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AB-2362 Common interest developments: pesticide application. (2015-2016)

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Assembly Bill No. 2362

CHAPTER 330

An act to add Section 4777 to the Civil Code, relating to common interest developments.

[Approved by Governor September 13, 2016. Filed with Secretary of State September 13, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2362, Chu. Common interest developments: pesticide application.

Existing law, the Davis-Stirling Common Interest Development Act, regulates the creation and governance of common interest developments, which are managed by associations. Existing law generally provides that an association is responsible for maintaining common areas in the development and owners of separate interests are responsible for their interests. Existing law permits an association to require the removal of an occupant of a separate interest for those times and periods as may be necessary for the effective treatment of wood-destroying pests. Existing law generally requires a landlord or his or her authorized agent to provide notice to tenants, and under certain circumstances tenants of adjacent units, of the use of pesticides at the tenant's dwelling unit or in common areas if the landlord or authorized agent applies any pesticide without a licensed pest control operator.

This bill would require a common interest development association or its authorized agent to provide notice to an owner and, if applicable, a tenant of a separate interest, and under certain circumstances to owners and, if applicable, tenants of adjacent separate interests, if pesticide is to be applied without a licensed pest control operator to a separate interest or to a common area. The bill would prescribe the contents of the notice and how it is to be provided. The bill would authorize an owner or tenant to agree to immediate pesticide application and would prescribe a revised notification procedure in this instance. The bill would also permit the notice to be posted, as specified, after the pesticide application if the pest poses an imminent threat to health and safety.

Vote: majority 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 the following:

(a) Existing law, Section 1940.8.5 of the Civil Code, requires a landlord or his or her agent who applies pesticide in certain ways to a dwelling unit or common area without a licensed pest control operator to provide to tenants of potentially affected units written notification that includes the pest to be targeted, the pesticide to be used, the frequency of its use, and a health and safety statement prior to the pesticide application.

(b) It is the intent of this bill, therefore, that when pesticides are about to be applied to the separate interests or to the common areas of a common interest development either by the homeowner association or by one of its agents rather than by a licensed

pest control operator, that the owners and, if applicable, tenants of the separate interests and the owners and, if applicable, tenants of adjacent separate units that could reasonably be impacted by the pesticide be provided with substantially the same written notification that they would have received under existing law had the pesticides been applied by a licensed pest control operator.

SEC. 2. Section 4777 is added to the Civil Code, to read:

4777. (a) For the purposes of this section:

- (1) "Adjacent separate interest" means a separate interest that is directly beside, above, or below a particular separate interest or the common area.
- (2) "Authorized agent" means an individual, organization, or other entity that has entered into an agreement with the association to act on the association's behalf.
- (3) "Broadcast application" means spreading pesticide over an area greater than two square feet.
- (4) "Electronic delivery" means delivery of a document by electronic means to the electronic address at, or through which, an owner of a separate interest has authorized electronic delivery.
- (5) "Licensed pest control operator" means anyone licensed by the state to apply pesticides.
- (6) "Pest" means a living organism that causes damage to property or economic loss, or transmits or produces diseases.
- (7) "Pesticide" means any substance, or mixture of substances, that is intended to be used for controlling, destroying, repelling, or mitigating any pest or organism, excluding antimicrobial pesticides as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136(mm)).

(b) (1) An association or its authorized agent that applies any pesticide to a separate interest or to the common area without a licensed pest control operator shall provide the owner and, if applicable, the tenant of an affected separate interest and, if making broadcast applications, or using total release foggers or aerosol sprays, the owner and, if applicable, the tenant in an adjacent separate interest that could reasonably be impacted by the pesticide use with written notice that contains the following statements and information using words with common and everyday meaning:

- (A) The pest or pests to be controlled.
- (B) The name and brand of the pesticide product proposed to be used.
- (C) "State law requires that you be given the following information:

CAUTION – PESTICIDES ARE TOXIC CHEMICALS. The California Department of Pesticide Regulation and the United States Environmental Protection Agency allow the unlicensed use of certain pesticides based on existing scientific evidence that there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.

If within 24 hours following application of a pesticide, a person experiences symptoms similar to common seasonal illness comparable to influenza, the person should contact a physician, appropriate licensed health care provider, or the California Poison Control System (1-800-222-1222).

For further information, contact any of the following: for Health Questions – the County Health Department (telephone number) and for Regulatory Information – the Department of Pesticide Regulation (916-324-4100)."

- (D) The approximate date, time, and frequency with which the pesticide will be applied.
- (E) The following notification:

"The approximate date, time, and frequency of this pesticide application is subject to change."

- (2) At least 48 hours prior to application of the pesticide to a separate interest, the association or its authorized agent shall provide individual notice to the owner and, if applicable, the tenant of the separate interest and notice to an owner and, if applicable, the tenant occupying any adjacent separate interest that is required to be notified pursuant to paragraph (1).
- (3) (A) At least 48 hours prior to application of the pesticide to a common area, the association or its authorized agent shall, if practicable, post the written notice described in paragraph (1) in a conspicuous place in or around the common area in which

the pesticide is to be applied. Otherwise, if not practicable, the association or its authorized agent shall provide individual notice to the owner and, if applicable, the tenant of the separate interest that is adjacent to the common area.

(B) If the pest poses an immediate threat to health and safety, thereby making compliance with notification prior to the pesticide application unreasonable, the association or its authorized agent shall post the written notice as soon as practicable, but not later than one hour after the pesticide is applied.

(4) Notice to tenants of separate interests shall be provided, in at least one of the following ways:

(A) First-class mail.

(B) Personal delivery to a tenant 18 years of age or older.

(C) Electronic delivery, if an electronic mailing address has been provided by the tenant.

(5) (A) Upon receipt of written notification, the owner of the separate interest or the tenant may agree in writing or, if notification was delivered electronically, the tenant may agree through electronic delivery, to allow the association or authorized agent to apply a pesticide immediately or at an agreed upon time.

(B) (i) Prior to receipt of written notification, the association or authorized agent may agree orally to an immediate pesticide application if the owner or, if applicable, the tenant requests that the pesticide be applied before the 48-hour notice of the pesticide product proposed to be used.

(ii) With respect to an owner or, if applicable, a tenant entering into an oral agreement for immediate pesticide application, the association or authorized agent, no later than the time of pesticide application, shall leave the written notice specified in paragraph (1) in a conspicuous place in the separate interest or at the entrance of the separate interest in a manner in which a reasonable person would discover the notice.

(iii) If any owner or, if applicable, any tenant of a separate interest or an owner or, if applicable, a tenant of an adjacent separate interest is also required to be notified pursuant to this subparagraph, the association or authorized agent shall provide that person with this notice as soon as practicable after the oral agreement is made authorizing immediate pesticide application, but in no case later than commencement of application of the pesticide.

(6) A copy of a written notice provided pursuant paragraph (1) shall be attached to the minutes of the board meeting immediately subsequent the application of the pesticide.