

Assembly Bill No. 2598

Passed the Assembly August 27, 2004

Chief Clerk of the Assembly

Passed the Senate August 27, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 1353.6, 1363, 1365.1, 1365.2, and 1367.1 of, to add Sections 1367.4 and 1367.5 to, and to repeal Section 1366.3 of, the Civil Code, and to amend Section 116.540 of, and to add Section 729.035 to, the Code of Civil Procedure, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2598, Steinberg. Common interest developments.

(1) Existing law defines and regulates common interest developments and prohibits the governing documents of a common interest development from prohibiting the displaying of certain noncommercial signs, posters, flags, or banners, in an owner's separate interest, as specified.

This bill would extend the provisions described above to an owner's exclusive use common area.

(2) Existing law requires that members of a common interest development association have access to the association records, including accounting books and membership lists, as specified.

This bill would provide that, upon a court finding that a request to copy or inspect was unlawfully denied, a member is entitled to reasonable attorney's fees and court costs, and that the court may impose a civil penalty of up to \$500 per violation.

(3) Existing law requires the managing association of a common interest development to make the accounting books and records and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative, as specified.

This bill would revise the provisions described above to have them apply to all association records, as defined, including contracts to which the association is or has been a party. The bill would also extend these provisions to community service organizations related to an association.

(4) Existing law defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. Existing law provides that a regular or special assessment of the association, late charges, reasonable costs of collection, and interest, as



specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a specified document and follows a specified process. Existing law permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure.

Existing law authorizes an owner of a separate interest in a common interest development to pay assessments that are in dispute in full under protest. Existing law, the right of redemption, permits a judgment debtor, as defined, to redeem his or her real property, as specified, after judicial foreclosure only if the decree of foreclosure finds that a deficiency judgment may be ordered against the debtor.

This bill would revise and recast the procedures for collecting delinquent assessments for certain debts that arise on and after January 1, 2005. The bill would provide that when an association of a common interest development seeks to collect a delinquent assessment of less than \$2,500, not including specified late charges and fees, the association must either file a civil action in small claims court or record a lien upon which it would be prohibited from foreclosing until the amount equals or exceeds \$2,500. The bill would repeal provisions authorizing the owner of a separate interest to pay assessments that are in dispute in full under protest and requiring the board of directors of an association to respond to an owner's written dispute of a debt within 15 days.

The bill would permit an association of a common interest development seeking to collect a delinquent regular or special assessment of \$2,500 or more, not including specified late charges and fees, to use foreclosure subject to specified conditions. Among these conditions, the bill would require the board of directors of an association to make the decision to record a lien against a separate interest or to foreclose upon a lien at an executive meeting of the board, by a majority vote, and to record the results of the vote, as specified, and would require the board to provide notice of the decision to foreclose, as specified.

The bill would require, if the owner so requests, that the association permit the owner of the separate interest to elect dispute resolution or alternative dispute resolution procedures, under specified circumstances, but only if AB 1836 of the 2003–04



Regular Session is enacted. The association would be prohibited from recording a lien or initiating a foreclosure action without participating in those procedures if so requested by the owner. If it is determined through dispute resolution or alternative dispute resolution that an association has filed a lien for a delinquent assessment in error, the association would be required to reverse specified charges and take other corrective actions.

The bill would further provide that, notwithstanding any law to the contrary, a foreclosure by an association to collect upon a debt for a delinquent assessment, as specified, is subject to a right of redemption. The bill would provide a redemption period of 90 days. The bill would establish a minimum bid of 65% of the appraised value, exclusive of senior liens, as specified, in a judicial or nonjudicial foreclosure to collect upon a debt for a delinquent assessment, as specified. The bill would exempt from its provisions developers and separate interest owners in time-share projects, as specified.

The bill would also authorize an association created to manage a common interest development to appear and participate in small claims court hearings through a management company representative or bookkeeper who appears on behalf of the association.

(5) This bill would incorporate additional changes in Sections 1365.1 and 1367.1 of the Civil Code proposed by AB 2252 and changes consistent with AB 1836 that would become operative only if either or both of these bills are chaptered and become effective on or before January 1, 2005.

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

SECTION 1. Section 1353.6 of the Civil Code is amended to read:

1353.6. (a) The governing documents, including the operating rules, may not prohibit posting or displaying of noncommercial signs, posters, flags, or banners on or in an owner's separate interest or within the owner's exclusive use common area, as defined in Section 1351, except as required for the protection of public health or safety or if the posting or display would violate a local, state, or federal law.



