STATE ASSISTANCE TO COMMON INTEREST DEVELOPMENTS

A common interest development ("CID") is a housing development characterized by (1) separate ownership of dwelling space (or a right of exclusive occupancy) coupled with an undivided interest in common property, (2) covenants, conditions, and restrictions that limit use of both the common area and separate ownership interests, and (3) management of common property and enforcement of restrictions by a community association. CIDs include condominiums, community apartment projects, housing cooperatives, and planned unit developments.1

There are over 36,000 CIDs in California, ranging in size from three to 27,000 units each.2 These developments comprise over three million total housing units — approximately one quarter of the state’s housing stock.3 CIDs accounted for 60% of all residential construction starts during the 1990s. The planned unit development alone represented more than 40% of single family home sales during that period.4

CIDs are governed by volunteer directors, elected from among the unit owners. Faced with the complexity of CID law, many of these volunteers make mistakes and violate procedures for conducting hearings, adopting budgets, establishing reserves, enforcing rules and restrictions, and collecting assessments. Many CID homeowners do not understand their rights under CID law and under their association’s governing documents. These sorts of mistakes and misunderstandings inevitably lead to conflicts within the development, either between the association and an individual homeowner, or between homeowners.

Empirical information is not available concerning the incidence of such disputes in California. However, some data is available from other jurisdictions in which there is government supervision of CID operations. For example, in Nevada the Ombudsman for Owners in Common Interest Communities receives approximately one complaint for every 100 common interest dwelling units per year. In California, with its approximately three million CID dwelling units, that would yield about 30,000 complaints each year.5

A homeowner who believes that a community association is violating the law or has otherwise breached its duties has no effective remedy other than civil

3. Id. at 20-21.
4. Id. at 3.
litigation. Litigation is not an ideal remedy for many common interest development disputes. Homeowners who sue their associations are suing their neighbors and themselves. The adversarial nature of litigation creates animosity that can degrade the quality of life within the community and make future disputes more likely to arise. Litigation imposes costs on the community as a whole — costs that must be paid by all members through increased assessments.

Many homeowners cannot afford to bring a lawsuit, especially in cases where money damages are not at issue. A person who cannot afford to sue is effectively denied the benefit of laws designed for that person’s protection. The absence of an affordable remedy limits accountability for wrongdoing, creating an atmosphere in which some may choose to cut corners or abuse their power.

PROPOSED LAW

State Assistance to Common Interest Developments

A program of state assistance to common interest developments would be helpful in addressing the problems described above. The state could provide training for those charged with difficult responsibilities, provide information and advice to those who do not understand their legal rights and responsibilities, assist in informally resolving disputes, and as a last resort, could take enforcement action against a person who violates common interest development law. This would help to avoid many problems and would provide an affordable administrative remedy for problems that cannot be resolved through education and conciliation.

Similar assistance programs exist in other states. Florida and Nevada have comprehensive programs that include a range of education, mediation, and law enforcement functions. The proposed law would create the Common Interest Development Bureau within the Department of Consumer Affairs (“Bureau”). The Bureau would be funded entirely from fees charged to CID homeowners. No general revenue funds would be used. The Bureau would have the following general responsibilities, which are discussed more fully below: (1) education, (2) dispute resolution, (3) law enforcement, and (4) data collection.

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6. The Attorney General has authority to intervene in cases involving the alleged violation of certain corporate governance statutes. See Corp. Code § 8216. However, the Attorney General’s involvement is limited to sending a “notice of complaint” letter. If that does not resolve the problem, the complainant is advised to obtain private counsel. See <www.caag.state.ca.us/consumers/complaints/npmb.htm>.

7. Many CID disputes involve laws regulating community association governance (e.g., procedures for elections, meetings, or access to records). In such a case, the relief sought will typically be an injunction or declaratory relief.

8. See “Experience in Other Jurisdictions” infra.

9. See “Funding Issues” infra.
Education

The Bureau would maintain an informational website. The website could be used to provide direct access to governing law, distribute plain language explanations of difficult concepts, and answer frequently asked questions. The website would also provide an annual summary of changes in CID law, to inform association directors and homeowners of new legal requirements or changes to existing requirements.

In addition, the Bureau would maintain a toll-free telephone number that could be used to request information or advice.

An authoritative, neutral, and readily available source of information, advice, and training can help association directors and homeowners to understand their legal rights and responsibilities. It would also help to defuse disputes that are based on misunderstanding or mistrust.

Dispute Resolution

On request, the Bureau would assist in trying to resolve a dispute informally. The proposed law does not define what methods would be used. It is expected that the Bureau would adopt procedures based on other successful dispute resolution programs within the Department of Consumer Affairs.

Statements made during the Bureau’s informal dispute resolution process would be confidential and could not be used in any subsequent administrative adjudication or litigation. Confidentiality fosters frankness, which is important to the successful settlement of disputes.

In addition to mediating disputes, the Bureau would be authorized to monitor association elections (if a sufficient minority of members request the assistance). Fair elections are essential to successful self-governance and provide a path to dispute resolution that is based in the community rather than in the legal system.

Law Enforcement

Any interested person could request that the Bureau investigate an alleged violation of CID statutory law. If the Bureau determines that a violation of law has occurred it would attempt to correct the violation by informal agreement. If the violation cannot be resolved through a voluntary agreement, the Bureau could issue a citation ordering correction of the violation and imposing a range of equitable and punitive remedies.

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10. See proposed Civ. Code § 1380.300(b)-(c) infra.
12. See proposed Civ. Code § 1380.400 infra.
13. See proposed Civ. Code § 1380.400(c) infra.
A person named in a citation could appeal the citation administratively.\textsuperscript{15} The Bureau’s decision on appeal would be subject to judicial review, by writ of administrative mandate.\textsuperscript{16}

If a person does not comply with a Bureau citation or a negotiated conciliation agreement, the Bureau could bring an action in superior court to compel compliance.\textsuperscript{17}

Specific issues relating to enforcement are discussed more fully below.

Empirical Data

An important incidental benefit of the proposed law would be the ability of the Bureau to collect empirical data on the nature and frequency of CID disputes in California. The Bureau would report its findings to the Legislature each year.\textsuperscript{18} This would provide an objective basis for evaluating any future reform of CID law.

