

RESOLUTION 12-01-2010

DIGEST

Notice of Change of Ownership to Homeowners Associations

Amends Civil Code section 1368 to add requirements for providing notice of change of ownership to homeowners associations.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 1368 to add requirements for providing notice of change of ownership to homeowners associations. This resolution should be approved in principle because it ensures that homeowners associations have current information on the proper member/owners.

This resolution would require the new owner to notify the association of the change in ownership of a separate interest unit within 30 days if the seller has not already done so. The burden on the new owner of providing notification is minimal. The benefit to the association and its other members, on the other hand, is potentially significant in that it will ensure timely collection of association dues from the proper owner of the property. The need for such notification is particularly important now, given the rise in foreclosures and increase in bank-owned properties.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 1368 to read as follows:

- 1 §1368
- 2 (a) The owner of a separate interest, other than an owner subject to the
- 3 requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as
- 4 practicable before transfer of title to the separate interest or execution of a real property
- 5 sales contract therefor, as defined in Section 2985, provide the following to the prospective
- 6 purchaser:
- 7 (1) A copy of the governing documents of the common interest development,
- 8 including any operating rules, and including a copy of the association's articles of
- 9 incorporation, or, if not incorporated, a statement in writing from an authorized
- 10 representative of the association that the association is not incorporated.
- 11 (2) If there is a restriction in the governing documents limiting the occupancy,
- 12 residency, or use of a separate interest on the basis of age in a manner different from that
- 13 provided in Section 51.3, a statement that the restriction is only enforceable to the extent
- 14 permitted by Section 51.3 and a statement specifying the applicable provisions of Section
- 15 51.3.

16 (3) A copy of the most recent documents distributed pursuant to Section 1365.
17 (4) A true statement in writing obtained from an authorized representative of the
18 association as to the amount of the association's current regular and special assessments
19 and fees, any assessments levied upon the owner's interest in the common interest
20 development that are unpaid on the date of the statement, and any monetary fines or
21 penalties levied upon the owner's interest and unpaid on the date of the statement. The
22 statement obtained from an authorized representative shall also include true information on
23 late charges, interest, and costs of collection which, as of the date of the statement, are or
24 may be made a lien upon the owner's interest in a common interest development pursuant
25 to Section 1367 or 1367.1.
26 (5) A copy or a summary of any notice previously sent to the owner pursuant to
27 subdivision (h) of Section 1363 that sets forth any alleged violation of the governing
28 documents that remains unresolved at the time of the request. The notice shall not be
29 deemed a waiver of the association's right to enforce the governing documents against the
30 owner or the prospective purchaser of the separate interest with respect to any violation.
31 This paragraph shall not be construed to require an association to inspect an owner's
32 separate interest.
33 (6) A copy of the preliminary list of defects provided to each member of the
34 association pursuant to Section 1375, unless the association and the builder subsequently
35 enter into a settlement agreement or otherwise resolve the matter and the association
36 complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this
37 paragraph does not waive any privilege attached to the document. The preliminary list of
38 defects shall also include a statement that a final determination as to whether the list of
39 defects is accurate and complete has not been made.
40 (7) A copy of the latest information provided for in Section 1375.1.
41 (8) Any change in the association's current regular and special assessments and
42 fees which have been approved by the association's board of directors, but have not
43 become due and payable as of the date disclosure is provided pursuant to this subdivision.
44 (b) The owner of a separate interest, other than an owner subject to the
45 requirements of Section 11018.6 of the Business and Professions Code, shall, unless
46 notified by written notice from the relevant association acknowledging the transfer of title
47 to such owner, within 30 days of transfer of title to such separate interest to such owner,
48 provide the following to the association's board secretary, agent, manager or duly
49 designated representative:
50 (1) A copy of such owner's deed or other document granting title to such owner
51 (2) Written notice of such owner's mailing address for service of notice of all
52 communications from the association to such owner
53 ~~(b)~~ (c) Upon written request, an association shall, within 10 days of the mailing
54 or delivery of the request, provide the owner of a separate interest with a copy of the
55 requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The items
56 required to be made available pursuant to this section may be maintained in electronic form
57 and requesting parties shall have the option of receiving them by electronic transmission or
58 machine readable storage media if the association maintains these items in electronic form.
59 The association may charge a reasonable fee for this service based upon the association's
60 actual cost to procure, prepare, and reproduce the requested items.

61 ~~(e)~~ (d) (1) Subject to the provisions of paragraph (2), neither an association nor a
62 community service organization or similar entity may impose or collect any assessment,
63 penalty, or fee in connection with a transfer of title or any other interest except for the
64 following:

65 (A) An amount not to exceed the association's actual costs to change its records.
66 (B) An amount authorized by subdivision (b).

