

Date of Hearing: June 15, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

SB 150 (Correa) – As Amended: June 9, 2011

SENATE VOTE: 39-0

SUBJECT: Common interest developments

SUMMARY: Prohibits a common interest development (CID) from restricting the right of an owner to rent or lease his/her separate interest if the owner had that right at the time of purchase, unless the owner waives the right to lease or rent. Specifically, this bill:

- 1) Makes legislative findings declaring the following:
  - a) The right of CID owners to rent or lease their separate interest should be protected by the State of California as the right existed when they purchased their separate interest; and
  - b) The right of subsequent CID owners to rent or lease should be governed by the rights at the time they acquire them.
- 2) Provides that the right of an owner to rent or lease his/her separate interest shall be the same as when the owner purchased his/her separate interest throughout the life of ownership, unless the owner agrees otherwise in writing.
- 3) Provides that the provisions of the bill are not intended to affect the voting process by which a CID adopts or amends its governing documents.
- 4) Requires a CID owner to inform prospective buyers as soon as practicable before transfer of title of a separate interest of any restriction in the governing documents that would prohibit renting or leasing a separate interest.
- 5) Specifies that certain types of property transfers are not considered to terminate the rights of the owner at the time of purchase.
- 6) Applies to governing documents or amendments to governing documents that become effective on or after January 1, 2012.
- 7) Includes language to avoid chaptering conflicts with AB 771 (Butler).

EXISTING LAW

- 1) Provides that any rule or regulation of a homeowners association (HOA) that arbitrarily or unreasonably restricts an owner's ability to market his or her interest in a CID is void (Civil Code Section 368.1).

- 2) Defines the governing documents of a CID as the Covenants, Conditions & Restrictions (CC&Rs), bylaws, operating rules of the HOA, articles of incorporation, or articles of the HOA which govern the operation of the CID (Civil Code Section 1351).
- 3) Provides the governing documents of a CID may be amended pursuant to the process provided for in the governing documents. The amendment is effective if the following conditions are met:
  - a) The approval of the percentage of owners required by the governing documents are met;
  - b) The vote of the owners are certified in writing by an officer of the HOA; and
  - c) The amendment is recorded in the county or counties in which the CID is located.
- 4) Provides if the governing documents do not provide a procedure for amendment, the following conditions must be met for an amendment to be effective:
  - a) The proposed amendment must be distributed to all owners by first class mail not less than 15 days and not more than 60 days prior to a vote;
  - b) Fifty percent or any higher percentage required by the CC&Rs of owners approve the amendment; and
  - c) The amendment is recorded in the county in which the CID is located.

(Civil Code Section 1355)

FISCAL EFFECT: None

COMMENTS:

Background:

There are over 47,000 CIDs in the state that range in size from three to 27,000 units. CIDs make up over six million total housing units which represents approximately one quarter of the state's housing stock. In the 1990s, over 60% of all residential construction starts in the state were CIDs. CIDs include condominiums, community apartment projects, and housing cooperatives and planned unit developments. They are characterized by a separate ownership of dwelling space coupled with an undivided interest in a common property, restricted by covenants and conditions that limit the use of common area, and the separate ownership interests and the management of common property and enforcement of restrictions by a HOA. CIDs are governed by the Davis Stirling Act, as well as the governing documents of the association including bylaws, declaration, and operating rules. CIDs are governed by volunteer boards of directors who are elected by the members of the HOA and are responsible for interpreting the governing documents and state law. Except when CIDs are first developed, no state agency provides ongoing oversight to these communities.

In order to amend the governing documents a HOA must follow the procedure outlined in their governing documents or if the governing documents are silent the process provided in state law. State law and most governing documents require that a majority of members vote to approve an amendment.

Some CIDs have restrictions on rentals which take a variety of forms including: limiting the total number of rentals in a CID to a set percentage, requiring a minimum amount of time for leases, prohibiting rental of a unit until the unit has been owner occupied for at least a year or prohibiting renting or leasing outright. Additionally, in some cases HOAs adopt rules which do not flatly deny rentals but require owners renting their separate interest to follow specific policies. For example, a HOA may require owners who rent their separate interest to include a clause in their lease agreement requiring renters to abide by the rules of the HOA as a condition of residence.