ENFORCEMENT ISSUES

Subject Matter Jurisdiction

The Bureau would have authority to investigate and correct a violation of statutory law. For example, a homeowner could request investigation of an association’s failure to do any of the following:

- Hold an open meeting and provide a copy of meeting minutes.\textsuperscript{19}
- Provide access to accounting books and records.\textsuperscript{20}
- Follow procedures for member meetings and voting.\textsuperscript{21}
- Provide required financial statements.\textsuperscript{22}
- Follow proper rulemaking procedure.\textsuperscript{23}
- Follow proper disciplinary procedure.\textsuperscript{24}

Many CID disputes involve these sorts of routine governance problems. Under the proposed law, the Bureau would not have authority to enforce an association’s governing documents. For example, the Bureau would not enforce a restriction on pet ownership or parking rules that is set out in the association’s declaration of covenants, conditions, and restrictions. This limitation is intended to

\textsuperscript{15} See proposed Civ. Code § 1380.420 \textit{infra}.  
\textsuperscript{16} \textit{Id.}  
\textsuperscript{17} See proposed Civ. Code § 1380.430 \textit{infra}.  
\textsuperscript{18} See proposed Civ. Code § 1380.120 \textit{infra}.  
\textsuperscript{19} See Civ. Code § 1363.05.  
\textsuperscript{20} See Civ. Code §§ 1363(f), 1365.2.  
\textsuperscript{21} Corp. Code §§ 7510-7527.  
\textsuperscript{22} Civ. Code § 1365.  
\textsuperscript{23} Civ. Code §§ 1357.100-1357.150.  
\textsuperscript{24} See Civ. Code § 1363(g)-(h).
avoid executive encroachment into powers that are reserved to the courts by the California Constitution.\textsuperscript{25}

In a seminal case on the proper scope of administrative adjudication, \textit{McHugh v. Santa Monica Rent Control Board}, the court held that administrative adjudication does not encroach on reserved judicial powers so long as the ultimate decisionmaking power remains in the courts (the “principle of check”) and the adjudicative activity is both authorized by statute and “reasonably necessary to effectuate the agency’s primary, legitimate regulatory purposes.”\textsuperscript{26}

Under the proposed law, a corrective citation would not be enforceable until after judicial review opportunities have been exhausted. This would satisfy the principle of check.

However, it is not clear that enforcement of an association’s governing documents would fall within the Bureau’s “primary, legitimate regulatory purpose.” The California Supreme Court has distinguished between administrative enforcement of statutory law and administrative adjudication of common law claims. In \textit{McHugh}, the court upheld administrative adjudication of a rent regulation ordinance, but indicated in dicta that adjudication of common law counterclaims would involve the exercise of judicial powers reserved to the courts. In such a case, the administrative agency would be “adjudicating a broad range of landlord-tenant disputes traditionally resolved in the courts.”\textsuperscript{27} In determining whether administrative adjudication unconstitutionally encroaches on reserved judicial power, a court would “closely scrutinize the agency’s asserted regulatory purposes in order to ascertain whether the challenged remedial power is merely incidental to a proper, primary regulatory purpose, or whether it is in reality an attempt to transfer determination of traditional common law claims from the courts to a specialized agency whose primary purpose is the processing of such claims.”\textsuperscript{28}

The Commission believes that enforcement of statutory requirements would fall squarely within the executive branch’s legitimate regulatory powers. However, administrative enforcement of governing documents, which would involve common law principles relating to equitable servitudes and contracts, would probably encroach on matters that have traditionally been adjudicated by the courts. In order to avoid a constitutional challenge to the Bureau’s authority, the proposed law limits the Bureau’s enforcement jurisdiction to matters of statutory law. For similar reasons, the Bureau would not be authorized to award damages.\textsuperscript{29}

\textsuperscript{25} See Cal. Const. art. III, § 3 (separation of powers); Cal. Const. art. VI, § 1 (judicial power vested in courts).

\textsuperscript{26} 49 Cal. 3d 348, 374, 777 P.2d 91, 261 Cal. Rptr. 318 (1989).

\textsuperscript{27} \textit{Id.} at 374-75.

\textsuperscript{28} \textit{Id.}

\textsuperscript{29} See \textit{Walnut Creek Manor v. Fair Employment & Housing Comm’n}, 54 Cal. 3d 245, 264, 284 Cal. Rptr. 718, 814, P.2d 704 (1991) (“The award of unlimited general compensatory damages is neither necessary to [the regulatory] purpose nor merely incidental thereto; its effect, rather, is to shift the remedial focus of the administrative hearing from affirmative actions designed to redress the particular instance of
Note that some disputes may involve a mixture of statutory and common law complaints. For example, a homeowner whose proposed property improvement is disapproved by an association may complain that (1) the association did not follow a fair and reasonable procedure in making its decision as required by Civil Code Section 1378, and (2) that the association did not properly apply the architectural standards contained within the association’s recorded declaration of covenants, conditions, and restrictions. The Bureau would have jurisdiction to decide the procedural question, which is based on a clear statutory requirement, but could not decide whether the substantive standard contained in the association’s declaration had been properly applied. This limitation on the Bureau’s jurisdiction would leave some important disputes unresolved.

The proposed limitation on the Bureau’s enforcement jurisdiction is consistent with the approach taken in other states that provide for state adjudication of common interest development disputes. In both Florida and Nevada, the state enforces statutory requirements but has no jurisdiction to enforce an association’s governing documents.30

Sanctions

In addition to ordering that a law violation be corrected, the Bureau could also impose punitive sanctions. The availability of these sanctions would encourage cooperation in resolving disputes informally and would serve to deter intentional misconduct. The possible sanctions would be as follows:

• An administrative fine of up to $1,000 per violation.
• Removal of a director from office.
• Publication of citations on the Bureau’s website.

There are a number of limitations on these sanctions. First, a sanction can be entirely avoided by entering into a conciliation agreement. If a violation is remedied through conciliation, a citation would not be issued. This creates an incentive to cooperate with the Bureau in fashioning an acceptable remedy. Other limitations on the imposition of sanctions are discussed below.

Administrative Fines

In determining whether to impose a monetary penalty and the amount of the penalty, the Bureau would be guided by specific criteria: the size of the association, the gravity of the violation, the presence or absence of just cause or unlawful housing discrimination and prevent its recurrence, to compensating the injured party not just for the tangible detriment to his or her housing situation, but for the intangible and nonquantifiable injury to his or her psyche suffered as a result of the respondent’s unlawful acts, in the manner of a traditional private tort action in a court of law.”). But see Konig v. Fair Employment & Housing Comm’n, 28 Cal. 4th 743, 123 Cal. Rptr 2d 1, 50 P.3d 718 (2002) (damages may be constitutionally awarded through administrative adjudication if statute permits parties to opt out of administrative process).

excuse, and any history of prior violations. This should mitigate against the imposition of an arbitrary or unduly burdensome penalty.

A penalty could not be imposed against an individual unless the Bureau finds by clear and convincing evidence that the person’s unlawful conduct involved “malice, oppression, or fraud” as those terms are defined in the statute that governs punitive damages. This is a strict standard of proof and misconduct that would only be satisfied in a clear case of intentional bad faith.

The possibility that a monetary penalty could be imposed against an individual director could deter some from volunteering to serve on a board. However, a person who acts in good faith would never be subject to a fine. Only serious intentional misconduct would result in a fine. If this is properly understood, the deterrent to voluntary service should be minimal.

Removal from Office

Removal of a director from office could be a useful remedy in a case of intentional wrongdoing. The Bureau would not be permitted to remove a person from office unless it finds by clear and convincing evidence that the person’s conduct involved malice, oppression, or fraud. This is a strict standard that would not easily be met. Use of the removal power should be infrequent.

Internet Publication of Citations

The proposed law would also require that the Bureau publish all citations on its website. This is similar to existing law that requires the Department of Consumer Affairs to publish the disciplinary history of licensees on its website. This practice would allow a potential CID home buyer to research whether a particular community association has a history of violating the law.

However, negative publicity about an association could adversely affect property values in the association. This would result in losses to all homeowners within the community. Concern about property value loss could deter some homeowners from seeking Bureau assistance in remedying a violation of law.

Request for Legislative Guidance

The Commission seeks guidance from the Legislature on whether the proposed law should include the punitive sanctions described above.

