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AB-786 Common interest developments: property use and maintenance. (2015-2016)

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Assembly Bill No. 786

CHAPTER 780

An act to amend Section 4735 of the Civil Code, relating to common interest developments, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2015. Filed with Secretary of State October 11, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 786, Levine. Common interest developments: property use and maintenance.

The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. Existing law provides that, unless otherwise provided in the common interest development declaration, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to that interest. Existing law makes void and unenforceable any provision of the governing documents or architectural or landscaping guidelines or policies that prohibits use of low water-using plants, or prohibits or restricts compliance with water-efficient landscape ordinances or regulations on the use of water, as specified.

Existing law also prohibits an association, except an association that uses recycled water for landscape irrigation, from imposing a fine or assessment on separate interest owners for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency or the local government has declared a local emergency due to drought.

This bill would revise that exception to instead authorize the imposition of a fine or assessment against the owner of a separate interest that receives recycled water from a retail water supplier, as defined, and fails to use that recycled water for landscaping irrigation.

This bill would incorporate additional changes to Section 4735 of the Civil Code proposed by AB 349 that would become operative if this bill and AB 349 are enacted and this bill is enacted last.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

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

SECTION 1. The Legislature finds and declares that due to the ongoing emergency drought conditions the state should maximize opportunities to conserve potable water, including encouraging homeowners to limit the watering of outdoor landscaping and removing all impediments to that goal.

SEC. 2. Section 4735 of the Civil Code is amended to read:

4735. (a) Notwithstanding any other law, a provision of the governing documents or architectural or landscaping guidelines or policies shall be void and unenforceable if it does any of the following:

(1) Prohibits, or includes conditions that have the effect of prohibiting, the use of low water-using plants as a group or as a replacement of existing turf.

(2) Has the effect of prohibiting or restricting compliance with either of the following:

(A) A water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c) of Section 65595 of the Government Code.

(B) Any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the Water Code.

(b) This section shall not prohibit an association from applying landscaping rules established in the governing documents, to the extent the rules fully conform with subdivision (a).

(c) Notwithstanding any other provision of this part, except as provided in subdivision (d), an association shall not impose a fine or assessment against an owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during any period for which either of the following have occurred:

(1) The Governor has declared a state of emergency due to drought pursuant to subdivision (b) of Section 8558 of the Government Code.

(2) A local government has declared a local emergency due to drought pursuant to subdivision (c) of Section 8558 of the Government Code.

(d) Subdivision (c) shall not apply to an owner of a separate interest that, prior to the imposition of a fine or assessment described in subdivision (c), receives recycled water, as defined in Section 13050 of the Water Code, from a retail water supplier, as defined in Section 13575 of the Water Code, and fails to use that recycled water for landscaping irrigation.

SEC. 2.5. Section 4735 of the Civil Code is amended to read:

4735. (a) Notwithstanding any other law, a provision of the governing documents or architectural or landscaping guidelines or policies shall be void and unenforceable if it does any of the following:

(1) Prohibits, or includes conditions that have the effect of prohibiting, the use of low water-using plants as a group or as a replacement of existing turf.

(2) Prohibits, or includes conditions that have the effect of prohibiting, the use of artificial turf or any other synthetic surface that resembles grass.

(3) Has the effect of prohibiting or restricting compliance with either of the following:

(A) A water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c) of Section 65595 of the Government Code.

(B) Any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the Water Code.

(b) This section shall not prohibit an association from applying landscaping rules established in the governing documents, to the extent the rules fully conform with subdivision (a).

(c) Notwithstanding any other provision of this part, except as provided in subdivision (d), an association shall not impose a fine or assessment against an owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during any period for which either of the following have occurred:

(1) The Governor has declared a state of emergency due to drought pursuant to subdivision (b) of Section 8558 of the Government Code.

(2) A local government has declared a local emergency due to drought pursuant to subdivision (c) of Section 8558 of the Government Code.

(d) Subdivision (c) shall not apply to an owner of a separate interest that, prior to the imposition of a fine or assessment described in subdivision (c), receives recycled water, as defined in Section 13050 of the Water Code, from a retail water supplier, as defined

in Section 13575 of the Water Code, and fails to use that recycled water for landscaping irrigation.

(e) An owner of a separate interest upon which water-efficient landscaping measures have been installed in response to a declaration of a state of emergency described in subdivision (c) shall not be required to reverse or remove the water-efficient landscaping measures upon the conclusion of the state of emergency.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 4735 of the Civil Code proposed by both this bill and Assembly Bill 349. It shall only become operative if (1) both bills are enacted and become effective, (2) each bill amends Section 4735 of the Civil Code, and (3) this bill is enacted after Assembly Bill 349, in which case Section 2 of this bill shall not become operative.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

California is in a state of emergency because of the continued drought. In response, Governor Brown issued Executive Order B-29-15, ordering a 25 percent statewide reduction in urban water consumption. Because residential landscaping accounts for 35 percent or more of the average urban water usage statewide, many homeowners have voluntarily ceased watering landscaping in order to assist with the drought emergency. However, some homeowners associations have interpreted existing law to allow them to fine homeowners who voluntarily cease using potable water on their landscaping if the homeowners association itself is using a de minimis amount of recycled water on common areas. This is directly contrary to the state's need to conserve the precious and dwindling water supplied for urban, agricultural, and environmental needs.