

## STATE ASSISTANCE TO COMMON INTEREST DEVELOPMENTS

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

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

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

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

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

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1. See Civ. Code § 1351.

2. Gordon, *Planned Developments in California: Private Communities and Public Life* 21-22 (Cal. Pub. Policy Inst., 2004).

3. *Id.* at 20-21.

4. *Id.* at 3.

5. For another effort to estimate the frequency of CID disputes, see Johnston & Johnston-Dodds, *Common Interest Developments: Housing at Risk?* 35 (Cal. Res. Bur., Aug. 2002).

1 litigation.<sup>6</sup> Litigation is not an ideal remedy for many common interest  
2 development disputes. Homeowners who sue their associations are suing their  
3 neighbors and themselves. The adversarial nature of litigation creates animosity  
4 that can degrade the quality of life within the community and make future disputes  
5 more likely to arise. Litigation imposes costs on the community as a whole —  
6 costs that must be paid by all members through increased assessments.

7 Many homeowners cannot afford to bring a lawsuit, especially in cases where  
8 money damages are not at issue.<sup>7</sup> A person who cannot afford to sue is effectively  
9 denied the benefit of laws designed for that person’s protection. The absence of an  
10 affordable remedy limits accountability for wrong-doing, creating an atmosphere  
11 in which some may choose to cut corners or abuse their power.

## 12 PROPOSED LAW

### 13 **State Assistance to Common Interest Developments**

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

22 Similar assistance programs exist in other states. Florida and Nevada have  
23 comprehensive programs that include a range of education, mediation, and law  
24 enforcement functions.<sup>8</sup>

25 The proposed law would create the Common Interest Development Bureau  
26 within the Department of Consumer Affairs (“Bureau”). The Bureau would be  
27 funded entirely from fees charged to CID homeowners.<sup>9</sup> No general revenue funds  
28 would be used. The Bureau would have the following general responsibilities,  
29 which are discussed more fully below: (1) education, (2) dispute resolution, (3)  
30 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](http://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*.

1    **Education**

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

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

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

13    **Dispute Resolution**

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

18       Statements made during the Bureau’s informal dispute resolution process would  
19 be confidential and could not be used in any subsequent administrative  
20 adjudication or litigation.<sup>10</sup> Confidentiality fosters frankness, which is important to  
21 the successful settlement of disputes.<sup>11</sup>

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

26    **Law Enforcement**

27       Any interested person could request that the Bureau investigate an alleged  
28 violation of CID statutory law.<sup>12</sup>

29       If the Bureau determines that a violation of law has occurred it would attempt to  
30 correct the violation by informal agreement.<sup>13</sup> If the violation cannot be resolved  
31 through a voluntary agreement, the Bureau could issue a citation ordering  
32 correction of the violation and imposing a range of equitable and punitive  
33 remedies.<sup>14</sup>

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10. See proposed Civ. Code § 1380.300(b)-(c) *infra*.

11. See, generally, *Mediation Confidentiality*, 26 Cal. L. Revision Comm’n Reports 407 (1996).

12. See proposed Civ. Code § 1380.400 *infra*.

13. See proposed Civ. Code § 1380.400(c) *infra*.

14. See proposed Civ. Code § 1380.410 *infra*.

1 A person named in a citation could appeal the citation administratively.<sup>15</sup> The  
2 Bureau's decision on appeal would be subject to judicial review, by writ of  
3 administrative mandate.<sup>16</sup>

4 If a person does not comply with a Bureau citation or a negotiated conciliation  
5 agreement, the Bureau could bring an action in superior court to compel  
6 compliance.<sup>17</sup>

7 Specific issues relating to enforcement are discussed more fully below.

#### 8 **Empirical Data**

9 An important incidental benefit of the proposed law would be the ability of the  
10 Bureau to collect empirical data on the nature and frequency of CID disputes in  
11 California. The Bureau would report its findings to the Legislature each year.<sup>18</sup>  
12 This would provide an objective basis for evaluating any future reform of CID law.