31. See proposed Section 1380.410(d) infra.
32. See proposed Section 1380.410(e) infra.
33. Existing law authorizes a court to remove a corporate director from office in cases of serious misconduct. See Corp. Code § 334
34. See proposed Section 1380.410(f) infra.
35. See proposed Section 1380.410(g) infra.
36. See, e.g., Bus. & Prof. Code § 27.
Exhaustion of Bureau Enforcement Procedure

There are a number of advantages to requiring that a person exhaust an available administrative remedy before filing a lawsuit:

In cases appropriate for administrative resolution, the exhaustion requirement serves the important policy interests … of resolving disputes and eliminating unlawful … practices by conciliation …, as well as the salutary goals of easing the burden on the court system, maximizing the use of administrative agency expertise and capability to order and monitor corrective measures, and providing a more economical and less formal means of resolving the dispute….

On the other hand, a homeowner may wish to proceed directly to litigation in a dispute that involves damages or a mixture of statutory and common law claims. An exhaustion requirement would prevent them from doing so.

As a practical matter, it is likely that most homeowners would take advantage of the low cost and expeditious enforcement procedure offered by the Bureau, regardless of whether exhaustion is formally required. For that reason, most of the benefits of exhaustion would be achieved even if exhaustion is not mandatory.

The Commission has not yet decided whether to recommend that the law require exhaustion of the Bureau’s law enforcement process. The proposed law includes two alternative versions of proposed Civil Code Section 1380.440, one requiring exhaustion and the other providing that exhaustion is not required. The Commission requests input on which is the better approach.

FUNDING ISSUES

Funding Levels

The cost to operate a state agency that processes tens of thousands of complaints each year would be significant. Under current fiscal conditions, it would not be feasible to fund such an agency from the state’s general fund.

Instead, the proposed law would impose a fee on community associations to fund the Bureau’s operations. The fee would initially be set at $5 per unit per year. The amount of the fee would be evaluated periodically and adjusted up or down, by regulation, to reflect the Bureau’s actual funding needs. However, there would be a statutory cap on any increase in the fee amount. It could never exceed $10 per unit per year.

Assuming that all associations pay their fees, the proposed fee would produce between $15 and $30 million in revenue per year. This is comparable to the budget of other agencies with similar consumer protection responsibilities. For example, the Department of Fair Employment and Housing processes complaints about illegal discrimination in employment and the provision of housing. It has approximately 200 employees, offices in 11 cities around the state, and an annual

38. See proposed Civ. Code § 1380.130.
budget of approximately $19 million. It resolves around 20,000 complaints each year, through a process of mediation, investigation, conciliation, adjudication, and litigation.

However, a comparison between the probable resource needs of the Bureau and the resource needs of other regulatory agencies within California has limited value because of differences in procedure and in the nature of the underlying disputes. For example, the Department of Fair Employment and Housing will represent complainants in litigation in some cases, a procedure that is more costly than anything provided in the proposed law. It also seems likely that housing and employment discrimination cases would be more difficult to resolve than a typical CID complaint because of the large sums of money that may be at stake in a discrimination case.

Funding Procedure

The Bureau would be funded through a fee paid by a homeowner association when registering with the Secretary of State every two years. An association would pass the fee along to its members through an increase in annual assessments.

A per unit fee would spread the cost of agency operations evenly among all CID homeowners. This might seem unfair to a homeowner in a well-run association, where there is little need for the Bureau’s dispute resolution and enforcement services. However, the Bureau’s educational services would benefit all associations. In addition, Bureau adjudication would produce a body of administrative decisions that could help to fill gaps and resolve ambiguities in the law, reducing the risk of litigation for all associations. The Bureau would also produce empirical data on the nature of problems within CIDs that could help to reform the law in ways that will benefit all CIDs.

A per-unit fee has been used successfully in other jurisdictions that provide education and dispute resolution services to common interest communities.

Filing Fee

In addition to the per-unit fee, the Commission is considering a proposal to impose a modest filing fee to partially defray the cost of law enforcement action (e.g., $25 per formal request for investigation). A filing fee would also have the salutary effect of deterring some frivolous complaints. This would reduce the Bureau’s enforcement caseload and the potential for unwarranted harassment of board members. The Commission requests input on whether a filing fee should be included in the proposed law.


40. See proposed Civ. Code § 1380.420(c) infra; Gov’t Code § 11425.60 (precedent decisions).

41. See “Experience in Other Jurisdictions” infra.
PILOT PROGRAM

The proposed law would be subject to a five year sunset provision. This is a common feature of consumer protection agencies established within the Department of Consumer Affairs.

The Joint Legislative Sunset Review Committee exists to review the operation of a consumer protection agency that is subject to a sunset provision and to make a recommendation on whether there is a continued public need for the agency’s existence. An agency under review must provide the Joint Committee with a detailed report analyzing its activities, funding, and expenditures. The Joint Committee then holds a public hearing to receive testimony regarding the continued need for the agency. Under the proposed law, the Common Interest Development Bureau would be subject to review by the Joint Committee. This provides an important measure of agency accountability.

EXPERIENCE IN OTHER JURISDICTIONS

Florida and Nevada have programs that are similar in scope to what is included in the proposed law. Other jurisdictions provide narrower assistance. Experience in other jurisdictions demonstrates the feasibility of government assistance to common interest developments and shows that there is significant public demand for such services. A brief survey of CID programs in other jurisdictions is provided below.

Florida

Florida regulates many aspects of the governance of condominiums and cooperatives. For example, Florida’s condominium law regulates record keeping, board meeting procedures, election procedures, and budgeting.

In Florida, the state provides assistance to condominiums and housing cooperatives that is very similar in scope to the proposed law. Florida provides three general types of assistance: (1) education, (2) informal dispute resolution, and (3) law enforcement.

These programs are funded in part by an annual fee of $4 per unit.

Education

The Division of Florida Land Sales, Condominiums and Mobile Homes (“Division”) provides a range of educational resources, including training classes,
a toll-free telephone number, and an Internet website. The website includes information on condominium law and provides answers to over 100 frequently asked questions.48

Dispute Resolution

Before a lawsuit can be filed in a case involving any of the following issues, the dispute must be submitted to mandatory nonbinding arbitration or mediation:

(a) The authority of the board of directors, under this chapter or association document to:
   1. Require any owner to take any action, or not to take any action, involving that owner’s unit or the appurtenances thereto.
   2. Alter or add to a common area or element.
(b) The failure of a governing body, when required by this chapter or an association document, to:
   1. Properly conduct elections.
   2. Give adequate notice of meetings or other actions.
   3. Properly conduct meetings.
   4. Allow inspection of books and records.49

This is similar to California law requiring an offer of alternative dispute resolution before filing a lawsuit to enforce an association’s governing documents or common interest development law.50 In addition, the Division now includes the Office of the Condominium Ombudsman.51 The Ombudsman is authorized to provide a range of informal dispute resolution services, including the monitoring of association elections.

