

# SUPREME COURT COPY

SUPREME COURT  
FILED

Appellate Case No.: S229762

AUG 22 2016

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IN THE SUPREME COURT STATE OF CALIFORNIA

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Frank A. McGuire Clerk  
Deputy

McMILLIN ALBANY LLC ET AL.,  
*Petitioners*

v.

SUPERIOR COURT OF KERN COUNTY  
*Respondent*

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CARL & SANDRA VAN TASSEL, et al.  
*Real Parties in Interest*

---

After A Decision By The Court Of Appeal  
Fifth Appellate District Case No. F069370

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**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF [PROPOSED]  
AMICUS CURIAE BRIEF BY APPLICANTS CONSUMER  
ATTORNEYS OF CALIFORNIA IN SUPPORT OF PETITIONERS  
MCMILLIN ALBANY, LLC, ET AL.**

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ATTORNEYS FOR PROSPECTIVE AMICUS CURIAE  
CONSUMER ATTORNEYS OF CALIFORNIA

Appellate Case No.: S229762

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**ATTORNEYS FOR PROSPECTIVE AMICUS CURIAE  
CONSUMER ATTORNEYS OF CALIFORNIA**

**REQUEST FOR JUDICIAL NOTICE**

Pursuant to Rule 8.54 and 8.252 of the California Rules of Court and Evidence Code sections 452 and 459, Amici Curiae Consumer Attorneys of California hereby move for judicial notice of the following documents:

- 1) Legislative History for AB 1963 as produced by Legislative Intent Services, Inc.
- 2) Declaration of Jenny S. Lillge authenticating the legislative history of Ab 1963.

This request is based on the accompanying memorandum of points and authorities and declaration of counsel.

Dated: August 15, 2016 EPSTEN GRINNELL & HOWELL, APC

and

BERDING | WEIL LLP

By:



Anne L. Rauch, Esq.

Tyler Berding, Esq.

Attorneys for Amicus Curiae Consumer  
Attorneys of California

## MEMORANDUM OF POINTS AND AUTHORITIES

### A. The Documents are Relevant

Exhibit 1 is a copy of materials from the legislative history of California Assembly Bill No. 1963 (2015-2016 Reg. Sess.) These documents pertain to the California Legislature's election to extend the sunset date of California Civil Code §6000, which provides a pre-litigation dispute resolution procedure applicable to homeowner associations in construction defect actions (commonly referred to as the "Calderon Process"), which differs from the procedure set forth in Civil Code section 895 et seq. ("The Right to Repair Act" or "SB800") applicable to both homeowner association and individual homeowner claimants alike.

The comments from the legislative history materials submitted herewith for the Court's consideration are relevant because they demonstrate the intention of the Legislature, for SB800 to not "occupy the field" of construction defect claims in California. Quite the contrary, the Assembly Committee on Judiciary noted that "SB800" (Civil Code sections 895, et seq. and also called the "Right to Repair Act") (a) defined defects **"to ensure specified performance standards,"** (b) established a "specified procedure" before bringing suit including a prelitigation notice, (c) provided builders a right to repair alleged defects before a claimant could sue, and (d) provided that homeowners retain the rights to sue and pursue remedies if the repair is not made or is inadequate. (See Report by the

Assembly Committee on Judiciary dated March 29, 2016, Exhibit 1, pp. 40-41.) There is nothing in the Legislative History to suggest that the Right to Repair Act “occupies the field” of construction defect litigation to the exclusion of all other applicable law. Indeed, this is self-evident from the Legislature’s extension of the Calderon Act, obviously a second body of law applicable to construction defect claims, which was enacted twenty years before the Right to Repair Act and has now been extended twice since adoption of the Right to Repair Act.

Exhibit 2 is the Declaration of Jenny S. Lillge authenticating the legislative history file, and specifically identifying each document contained within the legislative history file presented herewith.

**B. The Documents are Judicially Noticeable**

The analysis and reports of committees is properly the subject of judicial notice. (Cal. Evid. Code § 452(c); See also *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 32-37 (“*Kaufman*”).) *Kaufman* provides a thorough analysis of the types of documents contained within a legislative history that are the proper subjects of judicial notice. “[A]s a general rule in order to be cognizable, legislative history must shed light on the collegial view of the Legislature as a whole.” (*Id.* at 30.) The reports of the Senate Rules Committee, Senate Committee on Judiciary and Assembly Committee on Judiciary are

appropriate documents for courts to consider as cognizable legislative history. (*Id.* at 32-35).

**C. Rule 8.252(a)(2) Statement**


The legislative history materials to be noticed relate to proceedings occurring in 2016, after the order which is the subject of the pending Petition for Review, as such they were not presented at the trial court level.

Based on the foregoing, Amicus Curiae CAOC respectfully requests that this Court take judicial notice of the legislative history files submitted herewith as Exhibit 1.

Dated: August 15, 2016 EPSTEN GRINNELL & HOWELL, APC

and

BERDING | WEIL LLP

By:   
\_\_\_\_\_  
Anne L. Rauch, Esq.  
Tyler Berding, Esq.

Attorneys for Amicus Curiae Consumer  
Attorneys of California

**DECLARATION OF ANNE L. RAUCH**

I, Anne L. Rauch declare as follows:

1. I am an attorney at law licensed to practice in California, with the law firm of Epsten Grinnell & Howell, APC, counsel of record for Amicus Curiae Consumer Attorneys of California. I have personal knowledge of the matters attested to herein in this declaration.

2. Attached hereto as Exhibit 1 is a true and correct copy of the legislative history for AB 1963 which includes nine documents described in more detail in the Declaration of Jenny S. Lillge.

3. Attached hereto as Exhibit 2 is a true and correct copy of the declaration of Jenny S. Lillge authenticating the documents contained in the legislative history file for AB 1963.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on August 15, 2016, at San Diego, California.



\_\_\_\_\_  
Anne L. Rauch

PROOF OF SERVICE

Case No. S229762

McMillin Albany LLC v. Superior Court of Kern County

I, the undersigned, declare as follows:

I am employed in the County of San Diego, State of California. I am over the age of 18 years, and not a party to the within action. My business address is: Epsten Grinnell & Howell, APC, 10200 Willow Creek Rd., Suite 100, San Diego, California 92131.

On August 15, 2016 I caused a true and correct copy of the REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF [PROPOSED] AMICUS CURIAE BRIEF BY APPLICANTS CONSUMER ATTORNEYS OF CALIFORNIA IN SUPPORT OF PETITIONERS MCMILLIN ALBANY, LLC, ET AL. to be electronically submitted to the Supreme Court of California using the e-submission portal on the Court's website: [www.courts.ca.gov/supreme-court.htm](http://www.courts.ca.gov/supreme-court.htm).

On August 15, 2016 I caused the Original and 8 hard copies of the REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF [PROPOSED] AMICUS CURIAE BRIEF BY APPLICANTS CONSUMER ATTORNEYS OF CALIFORNIA IN SUPPORT OF PETITIONERS MCMILLIN ALBANY, LLC, ET AL. to be submitted for filing via Overnight Mail by Federal Express to:

Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797  
(415) 865-7000

On August 15, 2016, I caused true and correct copies of the REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF [PROPOSED] AMICUS CURIAE BRIEF BY APPLICANTS CONSUMER ATTORNEYS OF CALIFORNIA IN SUPPORT OF PETITIONERS MCMILLIN ALBANY, LLC, ET AL. to be enclosed in a sealed envelope, addressed to the parties listed below. I am readily familiar with the firm's business practice for collection and processing of envelopes and packages for mailing with the U.S. Postal Service. Under the firm's practice, mail is deposited in the ordinary course of business with the United States Postal Service at San Diego, California, that same day, with postage thereon fully prepaid:



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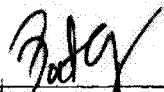
Honorable David R. Lampe  
Clerk of the Court  
Kern County Superior Court  
1415 Truxtun Avenue  
Bakersfield, CA 93301

Case No. S-1500-CV-  
279141

Civil Clerk of the Court  
California Court of Appeal  
Fifth Appellate District  
2424 Ventura Street  
Fresno, CA 93721  
(559) 445-5491

Case No. F069370

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct. Executed on August 15, 2016 at San Diego, California.

  
\_\_\_\_\_  
Patricia A. Fleming

**EXHIBIT 1**

**ASSEMBLY BILL**

**No. 1963**

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**Introduced by Assembly Member Calderon**

February 12, 2016

---

An act to amend Section 6000 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1963, as introduced, Calderon. Common interest developments: construction defects.

Existing law, the Davis-Stirling Common Interest Development Act, requires, until July 1, 2017, specified conditions to be met before an association may file a complaint for damages against a builder, developer, or general contractor of a common interest development based upon a claim for defects in the design or construction of the common interest development.

This bill would delete the inoperative and repeal dates of the above described requirement.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

- 1 SECTION 1. Section 6000 of the Civil Code is amended to  
2 read:  
3 6000. (a) Before an association files a complaint for damages  
4 against a builder, developer, or general contractor (respondent) of  
5 a common interest development based upon a claim for defects in  
6 the design or construction of the common interest development,



1 all of the requirements of this section shall be satisfied with respect  
2 to the builder, developer, or general contractor.

3 (b) The association shall serve upon the respondent a "Notice  
4 of Commencement of Legal Proceedings." The notice shall be  
5 served by certified mail to the registered agent of the respondent,  
6 or if there is no registered agent, then to any officer of the  
7 respondent. If there are no current officers of the respondent,  
8 service shall be upon the person or entity otherwise authorized by  
9 law to receive service of process. Service upon the general  
10 contractor shall be sufficient to initiate the process set forth in this  
11 section with regard to any builder or developer, if the builder or  
12 developer is not amenable to service of process by the foregoing  
13 methods. This notice shall toll all applicable statutes of limitation  
14 and repose, whether contractual or statutory, by and against all  
15 potentially responsible parties, regardless of whether they were  
16 named in the notice, including claims for indemnity applicable to  
17 the claim for the period set forth in subdivision (c). The notice  
18 shall include all of the following:

19 (1) The name and location of the project.

20 (2) An initial list of defects sufficient to apprise the respondent  
21 of the general nature of the defects at issue.

22 (3) A description of the results of the defects, if known.

23 (4) A summary of the results of a survey or questionnaire  
24 distributed to homeowners to determine the nature and extent of  
25 defects, if a survey has been conducted or a questionnaire has been  
26 distributed.

27 (5) Either a summary of the results of testing conducted to  
28 determine the nature and extent of defects or the actual test results,  
29 if that testing has been conducted.

30 (c) Service of the notice shall commence a period, not to exceed  
31 180 days, during which the association, the respondent, and all  
32 other participating parties shall try to resolve the dispute through  
33 the processes set forth in this section. This 180-day period may be  
34 extended for one additional period, not to exceed 180 days, only  
35 upon the mutual agreement of the association, the respondent, and  
36 any parties not deemed peripheral pursuant to paragraph (3) of  
37 subdivision (e). Any extensions beyond the first extension shall  
38 require the agreement of all participating parties. Unless extended,  
39 the dispute resolution process prescribed by this section shall be



1 deemed completed. All extensions shall continue the tolling period  
2 described in subdivision (b).

3 (d) Within 25 days of the date the association serves the Notice  
4 of Commencement of Legal Proceedings, the respondent may  
5 request in writing to meet and confer with the board. Unless the  
6 respondent and the association otherwise agree, there shall be not  
7 more than one meeting, which shall take place no later than 10  
8 days from the date of the respondent's written request, at a mutually  
9 agreeable time and place. The meeting shall be subject to  
10 subdivision (a) of Section 4925 and subdivisions (a) and (b) of  
11 Section 4935. The discussions at the meeting are privileged  
12 communications and are not admissible in evidence in any civil  
13 action, unless the association and the respondent consent in writing  
14 to their admission.

15 (e) Upon receipt of the notice, the respondent shall, within 60  
16 days, comply with the following:

17 (1) The respondent shall provide the association with access to,  
18 for inspection and copying of, all plans and specifications,  
19 subcontracts, and other construction files for the project that are  
20 reasonably calculated to lead to the discovery of admissible  
21 evidence regarding the defects claimed. The association shall  
22 provide the respondent with access to, for inspection and copying  
23 of, all files reasonably calculated to lead to the discovery of  
24 admissible evidence regarding the defects claimed, including all  
25 reserve studies, maintenance records and any survey questionnaires,  
26 or results of testing to determine the nature and extent of defects.  
27 To the extent any of the above documents are withheld based on  
28 privilege, a privilege log shall be prepared and submitted to all  
29 other parties. All other potentially responsible parties shall have  
30 the same rights as the respondent regarding the production of  
31 documents upon receipt of written notice of the claim, and shall  
32 produce all relevant documents within 60 days of receipt of the  
33 notice of the claim.

34 (2) The respondent shall provide written notice by certified mail  
35 to all subcontractors, design professionals, their insurers, and the  
36 insurers of any additional insured whose identities are known to  
37 the respondent or readily ascertainable by review of the project  
38 files or other similar sources and whose potential responsibility  
39 appears on the face of the notice. This notice to subcontractors,  
40 design professionals, and insurers shall include a copy of the Notice



1 of Commencement of Legal Proceedings, and shall specify the  
2 date and manner by which the parties shall meet and confer to  
3 select a dispute resolution facilitator pursuant to paragraph (1) of  
4 subdivision (f), advise the recipient of its obligation to participate  
5 in the meet and confer or serve a written acknowledgment of receipt  
6 regarding this notice, advise the recipient that it will waive any  
7 challenge to selection of the dispute resolution facilitator if it elects  
8 not to participate in the meet and confer, advise the recipient that  
9 it may seek the assistance of an attorney, and advise the recipient  
10 that it should contact its insurer, if any. Any subcontractor or design  
11 professional, or insurer for that subcontractor, design professional,  
12 or additional insured, who receives written notice from the  
13 respondent regarding the meet and confer shall, prior to the meet  
14 and confer, serve on the respondent a written acknowledgment of  
15 receipt. That subcontractor or design professional shall, within 10  
16 days of service of the written acknowledgment of receipt, provide  
17 to the association and the respondent a Statement of Insurance that  
18 includes both of the following:

19 (A) The names, addresses, and contact persons, if known, of all  
20 insurance carriers, whether primary or excess and regardless of  
21 whether a deductible or self-insured retention applies, whose  
22 policies were in effect from the commencement of construction  
23 of the subject project to the present and which potentially cover  
24 the subject claims.

25 (B) The applicable policy numbers for each policy of insurance  
26 provided.

27 (3) Any subcontractor or design professional, or insurer for that  
28 subcontractor, design professional, or additional insured, who so  
29 chooses, may, at any time, make a written request to the dispute  
30 resolution facilitator for designation as a peripheral party. That  
31 request shall be served contemporaneously on the association and  
32 the respondent. If no objection to that designation is received within  
33 15 days, or upon rejection of that objection, the dispute resolution  
34 facilitator shall designate that subcontractor or design professional  
35 as a peripheral party, and shall thereafter seek to limit the  
36 attendance of that subcontractor or design professional only to  
37 those dispute resolution sessions deemed peripheral party sessions  
38 or to those sessions during which the dispute resolution facilitator  
39 believes settlement as to peripheral parties may be finalized.  
40 Nothing in this subdivision shall preclude a party who has been





1 designated a peripheral party from being reclassified as a  
2 nonperipheral party, nor shall this subdivision preclude a party  
3 designated as a nonperipheral party from being reclassified as a  
4 peripheral party after notice to all parties and an opportunity to  
5 object. For purposes of this subdivision, a peripheral party is a  
6 party having total claimed exposure of less than twenty-five  
7 thousand dollars (\$25,000).

8 (f) (1) Within 20 days of sending the notice set forth in  
9 paragraph (2) of subdivision (e), the association, respondent,  
10 subcontractors, design professionals, and their insurers who have  
11 been sent a notice as described in paragraph (2) of subdivision (e)  
12 shall meet and confer in an effort to select a dispute resolution  
13 facilitator to preside over the mandatory dispute resolution process  
14 prescribed by this section. Any subcontractor or design professional  
15 who has been given timely notice of this meeting but who does  
16 not participate, waives any challenge he or she may have as to the  
17 selection of the dispute resolution facilitator. The role of the dispute  
18 resolution facilitator is to attempt to resolve the conflict in a fair  
19 manner. The dispute resolution facilitator shall be sufficiently  
20 knowledgeable in the subject matter and be able to devote sufficient  
21 time to the case. The dispute resolution facilitator shall not be  
22 required to reside in or have an office in the county in which the  
23 project is located. The dispute resolution facilitator and the  
24 participating parties shall agree to a date, time, and location to  
25 hold a case management meeting of all parties and the dispute  
26 resolution facilitator, to discuss the claims being asserted and the  
27 scheduling of events under this section. The case management  
28 meeting with the dispute resolution facilitator shall be held within  
29 100 days of service of the Notice of Commencement of Legal  
30 Proceedings at a location in the county where the project is located.  
31 Written notice of the case management meeting with the dispute  
32 resolution facilitator shall be sent by the respondent to the  
33 association, subcontractors and design professionals, and their  
34 insurers who are known to the respondent to be on notice of the  
35 claim, no later than 10 days prior to the case management meeting,  
36 and shall specify its date, time, and location. The dispute resolution  
37 facilitator in consultation with the respondent shall maintain a  
38 contact list of the participating parties.

39 (2) No later than 10 days prior to the case management meeting,  
40 the dispute resolution facilitator shall disclose to the parties all



1 matters that could cause a person aware of the facts to reasonably  
2 entertain a doubt that the proposed dispute resolution facilitator  
3 would be able to resolve the conflict in a fair manner. The  
4 facilitator's disclosure shall include the existence of any ground  
5 specified in Section 170.1 of the Code of Civil Procedure for  
6 disqualification of a judge, any attorney-client relationship the  
7 facilitator has or had with any party or lawyer for a party to the  
8 dispute resolution process, and any professional or significant  
9 personal relationship the facilitator or his or her spouse or minor  
10 child living in the household has or had with any party to the  
11 dispute resolution process. The disclosure shall also be provided  
12 to any subsequently noticed subcontractor or design professional  
13 within 10 days of the notice.

14 (3) A dispute resolution facilitator shall be disqualified by the  
15 court if he or she fails to comply with this subdivision and any  
16 party to the dispute resolution process serves a notice of  
17 disqualification prior to the case management meeting. If the  
18 dispute resolution facilitator complies with this subdivision, he or  
19 she shall be disqualified by the court on the basis of the disclosure  
20 if any party to the dispute resolution process serves a notice of  
21 disqualification prior to the case management meeting.

22 (4) If the parties cannot mutually agree to a dispute resolution  
23 facilitator, then each party shall submit a list of three dispute  
24 resolution facilitators. Each party may then strike one nominee  
25 from the other parties' list, and petition the court, pursuant to the  
26 procedure described in subdivisions (n) and (o), for final selection  
27 of the dispute resolution facilitator. The court may issue an order  
28 for final selection of the dispute resolution facilitator pursuant to  
29 this paragraph.

30 (5) Any subcontractor or design professional who receives notice  
31 of the association's claim without having previously received  
32 timely notice of the meet and confer to select the dispute resolution  
33 facilitator shall be notified by the respondent regarding the name,  
34 address, and telephone number of the dispute resolution facilitator.  
35 Any such subcontractor or design professional may serve upon  
36 the parties and the dispute resolution facilitator a written objection  
37 to the dispute resolution facilitator within 15 days of receiving  
38 notice of the claim. Within seven days after service of this  
39 objection, the subcontractor or design professional may petition  
40 the superior court to replace the dispute resolution facilitator. The



1 court may replace the dispute resolution facilitator only upon a  
2 showing of good cause, liberally construed. Failure to satisfy the  
3 deadlines set forth in this subdivision shall constitute a waiver of  
4 the right to challenge the dispute resolution facilitator.