### 13 ENFORCEMENT ISSUES

#### 14 **Subject Matter Jurisdiction**

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

- 18 • Hold an open meeting and provide a copy of meeting minutes.<sup>19</sup>
- 19 • Provide access to accounting books and records.<sup>20</sup>
- 20 • Follow procedures for member meetings and voting.<sup>21</sup>
- 21 • Provide required financial statements.<sup>22</sup>
- 22 • Follow proper rulemaking procedure.<sup>23</sup>
- 23 • Follow proper disciplinary procedure.<sup>24</sup>

24 Many CID disputes involve these sorts of routine governance problems.

25 Under the proposed law, the Bureau would not have authority to enforce an  
26 association's governing documents. For example, the Bureau would not enforce a  
27 restriction on pet ownership or parking rules that is set out in the association's  
28 declaration of covenants, conditions, and restrictions. This limitation is intended to

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15. See proposed Civ. Code § 1380.420 *infra*.

16. *Id.*

17. See proposed Civ. Code § 1380.430 *infra*.

18. See proposed Civ. Code § 1380.120 *infra*.

19. See Civ. Code § 1363.05.

20. See Civ. Code §§ 1363(f), 1365.2.

21. Corp. Code §§ 7510-7527.

22. Civ. Code § 1365.

23. Civ. Code §§ 1357.100-1357.150.

24. See Civ. Code § 1363(g)-(h).

1 avoid executive encroachment into powers that are reserved to the courts by the  
2 California Constitution.<sup>25</sup>

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

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

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

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

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

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

27. *Id.* at 374-75.

28. *Id.*

29. See *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

1 Note that some disputes may involve a mixture of statutory and common law  
2 complaints. For example, a homeowner whose proposed property improvement is  
3 disapproved by an association may complain that (1) the association did not follow  
4 a fair and reasonable procedure in making its decision as required by Civil Code  
5 Section 1378, and (2) that the association did not properly apply the architectural  
6 standards contained within the association's recorded declaration of covenants,  
7 conditions, and restrictions. The Bureau would have jurisdiction to decide the  
8 procedural question, which is based on a clear statutory requirement, but could not  
9 decide whether the substantive standard contained in the association's declaration  
10 had been properly applied. This limitation on the Bureau's jurisdiction would leave  
11 some important disputes unresolved.

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

### 17 **Sanctions**

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

- 22 • An administrative fine of up to \$1,000 per violation.
- 23 • Removal of a director from office.
- 24 • Publication of citations on the Bureau's website.

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

### 30 *Administrative Fines*

31 In determining whether to impose a monetary penalty and the amount of the  
32 penalty, the Bureau would be guided by specific criteria: the size of the  
33 association, the gravity of the violation, the presence or absence of just cause or

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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).

<sup>30</sup>. See Fla. Stat. Ann. §§ 718.501; Nev. Rev. Stat. §§ 116.745-116.750.

1 excuse, and any history of prior violations.<sup>31</sup> This should mitigate against the  
2 imposition of an arbitrary or unduly burdensome penalty.

3 A penalty could not be imposed against an individual unless the Bureau finds by  
4 clear and convincing evidence that the person’s unlawful conduct involved  
5 “malice, oppression, or fraud” as those terms are defined in the statute that governs  
6 punitive damages.<sup>32</sup> This is a strict standard of proof and misconduct that would  
7 only be satisfied in a clear case of intentional bad faith.

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

### 13 *Removal from Office*

14 Removal of a director from office could be a useful remedy in a case of  
15 intentional wrongdoing.<sup>33</sup> The Bureau would not be permitted to remove a person  
16 from office unless it finds by clear and convincing evidence that the person’s  
17 conduct involved malice, oppression, or fraud.<sup>34</sup> This is a strict standard that would  
18 not easily be met. Use of the removal power should be infrequent.

### 19 *Internet Publication of Citations*

20 The proposed law would also require that the Bureau publish all citations on its  
21 website.<sup>35</sup> This is similar to existing law that requires the Department of Consumer  
22 Affairs to publish the disciplinary history of licensees on its website.<sup>36</sup> This  
23 practice would allow a potential CID home buyer to research whether a particular  
24 community association has a history of violating the law.

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

### 29 *Request for Legislative Guidance*

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

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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.