Law Enforcement

Any person may file a complaint with the Division alleging a violation of condominium statutory law. The Division will review the complaint to determine whether it states facts establishing a violation within the Division’s enforcement jurisdiction. The Division does not enforce governing documents.52

If the Division finds a violation of statutory law, it can attempt to resolve the complaint informally, through a warning, education, or a negotiated agreement. If that is not effective, the Division can issue a corrective order, requiring that the offender cease and desist and take affirmative action to remedy the violation. A corrective order can include a civil penalty of as much as $5,000 per violation. A penalty can be imposed against an association director for a knowing and willful violation.53

48. See <www.myflorida.com/dbpr/lsc/condominiums/information/faq.shtml>
53. Id.
A Division enforcement decision is subject to administrative and judicial review.\textsuperscript{54}

\textbf{Nevada}

Nevada provides education, dispute resolution, and law enforcement assistance to common interest communities. Responsibility is divided between two entities: the Ombudsman for Owners in Common Interest Communities and the Commission for Common Interest Communities.

\textit{Ombudsman}

The Ombudsman has the following responsibilities:\textsuperscript{55}

1. To assist in processing claims submitted for mediation or arbitration pursuant to Nevada’s mandatory ADR statute (as in Florida, mediation or arbitration is required before certain specified types of CID lawsuits can be filed).\textsuperscript{56}

2. To assist owners to understand their rights and responsibilities, including publishing materials relating to rights and responsibilities of homeowners.

3. To assist board members to carry out their duties.

4. To investigate disputes involving community association law or the governing documents of an association and assist in resolving such disputes.

5. To compile a registry of CID associations.

The Ombudsman’s office is funded by a fee of $3 per unit per year.

\textit{Commission for Common Interest Communities}

The Commission for Common Interest Communities (“CCIC”) is charged with collecting specified types of information about common interest communities, developing and promoting various educational programs, developing standards for mandatory mediation and arbitration of CID disputes, and developing a program to certify and discipline community managers.\textsuperscript{57}

In addition, the CCIC has authority to adjudicate an alleged violation of the common interest community statutes and regulations.\textsuperscript{58} It may not adjudicate disputes involving an association’s governing documents.

A person who believes that there has been a violation of law must first provide notice to the alleged violator. The notice requirements are designed to provide an opportunity to correct the problem informally. If the problem is not corrected, the aggrieved person may file an affidavit with the Real Estate Division. The affidavit is referred to the Ombudsman who will attempt to resolve the problem by informal

\begin{itemize}
\item \textsuperscript{54} See Fla. Stat. Ann. §§ 120.569 (administrative hearing); 120.68 (judicial review).
\item \textsuperscript{58} Id.
\end{itemize}
means. If the problem cannot be resolved with the Ombudsman’s assistance, the Real Estate Division conducts an investigation to determine whether there is good cause to proceed with a hearing. If there is good cause to proceed, the complaint is heard by the CCIC or by a hearing panel appointed by the CCIC. The CCIC has authority to issue subpoenas, which are enforceable by court order.

The CCIC has a number of remedies at its disposal. It may issue an order requiring that the violator cease and desist from unlawful conduct or take affirmative action to correct conditions resulting from a violation. It can impose an administrative fine of up to $1,000 per violation. The CCIC may also order an audit of an association or require that a board hire a certified community manager. A board member or other officer who has knowingly or willfully violated the law can be ordered removed from office.

In general, a board member or other officer is not personally liable for a fine. However, if a board member or other officer is found to have knowingly and willfully violated the law, that officer may be held personally liable.

The CCIC is composed of five gubernatorial appointees, with the following qualifications: one homeowner who has served on an association board, one developer, one member who holds a permit or certificate (i.e., a property manager), one certified public accountant, and one attorney.

Maryland

Montgomery County, Maryland, has by ordinance adopted a complete scheme for nonjudicial resolution of CID disputes. The scheme was established in 1991, following a task force study that identified a number of major concerns and issues, including inequality of bargaining power and the need to provide for due process in fundamental association activities. The law creates a county Commission on Common Interest Communities that, among other activities, seeks to reduce the number and divisiveness of disputes, provide and encourage informal resolution of disputes, or (if necessary) conduct formal hearings.59

The Commission is composed of 15 voting members appointed by the County Executive, consisting of six CID residents, six CID professionals, and three real estate professionals. It also has non-voting designees of heads of major county departments (including planning, environment, public works, transportation, housing, and community affairs).

A dispute may not be filed with the Commission until the parties have made a good faith attempt to exhaust all procedures provided in the association documents, and at least 60 days have elapsed since those procedures were initiated.

The Commission will provide mediation services to the parties on request. If mediation fails, or is rejected by a party, the dispute goes to a hearing. The hearing is conducted pursuant to standard county administrative hearing procedures. The Commission may compel production of books and records and attendance of

59. See Chapter 10B of the Montgomery County Code.
witnesses, and may invoke the court’s contempt power. The hearing panel may
resolve the dispute, award damages, and award costs and attorney’s fees in
appropriate situations. Its decision is binding on the parties.

The hearing panel’s decision is subject to judicial review on three grounds only:
(1) the decision does not comply with law, (2) it is not supported by substantial
evidence, or (3) it is arbitrary and capricious. The court may award costs and fees.
A failure to comply with the decision is a civil offense, and the decision is
enforceable by the full enforcement mechanisms of the county, including the
County Attorney.

In recent years, an average of 40 to 64 cases have been filed each year (about
one dispute for every 2,200 registered units). About half of all complaints filed are
resolved without a formal hearing. An average of about three cases per year are
appealed to the courts.

The Montgomery County program is funded by a $2.25 annual per-unit fee.
There is also a $50 fee to file a dispute.

Hawaii

In Hawaii, the Real Estate Commission maintains a list of local mediation
centers that are under contract to the state to mediate condominium governance
disputes. The state subsidizes the mediation of specified types of disputes. The
parties to a subsidized mediation pay only a filing fee.

The Real Estate Commission also offers information and advice to condominium
homeowners and their boards. It publishes information on the Internet and in print,
and responds to specific inquiries. In 2003, the Real Estate Commission answered
nearly 26,000 requests for information or advice.

The Real Estate Commission’s educational function and its mediation subsidy
are funded by a $4 per unit annual fee on registered condominium associations.

The Real Estate Commission also has authority to investigate violations of
specific statutes under its jurisdiction. If it finds a violation it can issue a cease and
desist order or seek a court injunction. A violation may also be referred for
prosecution as a crime. For the most part this authority is limited to laws
governing the development and sale of condominiums. However, one of the
provisions that can be enforced administratively is a requirement that members
have access to association records.

Virginia

Virginia maintains a Common Interest Community Association Liaison in its
Department of Professional and Occupational Regulation. The Liaison has the
following duties:

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[Serve] as an information resource on issues relating to the governance, administration and operation of common interest communities, including the laws and regulations relating thereto. Such information may include nonbinding interpretations of laws or regulations governing common interest communities and referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members.62

The liaison maintains an informational website63 and funds various educational events and publications. The liaison maintains a telephone number for homeowner inquiries, receiving about 1,200 inquiries per year. The liaison provides information and advice, but does not intervene in disputes.

Liaison operations are funded by an annual fee of $25 per association.

Australia

Australia has state-run dispute resolution programs for “strata schemes” (including condominiums) in three states: New South Wales, Queensland, and Western Australia.

New South Wales has the most fully-developed program. The agency (Strata Schemes & Mediation Services) includes a commissioner, full-time mediators, adjudicators, and an appeals board. The agency provides governmental oversight and public information, as well as dispute resolution services, and employs customer service officers who provide free information to the public on the governing laws. The agency is funded by the state, but a person submitting a dispute for resolution must pay a filing fee of $58 AUS (approximately $45 US).