(b) For purposes of this section, a noncommercial sign, poster, flag, or banner may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or displayed from the yard, window, door, balcony, or outside wall of the separate interest or the exclusive use common area, but may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces.

(c) An association may prohibit noncommercial signs and posters that are more than 9 square feet in size and noncommercial flags or banners that are more than 15 square feet in size.

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

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

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

(c) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

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

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

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



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

(2) A member of the association may initiate a civil action to enforce his or her rights under this subdivision, and upon a finding that a request to copy or inspect was denied in violation of this subdivision, the member shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) per violation.

(g) If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents or rules of the association, including any monetary penalty relating to the activities of a guest or invitee of a member, the board of directors shall adopt and distribute to each member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the governing documents. The board of directors shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members pursuant to this subdivision.

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

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



effective against a member unless the board fulfills the requirements of this subdivision.

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

(j) Nothing in this section shall be construed to create, expand, or reduce the authority of the board of directors of an association to impose monetary penalties on an association member for a violation of the governing documents or rules of the association.

SEC. 3. Section 1365.1 of the Civil Code is amended to read:

1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association’s fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11003.5 of the Business and Professions Code may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

“NOTICE

ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND FORECLOSURE



Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2005, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments, exclusive of any late charges, fees, interest, and costs of collection, is less than two thousand five hundred dollars (\$2,500). For delinquent assessments of two thousand five hundred dollars (\$2,500) or more, an association may use nonjudicial or judicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code. When using nonjudicial or judicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amount secured by the lien is not paid. (Sections 1366, 1367.1, and 1367.4 of the Civil Code)

In a nonjudicial or judicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the



association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 1367.1 of the Civil Code)

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)"

SEC. 3.5. Section 1365.1 of the Civil Code is amended to read:

1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association



during the 60-day period immediately preceding the beginning of the association's fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11003.5 of the Business and Professions Code may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

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ASSESSMENTS AND FORECLOSURE

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the lien is not paid. (Sections 1366, 1367.1, and 1367.4 of the Civil Code)

In a nonjudicial or judicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing



address for overnight payments. (Section 1367.1 of the Civil Code)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4 of Title 6 of Division 2 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 of the Civil Code, if so requested by the owner.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)”

SEC. 3.6. Section 1365.1 of the Civil Code is amended to read:

1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association’s fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7, may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.



(b) The notice required by this section shall read as follows:

“NOTICE

ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner’s property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2005, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments, exclusive of any late charges, fees, interest, and costs of collection, is less than two thousand five hundred dollars (\$2,500). For delinquent assessments of two thousand five hundred dollars (\$2,500) or more, an association may use nonjudicial or judicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code. When using nonjudicial or judicial foreclosure, the association records a lien on the owner’s property. The owner’s property may be sold to satisfy the lien if the amount secured by the lien is not paid. (Sections 1366, 1367.1, and 1367.4 of the Civil Code)

In a nonjudicial or judicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney’s fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member’s



guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 1367.1 of the Civil Code)

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS



An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)”

SEC. 3.7. Section 1365.1 of the Civil Code is amended to read:

1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association’s fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7, may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

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Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2005, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments, exclusive of any late charges, fees, interest, and costs of collection, is less than two thousand five hundred dollars (\$2,500). For delinquent assessments of two thousand five hundred dollars (\$2,500) or more, an association may use nonjudicial or judicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code. When using nonjudicial or judicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amount secured by the lien is not paid. (Sections 1366, 1367.1, and 1367.4 of the Civil Code)

In a nonjudicial or judicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the



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When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 1367.1 of the Civil Code)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4 of Title 6 of Division 2 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 of the Civil Code, if so requested by the owner.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment.



These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)”

SEC. 4. Section 1365.2 of the Civil Code is amended to read:

1365.2. (a) (1) The association shall make available for inspection and copying by a member of the association, or the member’s designated representative, as provided by this section, all association records. The provisions of this section shall apply to any community service organization or similar entity, as defined in paragraph (3) of subdivision (c) of Section 1368, that is related to the association, and the section shall operate to give a member of the community service organization or similar entity a right to inspect and copy the records of that organization or entity equivalent to that granted to association members by this section.