5 (6) The costs of the dispute resolution facilitator shall be  
6 apportioned in the following manner: one-third to be paid by the  
7 association; one-third to be paid by the respondent; and one-third  
8 to be paid by the subcontractors and design professionals, as  
9 allocated among them by the dispute resolution facilitator. The  
10 costs of the dispute resolution facilitator shall be recoverable by  
11 the prevailing party in any subsequent litigation pursuant to Section  
12 1032 of the Code of Civil Procedure, provided however that any  
13 nonsettling party may, prior to the filing of the complaint, petition  
14 the facilitator to reallocate the costs of the dispute resolution  
15 facilitator as they apply to any nonsettling party. The determination  
16 of the dispute resolution facilitator with respect to the allocation  
17 of these costs shall be binding in any subsequent litigation. The  
18 dispute resolution facilitator shall take into account all relevant  
19 factors and equities between all parties in the dispute resolution  
20 process when reallocating costs.

21 (7) In the event the dispute resolution facilitator is replaced at  
22 any time, the case management statement created pursuant to  
23 subdivision (h) shall remain in full force and effect.

24 (8) The dispute resolution facilitator shall be empowered to  
25 enforce all provisions of this section.

26 (g) (1) No later than the case management meeting, the parties  
27 shall begin to generate a data compilation showing the following  
28 information regarding the alleged defects at issue:

29 (A) The scope of the work performed by each potentially  
30 responsible subcontractor.

31 (B) The tract or phase number in which each subcontractor  
32 provided goods or services, or both.

33 (C) The units, either by address, unit number, or lot number, at  
34 which each subcontractor provided goods or services, or both.

35 (2) This data compilation shall be updated as needed to reflect  
36 additional information. Each party attending the case management  
37 meeting, and any subsequent meeting pursuant to this section, shall  
38 provide all information available to that party relevant to this data  
39 compilation.



1 (h) At the case management meeting, the parties shall, with the  
2 assistance of the dispute resolution facilitator, reach agreement on  
3 a case management statement, which shall set forth all of the  
4 elements set forth in paragraphs (1) to (8), inclusive, except that  
5 the parties may dispense with one or more of these elements if  
6 they agree that it is appropriate to do so. The case management  
7 statement shall provide that the following elements shall take place  
8 in the following order:

9 (1) Establishment of a document depository, located in the  
10 county where the project is located, for deposit of documents,  
11 defect lists, demands, and other information provided for under  
12 this section. All documents exchanged by the parties and all  
13 documents created pursuant to this subdivision shall be deposited  
14 in the document depository, which shall be available to all parties  
15 throughout the pre-filing dispute resolution process and in any  
16 subsequent litigation. When any document is deposited in the  
17 document depository, the party depositing the document shall  
18 provide written notice identifying the document to all other parties.  
19 The costs of maintaining the document depository shall be  
20 apportioned among the parties in the same manner as the costs of  
21 the dispute resolution facilitator.

22 (2) Provision of a more detailed list of defects by the association  
23 to the respondent after the association completes a visual inspection  
24 of the project. This list of defects shall provide sufficient detail  
25 for the respondent to ensure that all potentially responsible  
26 subcontractors and design professionals are provided with notice  
27 of the dispute resolution process. If not already completed prior  
28 to the case management meeting, the Notice of Commencement  
29 of Legal Proceedings shall be served by the respondent on all  
30 additional subcontractors and design professionals whose potential  
31 responsibility appears on the face of the more detailed list of  
32 defects within seven days of receipt of the more detailed list. The  
33 respondent shall serve a copy of the case management statement,  
34 including the name, address, and telephone number of the dispute  
35 resolution facilitator, to all the potentially responsible  
36 subcontractors and design professionals at the same time.

37 (3) Nonintrusive visual inspection of the project by the  
38 respondent, subcontractors, and design professionals.

39 (4) Invasive testing conducted by the association, if the  
40 association deems appropriate. All parties may observe and



1 photograph any testing conducted by the association pursuant to  
2 this paragraph, but may not take samples or direct testing unless,  
3 by mutual agreement, costs of testing are shared by the parties.

4 (5) Provision by the association of a comprehensive demand  
5 which provides sufficient detail for the parties to engage in  
6 meaningful dispute resolution as contemplated under this section.

7 (6) Invasive testing conducted by the respondent, subcontractors,  
8 and design professionals, if they deem appropriate.

9 (7) Allowance for modification of the demand by the association  
10 if new issues arise during the testing conducted by the respondent,  
11 subcontractor, or design professionals.

12 (8) Facilitated dispute resolution of the claim, with all parties,  
13 including peripheral parties, as appropriate, and insurers, if any,  
14 present and having settlement authority. The dispute resolution  
15 facilitators shall endeavor to set specific times for the attendance  
16 of specific parties at dispute resolution sessions. If the dispute  
17 resolution facilitator does not set specific times for the attendance  
18 of parties at dispute resolution sessions, the dispute resolution  
19 facilitator shall permit those parties to participate in dispute  
20 resolution sessions by telephone.

21 (i) In addition to the foregoing elements of the case management  
22 statement described in subdivision (h), upon mutual agreement of  
23 the parties, the dispute resolution facilitator may include any or  
24 all of the following elements in a case management statement: the  
25 exchange of consultant or expert photographs; expert presentations;  
26 expert meetings; or any other mechanism deemed appropriate by  
27 the parties in the interest of resolving the dispute.

28 (j) The dispute resolution facilitator, with the guidance of the  
29 parties, shall at the time the case management statement is  
30 established, set deadlines for the occurrence of each event set forth  
31 in the case management statement, taking into account such factors  
32 as the size and complexity of the case, and the requirement of this  
33 section that this dispute resolution process not exceed 180 days  
34 absent agreement of the parties to an extension of time.

35 (k) (1) ~~(A)~~ At a time to be determined by the dispute resolution  
36 facilitator, the respondent may submit to the association all of the  
37 following:

38 (†)

39 (A) A request to meet with the board to discuss a written  
40 settlement offer.



- 1     ~~(ii)~~  
2     (B) A written settlement offer, and a concise explanation of the  
3 reasons for the terms of the offer.  
4     ~~(iii)~~  
5     (C) A statement that the respondent has access to sufficient  
6 funds to satisfy the conditions of the settlement offer.  
7     ~~(iv)~~  
8     (D) A summary of the results of testing conducted for the  
9 purposes of determining the nature and extent of defects, if this  
10 testing has been conducted, unless the association provided the  
11 respondent with actual test results.  
12     ~~(B)~~  
13     (2) If the respondent does not timely submit the items required  
14 by this subdivision, the association shall be relieved of any further  
15 obligation to satisfy the requirements of this subdivision only.  
16     ~~(C)~~  
17     (3) No less than 10 days after the respondent submits the items  
18 required by this paragraph, the respondent and the board shall meet  
19 and confer about the respondent's settlement offer.  
20     ~~(D)~~  
21     (4) If the board rejects a settlement offer presented at the  
22 meeting held pursuant to this subdivision, the board shall hold a  
23 meeting open to each member of the association. The meeting  
24 shall be held no less than 15 days before the association  
25 commences an action for damages against the respondent.  
26     ~~(E)~~  
27     (5) No less than 15 days before this meeting is held, a written  
28 notice shall be sent to each member of the association specifying  
29 all of the following:  
30     ~~(i)~~  
31     (A) That a meeting will take place to discuss problems that may  
32 lead to the filing of a civil action, and the time and place of this  
33 meeting.  
34     ~~(ii)~~  
35     (B) The options that are available to address the problems,  
36 including the filing of a civil action and a statement of the various  
37 alternatives that are reasonably foreseeable by the association to  
38 pay for those options and whether these payments are expected to  
39 be made from the use of reserve account funds or the imposition



1 of regular or special assessments, or emergency assessment  
2 increases.

3 ~~(iii)~~

4 (C) The complete text of any written settlement offer, and a  
5 concise explanation of the specific reasons for the terms of the  
6 offer submitted to the board at the meeting held pursuant to  
7 subdivision (d) that was received from the respondent.

8 ~~(F)~~

9 (6) The respondent shall pay all expenses attributable to sending  
10 the settlement offer to all members of the association. The  
11 respondent shall also pay the expense of holding the meeting, not  
12 to exceed three dollars (\$3) per association member.

13 ~~(G)~~

14 (7) The discussions at the meeting and the contents of the notice  
15 and the items required to be specified in the notice pursuant to  
16 subparagraph (E) are privileged communications and are not  
17 admissible in evidence in any civil action, unless the association  
18 consents to their admission.

19 ~~(H)~~

20 (8) No more than one request to meet and discuss a written  
21 settlement offer may be made by the respondent pursuant to this  
22 subdivision.

23 (I) All defect lists and demands, communications, negotiations,  
24 and settlement offers made in the course of the prelitigation dispute  
25 resolution process provided by this section shall be inadmissible  
26 pursuant to Sections 1119 to 1124, inclusive, of the Evidence Code  
27 and all applicable decisional law. This inadmissibility shall not be  
28 extended to any other documents or communications which would  
29 not otherwise be deemed inadmissible.

30 (m) Any subcontractor or design professional may, at any time,  
31 petition the dispute resolution facilitator to release that party from  
32 the dispute resolution process upon a showing that the  
33 subcontractor or design professional is not potentially responsible  
34 for the defect claims at issue. The petition shall be served  
35 contemporaneously on all other parties, who shall have 15 days  
36 from the date of service to object. If a subcontractor or design  
37 professional is released, and it later appears to the dispute  
38 resolution facilitator that it may be a responsible party in light of  
39 the current defect list or demand, the respondent shall renounce the  
40 party as provided by paragraph (2) of subdivision (e), provide a



1 copy of the current defect list or demand, and direct the party to  
2 attend a dispute resolution session at a stated time and location. A  
3 party who subsequently appears after having been released by the  
4 dispute resolution facilitator shall not be prejudiced by its absence  
5 from the dispute resolution process as the result of having been  
6 previously released by the dispute resolution facilitator.

7 (n) Any party may, at any time, petition the superior court in  
8 the county where the project is located, upon a showing of good  
9 cause, and the court may issue an order, for any of the following,  
10 or for appointment of a referee to resolve a dispute regarding any  
11 of the following:

12 (1) To take a deposition of any party to the process, or subpoena  
13 a third party for deposition or production of documents, which is  
14 necessary to further prelitigation resolution of the dispute.

15 (2) To resolve any disputes concerning inspection, testing,  
16 production of documents, or exchange of information provided  
17 for under this section.

18 (3) To resolve any disagreements relative to the timing or  
19 contents of the case management statement.

20 (4) To authorize internal extensions of timeframes set forth in  
21 the case management statement.

22 (5) To seek a determination that a settlement is a good faith  
23 settlement pursuant to Section 877.6 of the Code of Civil Procedure  
24 and all related authorities. The page limitations and meet and confer  
25 requirements specified in this section shall not apply to these  
26 motions, which may be made on shortened notice. Instead, these  
27 motions shall be subject to other applicable state law, rules of  
28 court, and local rules. A determination made by the court pursuant  
29 to this motion shall have the same force and effect as the  
30 determination of a postfiling application or motion for good faith  
31 settlement.

32 (6) To ensure compliance, on shortened notice, with the  
33 obligation to provide a Statement of Insurance pursuant to  
34 paragraph (2) of subdivision (e).

35 (7) For any other relief appropriate to the enforcement of the  
36 provisions of this section, including the ordering of parties, and  
37 insurers, if any, to the dispute resolution process with settlement  
38 authority.

39 (o) (1) A petition filed pursuant to subdivision (n) shall be filed  
40 in the superior court in the county in which the project is located.





1 The court shall hear and decide the petition within 10 days after  
2 filing. The petitioning party shall serve the petition on all parties,  
3 including the date, time, and location of the hearing no later than  
4 five business days prior to the hearing. Any responsive papers  
5 shall be filed and served no later than three business days prior to  
6 the hearing. Any petition or response filed under this section shall  
7 be no more than three pages in length.

8 (2) All parties shall meet with the dispute resolution facilitator,  
9 if one has been appointed and confer in person or by telephone  
10 prior to the filing of that petition to attempt to resolve the matter  
11 without requiring court intervention.

12 (p) As used in this section:

13 (1) "Association" shall have the same meaning as defined in  
14 Section 4080.

15 (2) "Builder" means the declarant, as defined in Section 4130.

16 (3) "Common interest development" shall have the same  
17 meaning as in Section 4100, except that it shall not include  
18 developments or projects with less than 20 units.

19 (q) The alternative dispute resolution process and procedures  
20 described in this section shall have no application or legal effect  
21 other than as described in this section.

22 (r) This section shall become operative on July 1, 2002, however  
23 it shall not apply to any pending suit or claim for which notice has  
24 previously been given.

25 ~~(s) This section shall become inoperative on July 1, 2017, and,~~  
26 ~~as of January 1, 2018, is repealed, unless a later enacted statute,~~  
27 ~~that becomes operative on or before January 1, 2018, deletes or~~  
28 ~~extends the dates on which it becomes inoperative and is repealed.~~

O



AMENDED IN ASSEMBLY APRIL 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1963

Introduced by Assembly Member Calderon

February 12, 2016

An act to amend Section 6000 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1963, as amended, Calderon. Common interest developments: construction defects.

Existing law, the Davis-Stirling Common Interest Development Act, requires, until July 1, 2017, specified conditions to be met before an association may file a complaint for damages against a builder, developer, or general contractor of a common interest development based upon a claim for defects in the design or construction of the common interest development.

This bill would delete the inoperative and repeal dates of the above described requirement, and would, instead, make these provisions inoperative on July 1, 2024, and would repeal these provisions as of January 1, 2025, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 6000 of the Civil Code is amended to  
2 read:

LEGISLATIVE INTENT SERVICE (800) 666-1917



1 6000. (a) Before an association files a complaint for damages  
2 against a builder, developer, or general contractor (respondent) of  
3 a common interest development based upon a claim for defects in  
4 the design or construction of the common interest development,  
5 all of the requirements of this section shall be satisfied with respect  
6 to the builder, developer, or general contractor.

7 (b) The association shall serve upon the respondent a "Notice  
8 of Commencement of Legal Proceedings." The notice shall be  
9 served by certified mail to the registered agent of the respondent,  
10 or if there is no registered agent, then to any officer of the  
11 respondent. If there are no current officers of the respondent,  
12 service shall be upon the person or entity otherwise authorized by  
13 law to receive service of process. Service upon the general  
14 contractor shall be sufficient to initiate the process set forth in this  
15 section with regard to any builder or developer, if the builder or  
16 developer is not amenable to service of process by the foregoing  
17 methods. This notice shall toll all applicable statutes of limitation  
18 and repose, whether contractual or statutory, by and against all  
19 potentially responsible parties, regardless of whether they were  
20 named in the notice, including claims for indemnity applicable to  
21 the claim for the period set forth in subdivision (c). The notice  
22 shall include all of the following:

- 23 (1) The name and location of the project.  
24 (2) An initial list of defects sufficient to apprise the respondent  
25 of the general nature of the defects at issue.  
26 (3) A description of the results of the defects, if known.  
27 (4) A summary of the results of a survey or questionnaire  
28 distributed to homeowners to determine the nature and extent of  
29 defects, if a survey has been conducted or a questionnaire has been  
30 distributed.

31 (5) Either a summary of the results of testing conducted to  
32 determine the nature and extent of defects or the actual test results,  
33 if that testing has been conducted.

34 (c) Service of the notice shall commence a period, not to exceed  
35 180 days, during which the association, the respondent, and all  
36 other participating parties shall try to resolve the dispute through  
37 the processes set forth in this section. This 180-day period may be  
38 extended for one additional period, not to exceed 180 days, only  
39 upon the mutual agreement of the association, the respondent, and  
40 any parties not deemed peripheral pursuant to paragraph (3) of



1 subdivision (e). Any extensions beyond the first extension shall  
2 require the agreement of all participating parties. Unless extended,  
3 the dispute resolution process prescribed by this section shall be  
4 deemed completed. All extensions shall continue the tolling period  
5 described in subdivision (b).

6 (d) Within 25 days of the date the association serves the Notice  
7 of Commencement of Legal Proceedings, the respondent may  
8 request in writing to meet and confer with the board. Unless the  
9 respondent and the association otherwise agree, there shall be not  
10 more than one meeting, which shall take place no later than 10  
11 days from the date of the respondent's written request, at a mutually  
12 agreeable time and place. The meeting shall be subject to  
13 subdivision (a) of Section 4925 and subdivisions (a) and (b) of  
14 Section 4935. The discussions at the meeting are privileged  
15 communications and are not admissible in evidence in any civil  
16 action, unless the association and the respondent consent in writing  
17 to their admission.

18 (e) Upon receipt of the notice, the respondent shall, within 60  
19 days, comply with the following:

20 (1) The respondent shall provide the association with access to,  
21 for inspection and copying of, all plans and specifications,  
22 subcontracts, and other construction files for the project that are  
23 reasonably calculated to lead to the discovery of admissible  
24 evidence regarding the defects claimed. The association shall  
25 provide the respondent with access to, for inspection and copying  
26 of, all files reasonably calculated to lead to the discovery of  
27 admissible evidence regarding the defects claimed, including all  
28 reserve studies, maintenance records and any survey questionnaires,  
29 or results of testing to determine the nature and extent of defects.  
30 To the extent any of the above documents are withheld based on  
31 privilege, a privilege log shall be prepared and submitted to all  
32 other parties. All other potentially responsible parties shall have  
33 the same rights as the respondent regarding the production of  
34 documents upon receipt of written notice of the claim, and shall  
35 produce all relevant documents within 60 days of receipt of the  
36 notice of the claim.

37 (2) The respondent shall provide written notice by certified mail  
38 to all subcontractors, design professionals, their insurers, and the  
39 insurers of any additional insured whose identities are known to  
40 the respondent or readily ascertainable by review of the project



1 files or other similar sources and whose potential responsibility  
2 appears on the face of the notice. This notice to subcontractors,  
3 design professionals, and insurers shall include a copy of the Notice  
4 of Commencement of Legal Proceedings, and shall specify the  
5 date and manner by which the parties shall meet and confer to  
6 select a dispute resolution facilitator pursuant to paragraph (1) of  
7 subdivision (f), advise the recipient of its obligation to participate  
8 in the meet and confer or serve a written acknowledgment of receipt  
9 regarding this notice, advise the recipient that it will waive any  
10 challenge to selection of the dispute resolution facilitator if it elects  
11 not to participate in the meet and confer, advise the recipient that  
12 it may seek the assistance of an attorney, and advise the recipient  
13 that it should contact its insurer, if any. Any subcontractor or design  
14 professional, or insurer for that subcontractor, design professional,  
15 or additional insured, who receives written notice from the  
16 respondent regarding the meet and confer shall, prior to the meet  
17 and confer, serve on the respondent a written acknowledgment of  
18 receipt. That subcontractor or design professional shall, within 10  
19 days of service of the written acknowledgment of receipt, provide  
20 to the association and the respondent a Statement of Insurance that  
21 includes both of the following:

22 (A) The names, addresses, and contact persons, if known, of all  
23 insurance carriers, whether primary or excess and regardless of  
24 whether a deductible or self-insured retention applies, whose  
25 policies were in effect from the commencement of construction  
26 of the subject project to the present and which potentially cover  
27 the subject claims.