A dispute is first submitted to mediation with a government-provided mediator. If mediation fails or is deemed inappropriate, the case proceeds to adjudication. There is a written adjudication system, which is based on the documentary record. A decision reached through written adjudication may be appealed to an administrative “tribunal” which holds a formal hearing to decide the matter. Cases may also be appealed to the courts, though that rarely occurs.

In 2003, there were 918 applications submitted for adjudication in New South Wales (out of approximately 750,000 “strata scheme” housing units).

The programs in Queensland and Western Australia are less fully developed, but include some combination of mediation or conciliation, paper-based adjudication, and appeal to a specialist tribunal.

Great Britain

Great Britain offers government assistance in resolving some types of landlord-tenant housing disputes. These services do not apply to the British equivalent of

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63. See <http://www.virginiaca.net>.
common interest development housing, but do provide models for state assistance in resolving similar sorts of housing-related disputes.

**Leasehold Advisory Service**

The purpose of the Leasehold Advisory Service is to give legal advice concerning housing disputes to anyone who asks for it. It is overseen by a board consisting of representatives of all stakeholders in the housing market.

The concept of this operation is that many disputes are not settled because parties are unaware of, or have a mistaken conception of, their legal rights. By providing independent legal advice to all, the agency helps people involved in disputes understand their legal rights better, which in turn makes them more realistic in coming to a resolution of their differences.

Advice is provided by telephone, written correspondence, email, or in person. The agency publishes information and advice on its website[^64] and in print. In addition, the agency provides training to local authorities, housing associations and professional bodies.

The agency’s seven consultants processed nearly 27,000 inquiries in 2003.

**Independent Housing Ombudsman**

The Independent Housing Ombudsman is a quasi-public entity created to provide dispute resolution services in certain landlord-tenant disputes. The Ombudsman receives complaints and resolves them free of charge. The Ombudsman uses a number of dispute resolution techniques, including informal intervention, formal inquiry, mediation, arbitration, and final recommendation. It rarely conducts hearings, performing most of its work on the basis of paper submissions.[^65]

**CONCLUSION**

A program of state assistance to common interest developments would provide a number of important benefits:

- Authoritative advice and education would help an association director or homeowner to understand the requirements of CID law. This would help to avoid problems that result from ignorance or misunderstanding. This is especially important because CID law is complex and most homeowners are not attorneys.

- Informal dispute resolution would help to defuse problems that are based on miscommunication or mistrust. The involvement of a neutral third party can often serve as a catalyst to bring about a mutually acceptable solution to what might otherwise be an intractable problem.

[^64]: See <http://www.lease-advice.org>.

State investigation and correction of a statutory violation would provide an affordable remedy for many common problems relating to CID governance. Imposition of a sanction for serious misconduct would help to deter malfeasance.

A centralized advice and dispute resolution service could gather reliable information about the frequency and nature of problems within CIDs. This would provide an empirical basis for determining the need for future reforms of CID law.

The proposed law would create a program to provide all of the services described above, at a cost to each CID homeowner of $5 per year. Experience in other jurisdictions demonstrates that there is a significant demand for state assistance of the type proposed and that it is feasible to provide such assistance. The Commission recommends that California provide similar assistance to its CID homeowners.
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PROPOSED LEGISLATION

Civ. Code §§ 1380.010-1380.410 (added). Common Interest Development Bureau

SEC. ___. Chapter 11 (commencing with Section 1380.010) is added to Title 6 of Part 4 of Division 2 of the Civil Code, to read:

CHAPTER 11. COMMON INTEREST DEVELOPMENT BUREAU

Article 1. Definitions

§ 1380.010. Application of definitions
1380.010. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

Comment. Section 1380.010 is new.

§ 1380.020. “Bureau” defined

Comment. Section 1380.020 is new.

§ 1380.030. “Homeowner” defined
1380.030. “Homeowner” means the owner of a separate interest.

Comment. Section 1380.030 is new. See also Section 1351(l) (“separate interest” defined).

§ 1380.035. “Managing agent” defined
1380.035. “Managing agent” has the meaning provided in subdivision (b) of Section 1363.1.

Comment. Section 1380.035 is new.

§ 1380.040. “Person” defined
1380.040. “Person” includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.

Comment. Section 1380.040 defines “person” broadly to include various forms of legal entity. Cf. Evid. Code § 175; Fam. Code § 105.

Article 2. Administration

§ 1380.100. Legislative findings and declarations
1380.100. The Legislature finds and declares all of the following:

(a) There are more than 36,000 residential common interest developments in California, comprising more than 3,000,000 dwellings. Common interest developments comprise approximately one quarter of the state’s housing stock.
(b) Managing a common interest development is a complex responsibility. Community associations are run by volunteer directors who may have little or no prior experience in managing real property, operating a nonprofit association or corporation, complying with the law governing common interest developments, and interpreting and enforcing restrictions and rules imposed by the governing documents of the common interest development. Homeowners may not fully understand their rights and obligations under the law and the governing documents. Mistakes and misunderstandings are inevitable and may lead to serious, costly, and divisive problems. The Common Interest Development Bureau seeks to educate community association officers and homeowners as to their legal rights and obligations. Effective education can prevent or reduce the severity of problems within a common interest development.

(c) Under prior law, the principal remedy for a violation of common interest development law was private litigation. Litigation is not an ideal remedy for many common interest development disputes, where the disputants are neighbors who must maintain ongoing relationships. The adversarial nature of litigation can disrupt these relationships, creating animosity that degrades the quality of life within the community and makes future disputes more likely to arise. Litigation imposes costs on a common interest development community as a whole — costs that must be paid by all members through increased assessments. Many homeowners cannot afford to bring a lawsuit and are effectively denied the benefit of laws designed for their protection. The Common Interest Development Bureau provides a neutral, nonjudicial forum for resolution of common interest development disputes. Many disputes can be resolved inexpensively, informally, and amicably through bureau facilitated mediation. As a last resort, the bureau has authority to issue a citation for violation of the law.

(d) Anecdotal accounts of abuses within common interest developments create continuing public demand for reform of common interest development law. This results in frequent changes to the law, making it more difficult to understand and apply and imposing significant transitional costs on common interest developments statewide. By collecting empirical data on the nature and incidence of problems within common interest developments, the Common Interest Development Bureau provides a sound basis for prioritizing reform efforts, thereby increasing the stability of common interest development law.

(e) The costs of the Common Interest Development Bureau shall be borne entirely by common interest development homeowners, through imposition of a biennial fee.

Comment. Section 1380.100 is new. See also Section 1351(a) (“association” defined), 1351(c) (“common interest development” defined), 1351(j) (“governing documents” defined), 1380.030 (“homeowner” defined).
§ 1380.110. Common Interest Development Bureau

1380.110. (a) There is in the Department of Consumer Affairs the Common
Interest Development Bureau, under the supervision and control of the director of
the Department of Consumer Affairs.

(b) The director of the Department of Consumer Affairs may employ a bureau
chief and other officers and employees as necessary to discharge the duties of the
bureau. The chief shall have the powers delegated by the director.

(c) The bureau shall adopt rules governing its practices and procedures. A rule
adopted under this subdivision is subject to the rulemaking provisions of the
Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of
Part 1 of Division 3 of Title 2 of the Government Code).