(2) A member of the association may designate another person to inspect and copy the association records on the member’s behalf. The member shall make this designation in writing.

(b) (1) The association shall make the association records available for inspection and copying in the association’s business office within the common interest development.

(2) If the association does not have a business office within the development, the association shall make the association records available for inspection and copying at a place that the requesting member and the association agree upon.

(3) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to paragraph (2), or if the requesting member submits a written request directly to the association for copies, the association may satisfy the requirement to make the association records available for inspection and copying by mailing copies of the requested records to the member by first-class mail within 10 days of receiving the member’s request. The association may bill the requesting member for its actual, reasonable costs for copying and mailing requested documents. The association shall inform the member of the amount of the copying and mailing costs before sending the requested documents.

(c) (1) Except as provided in paragraph (2), the association may withhold or redact information from the association records for any of the following reasons:



(A) The release of the information is reasonably likely to lead to identity theft. For the purposes of this section, “identity theft” means the unauthorized use of another person’s personal identifying information to obtain credit, goods, services, money, or property.

(B) The release of the information is reasonably likely to lead to fraud in connection with the association.

(C) The information is privileged under law.

(2) Except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee’s name, social security number, or other personal information.

(d) (1) The association records and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member’s interest as a member. An association may bring an action against any person who violates this section for injunctive relief and for actual damages to the association caused by the violation.

(2) This section may not be construed to limit the right of an association to damages for misuse of information obtained from the association records pursuant to this section or to limit the right of an association to injunctive relief to stop the misuse of this information.

(3) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney’s fees, in a successful action to enforce its rights under this section.

(e) A member of an association may bring an action to enforce the member’s right to inspect and copy the association records. If a court finds that the association unreasonably withheld access to the association records, the court shall award the member reasonable costs and expenses, including reasonable attorney’s fees, and may assess a civil penalty of up to five hundred dollars (\$500) for each violation.

(f) For the purposes of this section “association records” means accounting books and records, agendas and minutes of meetings of the governing board of the association, agendas and minutes of meetings of association committees, signed contracts to which the association is or has been a party or where association



assessments provide payment for services, invoices, receipts, check registers, canceled checks, purchase orders, accounting statements, bank statements, any document that can be used to verify any financial report issued by the association or its auditor, and common area maintenance records.

(g) The association may charge a fee to the requesting member, which fee shall not exceed the association's reasonable cost to copy the requested records of the association.

SEC. 5. Section 1366.3 of the Civil Code is repealed.

SEC. 6. Section 1367.1 of the Civil Code is amended to read:

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by subdivision (c).



(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) An owner, other than an owner of any interest that is described in Section 11003.5 of the Business and Professions Code, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner.

(2) The decision to record a lien for delinquent assessments shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open meeting. The board shall record the vote in the minutes of that meeting.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the



name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied. A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(e) Except as indicated in subdivision (d), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

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

(g) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to



enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision and Section 1367.4, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

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

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003.



(l) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.

SEC. 6.5. Section 1367.1 of the Civil Code is amended to read:

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by subdivision (c).

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of Part 4 of Division 2 before the



association may initiate foreclosure against the owner's separate interest.

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) (A) Prior to recording a lien for delinquent assessments, an association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2.

(B) Prior to initiating a foreclosure for delinquent assessments, an association shall offer the owner and, if so requested by the owner, shall participate in dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Part 4 of Division 2. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(2) The decision to record a lien for delinquent assessments shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open meeting. The board shall record the vote in the minutes of that meeting.

(3) An owner, other than an owner of any interest that is described in Section 11003.5 of the Business and Professions Code, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request,



if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied. A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California



Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(e) Except as indicated in subdivision (d), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

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

(g) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision and Section 1367.4, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created



pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003.

(l) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.

SEC. 6.6. Section 1367.1 of the Civil Code is amended to read:

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND



IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.”

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney’s fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by subdivision (c).

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney’s fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) An owner, other than an owner of any interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner.

(2) The decision to record a lien for delinquent assessments shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open meeting. The board shall record the vote in the minutes of that meeting.



(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied. A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing



with Section 11000) of Division 4 of the Business and Professions Code.

(e) Except as indicated in subdivision (d), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

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

(g) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision and Section 1367.4, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

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

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the



lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003.