1 **Exhaustion of Bureau Enforcement Procedure**

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

4 In cases appropriate for administrative resolution, the exhaustion requirement  
5 serves the important policy interests ... of resolving disputes and eliminating  
6 unlawful ... practices by conciliation ..., as well as the salutary goals of easing the  
7 burden on the court system, maximizing the use of administrative agency  
8 expertise and capability to order and monitor corrective measures, and providing a  
9 more economical and less formal means of resolving the dispute....<sup>37</sup>

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

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

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

22 **FUNDING ISSUES**

23 *Funding Levels*

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

27 Instead, the proposed law would impose a fee on community associations to fund  
28 the Bureau's operations.<sup>38</sup> The fee would initially be set at \$5 per unit per year.  
29 The amount of the fee would be evaluated periodically and adjusted up or down,  
30 by regulation, to reflect the Bureau's actual funding needs. However, there would  
31 be a statutory cap on any increase in the fee amount. It could never exceed \$10 per  
32 unit per year.

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

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<sup>37</sup>. Rojo v. Kliger, 52 Cal. 3d 65, 83, 801 P.2d 373, 276 Cal. Rptr. 130 (1990) (citations omitted).

<sup>38</sup>. See proposed Civ. Code § 1380.130.



1 budget of approximately \$19 million. It resolves around 20,000 complaints each  
2 year, through a process of mediation, investigation, conciliation, adjudication, and  
3 litigation.

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

### 13 *Funding Procedure*

14 The Bureau would be funded through a fee paid by a homeowner association  
15 when registering with the Secretary of State every two years.<sup>39</sup> An association  
16 would pass the fee along to its members through an increase in annual  
17 assessments.

18 A per unit fee would spread the cost of agency operations evenly among all CID  
19 homeowners. This might seem unfair to a homeowner in a well-run association,  
20 where there is little need for the Bureau's dispute resolution and enforcement  
21 services. However, the Bureau's educational services would benefit all  
22 associations. In addition, Bureau adjudication would produce a body of  
23 administrative decisions that could help to fill gaps and resolve ambiguities in the  
24 law, reducing the risk of litigation for all associations.<sup>40</sup> The Bureau would also  
25 produce empirical data on the nature of problems within CIDs that could help to  
26 reform the law in ways that will benefit all CIDs.

27 A per-unit fee has been used successfully in other jurisdictions that provide  
28 education and dispute resolution services to common interest communities.<sup>41</sup>

### 29 *Filing Fee*

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

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<sup>39</sup>. See Civ. Code § 1363.6.

<sup>40</sup>. See proposed Civ. Code § 1380.420(c) *infra*; Gov't Code § 11425.60 (precedent decisions).

<sup>41</sup>. See "Experience in Other Jurisdictions" *infra*.

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## 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.<sup>42</sup> An agency under review must provide the Joint Committee with a detailed report analyzing its activities, funding, and expenditures.<sup>43</sup> 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.

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## EXPERIENCE IN OTHER JURISDICTIONS

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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.

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### **Florida**

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Florida regulates many aspects of the governance of condominiums and cooperatives. For example, Florida's condominium law regulates record keeping,<sup>44</sup> board meeting procedures,<sup>45</sup> election procedures,<sup>46</sup> and budgeting.<sup>47</sup>

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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.

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

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### *Education*

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The Division of Florida Land Sales, Condominiums and Mobile Homes ("Division") provides a range of educational resources, including training classes,

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42. Bus. & Prof. Code § 473.4.

43. Bus. & Prof. Code § 473.2.

44. See Fla. Stat. Ann. § 718.111(12).

45. See Fla. Stat. Ann. § 718.112(2)(c).

46. See Fla. Stat. Ann. § 718.112(2)(d).

47. See Fla. Stat. Ann. § 718.112(2)(f).

1 a toll-free telephone number, and an Internet website. The website includes  
2 information on condominium law and provides answers to over 100 frequently  
3 asked questions.<sup>48</sup>

#### 4 *Dispute Resolution*

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

7 (a) The authority of the board of directors, under this chapter or association  
8 document to:

9 1. Require any owner to take any action, or not to take any action, involving that  
10 owner's unit or the appurtenances thereto.

11 2. Alter or add to a common area or element.

12 (b) The failure of a governing body, when required by this chapter or an  
13 association document, to:

14 1. Properly conduct elections.

15 2. Give adequate notice of meetings or other actions.

16 3. Properly conduct meetings.

17 4. Allow inspection of books and records.<sup>49</sup>

18 This is similar to California law requiring an offer of alternative dispute resolution  
19 before filing a lawsuit to enforce an association's governing documents or  
20 common interest development law.<sup>50</sup>

21 In addition, the Division now includes the Office of the Condominium  
22 Ombudsman.<sup>51</sup> The Ombudsman is authorized to provide a range of informal  
23 dispute resolution services, including the monitoring of association elections.