67 (2) The amendments made to this subdivision by the act adding this paragraph do
68 not apply to a community service organization or similar entity that is described in
69 subparagraph (A) or (B):

70 (A) The community service organization or similar entity satisfies both of the
71 following requirements:

72 (i) The community service organization or similar entity was established prior to
73 February 20, 2003.

74 (ii) The community service organization or similar entity exists and operates, in
75 whole or in part, to fund or perform environmental mitigation or to restore or maintain
76 wetlands or native habitat, as required by the state or local government as an express
77 written condition of development.

78 (B) The community service organization or similar entity satisfies all of the
79 following requirements:

80 (i) The community service organization or similar entity is not an organization or
81 entity entity described in subparagraph (A).

82 (ii) The community service organization or similar entity was established and
83 received a transfer fee prior to January 1, 2004.

84 (iii) On and after January 1, 2006, the community service organization or similar
85 entity offers a purchaser the following payment options for the fee or charge it collects at
86 time of transfer:

87 (I) Paying the fee or charge at the time of transfer.

88 (II) Paying the fee or charge pursuant to an installment payment plan for a period
89 of not less than seven years. If the purchaser elects to pay the fee or charge in installment
90 payments, the community service organization or similar entity may also collect additional
91 amounts that do not exceed the actual costs for billing and financing on the amount owed.
92 If the purchaser sells the separate interest before the end of the installment payment
93 plan period, he or she shall pay the remaining balance prior to transfer.

94 (3) For the purposes of this subdivision, a "community service organization or
95 similar entity" means a nonprofit entity, other than an association, that is organized to
96 provide services to residents of the common interest development or to the public in
97 addition to the residents, to the extent community common areas or facilities are available
98 to the public. A "community service organization or similar entity" does not include an
99 entity that has been organized solely to raise moneys and contribute to other nonprofit
100 organizations that are qualified as tax exempt under Section 501(c)(3) of the Internal
101 Revenue Code and that provide housing or housing assistance.

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

107 ~~(e)~~ (f) Nothing in this section affects the validity of title to real property
108 transferred in violation of this section.
109 ~~(f)~~ (g) In addition to the requirements of this section, an owner transferring title
110 to a separate interest shall comply with applicable requirements of Sections 1133 and
111 1134.
112 ~~(g)~~ (h) For the purposes of this section, a person who acts as a community
113 association manager is an agent, as defined in Section 2297, of the association.

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS:

Existing Law: Civil Code section 1368 provides that a seller of a separate interest as defined in the Davis-Stirling Common Interest Development Act, must provide to the buyer of such interest, as soon as practicable prior to the sale of such interest, all relevant documents pertaining to the common interest development within which the property is located. Willful failure to provide such information to the prospective buyer subjects the seller to liability and penalties as set out in Section 1368. There is no requirement that a new owner notify said common interest development of such change of title. In addition, there is no provision under California law for exemption of a foreclosing beneficiary under a deed of trust after foreclosure from the obligations of duly recorded governing documents of a common interest development. Such purchasers are treated the same as any other owner of a separate interest.

This Resolution: This resolution proposes to amend Civil Code section 1368 to add a requirement that a new owner, failing such notification by the seller, must notify the common interest development of his newly acquired title to the separate interest within 30 days of taking such title. Failure to comply would subject the owner of record to the same liability as set forth within the existing Section 1368.

The Problem: Even prior to the current housing crisis, it has been a struggle for common interest developments or “Homeowners Associations” to keep track of new owners/members within the development. Often title and real estate agents fail to provide the necessary documents to the prospective owners, or to fully research the title to the separate interest and disclose that a Homeowners Association is present. All too often, in the current market, a beneficiary under a deed of trust will acquire title to a separate interest through foreclosure, or under a “Deed in Lieu” and will provide no notice to an Association, whose interest is of record, that the beneficiary has acquired title. Following foreclosure then, the acquiring beneficiary may fail to take action with regard to maintenance of the property or to the obligations due under the Association’s CC&Rs. However, because the Association is left unaware of any change in title, it is deprived of its right to seek any redress with the owner of record, and the other members of the Association are left to pay the price for the neglectful owner whether it be loss of assessments, or depreciation of neighboring property values due to blight upon the neighborhood resulting from the neglected property. A beneficiary can wait months to record its trustee’s deed

if it chooses, and the Association may expend funds and energy to contact the owner and remedy the condition of the property all to no avail as the Association is unaware of the true owner.

IMPACT STATEMENT

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

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