly Member Dan Hauser
Author
State Capitol, Room 2003
(Copy of letter sent to Senate Floor)

FROM: Dwight Hansen, Legislative Advocate

RE: Support of AB 67 (Hauser)

The California Building Industry Association, representing over 6,000 member firms engaged in residential, light commercial and industrial construction, **SUPPORTS** AB 67 (Hauser).

Common interest developments (CID) are a very powerful entity. The boards of directors can sue and be sued. They can raise dues and assessments against association members, in many cases without their specific consent. They can place liens against property and foreclose for non-payment. It can enter into contracts and commit the financial resources of the association in a number of complex transactions.

The formation of a CID association should be a deliberate and carefully considered action. The persons who purchase property contained within the CID should have full information about the powers and authorities of the board, the rules governing their actions and the financial and other obligations/limitations into which they may be entering.

The powers of an association should not be granted by definition, as determined by the courts after the fact and without the review and agreement of the property owners.

The Department of Real Estate regulates the formation of new common interest developments at the time they are built, and requires that significant documentation, including an operating budget, be reviewed and approved by the Department prior to the offering for sale of the property. This information must them be disclosed to the property owner at the time of purchase.

AB 67 is a very important clarification of law which will help ensure that property owners do not find themselves subject to rules and regulations which they had no reason to believe existed at the time they purchased their property.

For these reasons, CBIA strongly support AB 67 and we respectfully urge and AYE vote when the measure comes before you.

Should you have any further questions regarding our position, please contact me directly at (916) 443-7933.

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712 Main Street, Suite 200, Woodland, CA 95695
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DECLARATION OF L. KAREN HARRISON

I, L. Karen Harrison, declare:

I am an attorney licensed to practice in California, State Bar No. 148912, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 3689 of 1990. Assembly Bill 3689 was approved by the Legislature and was enacted as Chapter 1517 of the Statutes of 1990.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 3689 of 1990. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

ASSEMBLY BILL 3689 OF 1990:

1. All versions of Assembly Bill 3689 (Hauser-1990);
2. Procedural history of Assembly Bill 3689 from the 1989-90 *Assembly Final History*;
3. Analysis of Assembly Bill 3689 prepared for the Assembly Committee on Housing and Community Development;
4. Material from the legislative bill file of the Assembly Committee on Housing and Community Development on Assembly Bill 3689 as follows:
   a. Previously Obtained Material,
   + b. Up-to-date Collection of Material;
5. Third Reading analysis of Assembly Bill 3689 from the Office of Assembly Floor Analyses;
6. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 3689 as follows:
   a. Previously Obtained Material,
   + b. Up-to-date Collection of Material;

7. Two analyses of Assembly Bill 3689 prepared for the Senate Committee on Housing and Urban Affairs;
8. Material from the legislative bill file of the Senate Committee on Housing and Urban Affairs on Assembly Bill 3689 as follows:
   a. Previously Obtained Material,
+ b. Up-to-date Collection of Material;
9. Material from the legislative bill file of the Senate Committee on Appropriations on Assembly Bill 3689;
10. Two Third Reading analyses of Assembly Bill 3689 prepared by the Office of Senate Floor Analyses;
11. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 3689;
12. Concurrence in Senate Amendments analysis of Assembly Bill 3689 from the Office of Assembly Floor Analyses;
13. Material from the legislative bill file of Assembly member Dan Hauser on Assembly Bill 3689 as follows:
   a. Previously Obtained Material,
+ b. Up-to-date Collection of Material;
14. Post-enrollment documents regarding Assembly Bill 3689 as follows:
   a. Previously Obtained Material,
+ b. Up-to-date Collection of Material;
15. Press Release #649 issued by the Office of the Governor on September 29, 1990 to announce that Assembly Bill 3689 had been signed;
16. Excerpt regarding Assembly Bill 3689 from the 1990 *Summary Digest of Statutes Enacted and Resolutions Adopted* prepared by Legislative Counsel;
17. Material from the legislative bill file of the Department of Finance on Assembly Bill 3689.

+ We have re-gathered these file materials and have noted this more recently accessed collection of documents as "up-to-date collection of material" in this declaration, which may duplicate documents previously gathered. It is not unusual for more materials to become publicly available after our initial research of legislation so our research protocols compel us to re-access a file to determine if additional documents are available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of September, 2013 at Woodland, California.

