

Assembly Bill No. 555

CHAPTER 1116

An act to amend Section 10153.2 of, to amend, repeal, and add Section 10170.5 of, and to add and repeal Part 4 (commencing with Section 11500) of Division 4 of the Business and Professions Code, and to amend Sections 1363.5 and 1365 of the Civil Code, relating to common interest development managers.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 555, Dutra. Common interest development managers.

(1) Existing law, the Davis-Stirling Common Interest Development Act, establishes a scheme for the regulation of common interest developments.

This bill would require a person, in order to be called a "certified common interest development manager" to have either passed an examination or achieved certification designated by a professional association for community association managers within the previous 5 years and to have satisfied other specified educational requirements. The bill would also require a person who provides or contemplates providing management services to a community association to disclose to that association whether that person is a certified common interest development manager. The bill would also make it an unfair business practice for a common interest development manager and certain other persons, to use the title of "certified common interest development manager" without meeting specified requirements, or to state or advertise that he or she is certified or licensed by a governmental agency to act as certified common interest development manager. The bill would provide that the above provisions would remain in effect only until January 1, 2008, unless extended.

(2) Existing law requires applicants for the real estate broker license examination and applicants for a real estate license renewal to meet certain education requirements.

This bill would include on July 1, 2004, in those requirements education in the subject of California law relating to common interest developments. The bill would also provide on July 1, 2003, that successful completion of coursework for renewal of a real estate license requires an applicant to demonstrate that he or she has passed a final examination.

(3) Existing law requires the articles of incorporation of common interest development associations to include specified information, including a statement that identifies the name and address of the association's managing agent, if any.

This bill would additionally require the articles of incorporation of a common interest development to state whether the association's managing agent is certified. The bill would further require a common interest development association to distribute to its members a summary of its fidelity insurance policies within 60 days preceding the start of the association's fiscal year.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) A large number of Californians find housing in the more than 33,000 common interest developments in this state. California common interest developments contain over three million homes, that house more than nine million people.

(b) Homes in common interest developments are no different than homes that are not in that they most often represent the owner's single largest lifetime investment.

(c) The management and operation of common interest developments is governed by a complex set of laws contained in the Civil, Corporations, Government, and Health and Safety Codes, and in federal statutes. In addition to possessing an understanding of this significant body of law, the successful professional common interest development management and the operations of a common interest development require fundamental skills in subjects including, but not limited to, finance accounting and bookkeeping, contract administration, human resources, and parliamentary procedure.

(d) Common interest development managers are often delegated the authority, by the governing body of the common interest development, to collect and disburse substantial sums of money annually in homeowner assessments, for the purpose of maintaining and operating the community.

(e) The growth in common interest developments, coupled with the addition of governing statutes, has created a demand for individuals who possess the necessary skills and technical expertise to act as common interest development managers.

(f) Currently, individuals hired to manage common interest developments are not recognized by law as possessing any educational or management skill standards if they identify themselves as



“certified.” In essence, any person can call himself or herself a certified common interest development manager without having received specific education and training in managing a common interest development.

(g) Those who reside in common interest developments in this state, or who participate as board members of homeowner associations of common interest developments, need to be assured that common interest development managers who refer to themselves as “certified” have met certain minimal education requirements and standards if they offer their services to California common interest developments as a “certified” common interest development manager.

SEC. 2. Section 10153.2 of the Business and Professions Code is amended to read:

10153.2. (a) An applicant to take the examination for an original real estate broker license shall also submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of:

(1) A three-semester unit course, or the quarter equivalent thereof, in each of the following:

- (A) Real estate practice.
- (B) Legal aspects of real estate.
- (C) Real estate appraisal.
- (D) Real estate financing.
- (E) Real estate economics or accounting.

(2) A three-semester unit course, or the quarter equivalent thereof, in three of the following:

- (A) Advanced legal aspects of real estate.
- (B) Advanced real estate finance.
- (C) Advanced real estate appraisal.
- (D) Business law.
- (E) Escrows.
- (F) Real estate principles.
- (G) Property management.
- (H) Real estate office administration.
- (I) Mortgage loan brokering and lending.
- (J) Computer applications in real estate.

