

# Assembly Bill No. 1738

## CHAPTER 411

An act to amend Sections 5910 and 5915 of the Civil Code, relating to common interest developments.

[Approved by Governor September 18, 2014. Filed with Secretary of State September 18, 2014.]

### LEGISLATIVE COUNSEL'S DIGEST

AB 1738, Chau. Common interest developments: dispute resolution.

The Davis-Stirling Common Interest Development Act defines a common interest development and requires it to be managed by an association. The act requires an association to provide a fair, reasonable, and expeditious procedure for resolving a dispute between an association and a member involving their rights, duties, or liabilities under the act, the Nonprofit Mutual Benefit Corporation Law, or the association's governing documents. The act authorizes an association to develop its own procedure for these purposes and requires this procedure to satisfy specified minimum standards, including, among others, that a resolution of a dispute, pursuant to the procedure, binds the association and is judicially enforceable, and that an agreement, pursuant to the procedure, binds the parties and is judicially enforceable, as specified. The act also requires that the procedure provide a means by which the member and the association may explain their positions.

This bill would additionally require the resolution or agreement under an association's procedure for resolving these disputes between an association and a member to be in writing and signed by both parties. The bill would authorize a member and an association to be assisted by an attorney or another person in explaining their positions at their own cost.

The act also establishes an alternative procedure applicable to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure as described above. Under these provisions a procedure that, among other things, authorizes either party to request, in writing, the other party to meet and confer, prohibits the association from refusing a request to meet and confer, and requires the parties to meet and confer in good faith in an effort to resolve the dispute, is deemed a fair, reasonable, and expeditious dispute resolution procedure. The act provides that an agreement reached under this procedure binds the parties and is judicially enforceable if specified conditions are satisfied.

This bill would additionally require the alternative procedure to provide either party the right to have an attorney or another person participate when meeting and conferring provided at their own cost. The bill would require an agreement reached under the alternative procedure that binds the parties

and is judicially enforceable to be in writing and signed by both parties, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 5910 of the Civil Code is amended to read:

5910. A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

(a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.

(b) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the association to act on a request invoking the procedure.

(c) If the procedure is invoked by a member, the association shall participate in the procedure.

(d) If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the board.

(e) A written resolution, signed by both parties, of a dispute pursuant to the procedure that is not in conflict with the law or the governing documents binds the association and is judicially enforceable. A written agreement, signed by both parties, reached pursuant to the procedure that is not in conflict with the law or the governing documents binds the parties and is judicially enforceable.

(f) The procedure shall provide a means by which the member and the association may explain their positions. The member and association may be assisted by an attorney or another person in explaining their positions at their own cost.

(g) A member of the association shall not be charged a fee to participate in the process.

SEC. 2. Section 5915 of the Civil Code is amended to read:

5915. (a) This section applies to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(2) A member of an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.

(3) The board shall designate a director to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an

effort to resolve the dispute. The parties may be assisted by an attorney or another person at their own cost when conferring.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) A written agreement reached under this section binds the parties and is judicially enforceable if it is signed by both parties and both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

(d) A member shall not be charged a fee to participate in the process.