(l) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.

SEC. 6.7. Section 1367.1 of the Civil Code is amended to read:

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of



collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by subdivision (c).

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of Part 4 of Division 2 before the association may initiate foreclosure against the owner's separate interest.

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) (A) Prior to recording a lien for delinquent assessments, an association shall offer the owner, and if so requested by the owner, participate in dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2.

(B) Prior to initiating a foreclosure for delinquent assessments, an association shall offer the owner and, if so requested by the owner, shall participate in dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Part 4 of Division 2. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner,



except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(2) The decision to record a lien for delinquent assessments shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open meeting. The board shall record the vote in the minutes of that meeting.

(3) An owner, other than an owner of any interest that is described in Section 11212 of the Business and Professions Code that is not exempt from this section pursuant to subdivision (a) of Section 11211.7, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in



Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied. A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(e) Except as indicated in subdivision (d), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

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

(g) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the foregoing provision may not



restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision and Section 1367.4, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

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

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003.

(l) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.

SEC. 7. Section 1367.4 is added to the Civil Code, to read:

1367.4. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2005.



(b) An association that seeks to collect a delinquent regular or special assessment of an amount less than two thousand five hundred dollars (\$2,500), not including any late charges, fees and costs of collection, or interest, may not collect that debt through nonjudicial or judicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount described in subparagraph (A) equal to the amount owed for the period from the date the complaint is filed until the estimated date of judgment.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any late charges, fees, interests and costs of collection, equals or exceeds two thousand five hundred dollars (\$2500). An association that chooses to record a lien under these provisions, prior to recording the lien, shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4. This procedure shall apply only if Assembly Bill 1836 of the 2003–04 Regular Session is enacted.

(3) Any other manner provided by law, except for nonjudicial or judicial foreclosure.

(c) An association that seeks to collect a delinquent regular or special assessment of an amount of two thousand five hundred dollars (\$2,500) or more, not including any late charges, fees and costs of collection, or interest, may use nonjudicial or judicial foreclosure subject to the following conditions:



(1) Prior to initiating a foreclosure on an owner's separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4 or alternative dispute resolution as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure. This procedure shall apply only if Assembly Bill 1836 of the 2003–04 Regular Session is enacted.

(2) The decision to initiate foreclosure of a lien for a delinquent assessment that has been validly recorded shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an executive session. The board shall record the vote in the minutes of that meeting. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter by the parcel number of the property, rather than the name of the owner or owners.

(3) The board shall provide personal notice to an owner of a separate interest who occupies the separate interest if the board votes to foreclose upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association.

(4) A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale.

(5) A nonjudicial or judicial foreclosure by an association to collect upon a debt for delinquent assessments shall comply with the following requirements:

(A) The minimum bid shall be at least 65 percent of the appraised value, excluding any senior liens subject to which the successful bidder would be taking title.

(B) An appraiser appropriately certified by the Office of Real Estate Appraisers shall perform the exterior appraisal (using Form



2055 Exterior Only Appraisal). The cost of the appraisal shall be recouped at sale if the property is auctioned or at cure of the default prior to sale. The appraisal shall be completed at least 30 days, but no more than 60 days, prior to sale unless, in the event of a judicial foreclosure, the court orders a different completion date.

(d) The limitation on foreclosure of assessment liens for amounts under the stated minimum in this section does not apply to assessments owed by owners of separate interests in time-share projects, as defined in Section 11003.5 of the Business and Professions Code, or to assessments owed by developers.

SEC. 7.5. Section 1367.5 is added to the Civil Code, to read:

1367.5. If it is determined through dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Part 4 of Division 2 that an association has recorded a lien for a delinquent assessment in error, the association shall promptly reverse all late charges, fees, interest, costs of collection, costs imposed for the notice prescribed in subdivision (a) of Section 1367.1, and costs of recordation and release of the lien authorized under subdivision (b), and pay all costs related to the dispute resolution or alternative dispute resolution.

SEC. 8. Section 116.540 of the Code of Civil Procedure is amended to read:

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) A corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.



(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear and participate on his or her behalf, if (1) the plaintiff is serving on active duty in the United States Armed Forces outside this state, (2) the plaintiff was assigned to his or her duty station after his or her claim arose, (3) the assignment is for more than six months, (4) the representative is serving without compensation, and (5) the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220 and 116.231.