(K) On and after July 1, 2004, California law that relates to common interest developments, including, but not limited to, topics addressed in the Davis-Stirling Common Interest Development Act (Title 6 commencing with Section 1350) of Part 4 of Division 2 of the Civil Code).

(b) The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California and shall waive the requirements for which an applicant has successfully



completed an equivalent course of study as determined under Section 10153.5.

(c) The commissioner shall extend credit under this section for any course completed to satisfy requirements of Section 10153.3 or 10153.4.

SEC. 3. Section 10170.5 of the Business and Professions Code is amended to read:

10170.5. (a) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing.

(5) Not less than 18 clock hours of courses or programs related to consumer protection, and designated by the commissioner as satisfying this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace, land use regulation and control, pertinent consumer disclosures, agency relationships, capital formation for real estate development, fair practices in real estate, appraisal and valuation techniques, landlord-tenant relationships, energy conservation, environmental regulation and consideration, taxation as it relates to consumer decisions in real estate transactions, probate and similar disposition of real property, governmental programs such as revenue bond activities, redevelopment, and related programs, business opportunities, mineral, oil, and gas conveyancing, and California law that relates to managing community associations that own, operate, and maintain property within common interest developments, including, but not limited to, management, maintenance, and financial matters addressed in the Davis-Stirling Common Interest Development Act.

(6) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or



similar objectives with respect to real property, including organizational and management techniques that will significantly contribute to this goal.

(b) Except as otherwise provided in Section 10170.8, no real estate license shall be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including a six-hour update survey course that covers the subject areas specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

(d) This section shall remain in effect only until July 1, 2003, and as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before July 1, 2003, deletes or extends the dates on which it becomes inoperative or is repealed.

SEC. 4. Section 10170.5 is added to the Business and Professions Code, to read:

10170.5. (a) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing.

(5) Not less than 18 clock hours of courses or programs related to consumer protection, and designated by the commissioner as satisfying this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace, land use regulation and control, pertinent consumer disclosures, agency relationships, capital formation for real estate development, fair practices in real estate, appraisal and valuation techniques,



landlord-tenant relationships, energy conservation, environmental regulation and consideration, taxation as it relates to consumer decisions in real estate transactions, probate and similar disposition of real property, governmental programs such as revenue bond activities, redevelopment, and related programs, business opportunities, mineral, oil, and gas conveyancing, and California law that relates to managing community associations that own, operate, and maintain property within common interest developments, including, but not limited to, management, maintenance, and financial matters addressed in the Davis-Stirling Common Interest Development Act.

(6) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational and management techniques that will significantly contribute to this goal.

(b) Except as otherwise provided in Section 10170.8, no real estate license shall be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including a six-hour update survey course that covers the subject areas specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

(d) For purposes of this section, “successful completion” of a course described in paragraphs (1) to (4), inclusive, of subdivision (a) means the passing of a final examination.

(e) This section shall become operative on July 1, 2003.

SEC. 5. Part 4 (commencing with Section 11500) is added to Division 4 of the Business and Professions Code, to read:

PART 4. CERTIFIED COMMON INTEREST DEVELOPMENT MANAGER

CHAPTER 1. PURPOSE AND DEFINITIONS

11500. For purposes of this chapter, the following definitions apply:

(a) “Common interest development” means a residential development identified in subdivision (c) of Section 1351 of the Civil Code.



(b) “Community association” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development. A community association is an “association” as defined in subdivision (a) of Section 1351 of the Civil Code.

(c) “Financial services” means an act performed or offered to be performed, for compensation, for a community association including, but not limited to, the preparation of internal unaudited financial statements, internal accounting and bookkeeping functions, billing of assessments, and related services.

(d) “Management services” means an act performed or offered to be performed in an advisory capacity for a community association including, but not limited to, the following:

(1) Administering or supervising the financial or common area assets of a community association or common interest development, at the direction of the community association’s governing body.

(2) Implementing resolutions and directives of the board of directors of the community association elected to oversee the operation of a common interest development.

(3) Implementing provisions of governing documents, as defined in Section 1351 of the Civil Code, which govern the operation of the community association or common interest development.

(4) Administering a community association’s contracts, including insurance contracts, within the scope of the community association’s duties or with other common interest development managers, vendors, contractors, and other third-party providers of goods and services to a community association or common interest development.

