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AB-1412 Common interest developments: notices: volunteer officers: liability. (2017-2018)

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Assembly Bill No. 1412

CHAPTER 278

An act to amend Sections 4041 and 5800 of the Civil Code, relating to common interest developments.

[Approved by Governor September 25, 2017. Filed with Secretary of State September 25, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1412, Choi. Common interest developments: notices: volunteer officers: liability.

The Davis-Stirling Common Interest Development Act defines and regulates residential common interest developments. Existing law requires a common interest development to be managed by an association, which is incorporated or unincorporated. Existing law requires the owner of a separate interest in a common interest development to annually provide the association with specified written information, including an address for the purpose of receiving notices from the association. Existing law authorizes the association to use the property address when the owner fails to provide an address. Existing law also limits the personal liability of a volunteer officer or director of an association that manages a common development that is exclusively residential for tortious acts or omissions, if certain criteria are met, including that the act or omission be made in good faith and within the scope of duty.

This bill would authorize the association, when an owner fails to provide the required notice, to use the last address provided in writing by the owner, except as specified. The bill would also extend the limitation on the personal liability, as described above, to a volunteer officer or director of a development that is mixed use when the volunteer officer or volunteer director is a tenant of a residential separate interest or is an owner of no more than 2 separate interests and whose ownership in the common interest development consists exclusively of residential separate interests.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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

SECTION 1. Section 4041 of the Civil Code is amended to read:

4041. (a) An owner of a separate interest shall, on an annual basis, provide written notice to the association of all of the following:

- (1) The address or addresses to which notices from the association are to be delivered.
- (2) An alternate or secondary address to which notices from the association are to be delivered.
- (3) The name and address of the owner's legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of the owner's extended absence from the separate interest.
- (4) Whether the separate interest is owner-occupied, is rented out, if the parcel is developed but vacant, or if the parcel is undeveloped land.

(b) The association shall solicit these annual notices of each owner and, at least 30 days prior to making its own required disclosure under Section 5300, shall enter the data into its books and records.

(c) If an owner fails to provide the notices set forth in paragraphs (1) and (2) of subdivision (a), the last address provided in writing by the owner or, if none, the property address shall be deemed to be the address to which notices are to be delivered.

SEC. 2. Section 5800 of the Civil Code is amended to read:

5800. (a) A volunteer officer or volunteer director described in subdivision (e) of an association that manages a common interest development that is residential or mixed use shall not be personally liable in excess of the coverage of insurance specified in paragraph (4) to any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of the tortious act or omission of the volunteer officer or volunteer director if all of the following criteria are met:

(1) The act or omission was performed within the scope of the officer's or director's association duties.

(2) The act or omission was performed in good faith.

(3) The act or omission was not willful, wanton, or grossly negligent.

(4) The association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance that shall include coverage for (A) general liability of the association and (B) individual liability of officers and directors of the association for negligent acts or omissions in that capacity; provided that both types of coverage are in the following minimum amounts:

(A) At least five hundred thousand dollars (\$500,000) if the common interest development consists of 100 or fewer separate interests.

(B) At least one million dollars (\$1,000,000) if the common interest development consists of more than 100 separate interests.

(b) The payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the director's or officer's status as a volunteer within the meaning of this section.

(c) An officer or director who at the time of the act or omission was a declarant, or who received either direct or indirect compensation as an employee from the declarant, or from a financial institution that purchased a separate interest at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property, is not a volunteer for the purposes of this section.

(d) Nothing in this section shall be construed to limit the liability of the association for its negligent act or omission or for any negligent act or omission of an officer or director of the association.

(e) This section shall only apply to a volunteer officer or director who is a tenant of a residential separate interest in the common interest development or is an owner of no more than two separate interests and whose ownership in the common interest development consists exclusively of residential separate interests.

(f) (1) For purposes of paragraph (1) of subdivision (a), the scope of the officer's or director's association duties shall include, but shall not be limited to, both of the following decisions:

(A) Whether to conduct an investigation of the common interest development for latent deficiencies prior to the expiration of the applicable statute of limitations.

(B) Whether to commence a civil action against the builder for defects in design or construction.

(2) It is the intent of the Legislature that this section clarify the scope of association duties to which the protections against personal liability in this section apply. It is not the intent of the Legislature that these clarifications be construed to expand, or limit, the fiduciary duties owed by the directors or officers.