

BILL NUMBER: AB 2502 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 27, 2010
AMENDED IN ASSEMBLY APRIL 5, 2010

INTRODUCED BY Assembly Member Brownley

FEBRUARY 19, 2010

An act to amend ~~Sections~~ *Section*
1367.1 ~~and 1367.4~~ of the Civil Code, relating to
homeowners' associations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2502, as amended, Brownley. Homeowners' associations:
delinquencies.

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes a homeowners' association that manages the development to levy assessments to fulfill its obligations. The act provides that a regular or special assessment of the association, fees, reasonable costs of collection, attorney's fees, late charges, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied. Existing law provides that payments made by a homeowner to reduce the debt shall first be applied to the assessments owed, and may only be applied to fees, reasonable costs of collection, ~~attorneys~~ *attorney's* fees, late charges, and interest only after the assessments owed are paid in full.

This bill would clarify that the provisions that set forth the order in which payments are to be allocated apply to any agent ~~or representative~~ of the homeowners' association and to any 3rd party assigned to collect payment for purposes of collection of the debt. This bill would provide that a homeowner may not waive the right to have payments allocated in the order specified ~~and would provide that any contract requiring a homeowner to waive this right would be void and unenforceable~~ . This bill would also require the homeowners' association ~~and its agent and representatives, and any 3rd party assigned to collect payments for purposes of the collection of the debt are required~~ to accept partial payments of the debt *if the partial payments comply with the terms of a written agreement* .

Existing law requires a homeowners' association, if requested by a homeowner, to meet with the board in special session, within 45 days of the request, to discuss a payment plan. Existing law provides that if there is no special session scheduled within the 45-day period, that the board may designate a committee to meet with the homeowner to discuss a payment plan within that time period.

~~This bill would, instead, if requested by the homeowner, require a meeting to discuss a payment plan to be held in an open session. This~~ bill would only allow the board to designate

a committee to meet with the homeowner if the homeowner authorizes the designation of that committee, and, if the homeowner does not authorize the designation of the committee, would require the meeting to take place at the next regularly scheduled board meeting. This bill would provide that the homeowners' association may not authorize an agent, representative, or any other ~~third~~ 3rd party to discuss or negotiate a payment plan without the consent of the homeowner and would require that all payment plans would be subject to the approval of the board at an open meeting of the board. This bill would also provide that, in the event the association assigns or pledges its right to collect payments or assessments to a financial institution, lender, or other 3rd party, that the 3rd party would be subject to the provisions of the act and, if the owner has entered into a payment plan with the homeowners' association, would require that 3rd party to conduct any collection procedures in accordance with the provisions of an existing payment plan.

~~Existing law provides that a homeowners' association may not collect a debt of an amount less than \$1,800, exclusive of specified charges, through judicial or nonjudicial foreclosure but provides that the homeowners' 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 \$1,800 or the assessments are more than 12 months delinquent.~~

~~The bill would, instead, provide that a homeowners' association may not collect a debt of an amount less than \$3,600, exclusive of specified charges, through judicial or nonjudicial foreclosure but would provide that the homeowners' 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 \$3,600 or the assessments are more than 18 months delinquent.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares:

(1) The Davis-Stirling Common Interest Development Act was ~~enacted to provide protections to homeowners that have purchased residences in common interest developments.~~ *enacted to provide protections, in part, to owners in common interest developments.*

(2) The Davis-Stirling Common Interest Development Act establishes procedures to be followed by homeowners' associations in the collection of delinquencies of regular and special assessments.

~~(3) Many homeowners' associations assign or pledge the association's right to collect these delinquencies to third parties who require the homeowner to enter into payment plans that require the homeowner to waive his or her rights to the protections provided by the Davis Stirling Common Interest Development Act, including the right to have all payments first applied to the assessments owed.~~

~~(4) By waiving these rights many homeowners are coerced into payment plans that require the payment to be first applied to costs~~

~~of collection, attorneys fees, late charges, and interest without lowering the underlying assessment that serves as the basis for computing these charges, thereby forcing the homeowner to sink deeper into debt.~~

(3) Some homeowners' associations assign the association's right to collect these delinquencies to agents that have required the owner to enter into payment plans that are different than the payment plan by and between the association and the owner. Some of the contracts have required the owner to waive his or her rights to the protections provided by the Davis-Stirling Common Interest Development Act.

(4) By waiving these rights, some owners have been coerced into payment plans that require the payments to be first applied to the costs of collection, attorney's fees, late charges, and interest, rather than to the principal, forcing the homeowner to sink deeper into debt.

(b) It is the intent of the Legislature, by enacting this act, to ~~clarify and guarantee that~~ apply the requirements of the Davis-Stirling Common Interest Development Act, with respect to the collection ~~of delinquencies, shall apply to any agent or representative of the homeowners' association and to any third party assigned to collect delinquent assessments.~~

~~of delinquencies, to agents of the homeowners' associations assigned to collect delinquent assessments.~~

SEC. 2. 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 paragraph (3) of subdivision (c).

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4.

