

Date of Hearing: April 30, 2014

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Ed Chau, Chair

AB 1738 (Chau) – As Amended: April 22, 2014

SUBJECT: Common interest developments: dispute resolution

SUMMARY: Requires the informal dispute resolution (IDR) process used by a common interest development (CID) to allow a member and the homeowners association (HOA) to have an attorney present if either party provides notice as specified. Specifically, this bill:

- 1) Clarifies that an agreement reached as part of IDR is only judicially enforceable if the agreement is in writing.
- 2) Requires an IDR process developed by an HOA to allow a member and the HOA to have legal counsel present if they choose, to explain their respective positions, and to seek to negotiate a mutually satisfactory resolution to the dispute.
- 3) Requires the member or the HOA to give five days written notice to the other party of their intent to bring legal counsel.
- 4) Provides that, if notice is not provided by either the member or HOA, the party that does not receive notice can elect to postpone IDR until the notice requirement is met.
- 5) Provides that another person that is not legal counsel may attend the IDR procedure and assist the member or HOA in the procedure without prior notice.
- 6) Specifies that each party must pay the cost of their own legal counsel.

EXISTING LAW

- 1) Requires an HOA's IDR procedure to be fair, reasonable, and expeditious and to satisfy the following minimum requirements:
 - a) Allow either a member or the HOA to request IDR if the request is in writing;
 - b) Have prompt deadlines that state the maximum time an HOA has to act on a request for IDR;
 - c) Require the HOA to participate if the member requests IDR;
 - d) Allow the member discretion to participate if the HOA requests IDR;
 - e) Allow that if the member participates in IDR and the dispute is resolved other than by agreement of the member then the member has the right to appeal to the board of directors.

- f) Provide that a resolution to a dispute that is not in conflict with the law or governing documents binds the HOA and is judicially enforceable.
- g) Provide that an agreement reached through IDR that is not in conflict with the law or the governing documents binds the parties and is judicially enforceable.
- h) Require the IDR procedure to provide a means by which the member and the HOA may explain their positions; and
- i) Prohibits a member from being charged a fee to participate in the process.

(Civil Code Section 4525)

FISCAL EFFECT: None.

COMMENTS:

There are over 50,000 CIDs in the state that range in size from three to 27,000 units. CIDs make up over 4.9 million housing units which represents approximately one quarter of the state's housing stock. CIDs include condominiums, community apartment projects, housing cooperatives, and planned unit developments. CIDs are governed by the Davis-Stirling Act as well as the governing documents of the association including bylaws, declaration, and operating rules.

Conflicts arise between members of an HOA and the board of directors regarding interpretation of the governing documents and operating rules. In 2004, AB 1836 (Harmon) (2004) Chapter 754, required that HOAs provide the members an IDR process at no cost. Either the member or the HOA can request IDR, however the HOA cannot compel the member to participate. Any agreement that is reached in IDR that is not in conflict with the law or the governing documents is judicially enforceable. If an HOA does not provide an IDR procedure then the bill created a statutory "meet and confer" process that HOAs must follow. The bill was sponsored by the California Law Revision Commission to give HOAs a standard, informal process to try to resolve disputes before they become serious.

Purpose of the bill: The law is silent on whether a member or the HOA can have legal counsel present at an IDR procedure. In practice, some HOAs invite a member to bring an attorney to an IDR procedure. In other cases, an HOA may have their attorney attend without noticing the member and deny the member's request to have counsel. The governing documents and the Davis Stirling Act can be difficult for a lay person to understand. In an effort to level the playing field during IDR, AB 1738 allows both the HOA and the member to bring legal counsel if they have notified the other party five days before the procedure. If either party shows up to the IDR procedure with legal counsel and has not provided the five day notice then the other party can choose to postpone the IDR session until the notice is received.

AB 1738 also allows a member to bring an assistant that is not legal counsel. The sponsor contends that some members may need help communicating their concerns to the HOA or resolving the dispute. Although there is nothing in existing law that would prevent a member from bringing along someone to assist them during the IDR procedure, AB 1738 would make clear that they can. IDR was intended to be a low-cost option for members and the HOA to

resolve disputes. Although, having attorneys participate may increase the cost for both sides AB 1738 makes clear that each side is responsible for paying for their own attorney fees.

Several organizations have requested amendments to the bill. The committee amendments make the following substantive changes:

- 1) Increase the notice required from five to ten days for a member or HOA to notify the other party that they plan to bring an attorney or another person to the IDR procedure.
- 2) Require an HOA or member to notify the other party if they plan to bring someone other than an attorney to the IDR procedure.
- 3) Require the notice of intent to bring either an attorney or another person to meet the existing notice requirements of the Davis Stirling Act.

Committee amendments:

- 1) On page 3, line 6 delete "legal counsel" and replace with "an attorney"
- 2) On page 3, line 9, delete "legal counsel" and replace it with " an attorney"
- 3) On page 3, starting on line 8, delete the following: **"If either or both parties intend to have legal counsel participate in the procedure, the procedure shall require at least five days written notice of this intent to be given to the other party. If this notice is not provided, the party not receiving the required notice shall have the election of postponing the procedure until the notice requirement is met."**
- 4) On page 3, line 16 delete "without prior notice"
- 5) On page 3, after line 16 insert the following: **(3) If either a member, an association, or both intends to have an attorney or another person participate in the procedure, the procedure shall require the member, the association, or both to provide ten days written notice of this intent to be given to the other party pursuant to the methods identified in subdivision (b) of section 4035 and paragraphs (1) and (2) of subdivision (a) of section 4040. If notice is not provided, the party not receiving the required notice shall have the election of postponing the procedure until the notice requirement is met.**
- 6) On page 3, line 19, delete "costs" and replace it with "attorney fees"
- 7) On page 3, line 19, delete "for legal counsel."
- 8) On page 3, line 37, delete "legal counsel present" and insert "an attorney participate"
- 9) On page 3, beginning on line 39 delete the following: **A party wishing to have counsel present when meeting and conferring must provide written notice to the other party of its intent to be represented. If this notice is not provided, the party not receiving the required notice shall have the election of postponing the meeting until the notice requirement is met.**

- 10) On page 4, line 6, delete "legal counsel" and replace it with "an attorney"
- 11) On page 4, line 7 delete "without prior notice"
- 12) On page 4, after lines 7 insert: **(C) If either a member, an association, or both intends to have an attorney or another person participate in the procedure, the procedure shall require the member, the association, or both to provide ten days written notice of this intent to be given to the other party pursuant to the methods identified in subdivision (b) of section 4035 and paragraphs (1) and (2) of subdivision (a) of section 4040. If notice is not provided, the party not receiving the required notice shall have the election of postponing the meeting until the notice requirement is met.**
- 13) On page 4, line 21 delete "legal counsel" and replace with "an attorney"

Double referred: The Assembly Committee on Rules referred AB 1738 to the Committee on Housing and Community Development and Judiciary. If AB 1738 passes this committee, the bill must be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

California Alliance for Retired Americans
Conference of California Bar Associations (CCBA) (sponsor)
Executive Council of Homeowners (ECHO) (support if amended)

Opposition

Community Associations Institute (CAI)

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085