(d) Information and advice provided by the bureau has no binding legal effect
and is not subject to the rulemaking provisions of the Administrative Procedure
Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title
2 of the Government Code.)

(e) There shall be no liability on the part of, and no cause of action of any nature
shall arise against, the State of California or any of its employees, agents, or
representatives for providing or failing to provide information or advice pursuant
to this chapter.

(f) The bureau chief may convene an advisory committee to make
recommendations on matters within the bureau’s jurisdiction. A member of an
advisory committee shall receive per diem and expenses pursuant to Section 103 of
the Business and Professions Code. In selecting the members of an advisory
committee, the bureau chief shall ensure a fair representation of the interests
involved.

Comment. Section 1380.110 is new. Subdivision (c) authorizes the Bureau to adopt rules
governing its practices and procedures. Such rules are subject to the rulemaking requirements of
the Administrative Procedure Act.

Subdivision (d) provides that information or advice provided by the bureau has no binding
effect and is not a regulation under the rulemaking provisions of the Administrative Procedure
Act.

Subdivision (e) immunizes the bureau from liability for any information or advice that it
provides or fails to provide. Provisions immunizing state agencies from liability for information
disclosure are common. See, e.g., Bus. & Prof. Code § 10176.1 (Department of Real Estate);
Health & Safety Code § 1799.105 (poison control center); Ins. Code § 932 (insurance bureau).
See also Section 1380.020 (“bureau” defined); Bus. & Prof. Code §§ Sections 10 (delegation
of powers or duties), 310 (powers and duties of the director).

§ 1380.120. Annual report

1380.120. The bureau shall report annually to the Legislature, no later than
October 1 of each year. The report shall include all of the following information:

(a) Annual workload and performance data. For each category of data, the
bureau shall provide totals and subtotals based on the different types of disputes
involved. The data shall include all of the following:

(1) The number of inquiries received and the final disposition of those inquiries.
(2) The number of requests for investigation filed and the final disposition of those investigations.

(3) The number of citations appealed administratively and the final disposition of those appeals.

(4) The number of administrative decisions on appeal submitted for judicial review and the final disposition of judicial review of those decisions.

(5) Analysis of the time required to resolve inquiries, conduct investigations, and complete administrative adjudication of appeals.

(b) Analysis of the most common and serious types of disputes within common interest developments, along with any recommendations for statutory reform to reduce the frequency or severity of those disputes.

Comment. Section 1380.120 is new. See also Sections 1351(c) (“common interest development” defined), 1380.020 (“bureau” defined),

§ 1380.130. Fee

1380.130. (a) On filing information with the Secretary of State every two years, pursuant to subdivision (a) of Section 1363.6, an association shall submit a Common Interest Development Bureau Fee. This fee is in addition to the fee submitted pursuant to Section 1363.6. Failure to submit the Common Interest Development Bureau Fee is deemed noncompliance with Section 1363.6.

(b) The Common Interest Development Bureau Fee shall equal the number of separate interests within the association multiplied by the biennial fee amount. The initial biennial fee amount is ten dollars ($10).

(c) If a separate interest is part of two or more associations, only one of the associations is required to pay the fee for that separate interest. An association can avoid paying the fee for a separate interest by certifying, on a form developed by the bureau, that another association has paid the fee for that separate interest.

(d) The bureau shall increase or decrease the biennial fee amount every two years to provide only the revenue that it estimates will be necessary for its operation during the next two year period. The biennial fee amount shall not exceed twenty dollars ($20).

(e) Section 1366 does not limit an assessment increase necessary to recover the fee imposed by this section.

Comment. Section 1380.130 is new. Subdivision (b) provides that the Common Interest Development Bureau fee equals the number of separate interests within an association multiplied by the biennial fee amount. The biennial fee amount is initially set at $10. Because the fee is paid every two years, the total annual cost to a homeowner would be $5.

Subdivision (c) provides that a separate interest should only be counted once in determining the fee under this section, regardless of how many associations the separate interest belongs to. This allows overlapping associations to make whatever arrangement for paying fees that suits their circumstances. For example, the separate interests in a 200 unit planned development and a 200 unit condominium project are also included in a master association. The master association pays the fee for all 400 units. The planned unit development association and condominium association are then excused from paying the fee for their separate interests, provided that they document payment by the master association.
See also Sections 1351(a) (“association” defined), 1351(l) (“separate interest” defined), 1380.020 (“bureau” defined).

+ Staff Note. Should an undeveloped separate interest be included in calculating the CID Bureau fee? For example, a planned unit development may have 100 separate interests, with homes built on only 50 of them. Should that development be charged a fee based on the 50 units or 100? Many undeveloped units will be owned by the developer rather than by individual homeowners. A developer who owns 50 undeveloped lots would not put the same strain on the Bureau’s resources as 50 individual homeowners. The Commission requests public comment on this issue.

§ 1380.140. Deposit and use of funds
1380.140. (a) Common Interest Development Bureau fee revenue received by the Secretary of State and fee revenue received by the bureau shall be transferred to the State Treasurer and placed in the Fee Account of the Common Interest Development Bureau Fund, which is hereby created. All funds in the Fee Account are continuously appropriated to the bureau, to be used exclusively for expenditures necessary for the proper administration of this chapter.

(b) Money paid to the bureau that is attributable to administrative fines imposed by the bureau, or cost recovery by the bureau from enforcement actions and case settlements, shall be transferred to the State Treasurer and placed into the Penalty Account of the Common Interest Development Bureau Fund, which is hereby created. Funds in the Penalty Account shall, upon appropriation by the Legislature, be available exclusively for expenditures necessary for the proper administration of this chapter.

Comment. Section 1380.140 is new. See also Sections 1380.020 (“bureau” defined), 1380.130 (Common Interest Development Bureau fee).

§ 1380.150. Application of chapter
1380.150. (a) This chapter is repealed by operation of law on January 1, 2011, unless a subsequent statute repealing this section or extending the date of repeal of this chapter is enacted and takes effect on or before January 1, 2011.
(b) The bureau is subject to review by the Joint Legislative Sunset Review Committee pursuant to Chapter 1 (commencing with Section 473) of Division 1.2 of the Business and Professions Code.

(c) The bureau may investigate and remedy a violation of law that occurred before January 1, 2006, but may impose an administrative fine only for a violation that occurs on or after January 1, 2006.

Comment. Section 1380.150 is new. See also Sections 1351(c) (“common interest development” defined), 1373 (this chapter not applicable to nonresidential CID).

Article 3. Education

§ 1380.200. Association training
1380.200. (a) The bureau shall offer training materials and courses to common interest development directors, officers, and homeowners, in subjects relevant to
the operation of a common interest development and the rights and duties of an
association or homeowner.
(b) The bureau may charge a fee for training materials or courses, not to exceed
their actual cost.

Comment. Section 1380.200 is new. See also Sections 1351(a) (“association” defined),
1351(c) (“common interest development” defined), 1380.020 (“bureau” defined), 1380.030
(“homeowner” defined).

§ 1380.210. Toll free telephone number
1380.210. The bureau shall maintain a toll free telephone number to be used for
information or assistance.

Comment. Section 1380.210 is new. See also Section 1380.020 (“bureau” defined).