#### 24 *Law Enforcement*

25 Any person may file a complaint with the Division alleging a violation of  
26 condominium statutory law. The Division will review the complaint to determine  
27 whether it states facts establishing a violation within the Division's enforcement  
28 jurisdiction. The Division does not enforce governing documents.<sup>52</sup>

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

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48. See <[www.myflorida.com/dbpr/lsc/condominiums/information/faq.shtml](http://www.myflorida.com/dbpr/lsc/condominiums/information/faq.shtml)>

49. See Fla. Stat. Ann. § 718.1255.

50. See Civ. Code § 1369.520.

51. See Fla. Stat. Ann. §§ 718.5011-718.5012.

52. See Fla. Stat. Ann. §§ 718.501.

53. *Id.*

1 A Division enforcement decision is subject to administrative and judicial  
2 review.<sup>54</sup>

3 **Nevada**

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

8 *Ombudsman*

9 The Ombudsman has the following responsibilities:<sup>55</sup>

- 10 (1) To assist in processing claims submitted for mediation or arbitration  
11 pursuant to Nevada's mandatory ADR statute (as in Florida, mediation or  
12 arbitration is required before certain specified types of CID lawsuits can be  
13 filed).<sup>56</sup>
- 14 (2) To assist owners to understand their rights and responsibilities, including  
15 publishing materials relating to rights and responsibilities of homeowners.
- 16 (3) To assist board members to carry out their duties.
- 17 (4) To investigate disputes involving community association law or the  
18 governing documents of an association and assist in resolving such disputes.
- 19 (5) To compile a registry of CID associations.

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

21 *Commission for Common Interest Communities*

22 The Commission for Common Interest Communities ("CCIC") is charged with  
23 collecting specified types of information about common interest communities,  
24 developing and promoting various educational programs, developing standards for  
25 mandatory mediation and arbitration of CID disputes, and developing a program to  
26 certify and discipline community managers.<sup>57</sup>

27 In addition, the CCIC has authority to adjudicate an alleged violation of the  
28 common interest community statutes and regulations.<sup>58</sup> It may not adjudicate  
29 disputes involving an association's governing documents.

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

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54. See Fla. Stat. Ann. §§ 120.569 (administrative hearing); 120.68 (judicial review).

55. See Nev. Rev. Stat. Ann. § 116.625.

56.

57. See Nev. Rev. Stat. §§ 116.745-116.750.

58. *Id.*

1 means. If the problem cannot be resolved with the Ombudsman's assistance, the  
2 Real Estate Division conducts an investigation to determine whether there is good  
3 cause to proceed with a hearing. If there is good cause to proceed, the complaint is  
4 heard by the CCIC or by a hearing panel appointed by the CCIC. The CCIC has  
5 authority to issue subpoenas, which are enforceable by court order.

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

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

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

## 20 **Maryland**

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

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

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

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

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<sup>59</sup>. See Chapter 10B of the Montgomery County Code.

1 witnesses, and may invoke the court's contempt power. The hearing panel may  
2 resolve the dispute, award damages, and award costs and attorney's fees in  
3 appropriate situations. Its decision is binding on the parties.

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

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

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

#### 16 **Hawaii**

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

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

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

27 The Real Estate Commission also has authority to investigate violations of  
28 specific statutes under its jurisdiction. If it finds a violation it can issue a cease and  
29 desist order or seek a court injunction. A violation may also be referred for  
30 prosecution as a crime.<sup>60</sup> For the most part this authority is limited to laws  
31 governing the development and sale of condominiums. However, one of the  
32 provisions that can be enforced administratively is a requirement that members  
33 have access to association records.<sup>61</sup>

#### 34 **Virginia**

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

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<sup>60</sup>. See Haw. Rev. Stat. §§ 514A-46 to 514A-49.

<sup>61</sup>. See Haw. Rev. Stat. § 514A-83.5.

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

8 The liaison maintains an informational website<sup>63</sup> and funds various educational  
9 events and publications. The liaison maintains a telephone number for homeowner  
10 inquiries, receiving about 1,200 inquiries per year. The liaison provides  
11 information and advice, but does not intervene in disputes.

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

### 13 **Australia**

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

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

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

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

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

### 35 **Great Britain**

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

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62. See Va. Code Ann. § 55-530.