(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 before the association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(b) (1) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), whether ~~made to the association, an agent or representative of the association, or to a third party assigned to collect any unpaid debt,~~

made to the association or an agent of the association assigned to collect the debt, 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, its agent or representative, or a third party~~
a receipt and the association or its agent

assigned to accept payment for purposes of collection of the debt 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.

~~(2) The association, an agent or representative of the association, or a third party assigned to collect payment for purposes of collection of the debt shall not refuse to accept partial payment of the debt.~~

(2) The association or agent of the association assigned to collect payment of the debt shall not refuse to accept partial payment of the debt should the partial payment comply with the terms of the written agreement between the association and the owner.

(3) The provisions set forth in paragraph (1), regarding the order in which the payments made are to be allocated, shall apply ~~to any agent or representative of the association and to any third party~~ *to an agent of the association* that accepts payment for purposes of collection of the debt. An owner shall not waive the provisions of paragraph (1) that set forth the order of the allocation of payments made toward the debt. ~~Any contract or payment plan that requires a waiver of the allocation of payments made, as set forth in paragraph (1), shall be void and unenforceable.~~

(4) An owner and the association may mutually agree to amend a payment plan so long as the amended payment plan is in compliance with paragraph (1).

(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 the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4.

(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 the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution with a neutral third party pursuant to 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.

(2) For liens recorded on or after January 1, 2006, 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) (A) 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, ~~or if requested by the owner, in an open meeting of the board,~~ 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, if authorized by the owner, may designate a committee of one or more members to meet with the owner. If the owner does not authorize the board to designate a committee to meet with the owner, the board shall meet with the owner at the next regularly scheduled board meeting. The board shall not, without the consent of the owner, authorize an agent or representative of the association or any other third party to discuss or negotiate a payment plan. All payment plans are subject to the approval of the board at an open meeting of the board.

(B) Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an association's ability to record a lien on the owner's separate interest to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(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 separate 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 separate interest in the common interest development against which the assessment and other sums are levied, and the name of the record owner of the separate interest in the common interest development against which the lien is imposed. The itemized statement of the charges owed by the owner described in paragraph (2) of subdivision (a) shall be recorded together with the notice of delinquent assessment. 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. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the separate interest in the association's records, and the notice shall be mailed 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) (1) 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. If the association assigns or pledges its right to collect payments or assessments to a financial institution, lender, or other third party, ~~that~~ then the third party shall be subject to the provisions of this section and, if the owner has entered into a payment plan with the association, ~~that~~ then the third party shall also conduct any collection procedures in accordance with the provisions of that payment plan.

(2) Subject to the limitations of this subdivision, 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, plus the cost of service for either of the following:

(A) The notice of default pursuant to subdivision (j) of Section 1367.1.

(B) The decision of the board to foreclose upon the separate interest of an owner as described in paragraph (3) of subdivision (c) of Section 1367.4.

(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) In addition to the requirements of Section 2924, a notice of default shall be served by the association on the owner's legal representative in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The owner's legal representative shall be the person whose name is shown as the owner of a separate interest in the association's records, unless another person has been previously designated by the owner as his or her legal representative in writing and mailed to the association in a manner that indicates that the association has received it.

(k) Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by this section to the secondary address provided. The association shall notify owners of their right to submit secondary addresses to the association, at the time the association issues the pro forma operating budget pursuant to Section 1365. The owner's request shall be in writing and shall be mailed to the association in a manner that shall indicate the association has received it. The owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the association shall only be required to send notices to the indicated secondary address from the point the association receives the request.

(1) (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.

(m) This section only applies to liens recorded on or after

January 1, 2003.

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

~~SEC. 3.—Section 1367.4 of the Civil Code is amended 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, 2006.~~

~~(b) An association that seeks to collect delinquent regular or special assessments of an amount less than three thousand six hundred dollars (\$3,600), not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, may not collect that debt through judicial or nonjudicial 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 to that described in subparagraph (A) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.~~

~~(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 accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds three thousand six hundred dollars (\$3,600) or the assessments secured by the lien are more than 18 months delinquent. 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 1363.810) of Chapter 4.~~

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

~~(c) An association that seeks to collect delinquent regular or special assessments of an amount of three thousand six hundred dollars (\$3,600) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, or any assessments secured by the lien that are more than 18 months delinquent, may use judicial or nonjudicial 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 pursuant to the association's "meet and confer" program required in Article 5~~

~~(commencing with Section 1363.810) 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.~~

~~— (2) The decision to initiate foreclosure of a lien for delinquent assessments 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 the next meeting of the board open to all members. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name of the owner or owners. A board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.~~

~~— (3) The board shall provide notice by personal service in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an owner of a separate interest who occupies the separate interest or to the owner's legal representative, 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. In the absence of written notification by the owner to the association, the address of the owner's separate interest may be treated as the owner's mailing address.~~

~~— (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. In addition to the requirements of Section 2924f, a notice of sale in connection with an association's foreclosure of a separate interest in a common interest development shall include a statement that the property is being sold subject to the right of redemption created in this paragraph.~~

~~— (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 timeshare estates, as defined in subdivision (x) of Section 11112 of the Business and Professions Code, or to assessments owed by developers.~~