28 (B) The applicable policy numbers for each policy of insurance  
29 provided.

30 (3) Any subcontractor or design professional, or insurer for that  
31 subcontractor, design professional, or additional insured, who so  
32 chooses, may, at any time, make a written request to the dispute  
33 resolution facilitator for designation as a peripheral party. That  
34 request shall be served contemporaneously on the association and  
35 the respondent. If no objection to that designation is received within  
36 15 days, or upon rejection of that objection, the dispute resolution  
37 facilitator shall designate that subcontractor or design professional  
38 as a peripheral party, and shall thereafter seek to limit the  
39 attendance of that subcontractor or design professional only to  
40 those dispute resolution sessions deemed peripheral party sessions



1 or to those sessions during which the dispute resolution facilitator  
2 believes settlement as to peripheral parties may be finalized.  
3 Nothing in this subdivision shall preclude a party who has been  
4 designated a peripheral party from being reclassified as a  
5 nonperipheral party, nor shall this subdivision preclude a party  
6 designated as a nonperipheral party from being reclassified as a  
7 peripheral party after notice to all parties and an opportunity to  
8 object. For purposes of this subdivision, a peripheral party is a  
9 party having total claimed exposure of less than twenty-five  
10 thousand dollars (\$25,000).

11 (f) (1) Within 20 days of sending the notice set forth in  
12 paragraph (2) of subdivision (e), the association, respondent,  
13 subcontractors, design professionals, and their insurers who have  
14 been sent a notice as described in paragraph (2) of subdivision (e)  
15 shall meet and confer in an effort to select a dispute resolution  
16 facilitator to preside over the mandatory dispute resolution process  
17 prescribed by this section. Any subcontractor or design professional  
18 who has been given timely notice of this meeting but who does  
19 not participate, waives any challenge he or she may have as to the  
20 selection of the dispute resolution facilitator. The role of the dispute  
21 resolution facilitator is to attempt to resolve the conflict in a fair  
22 manner. The dispute resolution facilitator shall be sufficiently  
23 knowledgeable in the subject matter and be able to devote sufficient  
24 time to the case. The dispute resolution facilitator shall not be  
25 required to reside in or have an office in the county in which the  
26 project is located. The dispute resolution facilitator and the  
27 participating parties shall agree to a date, time, and location to  
28 hold a case management meeting of all parties and the dispute  
29 resolution facilitator, to discuss the claims being asserted and the  
30 scheduling of events under this section. The case management  
31 meeting with the dispute resolution facilitator shall be held within  
32 100 days of service of the Notice of Commencement of Legal  
33 Proceedings at a location in the county where the project is located.  
34 Written notice of the case management meeting with the dispute  
35 resolution facilitator shall be sent by the respondent to the  
36 association, subcontractors and design professionals, and their  
37 insurers who are known to the respondent to be on notice of the  
38 claim, no later than 10 days prior to the case management meeting,  
39 and shall specify its date, time, and location. The dispute resolution



1 facilitator in consultation with the respondent shall maintain a  
2 contact list of the participating parties.

3 (2) No later than 10 days prior to the case management meeting,  
4 the dispute resolution facilitator shall disclose to the parties all  
5 matters that could cause a person aware of the facts to reasonably  
6 entertain a doubt that the proposed dispute resolution facilitator  
7 would be able to resolve the conflict in a fair manner. The  
8 facilitator's disclosure shall include the existence of any ground  
9 specified in Section 170.1 of the Code of Civil Procedure for  
10 disqualification of a judge, any attorney-client relationship the  
11 facilitator has or had with any party or lawyer for a party to the  
12 dispute resolution process, and any professional or significant  
13 personal relationship the facilitator or his or her spouse or minor  
14 child living in the household has or had with any party to the  
15 dispute resolution process. The disclosure shall also be provided  
16 to any subsequently noticed subcontractor or design professional  
17 within 10 days of the notice.

18 (3) A dispute resolution facilitator shall be disqualified by the  
19 court if he or she fails to comply with this subdivision and any  
20 party to the dispute resolution process serves a notice of  
21 disqualification prior to the case management meeting. If the  
22 dispute resolution facilitator complies with this subdivision, he or  
23 she shall be disqualified by the court on the basis of the disclosure  
24 if any party to the dispute resolution process serves a notice of  
25 disqualification prior to the case management meeting.

26 (4) If the parties cannot mutually agree to a dispute resolution  
27 facilitator, then each party shall submit a list of three dispute  
28 resolution facilitators. Each party may then strike one nominee  
29 from the other parties' list, and petition the court, pursuant to the  
30 procedure described in subdivisions (n) and (o), for final selection  
31 of the dispute resolution facilitator. The court may issue an order  
32 for final selection of the dispute resolution facilitator pursuant to  
33 this paragraph.

34 (5) Any subcontractor or design professional who receives notice  
35 of the association's claim without having previously received  
36 timely notice of the meet and confer to select the dispute resolution  
37 facilitator shall be notified by the respondent regarding the name,  
38 address, and telephone number of the dispute resolution facilitator.  
39 Any such subcontractor or design professional may serve upon  
40 the parties and the dispute resolution facilitator a written objection



1 to the dispute resolution facilitator within 15 days of receiving  
2 notice of the claim. Within seven days after service of this  
3 objection, the subcontractor or design professional may petition  
4 the superior court to replace the dispute resolution facilitator. The  
5 court may replace the dispute resolution facilitator only upon a  
6 showing of good cause, liberally construed. Failure to satisfy the  
7 deadlines set forth in this subdivision shall constitute a waiver of  
8 the right to challenge the dispute resolution facilitator.

9 (6) The costs of the dispute resolution facilitator shall be  
10 apportioned in the following manner: one-third to be paid by the  
11 association; one-third to be paid by the respondent; and one-third  
12 to be paid by the subcontractors and design professionals, as  
13 allocated among them by the dispute resolution facilitator. The  
14 costs of the dispute resolution facilitator shall be recoverable by  
15 the prevailing party in any subsequent litigation pursuant to Section  
16 1032 of the Code of Civil Procedure, provided however that any  
17 nonsettling party may, prior to the filing of the complaint, petition  
18 the facilitator to reallocate the costs of the dispute resolution  
19 facilitator as they apply to any nonsettling party. The determination  
20 of these costs shall be binding in any subsequent litigation. The  
21 dispute resolution facilitator shall take into account all relevant  
22 factors and equities between all parties in the dispute resolution  
23 process when reallocating costs.

24  
25 (7) In the event the dispute resolution facilitator is replaced at  
26 any time, the case management statement created pursuant to  
27 subdivision (h) shall remain in full force and effect.

28 (8) The dispute resolution facilitator shall be empowered to  
29 enforce all provisions of this section.

30 (g) (1) No later than the case management meeting, the parties  
31 shall begin to generate a data compilation showing the following  
32 information regarding the alleged defects at issue:

33 (A) The scope of the work performed by each potentially  
34 responsible subcontractor.

35 (B) The tract or phase number in which each subcontractor  
36 provided goods or services, or both.

37 (C) The units, either by address, unit number, or lot number, at  
38 which each subcontractor provided goods or services, or both.

39 (2) This data compilation shall be updated as needed to reflect  
40 additional information. Each party attending the case management





1 meeting, and any subsequent meeting pursuant to this section, shall  
2 provide all information available to that party relevant to this data  
3 compilation.

4 (h) At the case management meeting, the parties shall, with the  
5 assistance of the dispute resolution facilitator, reach agreement on  
6 a case management statement, which shall set forth all of the  
7 elements set forth in paragraphs (1) to (8), inclusive, except that  
8 the parties may dispense with one or more of these elements if  
9 they agree that it is appropriate to do so. The case management  
10 statement shall provide that the following elements shall take place  
11 in the following order:

12 (1) Establishment of a document depository, located in the  
13 county where the project is located, for deposit of documents,  
14 defect lists, demands, and other information provided for under  
15 this section. All documents exchanged by the parties and all  
16 documents created pursuant to this subdivision shall be deposited  
17 in the document depository, which shall be available to all parties  
18 throughout the pre-filing dispute resolution process and in any  
19 subsequent litigation. When any document is deposited in the  
20 document depository, the party depositing the document shall  
21 provide written notice identifying the document to all other parties.  
22 The costs of maintaining the document depository shall be  
23 apportioned among the parties in the same manner as the costs of  
24 the dispute resolution facilitator.

25 (2) Provision of a more detailed list of defects by the association  
26 to the respondent after the association completes a visual inspection  
27 of the project. This list of defects shall provide sufficient detail  
28 for the respondent to ensure that all potentially responsible  
29 subcontractors and design professionals are provided with notice  
30 of the dispute resolution process. If not already completed prior  
31 to the case management meeting, the Notice of Commencement  
32 of Legal Proceedings shall be served by the respondent on all  
33 additional subcontractors and design professionals whose potential  
34 responsibility appears on the face of the more detailed list of  
35 defects within seven days of receipt of the more detailed list. The  
36 respondent shall serve a copy of the case management statement,  
37 including the name, address, and telephone number of the dispute  
38 resolution facilitator, to all the potentially responsible  
39 subcontractors and design professionals at the same time.



1 (3) Nonintrusive visual inspection of the project by the  
2 respondent, subcontractors, and design professionals.

3 (4) Invasive testing conducted by the association, if the  
4 association deems appropriate. All parties may observe and  
5 photograph any testing conducted by the association pursuant to  
6 this paragraph, but may not take samples or direct testing unless,  
7 by mutual agreement, costs of testing are shared by the parties.

8 (5) Provision by the association of a comprehensive demand  
9 which provides sufficient detail for the parties to engage in  
10 meaningful dispute resolution as contemplated under this section.

11 (6) Invasive testing conducted by the respondent, subcontractors,  
12 and design professionals, if they deem appropriate.

13 (7) Allowance for modification of the demand by the association  
14 if new issues arise during the testing conducted by the respondent,  
15 subcontractor, or design professionals.

16 (8) Facilitated dispute resolution of the claim, with all parties,  
17 including peripheral parties, as appropriate, and insurers, if any,  
18 present and having settlement authority. The dispute resolution  
19 facilitators shall endeavor to set specific times for the attendance  
20 of specific parties at dispute resolution sessions. If the dispute  
21 resolution facilitator does not set specific times for the attendance  
22 of parties at dispute resolution sessions, the dispute resolution  
23 facilitator shall permit those parties to participate in dispute  
24 resolution sessions by telephone.

25 (i) In addition to the foregoing elements of the case management  
26 statement described in subdivision (h), upon mutual agreement of  
27 the parties, the dispute resolution facilitator may include any or  
28 all of the following elements in a case management statement: the  
29 exchange of consultant or expert photographs; expert presentations;  
30 expert meetings; or any other mechanism deemed appropriate by  
31 the parties in the interest of resolving the dispute.

32 (j) The dispute resolution facilitator, with the guidance of the  
33 parties, shall at the time the case management statement is  
34 established, set deadlines for the occurrence of each event set forth  
35 in the case management statement, taking into account such factors  
36 as the size and complexity of the case, and the requirement of this  
37 section that this dispute resolution process not exceed 180 days  
38 absent agreement of the parties to an extension of time.



1 (k) (1) At a time to be determined by the dispute resolution  
2 facilitator, the respondent may submit to the association all of the  
3 following:

4 (A) A request to meet with the board to discuss a written  
5 settlement offer.

6 (B) A written settlement offer, and a concise explanation of the  
7 reasons for the terms of the offer.

8 (C) A statement that the respondent has access to sufficient  
9 funds to satisfy the conditions of the settlement offer.

10 (D) A summary of the results of testing conducted for the  
11 purposes of determining the nature and extent of defects, if this  
12 testing has been conducted, unless the association provided the  
13 respondent with actual test results.

14 (2) If the respondent does not timely submit the items required  
15 by this subdivision, the association shall be relieved of any further  
16 obligation to satisfy the requirements of this subdivision only.

17 (3) No less than 10 days after the respondent submits the items  
18 required by this paragraph, the respondent and the board shall meet  
19 and confer about the respondent's settlement offer.

20 (4) If the board rejects a settlement offer presented at the  
21 meeting held pursuant to this subdivision, the board shall hold a  
22 meeting open to each member of the association. The meeting  
23 shall be held no less than 15 days before the association  
24 commences an action for damages against the respondent.

25 (5) No less than 15 days before this meeting is held, a written  
26 notice shall be sent to each member of the association specifying  
27 all of the following:

28 (A) That a meeting will take place to discuss problems that may  
29 lead to the filing of a civil action, and the time and place of this  
30 meeting.

31 (B) The options that are available to address the problems,  
32 including the filing of a civil action and a statement of the various  
33 alternatives that are reasonably foreseeable by the association to  
34 pay for those options and whether these payments are expected to  
35 be made from the use of reserve account funds or the imposition  
36 of regular or special assessments, or emergency assessment  
37 increases.

38 (C) The complete text of any written settlement offer, and a  
39 concise explanation of the specific reasons for the terms of the



1 offer submitted to the board at the meeting held pursuant to  
2 subdivision (d) that was received from the respondent.

3 (6) The respondent shall pay all expenses attributable to sending  
4 the settlement offer to all members of the association. The  
5 respondent shall also pay the expense of holding the meeting, not  
6 to exceed three dollars (\$3) per association member.

7 (7) The discussions at the meeting and the contents of the notice  
8 and the items required to be specified in the notice pursuant to  
9 ~~subparagraph (E)~~ *paragraph (5)* are privileged communications  
10 and are not admissible in evidence in any civil action, unless the  
11 association consents to their admission.

12 (8) No more than one request to meet and discuss a written  
13 settlement offer may be made by the respondent pursuant to this  
14 subdivision.

15 (l) All defect lists and demands, communications, negotiations,  
16 and settlement offers made in the course of the prelitigation dispute  
17 resolution process provided by this section shall be inadmissible  
18 pursuant to Sections 1119 to 1124, inclusive, of the Evidence Code  
19 and all applicable decisional law. This inadmissibility shall not be  
20 extended to any other documents or communications which would  
21 not otherwise be deemed inadmissible.

22 (m) Any subcontractor or design professional may, at any time,  
23 petition the dispute resolution facilitator to release that party from  
24 the dispute resolution process upon a showing that the  
25 subcontractor or design professional is not potentially responsible  
26 for the defect claims at issue. The petition shall be served  
27 contemporaneously on all other parties, who shall have 15 days  
28 from the date of service to object. If a subcontractor or design  
29 professional is released, and it later appears to the dispute  
30 resolution facilitator that it may be a responsible party in light of  
31 the current defect list or demand, the respondent shall renotice the  
32 party as provided by paragraph (2) of subdivision (e), provide a  
33 copy of the current defect list or demand, and direct the party to  
34 attend a dispute resolution session at a stated time and location. A  
35 party who subsequently appears after having been released by the  
36 dispute resolution facilitator shall not be prejudiced by its absence  
37 from the dispute resolution process as the result of having been  
38 previously released by the dispute resolution facilitator.

39 (n) Any party may, at any time, petition the superior court in  
40 the county where the project is located, upon a showing of good



1 cause, and the court may issue an order, for any of the following,  
2 or for appointment of a referee to resolve a dispute regarding any  
3 of the following:

4 (1) To take a deposition of any party to the process, or subpoena  
5 a third party for deposition or production of documents, which is  
6 necessary to further prelitigation resolution of the dispute.

7 (2) To resolve any disputes concerning inspection, testing,  
8 production of documents, or exchange of information provided  
9 for under this section.

10 (3) To resolve any disagreements relative to the timing or  
11 contents of the case management statement.

12 (4) To authorize internal extensions of timeframes set forth in  
13 the case management statement.

14 (5) To seek a determination that a settlement is a good faith  
15 settlement pursuant to Section 877.6 of the Code of Civil Procedure  
16 and all related authorities. The page limitations and meet and confer  
17 requirements specified in this section shall not apply to these  
18 motions, which may be made on shortened notice. Instead, these  
19 motions shall be subject to other applicable state law, rules of  
20 court, and local rules. A determination made by the court pursuant  
21 to this motion shall have the same force and effect as the  
22 determination of a postfiling application or motion for good faith  
23 settlement.

24 (6) To ensure compliance, on shortened notice, with the  
25 obligation to provide a Statement of Insurance pursuant to  
26 paragraph (2) of subdivision (e).

27 (7) For any other relief appropriate to the enforcement of the  
28 provisions of this section, including the ordering of parties, and  
29 insurers, if any, to the dispute resolution process with settlement  
30 authority.

31 (o) (1) A petition filed pursuant to subdivision (n) shall be filed  
32 in the superior court in the county in which the project is located.  
33 The court shall hear and decide the petition within 10 days after  
34 filing. The petitioning party shall serve the petition on all parties,  
35 including the date, time, and location of the hearing no later than  
36 five business days prior to the hearing. Any responsive papers  
37 shall be filed and served no later than three business days prior to  
38 the hearing. Any petition or response filed under this section shall  
39 be no more than three pages in length.



1 (2) All parties shall meet with the dispute resolution facilitator,  
2 if one has been appointed and confer in person or by telephone  
3 prior to the filing of that petition to attempt to resolve the matter  
4 without requiring court intervention.

5 (p) As used in this section:

6 (1) "Association" shall have the same meaning as defined in  
7 Section 4080.

8 (2) "Builder" means the declarant, as defined in Section 4130.

9 (3) "Common interest development" shall have the same  
10 meaning as in Section 4100, except that it shall not include  
11 developments or projects with less than 20 units.

12 (q) The alternative dispute resolution process and procedures  
13 described in this section shall have no application or legal effect  
14 other than as described in this section.

15 (r) This section shall become operative on July 1, 2002, however  
16 it shall not apply to any pending suit or claim for which notice has  
17 previously been given.

18 (s) *This section shall become inoperative on July 1, 2024, and,*  
19 *as of January 1, 2025, is repealed, unless a later enacted statute,*  
20 *that becomes operative on or before January 1, 2025, deletes or*  
21 *extends the dates on which it becomes inoperative and is repealed.*

O





Assembly Bill No. 1963

CHAPTER 71

An act to amend Section 6000 of the Civil Code, relating to common interest developments.

[Approved by Governor July 22, 2016. Filed with Secretary of State July 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1963, Calderon. Common interest developments: construction defects.

Existing law, the Davis-Stirling Common Interest Development Act, requires, until July 1, 2017, specified conditions to be met before an association may file a complaint for damages against a builder, developer, or general contractor of a common interest development based upon a claim for defects in the design or construction of the common interest development.

This bill would delete the inoperative and repeal dates and would, instead, make these provisions inoperative on July 1, 2024, and would repeal these provisions as of January 1, 2025, as specified.

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

SECTION 1. Section 6000 of the Civil Code is amended to read:

6000. (a) Before an association files a complaint for damages against a builder, developer, or general contractor (respondent) of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of this section shall be satisfied with respect to the builder, developer, or general contractor.

(b) The association shall serve upon the respondent a "Notice of Commencement of Legal Proceedings." The notice shall be served by certified mail to the registered agent of the respondent, or if there is no registered agent, then to any officer of the respondent. If there are no current officers of the respondent, service shall be upon the person or entity otherwise authorized by law to receive service of process. Service upon the general contractor shall be sufficient to initiate the process set forth in this section with regard to any builder or developer, if the builder or developer is not amenable to service of process by the foregoing methods. This notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity applicable to the claim for the period set forth in subdivision (c). The notice shall include all of the following:

- (1) The name and location of the project.

(2) An initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue.

(3) A description of the results of the defects, if known.