63. See <<http://www.virginiaca.net>>.

1 common interest development housing, but do provide models for state assistance  
2 in resolving similar sorts of housing-related disputes.

3 *Leasehold Advisory Service*

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

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

12 Advice is provided by telephone, written correspondence, email, or in person.  
13 The agency publishes information and advice on its website<sup>64</sup> and in print. In  
14 addition, the agency provides training to local authorities, housing associations and  
15 professional bodies.

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

17 *Independent Housing Ombudsman*

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

25 **CONCLUSION**

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

- 28 • Authoritative advice and education would help an association director or  
29 homeowner to understand the requirements of CID law. This would help to  
30 avoid problems that result from ignorance or misunderstanding. This is  
31 especially important because CID law is complex and most homeowners are  
32 not attorneys.
- 33 • Informal dispute resolution would help to defuse problems that are based on  
34 miscommunication or mistrust. The involvement of a neutral third party can  
35 often serve as a catalyst to bring about a mutually acceptable solution to  
36 what might otherwise be an intractable problem.

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<sup>64</sup>. See <<http://www.lease-advice.org>>.

<sup>65</sup>. See Independent Housing Ombudsman Scheme, Office of the Deputy Prime Minister (available at [www.ihos.org.uk/downloads/common/HOS\\_Scheme.pdf](http://www.ihos.org.uk/downloads/common/HOS_Scheme.pdf)).



- 1       • State investigation and correction of a statutory violation would provide an  
2 affordable remedy for many common problems relating to CID governance.  
3 Imposition of a sanction for serious misconduct would help to deter  
4 malfeasance.
- 5       • A centralized advice and dispute resolution service could gather reliable  
6 information about the frequency and nature of problems within CIDs. This  
7 would provide an empirical basis for determining the need for future reforms  
8 of CID law.

9 The proposed law would create a program to provide all of the services described  
10 above, at a cost to each CID homeowner of \$5 per year.

11 Experience in other jurisdictions demonstrates that there is a significant demand  
12 for state assistance of the type proposed and that it is feasible to provide such  
13 assistance. The Commission recommends that California provide similar assistance  
14 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**

1380.020. “Bureau” means the Common Interest Development Bureau.

**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.

1 (b) Managing a common interest development is a complex responsibility.  
2 Community associations are run by volunteer directors who may have little or no  
3 prior experience in managing real property, operating a nonprofit association or  
4 corporation, complying with the law governing common interest developments,  
5 and interpreting and enforcing restrictions and rules imposed by the governing  
6 documents of the common interest development. Homeowners may not fully  
7 understand their rights and obligations under the law and the governing  
8 documents. Mistakes and misunderstandings are inevitable and may lead to  
9 serious, costly, and divisive problems. The Common Interest Development Bureau  
10 seeks to educate community association officers and homeowners as to their legal  
11 rights and obligations. Effective education can prevent or reduce the severity of  
12 problems within a common interest development.

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

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

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

38 **Comment.** Section 1380.100 is new. See also Section 1351(a) (“association” defined),  
39 1351(c) (“common interest development” defined), 1351(j) (“governing documents” defined),  
40 1380.030 (“homeowner” defined).

1    **§ 1380.110. Common Interest Development Bureau**

2    1380.110. (a) There is in the Department of Consumer Affairs the Common  
3    Interest Development Bureau, under the supervision and control of the director of  
4    the Department of Consumer Affairs.

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

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

12   (d) Information and advice provided by the bureau has no binding legal effect  
13   and is not subject to the rulemaking provisions of the Administrative Procedure  
14   Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title  
15   2 of the Government Code.)

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

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

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

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

32    Subdivision (e) immunizes the bureau from liability for any information or advice that it  
33   provides or fails to provide. Provisions immunizing state agencies from liability for information  
34   disclosure are common. See, e.g., Bus. & Prof. Code § 10176.1 (Department of Real Estate);  
35   Health & Safety Code § 1799.105 (poison control center); Ins. Code § 932 (insurance bureau).

36    See also Section 1380.020 ("bureau" defined); Bus. & Prof. Code §§ Sections 10 (delegation  
37   of powers or duties), 310 (powers and duties of the director).

38    **§ 1380.120. Annual report**

39    1380.120. The bureau shall report annually to the Legislature, no later than  
40    October 1 of each year. The report shall include all of the following information:

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

44    (1) The number of inquiries received and the final disposition of those inquiries.