11501. (a) “Common interest development manager” means an individual who for compensation, or in expectation of compensation, provides or contracts to provide management or financial services, or represents himself or herself to act in the capacity of providing management or financial services to a community association. Notwithstanding any other provision of law, an individual may not be required to obtain a real estate or broker’s license in order to perform the services of a common interest development manager to a community association.

(b) “Common interest development manager” also means any of the following:

(1) An individual who is a partner in a partnership, a shareholder or officer in a corporation, or who, in any other business entity acts in a capacity to advise, supervise, and direct the activity of a registrant or provisional registrant, or who acts as a principal on behalf of a company that provides the services of a common interest development manager.



(2) An individual operating under a fictitious business name who provides the services of a common interest development manager.

This section may not be construed to require a community association to hire for compensation a common interest development manager, unless required to do so by the governing documents of the common interest development. Nothing in this part shall be construed to supersede any law that requires a license, permit, or any other form of registration, to provide management or financial services. Nothing in this section shall preclude a licensee of the California Board of Accountancy to provide financial services to a community association within the scope of his or her license in addition to the preparation of reviewed and audited financial statements and the preparation of the community association's tax returns.

CHAPTER 2. CERTIFIED COMMON INTEREST DEVELOPMENT MANAGER

11502. In order to be called a "certified common interest development manager," the person shall meet all of the following:

(a) Within the previous five years has passed a knowledge, skills, and aptitude examination or has achieved a certification designation endorsed by a professional association for community association managers and has received instruction in California law pursuant to paragraph (1) of subdivision (b) within the last five years. The course related competency examination or examinations and education provided to a "certified common interest development manager by any professional association for common interest development managers that meets the requirements of subdivision (c) of Section 11502, or any postsecondary educational institution" shall be developed and administered in a manner consistent with standards and requirements set forth by the American Educational Research Association's "Standards for Educational and Psychological Testing," and the Equal Employment Opportunity Commission's "Uniform Guidelines for Employee Selection Procedures," the Civil Rights Act of 1991, and the Americans with Disabilities Act of 1990, or the course or courses have been approved as a continuing education course or an equivalent course of study pursuant to the regulations of the Real Estate Commissioner.

(b) Education curriculum shall be no less than a combined 30 hours in coursework described in this subdivision. The examination shall test competence in common interest development management in the following areas:

(1) Instruction in California law that is related to the management of common interest developments, including, but not limited to, the following courses of study:



(A) The topics covered by the Davis-Stirling Common Interest Development Act, contained in Sections 1350 to 1376, inclusive, of the Civil Code, including, but not limited to, the types of California common interest developments, disclosure requirements pertaining to common interest developments, meeting requirements for community association boards of directors and members, financial disclosure and reporting requirements, and access to community association records.

(B) Personnel issues, including, but not limited to, general matters related to independent contractor or employee status, issues related to types of harassment, the Unruh Civil Rights Act, fair employment laws, and the Americans with Disabilities Act.

(C) Risk management as it pertains to common interest development, including, but not limited to, required insurance coverage and preventative maintenance programs.

(D) Property protection, including, but not limited to, general matters relating to hazardous materials such as asbestos, radon and lead, the Vehicle Code, local and municipal regulations, family day care homes, energy conservation, Federal Communications Commission rules and regulations, and solar energy systems.

(E) The business affairs of community associations, including, but not limited to, necessary compliance with all required local, state, and federal laws and treatises.

(F) Basic understanding of governing documents, codes, and regulations relating to the activities and affairs of community associations and common interest developments.

(2) Instruction in general management that is related to the managerial and business skills needed for management of a common interest development, including, but not limited to, the following:

(A) Finance issues, including, but not limited to, budget preparation, management, and administration of community association financial affairs, bankruptcy laws, and assessment collection activities.

(B) Contract negotiation and administration.

(C) Supervision of common interest development employees and staff.

(D) Management of common interest development maintenance programs.

(E) Management and administration of rules, regulations, parliamentary procedures, and architectural standards pertaining to community associations and common interest developments.

(F) Management and administration of common interest development recreational programs and facilities.