L. KAREN HARRISON

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712 Main Street, Suite 200, Woodland, CA 95695
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DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 55 of 1993. Assembly Bill 55 was approved by the Legislature and was enacted as Chapter 303 of the Statutes of 1993.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 55 of 1993. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

EXHIBIT A - ASSEMBLY BILL 55 OF 1993:

1. All versions of Assembly Bill 55 (Hauser-1993);
2. Procedural history of Assembly Bill 55 from the 1993-94 *Assembly Final History*;
3. Two analyses of Assembly Bill 55 prepared for the Assembly Committee on Judiciary;
4. Material from the legislative bill file of the Assembly Committee on Judiciary on Assembly Bill 55;
5. Third Reading analysis of Assembly Bill 55 from the Assembly Committee on Judiciary;
6. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 55 as follows:

a. Previously Obtained Material,
+ b. Up-to-date Collection of Material;

7. Two analyses of Assembly Bill 55 prepared for the Senate Committee on Judiciary;
8. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 55;
9. Special Consent analysis of Assembly Bill 55 prepared by the Office of Senate Floor Analyses;
10. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 55 as follows:
    a. Previously Obtained Material,
    + b. Up-to-date Collection of Material;
11. Concurrence in Senate Amendments analysis of Assembly Bill 55 from the Assembly Committee on Judiciary;
12. Material from the legislative bill file of Assembly member Dan Hauser on Assembly Bill 55 as follows:
    a. Previously Obtained Material,
    + b. Up-to-date Collection of Material;
13. Post-enrollment documents regarding Assembly Bill 55 as follows:
    a. Previously Obtained Material,
    + b. Up-to-date Collection of Material;
14. Press Release #PR93:676 issued by the Office of the Governor on August 27, 1993 to announce that Assembly Bill 55 had been signed;
15. Excerpt regarding Assembly Bill 55 from the 1993 *Digest of Significant Legislation*, prepared by the Office of Senate Floor Analyses, October 1993;
16. Material from the file of the State and Consumer Services Agency on Assembly Bill 55.

EXHIBIT B - ASSEMBLY BILL 867 OF 1992 (PREDECESSOR):

1. All versions of Assembly Bill 867 (Hauser-1992);
2. Procedural history of Assembly Bill 867 from the 1991-92 *Assembly Final History*;
3. Analysis of Assembly Bill 867 prepared for the Assembly Committee on Housing and Community Development;
4. Material from the legislative bill files of the Assembly Committee on Housing and Community Development and Assembly member Hauser on Assembly Bill 867 as follows:
    a. Previously Obtained Material,
    + b. Up-to-date Collection of Material;
5. Third Reading analysis of Assembly Bill 867 from the Assembly Committee on Housing and Community Development;

6. Document from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 867;
7. Analysis of Assembly Bill 867 prepared for the Senate Committee on Housing and Urban Affairs;
8. Material from the legislative bill file of the Senate Committee on Housing and Urban Affairs on Assembly Bill 867 as follows:
   a. Previously Obtained Material,
+ b. Up-to-date Collection of Material;
9. Third Reading and Special Consent analyses of Assembly Bill 867 prepared by the Office of Senate Floor Analyses;
10. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 867;
11. Concurrence in Senate Amendments analysis of Assembly Bill 867 from the Assembly Committee on Housing and Community Development;
12. Governor's Veto message prepared by the Assembly Committee on Housing and Community Development;
13. Governor's veto file on Assembly Bill 867;
14. Excerpt regarding Governor Wilson's veto message on Assembly Bill 867 dated August 31, 1992 from the September 1, 1992 *Assembly Daily Journal.*
15. Material from the file of the State and Consumer Services Agency on Assembly Bill 867.

EXHIBIT C - BACKGROUND MATERIALS:

1. Excerpt of background paper, agenda, and appendix list from the Assembly Select Committee on Common Interest Subdivisions' "Interim Hearing on Common Interest Developments: The Quiet Revolution in Housing and Neighborhood Governance," held July 31, 1990;
2. Excerpt on issues related to Alternative Dispute Resolution from the *Final Report* prepared by the Assembly Select Committee on Common Interest Subdivisions, December 23, 1990;
3. Excerpted for Department of Developmental Service; "Governor's Budget Highlights" prepared by Governor Gray Davis, January 2002,

+ We have re-gathered these file materials and have noted this more recently accessed collection of documents as "up-to-date collection of material" in this declaration, which may duplicate documents previously gathered. It is not unusual for more materials to become publicly available after our initial research of legislation so our research protocols compel us to re-access a file to determine if additional documents are available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19th day of September, 2013 at Woodland, California.