(4) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if a survey has been conducted or a questionnaire has been distributed.

(5) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted.

(c) Service of the notice shall commence a period, not to exceed 180 days, during which the association, the respondent, and all other participating parties shall try to resolve the dispute through the processes set forth in this section. This 180-day period may be extended for one additional period, not to exceed 180 days, only upon the mutual agreement of the association, the respondent, and any parties not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any extensions beyond the first extension shall require the agreement of all participating parties. Unless extended, the dispute resolution process prescribed by this section shall be deemed completed. All extensions shall continue the tolling period described in subdivision (b).

(d) Within 25 days of the date the association serves the Notice of Commencement of Legal Proceedings, the respondent may request in writing to meet and confer with the board. Unless the respondent and the association otherwise agree, there shall be not more than one meeting, which shall take place no later than 10 days from the date of the respondent's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (a) of Section 4925 and subdivisions (a) and (b) of Section 4935. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and the respondent consent in writing to their admission.

(e) Upon receipt of the notice, the respondent shall, within 60 days, comply with the following:

(1) The respondent shall provide the association with access to, for inspection and copying of, all plans and specifications, subcontracts, and other construction files for the project that are reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed. The association shall provide the respondent with access to, for inspection and copying of, all files reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed, including all reserve studies, maintenance records and any survey questionnaires, or results of testing to determine the nature and extent of defects. To the extent any of the above documents are withheld based on privilege, a privilege log shall be prepared and submitted to all other parties. All other potentially responsible parties shall have the same rights as the respondent regarding the production of documents upon receipt of written notice of the claim, and shall produce all relevant documents within 60 days of receipt of the notice of the claim.





(2) The respondent shall provide written notice by certified mail to all subcontractors, design professionals, their insurers, and the insurers of any additional insured whose identities are known to the respondent or readily ascertainable by review of the project files or other similar sources and whose potential responsibility appears on the face of the notice. This notice to subcontractors, design professionals, and insurers shall include a copy of the Notice of Commencement of Legal Proceedings, and shall specify the date and manner by which the parties shall meet and confer to select a dispute resolution facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its obligation to participate in the meet and confer or serve a written acknowledgment of receipt regarding this notice, advise the recipient that it will waive any challenge to selection of the dispute resolution facilitator if it elects not to participate in the meet and confer, advise the recipient that it may seek the assistance of an attorney, and advise the recipient that it should contact its insurer, if any. Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who receives written notice from the respondent regarding the meet and confer shall, prior to the meet and confer, serve on the respondent a written acknowledgment of receipt. That subcontractor or design professional shall, within 10 days of service of the written acknowledgment of receipt, provide to the association and the respondent a Statement of Insurance that includes both of the following:

(A) The names, addresses, and contact persons, if known, of all insurance carriers, whether primary or excess and regardless of whether a deductible or self-insured retention applies, whose policies were in effect from the commencement of construction of the subject project to the present and which potentially cover the subject claims.

(B) The applicable policy numbers for each policy of insurance provided.

(3) Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who so chooses, may, at any time, make a written request to the dispute resolution facilitator for designation as a peripheral party. That request shall be served contemporaneously on the association and the respondent. If no objection to that designation is received within 15 days, or upon rejection of that objection, the dispute resolution facilitator shall designate that subcontractor or design professional as a peripheral party, and shall thereafter seek to limit the attendance of that subcontractor or design professional only to those dispute resolution sessions deemed peripheral party sessions or to those sessions during which the dispute resolution facilitator believes settlement as to peripheral parties may be finalized. Nothing in this subdivision shall preclude a party who has been designated a peripheral party from being reclassified as a nonperipheral party, nor shall this subdivision preclude a party designated as a nonperipheral party from being reclassified as a peripheral party after notice to all parties and an opportunity to object. For purposes of this subdivision, a peripheral party is a party having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

(f) (1) Within 20 days of sending the notice set forth in paragraph (2) of subdivision (e), the association, respondent, subcontractors, design professionals, and their insurers who have been sent a notice as described in paragraph (2) of subdivision (e) shall meet and confer in an effort to select a dispute resolution facilitator to preside over the mandatory dispute resolution process prescribed by this section. Any subcontractor or design professional who has been given timely notice of this meeting but who does not participate, waives any challenge he or she may have as to the selection of the dispute resolution facilitator. The role of the dispute resolution facilitator is to attempt to resolve the conflict in a fair manner. The dispute resolution facilitator shall be sufficiently knowledgeable in the subject matter and be able to devote sufficient time to the case. The dispute resolution facilitator shall not be required to reside in or have an office in the county in which the project is located. The dispute resolution facilitator and the participating parties shall agree to a date, time, and location to hold a case management meeting of all parties and the dispute resolution facilitator, to discuss the claims being asserted and the scheduling of events under this section. The case management meeting with the dispute resolution facilitator shall be held within 100 days of service of the Notice of Commencement of Legal Proceedings at a location in the county where the project is located. Written notice of the case management meeting with the dispute resolution facilitator shall be sent by the respondent to the association, subcontractors and design professionals, and their insurers who are known to the respondent to be on notice of the claim, no later than 10 days prior to the case management meeting, and shall specify its date, time, and location. The dispute resolution facilitator in consultation with the respondent shall maintain a contact list of the participating parties.

(2) No later than 10 days prior to the case management meeting, the dispute resolution facilitator shall disclose to the parties all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed dispute resolution facilitator would be able to resolve the conflict in a fair manner. The facilitator's disclosure shall include the existence of any ground specified in Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any attorney-client relationship the facilitator has or had with any party or lawyer for a party to the dispute resolution process, and any professional or significant personal relationship the facilitator or his or her spouse or minor child living in the household has or had with any party to the dispute resolution process. The disclosure shall also be provided to any subsequently noticed subcontractor or design professional within 10 days of the notice.

(3) A dispute resolution facilitator shall be disqualified by the court if he or she fails to comply with this subdivision and any party to the dispute resolution process serves a notice of disqualification prior to the case management meeting. If the dispute resolution facilitator complies with this subdivision, he or she shall be disqualified by the court on the basis of the disclosure if any party to the dispute resolution process serves a notice of disqualification prior to the case management meeting.

(4) If the parties cannot mutually agree to a dispute resolution facilitator, then each party shall submit a list of three dispute resolution facilitators. Each party may then strike one nominee from the other parties' list, and petition the court, pursuant to the procedure described in subdivisions (n) and (o), for final selection of the dispute resolution facilitator. The court may issue an order for final selection of the dispute resolution facilitator pursuant to this paragraph.

(5) Any subcontractor or design professional who receives notice of the association's claim without having previously received timely notice of the meet and confer to select the dispute resolution facilitator shall be notified by the respondent regarding the name, address, and telephone number of the dispute resolution facilitator. Any such subcontractor or design professional may serve upon the parties and the dispute resolution facilitator a written objection to the dispute resolution facilitator within 15 days of receiving notice of the claim. Within seven days after service of this objection, the subcontractor or design professional may petition the superior court to replace the dispute resolution facilitator. The court may replace the dispute resolution facilitator only upon a showing of good cause, liberally construed. Failure to satisfy the deadlines set forth in this subdivision shall constitute a waiver of the right to challenge the dispute resolution facilitator.

(6) The costs of the dispute resolution facilitator shall be apportioned in the following manner: one-third to be paid by the association; one-third to be paid by the respondent; and one-third to be paid by the subcontractors and design professionals, as allocated among them by the dispute resolution facilitator. The costs of the dispute resolution facilitator shall be recoverable by the prevailing party in any subsequent litigation pursuant to Section 1032 of the Code of Civil Procedure, provided however that any nonsettling party may, prior to the filing of the complaint, petition the facilitator to reallocate the costs of the dispute resolution facilitator as they apply to any nonsettling party. The determination of the dispute resolution facilitator with respect to the allocation of these costs shall be binding in any subsequent litigation. The dispute resolution facilitator shall take into account all relevant factors and equities between all parties in the dispute resolution process when reallocating costs.

(7) In the event the dispute resolution facilitator is replaced at any time, the case management statement created pursuant to subdivision (h) shall remain in full force and effect.

(8) The dispute resolution facilitator shall be empowered to enforce all provisions of this section.

(g) (1) No later than the case management meeting, the parties shall begin to generate a data compilation showing the following information regarding the alleged defects at issue:

(A) The scope of the work performed by each potentially responsible subcontractor.

(B) The tract or phase number in which each subcontractor provided goods or services, or both.



(C) The units, either by address, unit number, or lot number, at which each subcontractor provided goods or services, or both.

(2) This data compilation shall be updated as needed to reflect additional information. Each party attending the case management meeting, and any subsequent meeting pursuant to this section, shall provide all information available to that party relevant to this data compilation.

(h) At the case management meeting, the parties shall, with the assistance of the dispute resolution facilitator, reach agreement on a case management statement, which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive, except that the parties may dispense with one or more of these elements if they agree that it is appropriate to do so. The case management statement shall provide that the following elements shall take place in the following order:

(1) Establishment of a document depository, located in the county where the project is located, for deposit of documents, defect lists, demands, and other information provided for under this section. All documents exchanged by the parties and all documents created pursuant to this subdivision shall be deposited in the document depository, which shall be available to all parties throughout the pre-filing dispute resolution process and in any subsequent litigation. When any document is deposited in the document depository, the party depositing the document shall provide written notice identifying the document to all other parties. The costs of maintaining the document depository shall be apportioned among the parties in the same manner as the costs of the dispute resolution facilitator.

(2) Provision of a more detailed list of defects by the association to the respondent after the association completes a visual inspection of the project. This list of defects shall provide sufficient detail for the respondent to ensure that all potentially responsible subcontractors and design professionals are provided with notice of the dispute resolution process. If not already completed prior to the case management meeting, the Notice of Commencement of Legal Proceedings shall be served by the respondent on all additional subcontractors and design professionals whose potential responsibility appears on the face of the more detailed list of defects within seven days of receipt of the more detailed list. The respondent shall serve a copy of the case management statement, including the name, address, and telephone number of the dispute resolution facilitator, to all the potentially responsible subcontractors and design professionals at the same time.

(3) Nonintrusive visual inspection of the project by the respondent, subcontractors, and design professionals.

(4) Invasive testing conducted by the association, if the association deems appropriate. All parties may observe and photograph any testing conducted by the association pursuant to this paragraph, but may not take samples or direct testing unless, by mutual agreement, costs of testing are shared by the parties.

(5) Provision by the association of a comprehensive demand which provides sufficient detail for the parties to engage in meaningful dispute resolution as contemplated under this section.

(6) Invasive testing conducted by the respondent, subcontractors, and design professionals, if they deem appropriate.

(7) Allowance for modification of the demand by the association if new issues arise during the testing conducted by the respondent, subcontractor, or design professionals.

(8) Facilitated dispute resolution of the claim, with all parties, including peripheral parties, as appropriate, and insurers, if any, present and having settlement authority. The dispute resolution facilitators shall endeavor to set specific times for the attendance of specific parties at dispute resolution sessions. If the dispute resolution facilitator does not set specific times for the attendance of parties at dispute resolution sessions, the dispute resolution facilitator shall permit those parties to participate in dispute resolution sessions by telephone.

(i) In addition to the foregoing elements of the case management statement described in subdivision (h), upon mutual agreement of the parties, the dispute resolution facilitator may include any or all of the following elements in a case management statement: the exchange of consultant or expert photographs; expert presentations; expert meetings; or any other mechanism deemed appropriate by the parties in the interest of resolving the dispute.

(j) The dispute resolution facilitator, with the guidance of the parties, shall at the time the case management statement is established, set deadlines for the occurrence of each event set forth in the case management statement, taking into account such factors as the size and complexity of the case, and the requirement of this section that this dispute resolution process not exceed 180 days absent agreement of the parties to an extension of time.

(k) (1) At a time to be determined by the dispute resolution facilitator, the respondent may submit to the association all of the following:

(A) A request to meet with the board to discuss a written settlement offer.

(B) A written settlement offer, and a concise explanation of the reasons for the terms of the offer.

(C) A statement that the respondent has access to sufficient funds to satisfy the conditions of the settlement offer.

(D) A summary of the results of testing conducted for the purposes of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the respondent with actual test results.

(2) If the respondent does not timely submit the items required by this subdivision, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision only.

(3) No less than 10 days after the respondent submits the items required by this paragraph, the respondent and the board shall meet and confer about the respondent's settlement offer.

(4) If the board rejects a settlement offer presented at the meeting held pursuant to this subdivision, the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days



before the association commences an action for damages against the respondent.

(5) No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

(A) That a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting.

(B) The options that are available to address the problems, including the filing of a civil action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases.

(C) The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the board at the meeting held pursuant to subdivision (d) that was received from the respondent.

(6) The respondent shall pay all expenses attributable to sending the settlement offer to all members of the association. The respondent shall also pay the expense of holding the meeting, not to exceed three dollars (\$3) per association member.

(7) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to paragraph (5) are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(8) No more than one request to meet and discuss a written settlement offer may be made by the respondent pursuant to this subdivision.

(l) All defect lists and demands, communications, negotiations, and settlement offers made in the course of the prelitigation dispute resolution process provided by this section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive, of the Evidence Code and all applicable decisional law. This inadmissibility shall not be extended to any other documents or communications which would not otherwise be deemed inadmissible.

(m) Any subcontractor or design professional may, at any time, petition the dispute resolution facilitator to release that party from the dispute resolution process upon a showing that the subcontractor or design professional is not potentially responsible for the defect claims at issue. The petition shall be served contemporaneously on all other parties, who shall have 15 days from the date of service to object. If a subcontractor or design professional is released, and it later appears to the dispute resolution facilitator that it may be a responsible party in light of the current defect list or demand, the respondent shall renounce the party as provided by paragraph (2) of subdivision (e), provide a copy of the current defect list or demand, and direct the party to attend a dispute resolution session at a stated time and location. A party who subsequently appears after having been released by the dispute resolution facilitator shall not be prejudiced by its absence from the dispute resolution process as the result of having been previously released by the dispute resolution facilitator.

(n) Any party may, at any time, petition the superior court in the county where the project is located, upon a showing of good cause, and the court may issue an order, for any of the following, or for appointment of a referee to resolve a dispute regarding any of the following:

(1) To take a deposition of any party to the process, or subpoena a third party for deposition or production of documents, which is necessary to further prelitigation resolution of the dispute.

(2) To resolve any disputes concerning inspection, testing, production of documents, or exchange of information provided for under this section.

(3) To resolve any disagreements relative to the timing or contents of the case management statement.

(4) To authorize internal extensions of timeframes set forth in the case management statement.

(5) To seek a determination that a settlement is a good faith settlement pursuant to Section 877.6 of the Code of Civil Procedure and all related authorities. The page limitations and meet and confer requirements specified in this section shall not apply to these motions, which may be made on shortened notice. Instead, these motions shall be subject to other applicable state law, rules of court, and local rules. A determination made by the court pursuant to this motion shall have the same force and effect as the determination of a postfiling application or motion for good faith settlement.

(6) To ensure compliance, on shortened notice, with the obligation to provide a Statement of Insurance pursuant to paragraph (2) of subdivision (e).

(7) For any other relief appropriate to the enforcement of the provisions of this section, including the ordering of parties, and insurers, if any, to the dispute resolution process with settlement authority.

(o) (1) A petition filed pursuant to subdivision (n) shall be filed in the superior court in the county in which the project is located. The court shall hear and decide the petition within 10 days after filing. The petitioning party shall serve the petition on all parties, including the date, time, and location of the hearing no later than five business days prior to the hearing. Any responsive papers shall be filed and served no later than three business days prior to the hearing. Any petition or response filed under this section shall be no more than three pages in length.

(2) All parties shall meet with the dispute resolution facilitator, if one has been appointed and confer in person or by telephone prior to the filing of that petition to attempt to resolve the matter without requiring court intervention.

(p) As used in this section:

(1) "Association" shall have the same meaning as defined in Section 4080.

(2) "Builder" means the declarant, as defined in Section 4130.

(3) "Common interest development" shall have the same meaning as in Section 4100, except that it shall not include developments or projects with less than 20 units.

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(q) The alternative dispute resolution process and procedures described in this section shall have no application or legal effect other than as described in this section.

(r) This section shall become operative on July 1, 2002, however it shall not apply to any pending suit or claim for which notice has previously been given.

(s) This section shall become inoperative on July 1, 2024, and, as of January 1, 2025, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2025, deletes or extends the dates on which it becomes inoperative and is repealed.

O



No. 3

CALIFORNIA LEGISLATURE

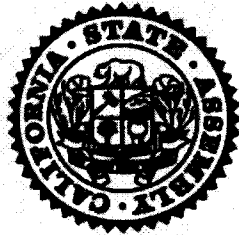
AT SACRAMENTO

2015-16 REGULAR SESSION

# ASSEMBLY WEEKLY HISTORY

COMMENCING WITH AB 1 AND ENDING WITH AB 2915

THURSDAY, AUGUST 4, 2016



HON. ANTHONY RENDON  
*Speaker*

HON. KEVIN MULLIN  
*Speaker pro Tempore*

HON. IAN C. CALDERON  
*Majority Floor Leader*

HON. AUTUMN R. BURKE  
*Assistant Speaker pro Tempore*

HON. CHAD MAYES  
*Minority Floor Leader*

Assembly Convened December 1, 2014

*Compiled Under the Direction of*  
E. DOTSON WILSON  
*Chief Clerk*

JACQUELYN DELIGHT  
*History Clerk*

KATHLEEN LEWIS  
*Assistant History Clerk*

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**A.B. No. 1962—Dodd.**

An act to amend Section 1369 of the Penal Code, relating to criminal procedure.

**2016**

- Feb. 12—Read first time. To print.  
 Feb. 16—From printer. May be heard in committee March 17.  
 Feb. 25—Referred to Com. on PUB. S.  
 Mar. 29—In committee: Set, first hearing. Hearing canceled at the request of author.  
 Mar. 30—From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.  
 Mar. 31—Re-referred to Com. on PUB. S.  
 Apr. 5—From committee: Do pass and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 7. Noes 0.) (April 5). Re-referred to Com. on APPR.  
 Apr. 13—From committee: Do pass. To Consent Calendar. (Ayes 20. Noes 0.) (April 13).  
 Apr. 14—Read second time. Ordered to Consent Calendar.  
 Apr. 21—Read third time. Passed. Ordered to the Senate. (Ayes 79. Noes 0. Page 4463.)  
 Apr. 21—In Senate. Read first time. To Com. on RLS. for assignment.  
 May 5—Referred to Com. on PUB. S.  
 Jun. 6—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on PUB. S.  
 Jun. 22—From committee: Do pass and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 7. Noes 0.) (June 21). Re-referred to Com. on APPR.  
 Aug. 1—In committee: Referred to APPR. suspense file.

**A.B. No. 1963—Calderon.**

An act to amend Section 6000 of the Civil Code, relating to common interest developments.

**2016**

- Feb. 12—Read first time. To print.  
 Feb. 16—From printer. May be heard in committee March 17.  
 Feb. 25—Referred to Com. on JUD.  
 Mar. 31—From committee: Amend, and do pass as amended. To Consent Calendar. (Ayes 10. Noes 0.) (March 29).  
 Apr. 4—Read second time and amended. Ordered returned to second reading.  
 Apr. 5—Read second time. Ordered to Consent Calendar.  
 Apr. 7—Read third time. Passed. Ordered to the Senate. (Ayes 77. Noes 0. Page 4231.)  
 Apr. 7—In Senate. Read first time. To Com. on RLS. for assignment.  
 Apr. 28—Referred to Com. on JUD.  
 Jun. 15—From committee: Do pass. To Consent Calendar. (Ayes 7. Noes 0.) (June 14).  
 Jun. 16—Read second time. Ordered to Consent Calendar.  
 Jun. 30—Read third time. Passed. Ordered to the Assembly. (Ayes 37. Noes 0. Page 4646.)  
 Jun. 30—In Assembly. Ordered to Engrossing and Enrolling.  
 Jul. 11—Enrolled and presented to the Governor at 4:30 p.m.  
 Jul. 22—Approved by the Governor.  
 Jul. 22—Chaptered by Secretary of State – Chapter 71, Statutes of 2016.