§ 1380.220. Internet website
1380.220. (a) The bureau shall maintain an Internet website, which shall provide
all of the following information:
(1) The text of (i) this title, (ii) the Nonprofit Mutual Benefit Corporation Law,
and (iii) any other statute or regulation that the bureau determines would be
relevant to the operation of a common interest development or the rights and duties
of an association or homeowner.
(2) Information concerning nonjudicial resolution of disputes that may arise
within a common interest development, including contacts for locally available
dispute resolution programs organized pursuant to Chapter 8 (commencing with
Section 465) of Division 1 of the Business and Professions Code.
(3) A description of the services provided by the bureau and information on how
to contact the bureau for assistance.
(4) An analysis, prepared each year, of legislative changes to common interest
development law.
(5) Any other information that the bureau determines would be useful to an
association or homeowner.
(b) Information provided on the bureau’s Internet website shall also be made
available in printed form. The bureau may charge a fee for the purchase of printed
material, not to exceed the actual cost of printing and delivery.

Comment. Section 1380.220 is new. See also Sections 1351(a) (“association” defined),
1351(c) (“common interest development” defined), 1380.020 (“bureau” defined), 1380.030
(“homeowner” defined).

§ 1380.230. Director and managing agent certification
1380.230. (a) Within 60 days of assuming office as an association director or
providing services as a managing agent, an association director or managing agent
shall certify that the director or managing agent has read each of the following:
(1) The declaration, articles of incorporation or association, and by-laws of the
association that the director or managing agent serves.
(2) This title or, if the bureau prepares a detailed summary of the requirements of this title, that summary.

(b) A director shall file the certification required by this section with the bureau. A managing agent shall file the certification required by this section with the association served by that managing agent.

Comment. Section 1380.230 is new. See also Sections 1351(a) (“association” defined), 1380.020 (“bureau” defined), 1380.035 (“managing agent” defined).

Article 4. Informal Dispute Resolution

§ 1380.300. Dispute resolution assistance

1380.300. (a) Any interested person may request the bureau’s assistance in resolving a dispute involving the law governing common interest developments or the governing documents of a common interest development. On receipt of a request for assistance the bureau shall, within the limits of its resources, confer with the interested parties and assist in efforts to resolve the dispute by mutual agreement of the parties.

(b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of informal dispute resolution initiated under this section.

(c) The bureau shall take reasonable steps to ensure that confidential information obtained in providing informal dispute resolution assistance is not used in investigating an alleged violation of law.

Comment. Section 1380.300 is new. Subdivision (b) makes clear that a statement made during mediation is subject to existing mediation confidentiality rules. Subdivision (c) requires the Bureau to take reasonable steps to prevent the use of confidential information obtained during informal dispute resolution in a subsequent law enforcement investigation. For example, the Bureau might adopt a procedure to keep dispute resolution and investigative files and personnel separate.

See also Sections 1351(c) (“common interest development” defined), 1351(j) (“governing documents” defined), 1380.020 (“bureau” defined), 1380.040 (“person” defined).

§ 1380.310. Election monitoring

1380.310. (a) If the bureau receives a petition requesting monitoring of an association election that is signed by homeowners representing 15 percent of the voting power of an association, or six separate interests, whichever is greater, the bureau shall appoint a person to serve as monitor of the election.

(b) The monitor shall be permitted to observe election procedures and examine election materials, including ballots cast. The monitor shall certify the results of the election to the bureau and shall report any irregularities in election procedures.

(c) The cost of monitoring shall be borne by the association.

Comment. Section 1380.310 is new. See also Sections 1351(a) (“association” defined), 1351(l) (“separate interest” defined), 1380.020 (“bureau” defined), 1380.040 (“person” defined).
Staff Note. Section 1380.310 is based on a similar provision of Florida law, which allows the
Condominium Ombudsman to appoint an election monitor in response to a homeowner petition.
See Fla. Stat. Ann. § 718.5012(9). It is included for discussion purposes and has not yet been
approved by the Commission. The Commission invites comment on whether such a provision
would be helpful.

Article 5. Law Enforcement

§ 1380.400. Investigation and conciliation

1380.400. (a) Any interested person may file a request for investigation of an
alleged violation of this title or of the Nonprofit Mutual Benefit Corporation Law
as it applies to a common interest development. The request shall be submitted in
writing, on a form provided by the Bureau [, along with a $25 filing fee].

(b) The bureau shall review the request and decide whether to conduct an
investigation. If the bureau declines to investigate, it shall [refund the filing fee
and] provide the person who requested the investigation with a written explanation
of the basis for its decision.

(c) If the bureau finds that a violation has occurred, it shall contact the person
accused and attempt to abate and remedy the violation through conciliation. A
conciliation agreement shall be in writing and signed by the person to be bound by
the agreement. The bureau shall provide a copy of the conciliation agreement to
the person who filed the request for investigation.

(d) If the bureau finds that the alleged violation did not occur, it shall provide
written notice of its findings to the person who requested the investigation and to
the person accused.

(e) The procedure provided in this article shall not be used to enforce the
obligation of a homeowner to pay an assessment.

Comment. Section 1380.400 is new. It provides for Bureau investigation of an alleged
violation of common interest development law. The Bureau would have discretion as to whether
to investigate a particular case. This allows the Bureau to judge the significance of a violation in
deciding whether to allocate investigative resources to it.

Subdivision (e) makes clear that the procedure provided in this article is not to be used for the
collection of assessments. Other procedures exist for that purpose. See Sections 1366-1367.1.

As part of the Department of Consumer Affairs, the Bureau could have a broad range of
delegated investigative powers. See Bus. & Prof. Code § 310(e) (director of DCA authorized to
“Hold public hearings, subpoena witnesses, take testimony, compel the production of books,
papers, documents, and other evidence, and call upon other state agencies for information.”).

See also Sections 1351(c) (“common interest development” defined), 1380.020 (“bureau”
defined), 1380.040 (“person” defined).

+ Staff Note. The bracketed language would be included if a filing fee is imposed — a matter
not yet decided by the Commission. A filing fee would help to deter frivolous complaints and
provide another source of revenue to partially offset the cost of an investigation. The tentative
figure of $25 was chosen to provide a meaningful deterrent without being unaffordable to those
of limited means.
§ 1380.410. Citation

1380.410. (a) If a violation cannot be abated and remedied through conciliation under Section 1380.400 the bureau may issue a citation. The citation shall be served on the person responsible for the violation. If the bureau decides not to issue a citation, it shall provide written notice of its decision to the person who filed the request for investigation.

(b) A citation shall identify the statute that has been violated and the facts constituting the violation. The citation shall order abatement of the violation and may order additional equitable relief as appropriate.

(c) A citation may include an administrative fine of not more than $1,000 per violation, to be paid to the bureau.

(d) In determining whether to impose a fine and the amount of any fine imposed, the bureau shall consider the size of the association, the gravity of the violation, the presence or absence of just cause or excuse, and any history of prior violations.

(e) A fine shall not be imposed against a director, officer, or managing agent unless the bureau finds, by clear and convincing evidence, that the violation involved malice, oppression, or fraud, as those terms are defined in Section 3294.

(f) If the bureau finds, by clear and convincing evidence, that a violation by an association director or officer involved malice, oppression, or fraud, as those terms are defined in Section 3294, the citation may order removal of the director or officer from office and state a period of time, not to exceed one year, during which the person removed may not serve as a director or officer.