Maria A. Sanders

MARIA A. SANDERS

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DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 1836. Assembly Bill 1836 was approved by the Legislature and was enacted as Chapter 754 of the Statutes of 2004.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 1836 of 2004. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

EXHIBIT A - ASSEMBLY BILL 1836 OF 2004:

1. All versions of Assembly Bill 1836 (Harman-2004);
2. Procedural history of Assembly Bill 1836 from the 2003-04 *Assembly Final History*;
3. Analysis of Assembly Bill 1836 prepared for the Assembly Committee on Judiciary;
4. Material from the legislative bill file of the Assembly Committee on Judiciary on Assembly Bill 1836;
5. Analysis of Assembly Bill 1836 prepared for the Assembly Committee on Housing and Community Development;
6. Material from the legislative bill file of the Assembly Committee on Housing and Community Development on Assembly Bill 1836;

7. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 1836;
8. Analysis of Assembly Bill 1836 prepared for the Senate Committee on Housing and Community Development;
9. Material from the legislative bill file of the Senate Committee on Housing and Community Development on Assembly Bill 1836;
10. Two analyses of Assembly Bill 1836 prepared for the Senate Committee on Judiciary;
11. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 1836;
12. Third Reading analysis of Assembly Bill 1836 prepared by the Office of Senate Floor Analyses;
13. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 1836;
14. Material from the legislative bill file of the Senate Republican Office of Policy on Assembly Bill 1836;
15. Material from the legislative bill file of the Senate Republican Fiscal Office on Assembly Bill 1836;
16. Concurrence in Senate Amendments analysis of Assembly Bill 1836 prepared by the Assembly Committee on Housing and Community Development;
17. Material from the legislative bill file of Assembly member Tom Harman on Assembly Bill 1836;
18. Post-enrollment documents regarding Assembly Bill 1836;
19. Excerpt regarding Assembly Bill 1836 from the 2004 *Digest of Legislation*, prepared by the Office of Senate Floor Analyses, November 2004;
20. Excerpt regarding Assembly Bill 1836 from the *Legislative Summary for 2003-2004* prepared by the Assembly Committee on Housing and Community Development.

EXHIBIT B - CALIFORNIA LAW REVISION COMMISSION MATERIALS:

1. Recommendation entitled *Alternative Dispute Resolution in Common Interest Developments*, prepared by the California Law Revision Commission, September 2003;
2. Tentative Recommendation entitled *Alternative Dispute Resolution in Common Interest Developments*, prepared by the California Law Revision Commission, December 2002;
3. Preliminary excerpt from Memorandum 2001-19, Study H-850, "Common Interest Development Law: Scope of Project" (Background Study), prepared by the California Law Revision Commission, January 22, 2001;
4. Memorandum 2001-31, Study H-851, "Nonjudicial Dispute Resolution Under CID Law: Discussion of Issues," prepared by the California Law Revision Commission, March 7, 2001;

5. Memorandum 2001-63, Study H-850, "Common Interest Development Law: Structure of Davis-Stirling Act," prepared by the California Law Revision Commission, August 6, 2001;
6. Memorandum 2003-31, Study H-851, "Alternative Dispute Resolution Under CID Law" (Comments on Tentative Recommendation), prepared by the California Law Revision Commission, July 24, 2003;
7. Memorandum 2004-23, Study H-851, "Common Interest Development Law: AB 1836 (Harman); AB 2376 (Bates), prepared by the California Law Revision Commission, April 8, 2004.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19th day of September, 2013 at Woodland, California.

Maria A. Sanders

MARIA A. SANDERS

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Tract 19051, et al., v Maurice Kemp, et al.

Supreme Court of the State of California Case No. S211596

I am over the age of 18 and not a party to the within action; I am employed in the County of Los Angeles at 429 Santa Monica Blvd., Suite 500, Santa Monica, CA 90401. On the date below I served the following document:

MOTION/REQUEST FOR JUDICIAL NOTICE

The document was served by the following means on all parties listed below:

Ken Mifflin, Esq.
The Law Offices of Mifflin & Associates
4309 South Western Ave.
Los Angeles, CA 90062

Robert L Jones
4081 S. Cloverdale Ave.
Los Angeles, CA 90008

[√] **(BY U.S. MAIL)** I am "readily familiar" with my office's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 30, 2013 at Santa Monica, California.

/s/Max Master
Max Master