

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 690 (Quirk-Silva) – As Amended March 28, 2017

SUBJECT: Common interest developments: managers: conflicts of interest

SUMMARY: Requires a manager or management firm of a common interest development (CID) to disclose certain information before entering into a management agreement and requires a CID homeowners association's (HOA) annual budget report to contain specified information relating to charges for certain documents provided by the manager or management firm. Specifically, **this bill:**

- 1) Clarifies that at the time of sale a manager or management firm of a CID is required to disclose an itemized list of the costs associated with providing each of the required sales documents.
- 2) Requires managers to provide an affirmative written acknowledgement each year that specified documents provided to the manager are the property of the HOA and not the manager.
- 3) Requires HOAs to disclose in their annual budget information the charges for copies of documents required to be provided to an owner by the association when a separate interest is sold.
- 4) Requires the manager or the management firm's agent to facilitate the delivery of documents containing specified information if the manager or firm is contractually responsible for delivering those documents.
- 5) Requires managers or management firms to disclose if they are receiving a referral fee or other monetary benefit from a third-party provider distributing the documents that are required to be provided to an owner when he or she sells a separate interest.
- 6) Requires that the form used for disclosure of document prices includes the following:
 - a) A statement that the seller may provide to a prospective purchaser at no costs, current copies of any documents required to provide at the time of sale that are in the possession of the seller; and
 - b) A statement that the seller may request to purchase some of the documents but is not required to purchase all of the documents required to be provided to a buyer at the time of a sale of a separate interest.
- 7) Requires a CID manager or firm to disclose in writing any potential conflict of interest when presenting a bid for service to an HOA's board of directors.
 - a) Defines "conflict of interest" as any referral fee or other monetary benefit that could be derived from a business or company providing products or services to the

association, or any ownership interests or profit sharing arrangements with service providers recommended to, or used by the HOA.

EXISTING LAW:

- 1) Requires the HOA to distribute an annual budget report 30 to 90 days before the end of its fiscal year. This report must include an operating budget, summary of reserves, repairs, a statement if the board has determined or anticipates to levy any special assessments, any outstanding loans of the HOA, and a summary of the HOA insurance policies.
- 2) Requires that a person or firm that is acting as a CID manager provides specified disclosures to the board of directors of the HOA, including whether the prospective manager is certified, holds an active real estate license, and the manager's name and address.
- 3) Requires a prospective manager to provide a written statement to the board containing specified information about the prospective manager including names and business addresses of the owners or general partners of the managing agent, whether or not the manager has any relevant licenses such as architectural design, construction, real estate, engineering or accounting, and any relevant professional certifications or designations are held by the manager.

FISCAL EFFECT: None

COMMENTS:

There are over 50,220 CIDs in the state that comprise over 4.8 million housing units, or approximately one quarter of the state's housing stock. CIDs include condominiums, community apartment projects, housing cooperatives, and planned unit developments. They are characterized by a separate ownership of dwelling space coupled with an undivided interest in a common property, restricted by covenants and conditions that limit the use of common area and the separate ownership interests, and the management of common property and enforcement of restrictions by a HOA. CIDs are governed by the Davis Stirling Act (the Act) as well as the governing documents of the HOA, including bylaws, declaration, and operating rules. CIDs are run by volunteer boards of directors (boards), the members of which may have little or no experience managing real property or governing a nonprofit HOA and who must interpret the complex laws regulating CIDs. Boards must not only interpret the law, but enforce the restrictions and rules imposed by the governing documents and state law.

An owner in a CID is required to provide a prospective purchaser with specified documents listed in Civil Code Section 4525 as soon as practicable before the transfer of title or the execution of a real property sales contract to a prospective buyer. Sellers, who do not have current documents to provide to a prospective buyer, can request the documents from the HOA which has 10 days to provide copies to the seller. In some CIDs, the HOA contracts with a management company or other agent to collect the documents, reproduce them, and provide them to the seller. Existing law provides the HOA may only charge a reasonable fee based on the actual cost to procure, prepare, and reproduce the items for the owner.

In 2007 an appellate court ruled in *Berryman v. Merit Property Management* that an agent of the HOA was not subject to the provision requiring that the HOA charge only the actual cost to procure, prepare, and reproduce the documents for the owner. The court determined that

although an HOA is prohibited from charging above the actual costs and making a profit, a managing agent is not.

In 2011, the California Association of Realtors (CAR) sponsored AB 771 (Butler) Chapter 206, Statutes of 2011, which amended the statute to only permit HOAs to charge fees for the documents required to facilitate the transfer of real property. The goal was to prohibit the “bundling” of fees for other documents with fees for the required documents. The bill also created a statutory form, which must accompany the documents, detailing the documents that are required.

In 2014, CAR sponsored AB 2430 (Maienschein) Chapter 185, Statutes of 2014, which was intended to close loop holes in CID law that permitted abuses of the previous legislation. AB 2430 specifically required the form to state the fees for the each required document and that it is the responsibility of the seller to provide the documents. Additionally, AB 2430 specifically sought, like AB 711, to prohibit bundling of CID documents by an HOA, and permits that a seller may provide, at no cost, any of the required documents possessed by the seller to the purchaser.

Purpose of this bill: According to the author, despite previous efforts to provide transparency regarding the cost of documents that a seller can request from an HOA, abuses still occur. In some instances, management companies assert that the statute only applies to the HOA and not the management company. AB 690 is an attempt to further regulate management companies and third-party vendors who provide documents to owners as part of the sale of a home in a CID. AB 690 further clarifies existing law that an owner in a CID can provide documents directly to a buyer and is not required to purchase all documents that they are required to provide a buyer from the managing agent or the HOA. In addition, the bill requires an HOA to include in its annual budget disclosure a copy of the list of documents that a seller can request from an HOA when selling their home and the cost of each document. AB 690 requires that a CID manager or management firm disclose to the HOA if it is receiving a referral fee or other monetary benefit from a third-party vendor who is providing documents to a seller. A CID manager is also required to disclose any conflict of interest when presenting a bid for service from an outside contractor.

Double-referred: This bill was also referred to the Committee on Judiciary where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors (sponsor)
California Professional Association of Specialty Contractors

Opposition

None received

Analysis Prepared by: Lisa Engel and Peter Stevens / H. & C.D. /916-319-2085