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

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

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

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

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

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

14 **§ 1380.130. Fee**

15 1380.130. (a) On filing information with the Secretary of State every two years,  
16 pursuant to subdivision (a) of Section 1363.6, an association shall submit a  
17 Common Interest Development Bureau Fee. This fee is in addition to the fee  
18 submitted pursuant to Section 1363.6. Failure to submit the Common Interest  
19 Development Bureau Fee is deemed noncompliance with Section 1363.6.

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

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

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

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

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

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



1 See also Sections 1351(a) (“association” defined), 1351(l) (“separate interest” defined),  
2 1380.020 (“bureau” defined).

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

9 **§ 1380.140. Deposit and use of funds**

10 1380.140. (a) Common Interest Development Bureau fee revenue received by  
11 the Secretary of State and fee revenue received by the bureau shall be transferred  
12 to the State Treasurer and placed in the Fee Account of the Common Interest  
13 Development Bureau Fund, which is hereby created. All funds in the Fee Account  
14 are continuously appropriated to the bureau, to be used exclusively for  
15 expenditures necessary for the proper administration of this chapter.

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

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

25 **§ 1380.150. Application of chapter**

26 1380.150. (a) This chapter is repealed by operation of law on January 1, 2011,  
27 unless a subsequent statute repealing this section or extending the date of repeal of  
28 this chapter is enacted and takes effect on or before January 1, 2011.

29 (b) The bureau is subject to review by the Joint Legislative Sunset Review  
30 Committee pursuant to Chapter 1 (commencing with Section 473) of Division 1.2  
31 of the Business and Professions Code.

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

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

37 **Article 3. Education**

38 **§ 1380.200. Association training**

39 1380.200. (a) The bureau shall offer training materials and courses to common  
40 interest development directors, officers, and homeowners, in subjects relevant to

1 the operation of a common interest development and the rights and duties of an  
2 association or homeowner.

3 (b) The bureau may charge a fee for training materials or courses, not to exceed  
4 their actual cost.

5 **Comment.** Section 1380.200 is new. See also Sections 1351(a) (“association” defined),  
6 1351(c) (“common interest development” defined), 1380.020 (“bureau” defined), 1380.030  
7 (“homeowner” defined).

8 **§ 1380.210. Toll free telephone number**

9 1380.210. The bureau shall maintain a toll free telephone number to be used for  
10 information or assistance.

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

12 **§ 1380.220. Internet website**

13 1380.220. (a) The bureau shall maintain an Internet website, which shall provide  
14 all of the following information:

15 (1) The text of (i) this title, (ii) the Nonprofit Mutual Benefit Corporation Law,  
16 and (iii) any other statute or regulation that the bureau determines would be  
17 relevant to the operation of a common interest development or the rights and duties  
18 of an association or homeowner.

19 (2) Information concerning nonjudicial resolution of disputes that may arise  
20 within a common interest development, including contacts for locally available  
21 dispute resolution programs organized pursuant to Chapter 8 (commencing with  
22 Section 465) of Division 1 of the Business and Professions Code.

23 (3) A description of the services provided by the bureau and information on how  
24 to contact the bureau for assistance.

25 (4) An analysis, prepared each year, of legislative changes to common interest  
26 development law.

27 (5) Any other information that the bureau determines would be useful to an  
28 association or homeowner.

29 (b) Information provided on the bureau’s Internet website shall also be made  
30 available in printed form. The bureau may charge a fee for the purchase of printed  
31 material, not to exceed the actual cost of printing and delivery.

32 **Comment.** Section 1380.220 is new. See also Sections 1351(a) (“association” defined),  
33 1351(c) (“common interest development” defined), 1380.020 (“bureau” defined), 1380.030  
34 (“homeowner” defined).

35 **§ 1380.230. Director and managing agent certification**

36 1380.230. (a) Within 60 days of assuming office as an association director or  
37 providing services as a managing agent, an association director or managing agent  
38 shall certify that the director or managing agent has read each of the following:

39 (1) The declaration, articles of incorporation or association, and by-laws of the  
40 association that the director or managing agent serves.

1 (2) This title or, if the bureau prepares a detailed summary of the requirements of  
2 this title, that summary.