(G) Management and administration of owner and resident communications.



(H) Training and strategic planning for the community association's board of directors and committees, and other activities of residents in a common interest development.

(I) Risk management as it pertains to common interest development properties, activities, and emergency preparedness.

(J) Implementation of community association policies and procedures.

(K) Ethics for common interest development managers.

(L) Professional conduct and standards of practice for common interest development managers.

(M) Current issues relating to common interest developments.

(c) A "professional association for common interest development managers" means an organization that meets all of the following:

(1) Has at least 200 individual members or certificants who are common interest development managers in California.

(2) Has been in existence for at least five years.

(3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

(4) Certifies that a common interest development manager has met the criteria set forth in Section 11505 without requiring membership in the association.

(5) Requires adherence to a Code of Professional Ethics and Standards of Practice for certified common interest development managers.

11503. A "certified common interest development manager" does not include a common interest development management firm.

CHAPTER 3. DISCLOSURE REQUIREMENTS

11504. On an annual basis, a person who either provides or contemplates providing the services of a common interest development manager to a community association, as defined in Section 11501, shall disclose to the board of directors of the community association the following information:

(a) Whether or not the community interest development manager is certified, as defined in Section 11502.

(b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification.

(c) The location of his or her primary office.

(d) Prior to entering into or renewing a contract with a community association, the common interest development manager, whether certified or not, shall disclose to the governing board of the community



association whether the fidelity insurance of the community manager or his or her employer covers the operating and reserve funds of the community association. This requirement may not be construed to compel or require a community association or common interest development manager to require fidelity insurance.

This section may not preclude a common interest development manager from disclosing information as required in Section 1363.1 of the Civil Code.

CHAPTER 4. UNFAIR BUSINESS PRACTICES

11505. It is an unfair business practice for a common interest development manager, a company that employs the manager, or a company that is controlled by a company that also has a financial interest in a company employing a manager, to do any of the following:

(a) On or after July 1, 2003, to hold oneself out or use the title of “certified common interest development manager” or any other term that implies or suggests that the person is certified as a common interest development manager without meeting the requirements of Section 11502.

(b) To state or advertise that he or she is certified, registered, or licensed by a governmental agency to perform the functions of a certified common interest development manager.

(c) To state or advertise a registration or license number, unless the license or registration is specified by a statute, regulation, or ordinance.

(d) To fail to disclose or misrepresent any item to be disclosed in Section 11504 of this code, or Section 1363.1 of the Civil Code.

CHAPTER 5. SUNSET REVIEW

11506. This part shall be subject to the review required by Division 1.2 (commencing with Section 473). This part shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 6. Section 1363.5 of the Civil Code is amended to read:

1363.5. (a) The articles of incorporation of any common interest development association filed with the Secretary of State on or after January 1, 1995, shall include a statement that shall be in addition to the statement of purposes of the corporation, and that (1) identifies the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, (2) states the business or corporate office of the association, if any,



and, if the office is not on the site of the common interest development, states the nine-digit ZIP Code, front street, and nearest cross street for the physical location of the common interest development, and (3) states the name and address of the association's managing agent, as defined in Section 1363.1, if any, and whether the association's managing agent is certified pursuant to Section 11502 of the Business and Professions Code.

(b) The statement of principal business activity contained in the annual statement filed by an incorporated association with the Secretary of State pursuant to Section 1502 of the Corporations Code shall also contain the statement specified in subdivision (a).

SEC. 7. Section 1365 of the Civil Code is amended to read:

1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in boldface type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). In lieu of complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.

(C) The percentage that the amount determined for purposes of clause (ii) subparagraph (B) equals the amount determined for purposes of clause (i) of subparagraph (B).



(3) A statement as to whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

(e) (1) A summary of the association's property, general liability, and earthquake and flood and fidelity insurance policies, which shall be distributed within 60 days preceding the beginning of the association's



fiscal year, that includes all of the following information about each policy:

- (A) The name of the insurer.
- (B) The type of insurance.
- (C) The policy limits of the insurance.
- (D) The amount of deductibles, if any.

(2) The association shall, as soon as reasonably practicable, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in paragraph (1), the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: “This summary of the association’s policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association’s insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association’s policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.”