Date of Hearing: March 29, 2016

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 1963 (Calderon) – As Introduced February 12, 2016

PROPOSED CONSENT (As Proposed to be Amended)

**SUBJECT:** COMMON INTEREST DEVELOPMENTS: CONSTRUCTION DEFECTS

**KEY ISSUE:** SHOULD THE SUNSET DATE FOR PROVISIONS ESTABLISHING A PRE-LITIGATION PROCESS IN CONSTRUCTION DEFECT CASES INVOLVING COMMON INTEREST DEVELOPMENTS BE EXTENDED FOR AN ADDITIONAL SEVEN YEARS?

**SYNOPSIS**

*Before a homeowner's association may file a complaint for damages against a builder, developer, or general contractor of a common interest development based upon a claim for defects in the design or construction of the development, the association must first engage in the extensive pre-litigation process specified by Civil Code Section 6000, under the Davis-Stirling Act. This process was initially established by the Legislature in 1995, and since then has been revised and reauthorized twice before for seven-year trial periods, the last one of which ends on July 1, 2017. As proposed to be amended, this bill seeks to extend the existing sunset date by seven years, until July 1, 2024, and retain existing law authorizing this pre-litigation process. According to the legislative history of this pre-litigation process (aka "the Calderon process"), was the product of extensive negotiations involving many stakeholders, including the California Building Industry Association (the sponsor of this bill), the Consumer Attorneys of California, and homeowners' associations. When contacted by the Committee, these stakeholders reported varying degrees of satisfaction with the process, including some comments that the process needs further examination or clarification in order to be effective. However, no group or organization expressed opposition to extending the sunset date an additional seven years, as proposed to be amended in this Committee. The bill is supported by the California Building Industry Association and the California Professional Association of Specialty Contractors, and has no registered opposition.*

**SUMMARY:** Retains existing law, Civil Code Section 6000, establishing special pre-litigation procedures in construction defect disputes involving common interest developments. Specifically, **this bill** extends the existing sunset date for seven years, until July 1, 2024, for Civil Code Section 6000, and repeals these provisions as of January 1, 2025, unless a later enacted statute becomes operative on or before that date.

**EXISTING LAW:**

- 1) Requires, until July 1, 2017, that the parties in a construction defect dispute involving a common interest development follow a specified pre-litigation process ("Section 6000 process"), including mandatory mediation, before a plaintiff homeowner association may file a complaint for damages against the builder and others based upon a claim for defects in the design or construction of the development. Among other things, the Section 6000 process:

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- a) Requires the association to provide the builder, developer, or general contractor (respondent) with a written "Notice of Commencement of Legal Proceedings" which includes certain information regarding defects in the development. This notice tolls the statute of limitations on all construction defect claims for all potentially responsible parties for 180 days, which can be extended by another 180 days with the consent of all the parties. (Civil Code Section 6000 (b). Further references are to this code, unless otherwise stated.)
  - b) Provides that within 25 days of the notice, the respondent may request to meet with the association's board of directors within 10 days. (Section 6000 (d).)
  - c) Requires, within 60 days of the notice, that the association and the respondent exchange certain information regarding defects, and that the respondent provide written notice to all subcontractors, design professionals, and insurers known or reasonably ascertainable to the respondent whose potential responsibility appears on the face of the notice. (Section 6000 (e).)
  - d) Requires, within 20 days of the above notice to subcontractors, that the association, respondent, and all noticed parties meet to select a special mediator to handle the dispute resolution, and establishes procedures to apply to the court to select the mediator if the parties cannot reach agreement. (Section 6000 (f)(1).)
  - e) Provides that the costs of the mediator be apportioned equally between the association, the respondent, and any subcontractors, with cost allocations among the subcontractors made by the mediator. (Section 6000 (f)(6).)
  - f) Establishes procedures to be followed during the mediation process for the collection and sharing of relevant information between the parties necessary to facilitate the mediation, requires preparation of a case management statement, and allows the mediator considerable discretion to set timelines and requirements for the mediation process. (Section 6000, subd. (h) to (j).)
  - g) Permits the parties to petition the court, upon a showing of good cause, to issue an order or appoint a referee to resolve disputes involving various aspects of the mediation process, including, among other things, whether a deposition of any party should be taken, to resolve any dispute over inspection, testing or production of documents, and whether a settlement offer is in good faith. (Section 6000 (n).)
  - h) Sunsets on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed. (Section 6000 (s).)
- 2) Establishes a comprehensive procedural scheme for handling construction defect litigation generally (whether or not a common interest development is involved), as established by SB 800 (Burton), Ch. 770, Stats. 2012 (hereafter "SB 800 process"). Under the SB 800 process:
    - a) Construction defects are defined to ensure specified performance standards. (Section 896.)



- b) Homeowners must follow a specified procedure before bringing suit against a builder, including providing written notice to the builder regarding alleged violations. (Section 910.)
- c) Builders are guaranteed an absolute right to repair alleged defects before a claimant may sue. (Sections 917 to 919.)
- d) Homeowners retain the right to sue and pursue remedies if the repair is not made or is inadequate. (Sections 941 to 945.5.)

**FISCAL EFFECT:** As currently in print this bill is keyed non-fiscal.

**COMMENTS:** Before a homeowners' association may file a complaint for damages against a builder, developer, or general contractor of a common interest development (CID) based upon a claim for defects in the design or construction of the development, the association must first engage in the extensive pre-litigation process specified by Civil Code Section 6000, part of the Davis-Stirling Act. Pursuant to Section 6000, the association must, among other things: (1) file a notice regarding the commencement of legal proceedings; (2) engage in a meet and confer process to exchange documents relevant to the defects claimed and to select a mediator; (3) prepare a case management statement; and (4) participate in a mandatory mediation process to seek resolution of the dispute, as provided.

**Legislative history and background of these provisions.** This pre-litigation dispute resolution process now contained in Section 6000 was initially established by AB 1029 (Charles Calderon) in 1995, and was later revised and expanded by AB 267 (Steinberg) and AB 1700 (Steinberg) in 2001, at which time it was also reauthorized until 2010. It should also be noted, however, that in 2002, after a year of negotiations between many of the same stakeholders, the Legislature approved and the Governor signed SB 800 ((Burton and Wesson), Ch. 722, Stats. 2002), a historic piece of legislation that established significant reforms in the area of construction defect litigation generally, including cases not involving community interest developments. The requirements enacted by SB 800, including pre-litigation notice of alleged violations and a builder's right to repair alleged defects before a claimant may sue, were not subject to any sunset date and remain current law that applies in CID-related cases, on top of the so-called "Calderon process" provisions under Section 6000.

In 2009, the Legislature approved and the Governor signed AB 927 (Charles Calderon) which again reauthorized the Section 6000 provisions, this time until July 1, 2017. As proposed to be amended, this bill would extend the sunset date for an additional seven years, retaining existing law in this area until July 1, 2024.

According to the legislative history of this pre-litigation process, the statute was the product of extensive negotiations involving many stakeholders, including the California Building Industry Association, the Consumer Attorneys of California, and homeowners' associations, among others. (Senate Judiciary Committee analysis of AB 267; August 28, 2001.) When this Committee revisited the question of whether to reauthorize the process in 2009, it found that "by all accounts, existing law appears to be working adequately." (Assembly Judiciary Committee analysis of AB 927; April 14, 2009.)

**Evaluation of the existing Calderon process.** According to the California Building Industry Association (CBIA), the sponsor of this bill and the original sponsor of AB 1029 (1995), the pre-

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litigation process "encourages disputes about construction defects in common interest developments to be settled or sent to alternative dispute resolution before a lawsuit is filed . . . (and) allows parties to discuss the claim while still preserving legal recourse. In the twenty years since its establishment, the process has worked well to avoid costly, time consuming litigation."

When contacted by the Committee, representatives of the Community Associations Institute, representing homeowners' associations, reported that they were unaware of any major problems with the law experienced by their members, and adopted a neutral position on the bill.

While not opposing the extension of the sunset date for another seven years, the Consumer Attorneys of California (CAOC) stated that they believe the Calderon process needs further examination or clarification because their members report that it is rarely used, overlaps with the SB 800 process (described above), and often creates additional delay for homeowners who need to get their homes repaired. CAOC expressed willingness to work with the sponsors as the bill moves forward to address these problems, and remains neutral on the bill as proposed to be amended.

*Author's proposed amendment to extend the sunset date until July 1, 2024.* As proposed to be amended, this bill simply seeks to extend the 2017 sunset date for these provisions for an additional seven years, until July 1 2024. The amendment is:

On page 13, line 25, insert:

(s) This section shall become inoperative on July 1, 2024, and, as of January 1, 2025, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2025, deletes or extends the dates on which it becomes inoperative and is repealed.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Building Industry Association (CBIA) (sponsor)  
California Professional Association of Specialty Contractors

**Opposition**

None on file

Analysis Prepared by: Anthony Lew / JUD. / (916) 319-2334

LEGISLATIVE INTENT SERVICE (800) 665-1917



Date of Hearing: March 29, 2016

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 1963 (Calderon) – As Introduced February 12, 2016  
PROPOSED CONSENT (As Proposed to be Amended)

**SUBJECT: COMMON INTEREST DEVELOPMENTS: CONSTRUCTION DEFECTS**

**KEY ISSUE: SHOULD THE SUNSET DATE FOR PROVISIONS ESTABLISHING A PRE-LITIGATION PROCESS IN CONSTRUCTION DEFECT CASES INVOLVING COMMON INTEREST DEVELOPMENTS BE EXTENDED FOR AN ADDITIONAL SEVEN YEARS?**

**SYNOPSIS**

*Before a homeowner's association may file a complaint for damages against a builder, developer, or general contractor of a common interest development based upon a claim for defects in the design or construction of the development, the association must first engage in the extensive pre-litigation process specified by Civil Code Section 6000, under the Davis-Stirling Act. This process was initially established by the Legislature in 1995, and since then has been revised and reauthorized twice before for seven-year trial periods, the last one of which ends on July 1, 2017. As proposed to be amended, this bill seeks to extend the existing sunset date by seven years, until July 1, 2024, and retain existing law authorizing this pre-litigation process. According to the legislative history of this pre-litigation process (aka "the Calderon process"), was the product of extensive negotiations involving many stakeholders, including the California Building Industry Association (the sponsor of this bill), the Consumer Attorneys of California, and homeowners' associations. When contacted by the Committee, these stakeholders reported varying degrees of satisfaction with the process, including some comments that the process needs further examination or clarification in order to be effective. However, no group or organization expressed opposition to extending the sunset date an additional seven years, as proposed to be amended in this Committee. The bill is supported by the California Building Industry Association and the California Professional Association of Specialty Contractors, and has no registered opposition.*

**SUMMARY:** Retains existing law, Civil Code Section 6000, establishing special pre-litigation procedures in construction defect disputes involving common interest developments. Specifically, **this bill** extends the existing sunset date for seven years, until July 1, 2024, for Civil Code Section 6000, and repeals these provisions as of January 1, 2025, unless a later enacted statute becomes operative on or before that date.

**EXISTING LAW:**

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**Evaluation of the existing Calderon process.** According to the California Building Industry Association (CBIA), the sponsor of this bill and the original sponsor of AB 1029 (1995), the pre-



litigation process "encourages disputes about construction defects in common interest developments to be settled or sent to alternative dispute resolution before a lawsuit is filed . . . (and) allows parties to discuss the claim while still preserving legal recourse. In the twenty years since its establishment, the process has worked well to avoid costly, time consuming litigation."

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On page 13, line 25, insert:

(s) This section shall become inoperative on July 1, 2024, and, as of January 1, 2025, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2025, deletes or extends the dates on which it becomes inoperative and is repealed.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Building Industry Association (CBIA) (sponsor)  
California Professional Association of Specialty Contractors

**Opposition**

None on file

**Analysis Prepared by:** Anthony Lew / JUD. / (916) 319-2334

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California Professional Association of Specialty Contractors

March 24, 2019

Assembly Member Mark Stone(Chair) and Members of the Assembly Committee on Judiciary  
Legislative Office Building  
1020 N St., Room 104  
Sacramento, CA 95814

RE: **AB 1963(Calderon)-SUPPORT**

Dear Chair Stone and Members of the Assembly Committee on Judiciary,

CALPASC is a non profit trade association of specialty contractors and suppliers, operating throughout California. Our members operate in most segments of construction.

**CALPASC Supports AB 1963(Calderon), Common Interest Developments: construction defects.**

CALPASC members have been involved in construction defect claims over many years. When these claims go immediately to lawsuit, everyone except the attorneys gets shortchanged. Homeowner claimants wait long periods of time for resolution, and have substantial amounts of any settlement amounts given to the plaintiff attorney. Subcontractors are often named in the litigation, and it can be a lengthy period of time before it becomes clear whether their work was defective or not. In the meantime, they have spent substantial amounts of money in defense fees and costs, even if they are found not negligent. Prelitigation procedures such as the Davis-Stirling Common Interest Development Act, save homeowners and subcontractors substantial amounts of money and time. Repairs are made expeditiously for legitimate defective issues, and the subcontractors involved have unnecessary expense fees and costs greatly reduced. This Act should be allowed to continue to be operative in California.

For these reasons, CALPASC respectfully **SUPPORTS AB 1963(Calderon)**.

Sincerely,

Bruce Wick  
Director of Risk Management  
1150 Brookside Avenue, Suite Q.  
Redlands, CA 92373  
909-793-9932  
[bwick@calpasc.org](mailto:bwick@calpasc.org)

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California Building Industry Association

1216 K Street  
Suite 1200  
Sacramento, CA 95814  
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www.cbia.org

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Building Industry Association of Fresno/Madera Counties

Building Industry Association of the Greater Valley

Building Industry Association of San Diego County

Building Industry Association of Southern California

Home Builders Association of Central Coast

Home Builders Association of Kern County

Home Builders Association of Tulare & Kings Counties

North State Building Industry Association

March 9, 2016

Honorable Mark Stone  
Chair, Assembly Judiciary Committee  
State Capitol, Room 5155  
Sacramento, CA 95814

**RE: AB 1963 (Calderon) – Sponsor**

Dear Chairman Stone:

The California Building Industry Association (CBIA) is pleased to sponsor AB 1963 (Calderon), a bill that would delete the sunset provisions for a pre-litigation process that encourages disputes about construction defects in common interest developments to be settled or sent to alternative dispute resolution before a lawsuit is filed.

This pre-litigation process was established by SB 1029 (Calderon) in 1995. In 2001, AB 1700 (Steinberg) made minor changes to the process and added a "sunset" date of July 1, 2010. In 2009, then-Assemblyman Chuck Calderon carried AB 927 which extended that sunset date to July 1, 2017.

The process allows parties to discuss the claim while still preserving legal recourse. In the twenty years since its establishment, the process has worked well to avoid costly, time consuming litigation. AB 1963 simply eliminates the sunset provision on this process.

We respectfully request your support of AB 1963 (Calderon).

Sincerely,

Erin M. Guerrero  
Vice President of Legislative Affairs

cc: Honorable Don Wagner, Vice-Chair, Assembly Judiciary Committee  
Honorable Members, Assembly Judiciary Committee  
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee  
Paul Dress, Republican Caucus Office of Policy

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414 Amend clare

REPORTS OF STANDING COMMITTEES  
Committee on Judiciary

¶ [t8] Date of Hearing: March 29, 2016 (\_fr)

¶ Mr. Speaker: Your Committee on Judiciary reports:

¶ AB 1963 (10-0)

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(f) With the recommendation: Amend, and do pass as amended.

¶ Pursuant to the provisions of Joint Rules Nos. 22.1, 22.2, and 22.3, the committee recommends that the above bill be placed on the Consent Calendar.

\_\_\_\_\_, Chair (\_fr)

MARK STONE

¶ Above bills ordered to second reading.

CODE: 14

AP - 7

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03/30/16 02:27 PM  
RN 16 10691 PAGE 1  
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 1963

Amendment 1

On page 11, in line 16, strike out "subparagraph (E)" and insert:  
paragraph (5)

Amendment 2

On page 13, below line 24, insert:

(s) This section shall become inoperative on July 1, 2024, and, as of January 1, 2025, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2025, deletes or extends the dates on which it becomes inoperative and is repealed.

- 0 -

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03/30/16 02:27 PM

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**ASSEMBLY JUDICIARY COMMITTEE**  
**MANDATORY INFORMATION WORKSHEET**

**\*\*\*\*\*IMPORTANT NOTE\*\*\*\*\***

**THIS FORM MUST BE FULLY COMPLETED AND HAND-DELIVERED TO THE COMMITTEE NO LATER THAN SEVEN (7) CALENDAR DAYS AFTER IT IS INITIALLY DELIVERED TO THE AUTHOR'S OFFICE. IF THE BILL HAS BEEN SET FOR HEARING, IT SHALL CONSTITUTE AN AUTHOR'S RESET IF A SATISFACTORY WORKSHEET OR OTHER REQUESTED INFORMATION HAS NOT BEEN TIMELY RECEIVED BY THE COMMITTEE.**

**ALL SUBSTANTIVE AUTHOR'S AMENDMENTS MUST BE HAND-DELIVERED TO THE COMMITTEE IN LEGISLATIVE COUNSEL FORM (ORIGINAL AND EIGHT COPIES) WITHIN SEVEN (7) BUSINESS DAYS PRIOR TO THE HEARING. FAILURE TO DO SO MAY RESULT IN AN AUTHOR'S RESET.**

**THE COMMITTEE RECORDS THE DATE THIS WORKSHEET IS DELIVERED, THE DATE IT IS RETURNED, AND THE DATE THE COMMITTEE RECEIVES AMENDMENTS.**

***PLEASE RETURN COMPLETED WORKSHEETS TO THE COMMITTEE BY EMAIL TO [Alexandria.SmithDavis@asm.ca.gov](mailto:Alexandria.SmithDavis@asm.ca.gov). PLEASE ALSO HAND-DELIVER TWO (2) COPIES OF THIS WORKSHEET AND ANY SUPPORTING DOCUMENTS TO THE COMMITTEE.***

**ASSEMBLY JUDICIARY COMMITTEE, 1020 N Street (LOB), Room 104**

**Bill Number: AB 1963**

**Author: Asm. Calderon**

**Author's staff person: ~~Kelsy Castillo~~**

**phone: 916-319-2057**

**e-mail: [Kelsy.Castillo@asm.ca.gov](mailto:Kelsy.Castillo@asm.ca.gov)**

1. What do you see as the key issue(s) raised by the bill.  
**The key issue is simply whether or not to eliminate the sunset provision on a pre-litigation process for construction defect issues within common interest developments.**
  
2. Please provide a statement of the author's purpose for the bill, which may be used in the Committee's analysis, including *in detail* the problem or deficiency in the current law that the bill seeks to remedy, and how the bill resolves the problem.