(f) A party incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim, or may authorize another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting written declarations to serve as evidence supporting his or her defense, (2) allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times



during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and (2) the claim relates to the rental property.

(i) A party that is an association created to manage a common interest development, as defined in Section 1351 of the Civil Code, may appear and participate in a small claims action through a management company representative or bookkeeper who appears on behalf of that association.

(j) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party under subdivisions (b) to (i), inclusive, to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that authorization. If the representative is appearing under subdivision (b), (c), (d), or (i), the declaration also shall state that the individual is not employed solely to represent the party in small claims court. If the representative is appearing under subdivision (e), (f), or (g), the declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(k) A husband or wife who sues or who is sued with his or her spouse may appear and participate on behalf of his or her spouse if (1) the claim is a joint claim, (2) the represented spouse has given his or her consent, and (3) the court determines that the interests of justice would be served.

(l) If the court determines that a party cannot properly present his or her claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

(m) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

SEC. 9. Section 729.035 is added to the Code of Civil Procedure, to read:



729.035. Notwithstanding any provision of law to the contrary, the sale of a separate interest in a common interest development is subject to the right of redemption within 90 days after the sale if the sale arises from a foreclosure by the association of a common interest development pursuant to subdivision (g) of Section 1367.1 of the Civil Code, subject to the conditions of Section 1367.4 of the Civil Code.

SEC. 10. Section 3.5 of this bill incorporates amendments to Section 1365.1 of the Civil Code to reference new provisions of the Civil Code, as added by AB 1836, but not the changes to Section 1365.1 proposed by AB 2252. It shall only become operative if both this bill and AB 1836 are enacted and become effective on or before January 1, 2005, and AB 2252 is not enacted, in which event Sections 3, 3.6, and 3.7 of this bill shall not become operative.

SEC. 11. Section 3.6 of this bill incorporates amendments to Section 1365.1 of the Civil Code proposed by this bill and AB 2252, but does not incorporate amendments to Section 1365.1 to reference new provisions of the Civil Code, as added by AB 1836. It shall only become operative if (1) both this bill and AB 2252 are enacted and become effective on or before January 1, 2005, (2) both this bill and AB 2252 amend Section 1365.1 of the Civil Code, (3) this bill is enacted after AB 2252, and (4) AB 1836 is not enacted, in which event Sections 3, 3.5, and 3.7 shall not become operative.

SEC. 12. Section 3.7 of this bill incorporates amendments to Section 1365.1 of the Civil Code to reference new provisions of the Civil Code, as added by AB 1836, and the changes to Section 1365.1 proposed by this bill and AB 2252. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2005, (2) both this bill and AB 2252 amend Section 1365.1 of the Civil Code, (3) and this bill is enacted after AB 2252, in which event Sections 3, 3.5, and 3.6 of this bill shall not become operative.

SEC. 13. Section 6.5 of this bill incorporates amendments to Section 1367.1 of the Civil Code to reference new provisions of the Civil Code, as added by AB 1836, but not the changes to Section 1367.1 proposed by AB 2252. It shall only become operative if both this bill and AB 1836 are enacted and become effective on or before January 1, 2005, and AB 2252 is not enacted,



in which event Sections 6, 6.6, and 6.7 of this bill shall not become operative.

SEC. 14. Section 6.6 of this bill incorporates amendments to Section 1367.1 of the Civil Code proposed by this bill and AB 2252, but does not incorporate amendments to Section 1367.1 to reference new provisions of the Civil Code, as added by AB 1836. It shall only become operative if (1) both this bill and AB 2252 are enacted and become effective on or before January 1, 2005, (2) both this bill and AB 2252 amend Section 1367.1 of the Civil Code, (3) this bill is enacted after AB 2252, and (4) AB 1836 is not enacted, in which event Sections 6, 6.5, and 6.7 shall not become operative.

SEC. 15. Section 6.7 of this bill incorporates amendments to Section 1367.1 of the Civil Code to reference new provisions of the Civil Code, as added by AB 1836, and the changes to Section 1367.1 proposed by this bill and AB 2252. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2005, (2) both this bill and AB 2252 amend Section 1367.1 of the Civil Code, and (3) this bill is enacted after AB 2252, in which event Sections 6, 6.5, and 6.6 of this bill shall not become operative.



Approved _____, 2004

Governor