(g) If a citation is either not contested or is upheld after administrative and judicial review, the bureau shall publish the citation on its Internet website for a period of three years.

Comment. Section 1380.410 authorizes issuance of a citation to correct a violation of law that cannot be remedied through conciliation. Cf. Bus. & Prof. Code § 125.9 (authority to issue corrective citations). The bureau’s authority to order a remedy for a violation of law derives from this chapter and is not limited by any provision of the governing documents of a common interest development.

An association’s governing documents may provide for indemnification of a director or other agent of an association who is investigated by the Bureau for an alleged violation of law. However, the power of a corporation to indemnify an agent is limited by Section 7237 of the Corporations Code.

Subdivision (e) provides for Internet publication of a final citation. Cf. Bus. & Prof. Code § 27 (Internet publication of disciplinary status of Department of Consumer Affairs licensee).

See also Sections 1351(a) (“association” defined), 1351(c) (“common interest development” defined), 1380.020 (“bureau” defined), 1380.035 (“managing agent” defined), 1380.040 (“person” defined).

§ 1380.420. Administrative and judicial review

1380.420. (a) A person named in a citation may contest the findings or orders included in the citation by filing a written request with the bureau for an administrative hearing.
(b) A hearing held pursuant to this section is subject to the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). The Department of Consumer Affairs shall appoint the presiding officer, who shall be qualified as an administrative law judge. The presiding officer may be an employee of the Office of Administrative Hearings or of the Department of Consumer Affairs but may not be an employee of the bureau.

(c) If the bureau determines that an adjudicative decision involves a significant legal or policy determination of general application, the bureau may designate the decision as a precedent decision under Section 11425.60 of the Government Code.

(d) An adjudicative decision made pursuant to this section is subject to review under Section 1094.5 of the Code of Civil Procedure.

Comment. Section 1380.420 is new. See Gov’t Code § 11400 (“administrative adjudication provisions of the Administrative Procedure Act” defined). See also Sections 1380.020 (“bureau” defined), 1380.040 (“person” defined); Gov’t Code § 11523 (judicial review of final agency decision).

§ 1380.430. Enforcement of conciliation agreement or citation

1380.430. (a) The bureau may enforce a conciliation agreement or citation by commencing a civil action in superior court, in the county in which the common interest development named in the conciliation agreement or citation is located.

(b) A citation is only enforceable if the court finds that the citation was not contested or was upheld after administrative and judicial review.

(c) In a proceeding under this section, the court shall not review the merits of a conciliation agreement or citation.

(d) A judgment under this section is nonappealable and has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action.

Comment. Section 1380.430 provides for judicial enforcement of a conciliation agreement or citation. See also Section 1380.020 (“bureau” defined).

+ Staff Note. Two alternative versions of Section 1380.440 are set out below. The Commission has not yet decided whether to recommend that a person be required to exhaust the Bureau’s law enforcement procedure before filing a civil claim within the Bureau’s law enforcement jurisdiction. The two sections below set out the alternative approaches.

§ 1380.440. First Alternative: exhaustion of administrative remedy required

1380.440. (a) A person may not commence a civil action based on an alleged violation of this title or of the Nonprofit Mutual Benefit Corporation Law as it applies to a common interest development, unless the person files a statement certifying that the person requested bureau investigation of the alleged violation and that the bureau’s investigative process reached one of the following conclusions:

(1) The bureau declined to investigate the alleged violation.
(2) The bureau found no violation.
(3) The bureau reached a conciliation agreement with the accused.
(4) The bureau failed to reach a conciliation agreement but declined to issue a citation.
(5) The bureau issued a citation and the citation was either not contested or was upheld after administrative and judicial review.
(b) The statute of limitations on a cause of action based on an alleged violation of this title or of the Nonprofit Mutual Benefit Corporation Law as it applies to a common interest development is tolled from the time of filing a request for investigation to the time that one of the events listed in subdivision (a) occurs.

Comment. Section 1380.440 requires exhaustion of the Bureau’s law enforcement process before filing a civil action based on an alleged violation within the Bureau’s law enforcement jurisdiction. Subdivision (a) lists the events that must occur before the Bureau’s process is deemed to have been exhausted. Subdivision (b) provides that the Bureau’s law enforcement process tolls the statute of limitations on a civil action that is based on an alleged violation within the Bureau’s law enforcement jurisdiction. See also Section 1380.020 (“bureau” defined).

§ 1380.440. Second Alternative: exhaustion of administrative remedy not required

1380.440. A person is not required to exhaust the administrative remedy provided in this article before filing a civil action based on an alleged violation of this title or of the Nonprofit Mutual Benefit Corporation Law as it applies to a common interest development.

Comment. Section 1380.430 excuses a person from exhausting the Bureau’s law enforcement procedure before filing a civil action that is based on an alleged violation within the Bureau’s law enforcement jurisdiction. See also Sections 1351(c) (“common interest development” defined), 1380.040 (“person” defined).
RELATED CHANGES

Civ. Code § 1363.7 (added). Information on Common Interest Development Bureau
SEC. ___. Section 1363.7 is added to the Civil Code, to read:
1363.7. An association shall provide its members with annual written notice of
the Internet website address and toll-free telephone number of the Common
Interest Development Bureau established pursuant to Chapter 11 (commencing
with Section 1380.010).
Comment. Section 1363.7 is added to require that an association provide its members with
contact information for the Common Interest Development Bureau.

Civ. Code § 1369.510 (amended). Definitions
SEC. ___. Section 1369.510 of the Civil Code is amended to read:
1369.510. As used in this article:
(a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or
other nonjudicial procedure, including informal dispute resolution pursuant to
Section 1380.300, that involves a neutral party in the decisionmaking process. The
form of alternative dispute resolution chosen pursuant to this article may be
binding or nonbinding, with the voluntary consent of the parties.
(b) “Enforcement action” means a civil action or proceeding, other than a cross-claim,
for any of the following purposes:
(1) Enforcement of this title.
(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3
(commencing with Section 7110) of Division 2 of Title 1 of the Corporations
Code).
(3) Enforcement of the governing documents of a common interest development.
Comment. Section 1369.510 is amended to make clear that “alternative dispute resolution”
includes an attempt to mediate a dispute under procedures established by the Common Interest
Development Bureau.

Civ. Code § 1373 (amended). Nonresidential associations
SEC. ___. Section 1373 of the Civil Code is amended to read:
1373. (a) The following provisions do not apply to a common interest
development that is limited to industrial or commercial uses by zoning or by a
declaration of covenants, conditions, and restrictions that has been recorded in the
official records of each county in which the common interest development is
located:
(1) Section 1356.
(2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of Part
4 of Division 2.
(3) Subdivision (b) of Section 1363.
(4) Section 1365.
(5) Section 1365.5.
(6) Subdivision (b) of Section 1366.
(7) Section 1366.1.
(8) Section 1368.
(9) Section 1378.
(10) Chapter 11 (commencing with Section 1380.010).

(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to protect purchasers in residential common interest developments, however, the provisions may not be necessary to protect purchasers in commercial or industrial developments since the application of those provisions could result in unnecessary burdens and costs for these types of developments.

Comment. Section 1373 is amended to exempt a nonresidential CID from the jurisdiction of the Common Interest Development Bureau and to delete unnecessary language.