**In 1995, the Legislature approved a measure (SB 1029, Calderon) creating a pre-litigation process to encourage disputes about construction defects in common interest developments to be settled or sent to alternative dispute resolution before a lawsuit is filed. That process has been in place for twenty years and has worked well to avoid costly, time consuming litigation. The process allows parties to discuss the claim while still preserving legal recourse. AB 1963 simply eliminates the sunset provision on this process.**

**Other Background:**

**AB 1700 (Steinberg, 2001) was the Judiciary Committee omnibus bill. It made changes to the Calderon process and added a sunset date.**

**AB 927 (Calderon, 2009) extended the sunset added by AB 1700 and was passed through the Legislature.**

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3. Who is the sponsor of the bill? If there is no sponsor, what person or entity requested that the bill be introduced? Please provide the name and telephone number of any sponsor or other person who may be contacted by the Committee for information regarding the bill.

**California Building Industry Association  
Erin Guerrero  
916-340-3302**

4. Please show the results of an LIS search regarding each similar and/or related bill (for example, same key words and/or code section) that has been introduced in this legislative session, or in any prior legislative session covered by the LIS system. (When using the Text Search function in LIS, be sure to check the "All Bill Versions" button in the Include column.) Please include the bill number and year, a summary of the bill's contents, and the disposition of each bill.

- **AB 805 (Torres), 2012-** This bill comprehensively reorganized and re-codified the Davis-Stirling Act, which establishes the rules and regulations governing the operation of a common interest development and the respective rights and duties of a homeowners association and its members. This bill was chaptered in 2012.

5. Please identify and summarize all similar or related pending federal legislation (see <http://thomas.loc.gov/home/thomas2.html>) and any bills or existing laws you are aware of in other states.

**We are unaware of any similar federal legislation as common interest developments were created by the Davis-Stirling Act in California statute. We are unaware of any similar laws in other states.**

6. Please summarize and show the results (by citation) of a computer search regarding all existing California statutes (<http://www.leginfo.ca.gov/calaw.html>) and all existing federal statutes (<http://www4.law.cornell.edu/uscode/>) relevant to this bill. Please also indicate any relevant court decisions.

**EXISTING CALIFORNIA STATUTES**

- **Division 4, Part 5 [Sec. 4000-6150] of the Civil Code, is known as the Davis-Stirling Act (1985), establishing common interest developments in statute.**
- **Civil Code Sec. 6000-6150 inclusive deals with construction defect litigation regarding common interest developments.**

**SEARCH ENTRIES: "common interest development" and "litigation"**

Code Search    Text Search

Sections Returned: 2    Sections Displayed: 1 / 2    Page 1 of 1 pages

Go To Page: 1    [Go]

CA: 6000-6150 - Civil Code - Defect Litigation [6000 - 6150]

... contractor (respondent) of a **common interest development** based upon a claim for defects in the design or construction of the **common interest development**, all of the requirements of this section shall...

CA: 6000-6150 - Civil Code - Defect Litigation [6000 - 6150]

... contractor (respondent) of a **common interest development** based upon a claim for defects in the design or construction of the **common interest development**, all of the requirements of this section shall...

**EXISTING FEDERAL STATUTES: Search terms came up with no results.**

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**RELEVANT COURT DECISIONS: None.**

7. Are the issues addressed by the bill the subject of pending litigation? If yes, please indicate the status of the pending litigation and how the bill would affect the pending litigation. Please also provide the case citation and any relevant documents.

**No.**

8. Have there been any informational hearings on the subject matter of the bill? If so, when? Please attach all information distributed by the Committee that held the hearing.

**No.**

9. Please describe all amendments the author currently wishes to make before this bill is heard in Committee. (Please recall that amendments must be hand-delivered to the Committee in Leg Counsel form at least 7 calendar days before the bill is to be heard.)

**None.**

10. Please summarize any studies, reports, statistics or other evidence showing that the problem exists and that the bill will properly address the problem. Please also attach copies of all such evidence and/or state where such material is available for reference by Committee counsel. **There have been no studies on the pre-litigation process.**

11. Please list all groups, agencies or persons that have contacted you in support or in opposition to the bill. Please attach copies of all letters of support and opposition.  
**California Building Industry Association, Sponsor**

12. Please describe any concerns that you anticipate may be raised in opposition to your bill, and state your response to those concerns.  
**The question may arise whether or not to eliminate the sunset. The response is that the pre-litigation process has worked well for twenty years and there is no need for a sunset date.**

13. Please list the name, organization and telephone number of all witnesses that you anticipate will testify in support or opposition to the bill. (Please note that the time restraints may require the Committee to limit the number of testifying witnesses. Additional witnesses may identify themselves for the record.)

**Support:**

**Nick Cammarota, California Building Industry Association, 916-443-1960 or  
Erin Guerrero, California Building Industry Association, 916-340-3302**

**PLEASE REMEMBER TO EMAIL THIS COMPLETED WORKSHEET, AND ALSO  
DROP OFF 2 HARD COPIES TO THE COMMITTEE. TYPE AS DETAILED  
RESPONSES AS POSSIBLE. THANK YOU VERY MUCH FOR YOUR  
ASSISTANCE.**

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**Assembly Committee Rollcalls  
Judiciary**

Date of Hearing: March 29, 2016

BILL NO.	AB 1900	AB 1963	AB 2000	AB 2020
ACTION VOTED ON	Do pass as amended and re-refer to Cmte on Appr.	Do pass as amended, to Consent	Do pass and re-refer to Cmte on Appr.	Do pass as amended, to Consent
	Aye : No	Aye : No	Aye : No	Aye : No
Mark Stone, Chair	X :	X :	X :	X :
Wagner, V. Chair	Absent	X :	X :	X :
Alejo	X :	X :	X :	X :
Chau	X :	X :	X :	X :
Chiu	X :	X :	X :	X :
Gallagher	X :	X :	: X	X :
Cristina Garcia	X :	X :	X :	X :
Holden	X :	X :	X :	X :
Maienschcin	X :	X :	X :	X :
Ting	X :	X :	X :	X :
	Ayes : 9 Noes : 0	Ayes : 10 Noes : 0	Ayes : 9 Noes : 1	Ayes : 10 Noes : 0

RECEIVED: \_\_\_\_\_

\_\_\_\_\_, CHAIR

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SENATE JUDICIARY COMMITTEE  
Senator Hannah-Beth Jackson, Chair  
2015-2016 Regular Session

AB 1963 (Calderon)  
Version: April 4, 2016  
Hearing Date: June 14, 2016  
Fiscal: No  
Urgency: No  
TH

SUBJECT

Common Interest Developments: Construction Defects

DESCRIPTION

Existing law requires, until July 1, 2017, a homeowner association in a common interest development of more than 20 units to follow a pre-litigation dispute resolution procedure before commencing a design or construction defect action against a builder, developer, or general contractor. This bill would extend the above sunset date to July 1, 2024.

BACKGROUND

In California, residential common interest developments (CIDs) are governed by the Davis-Stirling Common Interest Development Act (Davis-Stirling Act). Owners of separate property in a CID have an undivided interest in the common property of the development and are subject to the CID's covenants, conditions, and restrictions. Residential CIDs are governed by a homeowner association, which is run by volunteer directors that may or may not have prior experience managing an association.

In 1995, the Davis-Stirling Act was amended to require homeowner associations to take part in specified pre-litigation dispute resolution procedures before commencing a design or construction defect action against the builder, developer, or general contractor of the CID. (See SB 1029, Calderon, Ch. 864, Stats. 1995; Civ. Code Sec. 6000.) According to the Senate Judiciary Committee analysis of that bill:

The author has introduced [SB 1029] because in many instances, expensive and time-consuming litigation alleging defects in the design or construction of common interest developments are commenced before the parties have a reasonable opportunity to discuss the merits of the claim, or to consider alternative proposals to resolve the claim. The author believes that the initiation of such litigation prior to a meaningful opportunity for the parties to meet and confer is detrimental because of

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the substantial costs to both parties, and to the courts, of complex construction defect litigation which in many instances could be avoided. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1029 (1995-1996 Reg. Sess.) as amended Mar. 29, 1995, p. 7 [for hearing on May 9, 1995].)

In 2001, the Act was further amended to require an association to serve a "Notice of Commencement of Legal Proceedings" on the respondent builder, developer, or general contractor, including an initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue, and also specified timelines and procedures for parties to follow during the pre-litigation dispute resolution process. (See AB 1700, Steinberg, Ch. 824, Stats. 2001.) AB 1700 included a sunset provision that would have rendered the CID pre-litigation dispute resolution requirement inoperative on July 1, 2010. In 2009, AB 927 (Calderon, Ch. 7, Stats. 2009) extended the effective date of the CID pre-litigation dispute resolution requirement to July 1, 2017, and repeals the requirement on January 1, 2018, unless a later enacted statute deletes or extends these dates.

This bill would extend until July 1, 2024, the requirement that homeowner associations take part in the pre-litigation dispute resolution process, and would repeal this requirement on January 1, 2025, unless a later enacted statute deletes or extends these dates.

#### CHANGES TO EXISTING LAW

Existing law, the Davis-Stirling Common Interest Development Act, defines and regulates residential common interest developments (CIDs), including the ability of the association to levy regular and special assessments sufficient to perform its obligations. (Civ. Code Sec. 4000 et seq.)

Existing law requires, before an association files a complaint for damages against a builder, developer, or general contractor (respondent) of a common interest development based upon a claim for defects in the design or construction of the common interest development, certain specified requirements to be satisfied. (Civ. Code Sec. 6000 et seq.)

Existing law requires an association to serve upon the respondent a "Notice of Commencement of Legal Proceedings," indicating the name and location of the project, an initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue, a description of the results of the defects, if known, a summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if a survey has been conducted or a questionnaire has been distributed, and either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted. (Civ. Code Sec. 6000(b).)

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Existing law specifies that service of the notice shall commence a period, not to exceed 180 days, during which the association, the respondent, and all other participating parties shall try to resolve the dispute through a specified process, and states that service of the notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity. (Civ. Code Sec. 6000(b), (c).)

Existing law states that, upon receipt of the notice, the respondent shall provide the association with access to specified information for the project reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed within 60 days. (Civ. Code Sec. 6000(e).)

Existing law states that within 20 days of sending the notice, the association, respondent, subcontractors, design professionals, and their insurers shall meet and confer in an effort to select a dispute resolution facilitator to preside over the specified mandatory dispute resolution process. (Civ. Code Sec. 6000(f).)

Existing law provides, among other things, that the respondent may submit to the association a request to meet with the board to discuss a written settlement offer. If the board rejects a settlement offer presented at the meeting, the board shall hold a meeting open to each member of the association no less than 15 days before the association commences an action for damages against the respondent. No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

- that a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting;
- the options that are available to address the problems, including the filing of a civil action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases; and
- the complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer received from the respondent. (Civ. Code Sec. 6000(k).)

Existing law states that all defect lists and demands, communications, negotiations, and settlement offers made in the course of the pre-litigation dispute resolution process shall be inadmissible, as specified. (Civ. Code Sec. 6000(l).)

Existing law states that any party may at any time petition the superior court in the county where the project is located, upon a showing of good cause, to resolve a dispute or make a determination, as specified. (Civ. Code Sec. 6000(n).)

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Existing law states that the pre-litigation dispute resolution process shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed. (Civ. Code Sec. 6000(s).)

This bill extends the above sunset date by seven years, stating that the pre-litigation dispute resolution process shall become inoperative on July 1, 2024, and, as of January 1, 2025, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2025, deletes or extends the dates on which it becomes inoperative and is repealed.

### COMMENT

#### 1. Stated need for the bill

According to the author:

Before a homeowner's association may file a complaint for damages against a builder, developer, or general contractor of a [common interest development] based upon a claim for defects in the design or construction of the development, the association must first engage in the extensive pre-litigation process specified by Civil Code Section 6000, under the Davis-Stirling Act. This process was initially established by the Legislature in 1995, and since then has been revised and reauthorized twice before for seven-year trial periods, the last one of which ends on July 1, 2017. This process is also referred to as the "Section 6000 process" and requires among other things:

- the plaintiff to provide notice;
- within 25 days, the respondent may request a meeting with the [association] board of directors within 10 days;
- the association and respondent to exchange information about the defect within 60 days of the notice;
- the respondent to provide notice to subcontractors, design professionals, and insurers within 60 days of the notice;
- within 20 days of the notice to subcontractors, that all parties meet to select a mediator and establish a procedure to request the court to select a mediator if they cannot agree; and
- mediation costs to be split equally.

AB 1963 would extend the sunset for the "Section 6000" pre-litigation process for an additional seven years. It encourages disputes about construction defects in common interest developments to be settled or sent to alternative dispute resolution before a lawsuit is filed. This process has worked for the last twenty years, by providing an avenue for dispute resolution prior to costly and time-consuming lawsuits. In an era of overcrowded court dockets, the Legislature should act to

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preserve a process that relieves some of this pressure on our already overburdened courts. AB 1963 will ensure that homeowners and builders are able to continue to resolve disagreements in a cost effective manner that is careful to preserve the legal options of those involved.

## 2. Pre-litigation Dispute Resolution Process

Existing law establishes a pre-litigation dispute resolution process that must be followed prior to an association filing a lawsuit against a builder, general contractor, or developer of a common interest development with 20 or more units regarding claims for defects in the design or construction of the development. While the dispute resolution process is ongoing, the statute of limitation on the association's claim or claims is tolled, generally for a period of 180 days, unless the parties agree to extend the process beyond 180 days. The five general steps of this process are described below.

Step 1: Before filing suit, the association must give written notice to the builder. This notice, denoted a "Notice of Commencement of Legal Proceedings," must include, among other things:

- an initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue; and
- either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted.

Service of the notice commences a period, not to exceed 180 days unless extended by the parties, during which the association, the respondent, and all other participating parties try to resolve the dispute through the process.

Step 2: Within 25 days, the respondent may request in writing to meet and confer with the association, which meeting must take place 10 days after the request. Upon receipt of the notice, the respondent must, within 60 days, provide the association with specified information pertaining to the project that may lead to evidence concerning the defects claimed by the association. Likewise, the association must provide the respondent with specified information concerning the defects claimed by the association, such as reserve studies, maintenance records, and test results.

The respondent must also provide written notice by certified mail to all subcontractors, design professionals, their insurers, and the insurers of any additional insured whose identities are known to the respondent or are readily ascertainable and whose potential responsibility appears on the face of the notice. This notice must include a copy of the Notice of Commencement of Legal Proceedings, and must specify the date and manner by which the parties shall meet and confer to select a dispute resolution facilitator.

Step 3: Within 20 days of sending the above notice, the association, respondent, subcontractors, design professionals, and their insurers must meet and confer in an

effort to select a dispute resolution facilitator to preside over a mandatory dispute resolution process. Once selected, the dispute resolution facilitator and the participating parties agree to a date, time, and location to hold a case management meeting of all parties to discuss the claims being asserted and the scheduling of events in the process.

The costs of the dispute resolution facilitator are apportioned among the parties as follows: one-third to be paid by the association; one-third to be paid by the respondent; and one-third to be paid by the subcontractors and design professionals, as allocated among them by the dispute resolution facilitator. The costs of the dispute resolution facilitator are recoverable by the prevailing party in any subsequent litigation.

Step 4: No later than the case management meeting, the parties must begin to generate data showing the following information regarding the alleged defects:

- the scope of the work performed by each potentially responsible subcontractor;
- the tract or phase number in which each subcontractor provided goods or services, or both; and
- the units, either by address, unit number, or lot number, at which each subcontractor provided goods or services, or both.

At the case management meeting, the parties must come to an agreement on several issues with regard to resolving the dispute, including:

- the provision of a detailed list of defects by the association to the respondent after the association completes a visual inspection of the project;
- invasive testing conducted by the association, respondent, or other party, if deemed appropriate;
- provision by the association of a comprehensive demand which provides sufficient detail for the parties to engage in meaningful dispute resolution; and
- facilitated dispute resolution of the claim, with all parties present and having settlement authority.

Step 5: After the selection of a dispute resolution facilitator, and at his or her determination, the respondent may submit to the association a request to meet with the board to discuss a written settlement offer. No less than 10 days after the respondent submits required settlement information to the association, the respondent and the board must meet and confer about the settlement offer. If the board rejects the settlement offer, the board must hold a meeting open to each member of the association no less than 15 days before the association commences an action for damages against the respondent. Fifteen days prior to that open meeting, the board must send the following to each member of the association:

- notice that an open meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of the meeting;
- options available to address the problems identified, including the filing of a civil action and a statement of the various alternatives to pay for those options and





whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases; and

- the text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer.

The respondent is obligated to pay all expenses attributable to sending the settlement offer to members of the association, and for the expense of holding the meeting, up to a specified limit.

At any point during the pre-litigation dispute resolution process, any party may petition the superior court to resolve a dispute concerning the process, including disagreements relative to the timing of specific events, or to the production of documents or the exchange of information.

### 3. Extension of Sunset Date

Under current law, the pre-litigation dispute resolution process described in Comment 2 is scheduled to sunset on July 1, 2017. This bill would extend that sunset date by seven years, delaying its terminal date to July 1, 2024. The California Land Surveyors Association, writing in support, states:

The provisions of Section 6000 of the Civil Code set forth a balanced procedure whereby a land surveyor or other party is provided notice of intent to file construction defect litigation and provided an opportunity to present facts to a dispute resolution facilitator. This pre-litigation process not only results in the non-inclusion of a land surveyor in subsequently filed litigation, but also expedites the court time and expense necessary to try construction defect litigation. It is important for all parties to continue to use the pre-litigation process in Section 6000.

In the past, this Committee has raised concerns about imposing mandatory pre-litigation dispute resolution procedures. First, procedures that are too complex or too time-consuming could place an unfair obstacle in the path of a litigant - here, a homeowner association - who seeks to vindicate its rights. Second, mandatory pre-litigation procedures could be used as a tool by defendants to make procedural objections and prevent a court from ruling on the merits of a litigant's claim. However, it does not appear that these concerns are warranted with respect to this particular pre-litigation dispute resolution process for several reasons. First, the process, by its terms, must be completed within 180 days, unless the parties agree to extend that period, and during that time all applicable statutes of limitation are tolled. Second, as described in Comment 2, the process does not appear to be overly complex or difficult to execute. Finally, as noted in the Background, this particular process has been in place, in varying forms, for at least 20 years, and during that time the Committee has not received any



significant indication that the process acts to frustrate the vindication of rights, or that it has been abused by litigants for procedural advantage.

Support: American Subcontractors Association California, Inc.; California Land Surveyors Association; California Professional Association of Specialty Contractors; Community Associations Institute; Construction Employers' Association

Opposition: None Known

### HISTORY

Source: California Building Industry Association

Related Pending Legislation: None Known

Prior Legislation:

AB 927 (Calderon, Ch. 7, Stats. 2009) *See* Background.  
AB 1700 (Steinberg, Ch. 824, Stats. 2001) *See* Background.  
SB 1029 (Calderon, Ch. 864, Stats. 1995) *See* Background.

Prior Vote:

Assembly Floor (Ayes 77, Noes 0)  
Assembly Judiciary Committee (Ayes 10, Noes 0)

\*\*\*\*\*

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SENATE JUDICIARY COMMITTEE  
Senator Hannah-Beth Jackson, Chair  
2015-2016 Regular Session

AB 1963 (Calderon)  
Version: April 4, 2016  
Hearing Date: June 14, 2016  
Fiscal: No  
Urgency: No  
TH

SUBJECT

Common Interest Developments: Construction Defects

DESCRIPTION

Existing law requires, until July 1, 2017, a homeowner association in a common interest development of more than 20 units to follow a pre-litigation dispute resolution procedure before commencing a design or construction defect action against a builder, developer, or general contractor. This bill would extend the above sunset date to July 1, 2024.

