

Date of Hearing: April 30, 2014

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Ed Chau, Chair

AB 2430 (Maienschein) – As Amended: April 7, 2014

SUBJECT: Transfer disclosures.

SUMMARY: Clarifies that it is the responsibility of the seller of a separate interest in a common interest development (CID) to pay for the production and delivery of any disclosure documents that are required to be provided to a prospective purchaser. Specifically, this bill:

- 1) Requires the billing disclosure form that a homeowners association (HOA) in a CID is required to provide to an owner or any other representative authorized by the owner, to individually itemize the fee for each document.
- 2) Clarifies that an HOA must collect the fee for procuring, preparing, reproducing, and delivering documents from the seller.
- 3) Clarifies that any documents that a seller is not required to provide to a prospective purchaser of a separate interest shall not be included with the required CID disclosure documents.
- 4) Prohibits the "bundling" of required disclosure documents with other documents that are not required as part of the disclosure requirements.
- 5) Requires a seller to provide a prospective purchaser current copies of any disclosure documents that are in the seller's possession at no cost.
- 6) States that it is the seller of a separate interest's responsibility to compensate the HOA, person, or entity that provides the required disclosure documents.

EXISTING LAW

- 1) Requires an owner of a separate interest to provide the following documents as soon as practicable before the transfer of title or the execution of a real property sales contract to a prospective buyer:
 - a) a copy of all the governing documents of the CID;
 - b) restrictions on occupancy based on age;
 - c) copies of documents required as part of the pro forma budget;
 - d) a statement of the current and special assessments;
 - e) a summary of any alleged violations that are unresolved against the owner of the separate interest;

- f) a list of any construction defects;
 - g) any pending special assessments that have been approved by the board of directors but have not been made due;
 - h) any prohibition in the governing documents on renting or leasing a separate unit; and
 - i) if requested by a prospective purchaser, a copy of the last 12 months of board minutes.
(Civil Code 4525)
- 2) Requires an HOA in a CID to provide each owner of a separate interest in a CID with a statement of the fees that may be charged for providing documents to a prospective buyer (Civil Code 4528).

FISCAL EFFECT: None.

COMMENTS:

There are over 50,000 Community Interest Developments (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.

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 with a prospective buyer. These documents include the operating rules, financial statements, governing documents and other disclosures governing the operations of the CID. 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 or someone designated by 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 *Berryman v. Merit Property Management* (152 Cal App 4th 1544, 2007), the court determined that an agent of the HOA is 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, California Association of Realtors (CAR) sponsored AB 771 (Butler) Chapter 206 in an effort to curb abuses they identified in which an HOA or the entity that it contracts with to provide disclosure documents to a seller bundled the fee for those documents with other escrow-related services and documents. AB 771 (Butler) created a billing disclosure form that an HOA must provide to an owner listing all of the documents that must be disclosed and the cumulative cost of those documents. The bill also specified that the disclosure documents required in Civil Code Section 4525 could not be combined with other documents, items, or services. This

language was an effort to eliminate the practice of bundling the required CID disclosure documents with other documents and charging more.

According to CAR, "two years of experience with the guidelines created by AB 771 suggest that it has not been entirely effective at reducing unnecessary costs in CID unit sales transactions. Clarifying amendments are necessary to achieve the goals of AB 771 and protect sellers and prospective purchasers from being 'hit' with excessive fees during the purchase of a unit in a CID. AB 2430 is intended to totally eliminate any and all bundling of other transactions and escrow fees with the Davis Stirling Act fees."

Staff comments:

Itemizing the fee for each individual document in the disclosure form will help the seller to identify discrepancies between the costs of like documents. However, it is somewhat unclear if this bill will accomplish greater transparency and curb bundling of documents where the previous bill was unsuccessful. The committee may wish to consider that ultimately what may be necessary to curb the practice of bundling the fees for required disclosure documents with other real estate documents is to cap the amount that can be charged per document by entities that HOAs contract with, or to limit the amount an entity that the HOA contracts with to charging reasonable fees like an HOA.

Additionally, it is unclear in existing law that the seller receives the billing disclosure form prior to receiving all the disclosure documents. The committee may wish to clarify that the seller must receive the billing disclosure form before receiving the disclosure documents. This will allow the seller to make an informed decision as to whether to pay for the disclosure documents.

Committee amendment:

On page 5, line 13 through 16, amend as follows:

- (2) Upon receipt of a written request, the association shall provide, on the form described in Section 4528, a written or electronic estimate of the fees that will be assessed for providing the requested documents *prior to processing the request in (a) (1)*.

Double referred: The Assembly Committee on Rules referred AB 2430 to the Committee on Housing and Community Development and Judiciary. If AB 2430 passes this committee, the bill must be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors

Opposition

None on file.

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