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

6 **Comment.** Section 1380.230 is new. See also Sections 1351(a) (“association” defined),  
7 1380.020 (“bureau” defined), 1380.035 (“managing agent” defined).

## 8 Article 4. Informal Dispute Resolution

### 9 § 1380.300. Dispute resolution assistance

10 1380.300. (a) Any interested person may request the bureau’s assistance in  
11 resolving a dispute involving the law governing common interest developments or  
12 the governing documents of a common interest development. On receipt of a  
13 request for assistance the bureau shall, within the limits of its resources, confer  
14 with the interested parties and assist in efforts to resolve the dispute by mutual  
15 agreement of the parties.

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

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

22 **Comment.** Section 1380.300 is new. Subdivision (b) makes clear that a statement made during  
23 mediation is subject to existing mediation confidentiality rules.

24 Subdivision (c) requires the Bureau to take reasonable steps to prevent the use of confidential  
25 information obtained during informal dispute resolution in a subsequent law enforcement  
26 investigation. For example, the Bureau might adopt a procedure to keep dispute resolution and  
27 investigative files and personnel separate.

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

### 30 § 1380.310. Election monitoring

31 1380.310. (a) If the bureau receives a petition requesting monitoring of an  
32 association election that is signed by homeowners representing 15 percent of the  
33 voting power of an association, or six separate interests, whichever is greater, the  
34 bureau shall appoint a person to serve as monitor of the election.

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

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

39 **Comment.** Section 1380.310 is new. See also Sections 1351(a) (“association” defined),  
40 1351(l) (“separate interest” defined), 1380.020 (“bureau” defined), 1380.040 (“person” defined).

1 + **Staff Note.** Section 1380.310 is based on a similar provision of Florida law, which allows the  
2 Condominium Ombudsman to appoint an election monitor in response to a homeowner petition.  
3 See Fla. Stat. Ann. § 718.5012(9). It is included for discussion purposes and has not yet been  
4 approved by the Commission. The Commission invites comment on whether such a provision  
5 would be helpful.

6 Article 5. Law Enforcement

7 **§ 1380.400. Investigation and conciliation**

8 1380.400. (a) Any interested person may file a request for investigation of an  
9 alleged violation of this title or of the Nonprofit Mutual Benefit Corporation Law  
10 as it applies to a common interest development. The request shall be submitted in  
11 writing, on a form provided by the Bureau [, along with a \$25 filing fee].

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

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

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

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

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

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

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

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

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

1    **§ 1380.410. Citation**

2       1380.410. (a) If a violation cannot be abated and remedied through conciliation  
3 under Section 1380.400 the bureau may issue a citation. The citation shall be  
4 served on the person responsible for the violation. If the bureau decides not to  
5 issue a citation, it shall provide written notice of its decision to the person who  
6 filed the request for investigation.

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

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

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

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

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

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

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

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

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

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

40    **§ 1380.420. Administrative and judicial review**

41       1380.420. (a) A person named in a citation may contest the findings or orders  
42 included in the citation by filing a written request with the bureau for an  
43 administrative hearing.

1 (b) A hearing held pursuant to this section is subject to the administrative  
2 adjudication provisions of the Administrative Procedure Act (Chapter 4.5  
3 (commencing with Section 11400) and Chapter 5 (commencing with Section  
4 11500) of Part 1 of Division 3 of Title 2 of the Government Code). The  
5 Department of Consumer Affairs shall appoint the presiding officer, who shall be  
6 qualified as an administrative law judge. The presiding officer may be an  
7 employee of the Office of Administrative Hearings or of the Department of  
8 Consumer Affairs but may not be an employee of the bureau.

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

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

14 **Comment.** Section 1380.420 is new. See Gov't Code § 11400 ("administrative adjudication  
15 provisions of the Administrative Procedure Act" defined). See also Sections 1380.020 ("bureau"  
16 defined), 1380.040 ("person" defined); Gov't Code § 11523 (judicial review of final agency  
17 decision).

18 **§ 1380.430. Enforcement of conciliation agreement or citation**

19 1380.430. (a) The bureau may enforce a conciliation agreement or citation by  
20 commencing a civil action in superior court, in the county in which the common  
21 interest development named in the conciliation agreement or citation is located.

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

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

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

29 **Comment.** Section 1380.430 provides for judicial enforcement of a conciliation agreement or  
30 citation. See also Section 1380.020 ("bureau" defined).