BACKGROUND

In California, residential common interest developments (CIDs) are governed by the Davis-Stirling Common Interest Development Act (Davis-Stirling Act). Owners of separate property in a CID have an undivided interest in the common property of the development and are subject to the CID's covenants, conditions, and restrictions. Residential CIDs are governed by a homeowner association, which is run by volunteer directors that may or may not have prior experience managing an association.

In 1995, the Davis-Stirling Act was amended to require homeowner associations to take part in specified pre-litigation dispute resolution procedures before commencing a design or construction defect action against the builder, developer, or general contractor of the CID. (See SB 1029, Calderon, Ch. 864, Stats. 1995; Civ. Code Sec. 6000.) According to the Senate Judiciary Committee analysis of that bill:

The author has introduced [SB 1029] because in many instances, expensive and time-consuming litigation alleging defects in the design or construction of common interest developments are commenced before the parties have a reasonable opportunity to discuss the merits of the claim, or to consider alternative proposals to resolve the claim. The author believes that the initiation of such litigation prior to a meaningful opportunity for the parties to meet and confer is detrimental because of

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the substantial costs to both parties, and to the courts, of complex construction defect litigation which in many instances could be avoided. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1029 (1995–1996 Reg. Sess.) as amended Mar. 29, 1995, p. 7 [for hearing on May 9, 1995].)

In 2001, the Act was further amended to require an association to serve a “Notice of Commencement of Legal Proceedings” on the respondent builder, developer, or general contractor, including an initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue, and also specified timelines and procedures for parties to follow during the pre-litigation dispute resolution process. (See AB 1700, Steinberg, Ch. 824, Stats. 2001.) AB 1700 included a sunset provision that would have rendered the CID pre-litigation dispute resolution requirement inoperative on July 1, 2010. In 2009, AB 927 (Calderon, Ch. 7, Stats. 2009) extended the effective date of the CID pre-litigation dispute resolution requirement to July 1, 2017, and repeals the requirement on January 1, 2018, unless a later enacted statute deletes or extends these dates.

This bill would extend until July 1, 2024, the requirement that homeowner associations take part in the pre-litigation dispute resolution process, and would repeal this requirement on January 1, 2025, unless a later enacted statute deletes or extends these dates.

#### CHANGES TO EXISTING LAW

Existing law, the Davis-Stirling Common Interest Development Act, defines and regulates residential common interest developments (CIDs), including the ability of the association to levy regular and special assessments sufficient to perform its obligations. (Civ. Code Sec. 4000 et seq.)

Existing law requires, before an association files a complaint for damages against a builder, developer, or general contractor (respondent) of a common interest development based upon a claim for defects in the design or construction of the common interest development, certain specified requirements to be satisfied. (Civ. Code Sec. 6000 et seq.)

Existing law requires an association to serve upon the respondent a “Notice of Commencement of Legal Proceedings,” indicating the name and location of the project, an initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue, a description of the results of the defects, if known, a summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if a survey has been conducted or a questionnaire has been distributed, and either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted. (Civ. Code Sec. 6000(b).)



Existing law specifies that service of the notice shall commence a period, not to exceed 180 days, during which the association, the respondent, and all other participating parties shall try to resolve the dispute through a specified process, and states that service of the notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity. (Civ. Code Sec. 6000(b), (c).)

Existing law states that, upon receipt of the notice, the respondent shall provide the association with access to specified information for the project reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed within 60 days. (Civ. Code Sec. 6000(e).)

Existing law states that within 20 days of sending the notice, the association, respondent, subcontractors, design professionals, and their insurers shall meet and confer in an effort to select a dispute resolution facilitator to preside over the specified mandatory dispute resolution process. (Civ. Code Sec. 6000(f).)

Existing law provides, among other things, that the respondent may submit to the association a request to meet with the board to discuss a written settlement offer. If the board rejects a settlement offer presented at the meeting, the board shall hold a meeting open to each member of the association no less than 15 days before the association commences an action for damages against the respondent. No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

- that a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting;
- the options that are available to address the problems, including the filing of a civil action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases; and
- the complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer received from the respondent. (Civ. Code Sec. 6000(k).)

Existing law states that all defect lists and demands, communications, negotiations, and settlement offers made in the course of the pre-litigation dispute resolution process shall be inadmissible, as specified. (Civ. Code Sec. 6000(l).)

Existing law states that any party may at any time petition the superior court in the county where the project is located, upon a showing of good cause, to resolve a dispute or make a determination, as specified. (Civ. Code Sec. 6000(n).)



Existing law states that the pre-litigation dispute resolution process shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed. (Civ. Code Sec. 6000(s).)

This bill extends the above sunset date by seven years, stating that the pre-litigation dispute resolution process shall become inoperative on July 1, 2024, and, as of January 1, 2025, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2025, deletes or extends the dates on which it becomes inoperative and is repealed.

### COMMENT

#### 1. Stated need for the bill

According to the author:

Before a homeowner's association may file a complaint for damages against a builder, developer, or general contractor of a [common interest development] based upon a claim for defects in the design or construction of the development, the association must first engage in the extensive pre-litigation process specified by Civil Code Section 6000, under the Davis-Stirling Act. This process was initially established by the Legislature in 1995, and since then has been revised and reauthorized twice before for seven-year trial periods, the last one of which ends on July 1, 2017. This process is also referred to as the "Section 6000 process" and requires among other things:

- the plaintiff to provide notice;
- within 25 days, the respondent may request a meeting with the [association] board of directors within 10 days;
- the association and respondent to exchange information about the defect within 60 days of the notice;
- the respondent to provide notice to subcontractors, design professionals, and insurers within 60 days of the notice;
- within 20 days of the notice to subcontractors, that all parties meet to select a mediator and establish a procedure to request the court to select a mediator if they cannot agree; and
- mediation costs to be split equally.

AB 1963 would extend the sunset for the "Section 6000" pre-litigation process for an additional seven years. It encourages disputes about construction defects in common interest developments to be settled or sent to alternative dispute resolution before a lawsuit is filed. This process has worked for the last twenty years, by providing an avenue for dispute resolution prior to costly and time-consuming lawsuits. In an era of overcrowded court dockets, the Legislature should act to



preserve a process that relieves some of this pressure on our already overburdened courts. AB 1963 will ensure that homeowners and builders are able to continue to resolve disagreements in a cost effective manner that is careful to preserve the legal options of those involved.

## 2. Pre-litigation Dispute Resolution Process

Existing law establishes a pre-litigation dispute resolution process that must be followed prior to an association filing a lawsuit against a builder, general contractor, or developer of a common interest development with 20 or more units regarding claims for defects in the design or construction of the development. While the dispute resolution process is ongoing, the statute of limitation on the association's claim or claims is tolled, generally for a period of 180 days, unless the parties agree to extend the process beyond 180 days. The five general steps of this process are described below.

**Step 1:** Before filing suit, the association must give written notice to the builder. This notice, denoted a "Notice of Commencement of Legal Proceedings," must include, among other things:

- an initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue; and
- either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted.

Service of the notice commences a period, not to exceed 180 days unless extended by the parties, during which the association, the respondent, and all other participating parties try to resolve the dispute through the process.

**Step 2:** Within 25 days, the respondent may request in writing to meet and confer with the association, which meeting must take place 10 days after the request. Upon receipt of the notice, the respondent must, within 60 days, provide the association with specified information pertaining to the project that may lead to evidence concerning the defects claimed by the association. Likewise, the association must provide the respondent with specified information concerning the defects claimed by the association, such as reserve studies, maintenance records, and test results.

The respondent must also provide written notice by certified mail to all subcontractors, design professionals, their insurers, and the insurers of any additional insured whose identities are known to the respondent or are readily ascertainable and whose potential responsibility appears on the face of the notice. This notice must include a copy of the Notice of Commencement of Legal Proceedings, and must specify the date and manner by which the parties shall meet and confer to select a dispute resolution facilitator.

**Step 3:** Within 20 days of sending the above notice, the association, respondent, subcontractors, design professionals, and their insurers must meet and confer in an



effort to select a dispute resolution facilitator to preside over a mandatory dispute resolution process. Once selected, the dispute resolution facilitator and the participating parties agree to a date, time, and location to hold a case management meeting of all parties to discuss the claims being asserted and the scheduling of events in the process.

The costs of the dispute resolution facilitator are apportioned among the parties as follows: one-third to be paid by the association; one-third to be paid by the respondent; and one-third to be paid by the subcontractors and design professionals, as allocated among them by the dispute resolution facilitator. The costs of the dispute resolution facilitator are recoverable by the prevailing party in any subsequent litigation.

Step 4: No later than the case management meeting, the parties must begin to generate data showing the following information regarding the alleged defects:

- the scope of the work performed by each potentially responsible subcontractor;
- the tract or phase number in which each subcontractor provided goods or services, or both; and
- the units, either by address, unit number, or lot number, at which each subcontractor provided goods or services, or both.

At the case management meeting, the parties must come to an agreement on several issues with regard to resolving the dispute, including:

- the provision of a detailed list of defects by the association to the respondent after the association completes a visual inspection of the project;
- invasive testing conducted by the association, respondent, or other party, if deemed appropriate;
- provision by the association of a comprehensive demand which provides sufficient detail for the parties to engage in meaningful dispute resolution; and
- facilitated dispute resolution of the claim, with all parties present and having settlement authority.

Step 5: After the selection of a dispute resolution facilitator, and at his or her determination, the respondent may submit to the association a request to meet with the board to discuss a written settlement offer. No less than 10 days after the respondent submits required settlement information to the association, the respondent and the board must meet and confer about the settlement offer. If the board rejects the settlement offer, the board must hold a meeting open to each member of the association no less than 15 days before the association commences an action for damages against the respondent. Fifteen days prior to that open meeting, the board must send the following to each member of the association:

- notice that an open meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of the meeting;
- options available to address the problems identified, including the filing of a civil action and a statement of the various alternatives to pay for those options and

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whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases; and

- the text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer.

The respondent is obligated to pay all expenses attributable to sending the settlement offer to members of the association, and for the expense of holding the meeting, up to a specified limit.

At any point during the pre-litigation dispute resolution process, any party may petition the superior court to resolve a dispute concerning the process, including disagreements relative to the timing of specific events, or to the production of documents or the exchange of information.

### 3. Extension of Sunset Date

Under current law, the pre-litigation dispute resolution process described in Comment 2 is scheduled to sunset on July 1, 2017. This bill would extend that sunset date by seven years, delaying its terminal date to July 1, 2024. The California Land Surveyors Association, writing in support, states:

The provisions of Section 6000 of the Civil Code set forth a balanced procedure whereby a land surveyor or other party is provided notice of intent to file construction defect litigation and provided an opportunity to present facts to a dispute resolution facilitator. This pre-litigation process not only results in the non-inclusion of a land surveyor in subsequently filed litigation, but also expedites the court time and expense necessary to try construction defect litigation. It is important for all parties to continue to use the pre-litigation process in Section 6000.

In the past, this Committee has raised concerns about imposing mandatory pre-litigation dispute resolution procedures. First, procedures that are too complex or too time-consuming could place an unfair obstacle in the path of a litigant – here, a homeowner association – who seeks to vindicate its rights. Second, mandatory pre-litigation procedures could be used as a tool by defendants to make procedural objections and prevent a court from ruling on the merits of a litigant's claim. However, it does not appear that these concerns are warranted with respect to this particular pre-litigation dispute resolution process for several reasons. First, the process, by its terms, must be completed within 180 days, unless the parties agree to extend that period, and during that time all applicable statutes of limitation are tolled. Second, as described in Comment 2, the process does not appear to be overly complex or difficult to execute. Finally, as noted in the Background, this particular process has been in place, in varying forms, for at least 20 years, and during that time the Committee has not received any



significant indication that the process acts to frustrate the vindication of rights, or that it has been abused by litigants for procedural advantage.

Support: American Subcontractors Association California, Inc.; California Land Surveyors Association; California Professional Association of Specialty Contractors; Community Associations Institute; Construction Employers' Association

Opposition: None Known

### HISTORY

Source: California Building Industry Association

Related Pending Legislation: None Known

Prior Legislation:

AB 927 (Calderon, Ch. 7, Stats. 2009) *See* Background.  
AB 1700 (Steinberg, Ch. 824, Stats. 2001) *See* Background.  
SB 1029 (Calderon, Ch. 864, Stats. 1995) *See* Background.

Prior Vote:

Assembly Floor (Ayes 77, Noes 0)  
Assembly Judiciary Committee (Ayes 10, Noes 0)

\*\*\*\*\*





SENATE COMMITTEE ON JUDICIARY  
Hannah-Beth Jackson, Chairperson

**BACKGROUND INFORMATION REQUEST**

*Please complete and return this form and all supporting materials (including support/opposition letters) **WITHIN SEVEN (7) CALENDAR DAYS OF RECEIPT** of this background information request form. If you have any hard copies that are not available electronically please provide the Committee with two (2) hard copies of these supporting documents. A bill cannot be heard if a completed worksheet and all supplemental materials are not provided to the Committee.*

**Please email this completed background information request form and any attachments to:**  
*Jocelyn Twilla ([Jocelyn.Twilla@sen.ca.gov](mailto:Jocelyn.Twilla@sen.ca.gov)), Committee Assistant*  
*Mike Petersen ([Mike.Petersen@sen.ca.gov](mailto:Mike.Petersen@sen.ca.gov)), Committee's Republican Policy Consultant*

**Measure:** AB 1963

**Author:** Calderon

**Subject:** Common interest developments: construction defects.

**Staff person and contact information:**

---

**1. Origin of the bill:**

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction? Please provide contact information.

**California Building Industry Association**

**Erin Guerrero**

**[eguerrero@cbia.org](mailto:eguerrero@cbia.org)**

**916-340-3302**

- b. Has a similar bill been introduced in this or any previous legislative session? If so, please identify the bill number and year.

**SB 1029 (Calderon, 1995)**

**AB 1700 (Steinberg, 2001)**

**AB 927 (Calderon, 2009)**

- c. Has there been an interim committee report or informational hearing on the bill or its subject matter? If so, please identify the report or informational hearing and attach any related information.

**None**

**2. Describe in detail existing law on this issue.**

**Existing law requires that, before filing a construction defect complaint for damages against a builder of a common interest development, the plaintiff homeowner**

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association must follow the pre-litigation process established in the aforementioned bills (SB 1029 and AB 1700). This process is also referred to as the "Section 6000 process."

This process requires among other things:

- The plaintiff to provide notice
- Within 25 days, the respondent may request a meeting with the HOA board of directors within 10 days
- The association and respondent to exchange information about the defect within 60 days of the notice
- The respondent to provide notice to subcontractors, design professionals, and insurers within 60 days of the notice
- Within 20 days of the notice to subcontractors, that all parties meet to select a mediator and establish a procedure to request the court to select a mediator if they cannot agree
- Mediation costs to be split equally

This process sunsets on July 1, 2017.

3. What does your bill do? Please describe in detail.  
AB 1963 simply extends the sunset provision by an additional 7 years – to July 1, 2024.
4. What is the problem or deficiency in current law which this bill seeks to remedy? Please describe in detail.  
The process is due to sunset. The bill seeks to extend the sunset.
5. Please summarize any studies, reports, statistics, or other evidence showing that the problem exists and that the bill will address the problem.  
None.
6. Please identify similar or related federal legislation or statutes and any bills or existing laws you are aware of in other states.  
None.
7. Please identify and describe any relevant state and/or federal court decisions.  
None.
8. Are the issues addressed by the bill the subject of pending litigation? If yes, please indicate the case citation and include relevant documents.  
None.
9. Please identify parties that may have concerns in opposition to the bill, describe those concerns, and state your response to those concerns.  
The Consumer Attorneys may have concerns as cited in the Assembly Judiciary committee that 1) this process is rarely used, 2) it overlaps with SB 800, and 3) it causes delays.  
Our responses:  
1) Although it may be used rarely, it is used and has been helpful in avoiding costly lawsuits.



- 2) While this process and the SB 800 process may overlap, we are unaware of any conflict that this creates. There are no court cases indicating that there is a conflict.
  - 3) This process typically takes approximately 6 months. A lawsuit can last years.
10. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill. Letters received by the author's office after submission of the Background Information Request form must be submitted to the Committee as soon as possible, but no later than 12 p.m. of the Wednesday prior to the scheduled hearing date.
  11. If you plan to have substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments. **PLEASE NOTE COMMITTEE POLICY ON AUTHOR'S AMENDMENTS.**
  12. Please list the witnesses you plan to have testify.

COMMITTEE POLICY ON AUTHOR'S AMENDMENTS

AUTHOR'S AMENDMENTS MUST BE SUBMITTED IN LEGISLATIVE COUNSEL FORM TO THE COMMITTEE ASSISTANT NO LATER THAN 2:00 P.M. ON THE FRIDAY TWO WEEKS PRIOR TO THE SCHEDULED COMMITTEE HEARING DATE.

IF THIS DEADLINE IS NOT MET BY THE AUTHOR, YOUR BILL WILL BE PUT OVER TO ALLOW THE COMMITTEE MEMBERS AND THE PUBLIC SUFFICIENT TIME TO REVIEW AN ANALYSIS THAT REFLECTS THE AMENDED VERSION OF THE BILL. THE AUTHOR WILL BE RESPONSIBLE FOR OBTAINING ANY NECESSARY RULE WAIVERS TO HEAR THE BILL AT A SUBSEQUENT HEARING.  
THANK YOU.

PLEASE RETURN THIS FORM TO: SENATE COMMITTEE ON JUDICIARY

Phone: (916) 651-4113

Fax: (916) 403-7394

e-mail to: [Jocelyn.Twill@sen.ca.gov](mailto:Jocelyn.Twill@sen.ca.gov)

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## AB 1963 – COMMON INTEREST DEVELOPMENTS: CONSTRUCTION DEFECTS

### BACKGROUND

The Davis-Stirling Common Interest Development Act (1985) provided for the creation and regulation of Common Interest Developments (CIDs). CIDs are composed of individually owned units (e.g. condominiums, single-family homes, townhouses), that share ownership of common areas. They are managed by homeowners' associations (HOAs) and typically rely on HOA dues for the upkeep of common areas.

Before a homeowner's association may file a complaint for damages against a builder, developer, or general contractor of a CID based upon a claim for defects in the design or construction of the development, the association must first engage in the extensive pre-litigation process specified by Civil Code Section 6000, under the Davis-Stirling Act. This process was initially established by the Legislature in 1995, and since then has been revised and reauthorized twice before for seven-year trial periods, the last one of which ends on July 1, 2017. This process is also referred to as the "Section 6000 process" and requires among other things:

- The plaintiff to provide notice
- Within 25 days, the respondent may request a meeting with the HOA board of directors within 10 days
- The association and respondent to exchange information about the defect within 60 days of the notice
- The respondent to provide notice to subcontractors, design professionals, and insurers within 60 days of the notice
- Within 20 days of the notice to subcontractors, that all parties meet to select a mediator and establish a procedure to request the court to select a mediator if they cannot agree
- Mediation costs to be split equally

### EXISTING LAW

SB 1029 (1995, Calderon) established a process for resolving disputes about construction defects in common interest developments prior to a lawsuit being filed.

AB 1700 (2001, Steinberg) was a Judiciary Omnibus bill which made minor changes to the process and added a sunset date (July 1, 2010).