#### Federal Housing Administration (FHA) financing limitations

To qualify for FHA financing, at least 50 percent of the units in a CID must be owner-occupied, or sold to owners who intend to occupy the unit. It is unclear how many CIDs approach or exceeds that amount, and whether this bill could cause some CIDs to exceed that threshold. It should be noted that FHA recently waived certain leasing restrictions, and that it is arguably possible that the 50 percent restriction will be eliminated as well in the near future.

#### Purpose of the bill:

According to the author, current law does not protect the right of a CID unit owner to rent or lease his or her unit, if such a right existed at the time ownership of the unit commenced. Over the last few years, attorney's specializing in CID law, and realtors representing buyers and sellers of CID units, have seen HOAs impose rental restrictions on residential communities, irrespective of the ownership rights vested at the time ownership commenced. Many people need to rent their units because of job relocation or a personal situation. The ability to rent a unit has become even more important because of the deteriorating housing market. Because demand is weak, it will take a long time for an owner to sell their home (realtors estimate it will take a minimum of 12 to 18 months to sell a home) and it is almost certain that if the house is sold it will be at a considerable financial loss for the owner. The right to rent or lease real property owned is a valuable property right that should be protected, irrespective of whether the real property is located within or outside a CID.

SB 150 seeks to preserve the right of a member of an HOA to rent or lease his/her home as the right existed when the home was purchased. If the members of a HOA vote to pass a restriction on rentals the restriction would not apply to an owner that had the right to rent or lease when they purchased unless they agree to waive that right in writing. Once the existing owner sold their home it would be grandfathered into any new rental restriction approved by the members.

This bill is not intended to affect the voting process through which an HOA amends the governing documents. The members of an HOA could vote to amend the governing documents to incorporate a rental restriction if a majority of the members approved the amendment as provided for in the governing documents or state law.

CIDs are required to provide prospective buyers with disclosure documents before purchase. This includes a statement of any restriction that limits residency on the basis of age. This bill would add to the list of disclosures by requiring a CID to give a prospective buyer a statement describing any restriction in the governing documents on rentals. This requirement will allow prospective buyers to make an informed decision before finalizing purchase of a home.

Arguments in opposition:

Opponents argue this bill would take away the decision-making power from owners of CIDs by enacting a one-size fits all prohibition on rental restrictions. Opponents argue that the current process in place for amending the governing documents is sufficient to allow owner input and approval or rejection of changes.

Related legislation: In 2008, AB 2259 (Mullin) which was identical to this bill was vetoed by Governor Schwarzenegger. The veto message is below:

This bill would allow a homeowner in a common interest development (CID) to retain the right to rent or lease his or her unit, if the right existed at the time of ownership unless the owner relinquishes those rights in writing.

The supporters of this bill stress that the bill will protect the property rights of the owners of property within a CID governed by a home owner association (HOA) by preserving the conditions under which the property was purchased. This view stresses that these conditions are essentially a contract between the buyer and the HOA. However, the converse of this argument is that owners have their property rights limited when they are prevented from renting or leasing their property when they are restricted by this law and the subsequent actions taken by HOAs.

This bill alters the basic tenets under which CIDs and HOAs are formed and operated. While my support of property rights is unwavering, the CID creates a unique community model that is unlike the standard single family home in a traditional neighborhood.

Property owners and residents that purchase and live in a CID governed by an HOA have agreed to live under a common set of rules and guidelines governed by a democratic process. It is best, as current law allows, for the owner-members of the HOA to determine what is best for their communities.

Double referred: The Assembly Committee on rules referred SB 150 to the Committee on Housing and Community Development and Judiciary. If SB 150 passes this committee, the bill must be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors (sponsor)

Center for California Homeowner Association Law

Opposition

Community Associations Institute

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