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

35 **§ 1380.440. First Alternative: exhaustion of administrative remedy required**

36 1380.440. (a) A person may not commence a civil action based on an alleged  
37 violation of this title or of the Nonprofit Mutual Benefit Corporation Law as it  
38 applies to a common interest development, unless the person files a statement  
39 certifying that the person requested bureau investigation of the alleged violation  
40 and that the bureau's investigative process reached one of the following  
41 conclusions:

42 (1) The bureau declined to investigate the alleged violation.

1 (2) The bureau found no violation.

2 (3) The bureau reached a conciliation agreement with the accused.

3 (4) The bureau failed to reach a conciliation agreement but declined to issue a  
4 citation.

5 (5) The bureau issued a citation and the citation was either not contested or was  
6 upheld after administrative and judicial review

7 (b) The statute of limitations on a cause of action based on an alleged violation  
8 of this title or of the Nonprofit Mutual Benefit Corporation Law as it applies to a  
9 common interest development is tolled from the time of filing a request for  
10 investigation to the time that one of the events listed in subdivision (a) occurs.

11 **Comment.** Section 1380.440 requires exhaustion of the Bureau’s law enforcement process  
12 before filing a civil action based on an alleged violation within the Bureau’s law enforcement  
13 jurisdiction. Subdivision (a) lists the events that must occur before the Bureau’s process is  
14 deemed to have been exhausted.

15 Subdivision (b) provides that the Bureau’s law enforcement process tolls the statute of  
16 limitations on a civil action that is based on an alleged violation within the Bureau’s law  
17 enforcement jurisdiction.

18 See also Section 1380.020 (“bureau” defined).

19 **§ 1380.440. Second Alternative: exhaustion of administrative remedy not required**

20 1380.440. A person is not required to exhaust the administrative remedy  
21 provided in this article before filing a civil action based on an alleged violation of  
22 this title or of the Nonprofit Mutual Benefit Corporation Law as it applies to a  
23 common interest development.

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

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## RELATED CHANGES

1 **Civ. Code § 1363.7 (added). Information on Common Interest Development Bureau**

2 SEC. \_\_\_\_\_. Section 1363.7 is added to the Civil Code, to read:

3 1363.7. An association shall provide its members with annual written notice of  
4 the Internet website address and toll-free telephone number of the Common  
5 Interest Development Bureau established pursuant to Chapter 11 (commencing  
6 with Section 1380.010).

7 **Comment.** Section 1363.7 is added to require that an association provide its members with  
8 contact information for the Common Interest Development Bureau.

9 **Civ. Code § 1369.510 (amended). Definitions**

10 SEC. \_\_\_\_\_. Section 1369.510 of the Civil Code is amended to read:

11 1369.510. As used in this article:

12 (a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or  
13 other nonjudicial procedure, including informal dispute resolution pursuant to  
14 Section 1380.300, that involves a neutral party in the decisionmaking process. The  
15 form of alternative dispute resolution chosen pursuant to this article may be  
16 binding or nonbinding, with the voluntary consent of the parties.

17 (b) “Enforcement action” means a civil action or proceeding, other than a cross-  
18 complaint, for any of the following purposes:

19 (1) Enforcement of this title.

20 (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3  
21 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations  
22 Code).

23 (3) Enforcement of the governing documents of a common interest development.

24 **Comment.** Section 1369.510 is amended to make clear that “alternative dispute resolution”  
25 includes an attempt to mediate a dispute under procedures established by the Common Interest  
26 Development Bureau.

27 **Civ. Code § 1373 (amended). Nonresidential associations**

28 SEC. \_\_\_\_\_. Section 1373 of the Civil Code is amended to read:

29 1373. (a) The following provisions do not apply to a common interest  
30 development that is limited to industrial or commercial uses by zoning or by a  
31 declaration of covenants, conditions, and restrictions that has been recorded in the  
32 official records of each county in which the common interest development is  
33 located:

34 (1) Section 1356.

35 (2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of Part  
36 ~~4 of Division 2.~~

37 (3) Subdivision (b) of Section 1363.

38 (4) Section 1365.



1 (5) Section 1365.5.

2 (6) Subdivision (b) of Section 1366.

3 (7) Section 1366.1.

4 (8) Section 1368.

5 (9) Section 1378.

6 (10) Chapter 11 (commencing with Section 1380.010).

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

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