AB 927 (2009, Calderon) extended the sunset date to July 1, 2017. It passed through the legislature without any opposition.

### SOLUTION

AB 1963 would extend the sunset for the "Section 6000" pre-litigation process for an additional seven years. It encourages disputes about construction defects in common interest developments to be settled or sent to alternative dispute resolution before a lawsuit is filed. This process has worked for the last twenty years, by providing an avenue for dispute resolution prior to costly and time-consuming lawsuits. In an era of overcrowded court dockets, the Legislature should act to preserve a process that relieves some of this pressure on our already overburdened courts. AB 1963 will ensure that homeowners and builders are able to continue to resolve disagreements in a cost effective manner, that is careful to preserve the legal options of those involved.

### FOR MORE INFORMATION

Denneile Ritter  
[denneile.ritter@asm.ca.gov](mailto:denneile.ritter@asm.ca.gov)  
916-319-2057- office  
916-319-2157- fax

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**Assemblymember Ian C. Calderon, 57<sup>th</sup> District**

**AB 1963 – COMMON INTEREST DEVELOPMENTS: CONSTRUCTION DEFECTS**

**BACKGROUND**

The Davis-Stirling Common Interest Development Act (1985) provided for the creation and regulation of Common Interest Developments (CIDs). CIDs are composed of individually owned units (e.g. condominiums, single-family homes, townhouses), that share ownership of common areas. They are managed by homeowners' associations (HOAs) and typically rely on HOA dues for the upkeep of common areas.

**FOR MORE INFORMATION**

Kelsy Castillo  
[Kelsy.castillo@asm.ca.gov](mailto:Kelsy.castillo@asm.ca.gov)  
916-319-2057- office  
916-319-2157- fax

**EXISTING LAW**

SB 1029 (1995, Calderon) established a process for resolving disputes about construction defects in common interest developments prior to a lawsuit being filed.

AB 1700 (2001, Steinberg) was a Judiciary Omnibus bill which made minor changes to the process and added a sunset date (July 1, 2010).

AB 927 (2009, Calderon) extended the sunset date to July 1, 2017. It passed through the legislature without any opposition.

**SOLUTION**

This process has been in place for twenty years and has worked well.

AB 1963 would simply eliminate the sunset date and allow the process to continue to exist, providing an avenue for dispute resolution prior to costly and time-consuming lawsuits.

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California Professional Association of Specialty Contractors

June 6, 2016

Senator Hannah-Beth Jackson(Chair) and Members of the Senate Standing Committee on Judiciary  
State Capitol, Room 2187  
Sacramento, CA 95814

RE: **AB 1963(Calderon)-SUPPORT**

Dear Chair Jackson and Members of the Senate Standing Committee on Judiciary,

CALPASC is a non profit trade association of specialty contractors and suppliers, operating throughout California. Our members operate in most segments of construction.

**CALPASC Supports AB 1963(Calderon), as amended in Assembly April 4, 2016; Common Interest Developments: construction defects.**

CALPASC members have been involved in construction defect claims over many years. When these claims go immediately to lawsuit, everyone except the attorneys gets shortchanged. Homeowner claimants wait long periods of time for resolution, and have substantial amounts of any settlement amounts given to the plaintiff attorney. Subcontractors are often named in the litigation, and it can be a lengthy period of time before it becomes clear whether their work was defective or not. In the meantime, they have spent substantial amounts of money in defense fees and costs, even if they are found not negligent. Prelitigation procedures such as the Davis-Stirling Common Interest Development Act, save homeowners and subcontractors substantial amounts of money and time. Repairs are made expeditiously for legitimate defective issues, and the subcontractors involved have unnecessary expense fees and costs greatly reduced. This Act should be allowed to continue to be operative in California.

For these reasons, CALPASC respectfully **SUPPORTS AB 1963(Calderon).**

Sincerely,

Bruce Wick  
Director of Risk Management  
1150 Brookside Avenue, Suite Q.  
Redlands, CA 92373  
909-793-9932  
[bwick@calpasc.org](mailto:bwick@calpasc.org)

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The Honorable Ian Calderon  
State Capitol  
Sacramento, CA 95814

June 7, 2016

RE: AB 1963 ... SUPPORT as amended April 4, 2016

Dear Ian,

This organization is comprised of common interest development homeowners associations. Our Delegates voted to support your AB 1963 relating to construction defect dispute resolution.

The current process has worked sufficiently well so as to allow it to continue through the revised sunset date of July 1, 2025.

Please add Community Associations Institute to the list of supporters.

California common interest developments (CID), are a critical element in housing, whether they are condominiums, townhomes, attached or detached structures. They house 9,000,000 owners in 50,000 associations throughout the state. They offer exceptional value to first time buyers and well as those on fixed income because of their amenities and investment value.

The California Legislative Action Committee (CLAC) is a volunteer committee of the Community Associations Institute (CAI), consisting of homeowners and professionals serving community associations. CAI is the largest organization in America and California dedicated to monitoring legislation, educating elected state lawmakers and protecting the interests of those living in community associations. In recognition our efforts CAI-CLAC was honored twice as the nation's Legislative Action Committee of the Year.

Respectfully,  
*Skip Daum*  
Skip Daum, Advocate

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**Executive Director**  
Janie Glidden  
628-888-4329  
asac@asacalif.com

The Honorable Ian Calderon  
State Capitol  
Sacramento, CA 95814

June 7, 2016

Re: AB 1963...SUPPORT

Dear Ian,

The union and open shop companies that belong to this association fully support your AB 1963. They typically construct large commercial, industrial and publicly owned projects but are also building common interest developments.

The current laws regarding construction defect resolution disputes have proven to be workable so my members are in support of extending the sunset date.

Respectfully,

Skip Daum

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# Governmental Advocates, Inc.

May 18, 2016

The Honorable Hannah Beth Jackson, Chair  
Senate Judiciary Committee  
California State Senate  
State Capitol  
Sacramento, CA 95814

RE: AB 1963 (Calderon) – SUPPORT

Dear Senator Jackson,

On behalf of the Construction Employers' Association (CEA), which is comprised of over 100 unionized commercial and industrial building contractors performing billions of dollars in construction volume annually in California, I am writing to inform you of CEA's support for AB 1963.

This bill extends the current construction defect law which established special pre-litigation procedures in construction defect disputes involving common interest developments. Specifically, this bill extends the existing sunset date for seven years, until July 1, 2024, for Civil Code Section 6000, and repeals these provisions as of January 1, 2025, unless a later enacted statute becomes operative on or before that date.

It is for these reasons that we support AB 1963.

Sincerely,

Traci Stevens

Cc: Members, Senate Judiciary Committee  
Senate Judiciary Chief Counsel, Margie Estrada

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Mar. 15. 2016 4:13PM

No. 0329 P. 1

# CALIFORNIA ADVOCATES, INC.

March 15, 2016

The Honorable Ian Calderon  
Member of the Assembly  
State Capitol, Room 2148  
Sacramento, CA 95814

*Michael D. Belote*

*Dennis K. Albani*

*Julianne A. Broyles*

*Lexi Purich Howard*

*John F. O'Malley*

*Ralph F. Simoni*

**Subject: Assembly Bill 1963 -- FAVOR -- Construction Defect Litigation -- Repeal of Sunset Provision**

Dear Assemblyman Calderon:

On behalf of our client, the California Land Surveyors Association (CLSA), I would like to inform you of their favor position on Assembly Bill 1963 which repeals the sunset of existing provisions of law relating to construction defect litigation. A "favor" position means that CLSA communicates its concerns about a bill only to the author's office, but not to others such as committee members or staff.

CLSA is a professional association composed of both private sector and public sector licensed land surveyors. As such, CLSA is concerned with facilitating the practice of land surveying in a manner that benefits both the profession and the public that it services. In particular, private sector land surveyors are acutely aware of construction defect litigation abuses.

Assembly Bill 1963 will repeal the sunset provision and thereby extend indefinitely the current pre-litigation procedure contained in Section 6000 of the Civil Code. Land surveyors provide necessary threshold services for common interest developments when locating property lines, layout of improvements and other services. However, land surveyors are frequently named as a party to construction defect litigation (so-called "shotgun" litigation) when these pre-improvement services have nothing to do with the actual construction phase of a common interest development which is the subject of the litigation.

The provisions of Section 6000 of the Civil Code set forth a balanced procedure whereby a land surveyor or other party is provided notice of intent to file construction defect litigation and provided an opportunity to present facts to a dispute resolution facilitator. This pre-litigation process not only results in the non-inclusion of a land surveyor in subsequently filed litigation, but also expedites the court time and expense necessary to try construction defect litigation. It is important for all parties to continue to use the pre-litigation process in Section 6000.

Again, CLSA is pleased to inform you that they favor the provisions of Assembly Bill 1963 that permanently extends the pre-litigation protections in existing law.

Sincerely,

  
Ralph F. Simoni

RFS:cs

925 L Street, Suite 1250 Sacramento, CA 95814

phone: (916) 441-5050 fax: (916) 441-5859 email: mail@caladvocates.com

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## Governmental Advocates, Inc.

May 18, 2016

The Honorable Hannah Beth Jackson, Chair  
Senate Judiciary Committee  
California State Senate  
State Capitol  
Sacramento, CA 95814

RE: AB 1963 (Calderon) – SUPPORT

Dear Senator Jackson,

On behalf of the Construction Employers' Association (CEA), which is comprised of over 100 unionized commercial and industrial building contractors performing billions of dollars in construction volume annually in California, I am writing to inform you of CEA's support for AB 1963.

This bill extends the current construction defect law which established special pre-litigation procedures in construction defect disputes involving common interest developments. Specifically, this bill extends the existing sunset date for seven years, until July 1, 2024, for Civil Code Section 6000, and repeals these provisions as of January 1, 2025, unless a later enacted statute becomes operative on or before that date.

It is for these reasons that we support AB 1963.

Sincerely,

Traci Stevens

Cc: Members, Senate Judiciary Committee  
Senate Judiciary Chief Counsel, Margie Estrada

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 www.cbia.org

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**MEMBER ASSOCIATIONS**

Building Industry Association of the Bay Area

Building Industry Association of Fresno/Madera/Coalinga

Building Industry Association of the Central Valley

Building Industry Association of the Sacramento Valley

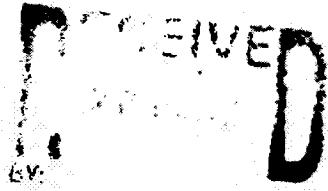
Building Industry Association of Southern California

Building Industry Association of the Truckee/Klamath Area

Building Industry Association of the Yuba City Area

Building Industry Association of the Yuba City Area

May 4, 2016



The Honorable Hannah-Beth Jackson  
 Chair, Senate Judiciary Committee  
 State Capitol, Room 2032  
 Sacramento, CA 95814

**RE: AB 1963 (Calderon) – Sponsor**

Dear Senator Jackson:

The California Building Industry Association (CBIA) is pleased to sponsor AB 1963 (Calderon), a bill that would extend by seven years the sunset provisions for the "Section 6000" pre-litigation process. This process encourages disputes about construction defects in common interest developments to be settled or sent to alternative dispute resolution before a lawsuit is filed.

This pre-litigation process was established by SB 1029 (Calderon) in 1995. In 2001, AB 1700 (Steinberg) made minor changes to the process and added a "sunset" date of July 1, 2010. In 2009, then-Assemblyman Chuck Calderon carried AB 927 which extended that sunset date to July 1, 2017.

The process allows parties to discuss the claim while still preserving legal recourse. In the twenty years since its establishment, the process has worked well to avoid costly, time consuming litigation. AB 1963 simply extends the sunset provision on this process to July 1, 2024.

We respectfully request your support of AB 1963 (Calderon).

Sincerely,

Erin M. Guerrero  
 Vice President of Legislative Affairs

cc: The Honorable John Moorlach – Vice-Chair, Senate Judiciary Committee  
 Honorable Members, Senate Judiciary Committee  
 Tobias Halvarson – Counsel, Senate Judiciary Committee  
 Mike Petersen – Senate Republican Caucus Office of Policy

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CONSENT

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Bill No: AB 1963  
Author: Calderon (D)  
Amended: 4/4/16 in Assembly  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 7-0, 6/14/16  
AYES: Jackson, Moorlach, Anderson, Hertzberg, Leno, Monning, Wieckowski  
ASSEMBLY FLOOR: 77-0, 4/7/16 (Consent) - See last page for vote

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**SUBJECT:** Common interest developments: construction defects  
**SOURCE:** California Building Industry Association

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**DIGEST:** This bill extends, until July 1, 2024, a requirement that a homeowner association in a common interest development of more than 20 units follow a pre-litigation dispute resolution procedure before commencing a design or construction defect action against a builder, developer, or general contractor.

**ANALYSIS:**

Existing law:

- 1) Defines, in the Davis-Stirling Common Interest Development Act (Davis-Stirling Act), and regulates residential common interest developments (CIDs), including the ability of an association to levy regular and special assessments sufficient to perform its obligations. (Civ. Code Sec. 4000 et seq.)
- 2) Requires, before an association files a complaint for damages against a builder, developer, or general contractor (respondent) of a CID based upon a claim for defects in the design or construction of the CID, certain specified requirements to be satisfied. (Civ. Code Sec. 6000 et seq.)
- 3) Requires an association to serve upon the respondent a "Notice of Commencement of Legal Proceedings," indicating the name and location of



the project, an initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue, a description of the results of the defects, if known, a summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if a survey has been conducted or a questionnaire has been distributed, and either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted. (Civ. Code Sec. 6000(b).)

- 4) Specifies that service of the notice shall commence a period, not to exceed 180 days, during which the association, the respondent, and all other participating parties shall try to resolve the dispute through a specified process, and states that service of the notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity. (Civ. Code Sec. 6000(b), (c).)
- 5) States that upon receipt of the notice, the respondent shall provide the association with access to specified information for the project reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed within 60 days. (Civ. Code Sec. 6000(e).)
- 6) States that within 20 days of sending the notice, the association, respondent, subcontractors, design professionals, and their insurers shall meet and confer in an effort to select a dispute resolution facilitator to preside over the specified mandatory dispute resolution process. (Civ. Code Sec. 6000(f).)
- 7) Provides, among other things, that the respondent may submit to the association a request to meet with the association's board of directors to discuss a written settlement offer. If the board rejects a settlement offer presented at the meeting, the board shall hold a meeting open to each member of the association no less than 15 days before the association commences an action for damages against the respondent. No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:
  - That a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting;
  - The options that are available to address the problems, including the filing of a civil action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve



account funds or the imposition of regular or special assessments, or emergency assessment increases; and

- The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer received from the respondent. (Civ. Code Sec. 6000(k).)
- 8) States that all defect lists and demands, communications, negotiations, and settlement offers made in the course of the pre-litigation dispute resolution process shall be inadmissible, as specified. (Civ. Code Sec. 6000(l).)
  - 9) States that any party may at any time petition the superior court in the county where the project is located, upon a showing of good cause, to resolve a dispute or make a determination, as specified. (Civ. Code Sec. 6000(n).)
  - 10) States that the pre-litigation dispute resolution process shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed. (Civ. Code Sec. 6000(s).)

This bill extends the above sunset date by seven years, stating that the pre-litigation dispute resolution process shall become inoperative on July 1, 2024, and, as of January 1, 2025, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2025, deletes or extends the dates on which it becomes inoperative and is repealed.

## Background

In California, residential CIDs are governed by the Davis-Stirling Act. Owners of separate property in a CID have an undivided interest in the common property of the development and are subject to the CID's covenants, conditions, and restrictions. Residential CIDs are governed by a homeowner association, which is run by volunteer directors that may or may not have prior experience managing an association.

In 1995, the Davis-Stirling Act was amended to require homeowner associations to take part in specified pre-litigation dispute resolution procedures before commencing a design or construction defect action against the builder, developer, or general contractor of the CID. (*See* SB 1029, Calderon, Chapter 864, Statutes of 1995; Civ. Code Sec. 6000.) According to the Senate Judiciary Committee analysis of that bill:



The author has introduced [SB 1029] because in many instances, expensive and time-consuming litigation alleging defects in the design or construction of common interest developments are commenced before the parties have a reasonable opportunity to discuss the merits of the claim, or to consider alternative proposals to resolve the claim. The author believes that the initiation of such litigation prior to a meaningful opportunity for the parties to meet and confer is detrimental because of the substantial costs to both parties, and to the courts, of complex construction defect litigation which in many instances could be avoided. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1029 (1995–1996 Reg. Sess.) as amended Mar. 29, 1995, p. 7 [for hearing on May 9, 1995].)

In 2001, the Act was further amended to require an association to serve a “Notice of Commencement of Legal Proceedings” on the respondent builder, developer, or general contractor, including an initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue, and also specified timelines and procedures for parties to follow during the pre-litigation dispute resolution process. (See AB 1700, Steinberg, Chapter 824, Statutes of 2001.) AB 1700 included a sunset provision that would have rendered the CID pre-litigation dispute resolution requirement inoperative on July 1, 2010. In 2009, AB 927 (Calderon, Chapter 7, Statutes of 2009) extended the effective date of the CID pre-litigation dispute resolution requirement to July 1, 2017, and repeals the requirement on January 1, 2018, unless a later enacted statute deletes or extends these dates.

This bill extends until July 1, 2024, the requirement that homeowner associations take part in the pre-litigation dispute resolution process, and repeals this requirement on January 1, 2025, unless a later enacted statute deletes or extends these dates.

## Comments

According to the author:

Before a homeowner’s association may file a complaint for damages against a builder, developer, or general contractor of a [common interest development] based upon a claim for defects in the design or construction of the development, the association must first engage in the extensive pre-litigation process specified by Civil Code Section 6000, under the Davis-Stirling Act. This process was initially established by the Legislature in 1995, and since then has been revised and reauthorized twice before for seven-year trial periods, the last one of which ends on July 1, 2017. This process is also referred to as the “Section 6000 process” and requires among other things:



- the plaintiff to provide notice;
- within 25 days, the respondent may request a meeting with the [association] board of directors within 10 days;
- the association and respondent to exchange information about the defect within 60 days of the notice;
- the respondent to provide notice to subcontractors, design professionals, and insurers within 60 days of the notice;
- within 20 days of the notice to subcontractors, that all parties meet to select a mediator and establish a procedure to request the court to select a mediator if they cannot agree; and
- mediation costs to be split equally.

AB 1963 would extend the sunset for the “Section 6000” pre-litigation process for an additional seven years. It encourages disputes about construction defects in common interest developments to be settled or sent to alternative dispute resolution before a lawsuit is filed. This process has worked for the last twenty years, by providing an avenue for dispute resolution prior to costly and time-consuming lawsuits. In an era of overcrowded court dockets, the Legislature should act to preserve a process that relieves some of this pressure on our already overburdened courts. AB 1963 will ensure that homeowners and builders are able to continue to resolve disagreements in a cost effective manner that is careful to preserve the legal options of those involved.

### **Prior Legislation**

AB 927 (Calderon, Chapter 7, Statutes of 2009) *See* Background.

AB 1700 (Steinberg, Chapter 824, Statutes of 2001) *See* Background.

SB 1029 (Calderon, Chapter 864, Statutes of 1995) *See* Background.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 6/14/16)

California Building Industry Association (source)  
American Subcontractors Association California, Inc.  
California Land Surveyors Association

California Professional Association of Specialty Contractors  
Community Associations Institute  
Construction Employers' Association

**OPPOSITION:** (Verified 6/14/16)

None received

**ASSEMBLY FLOOR:** 77-0, 4/7/16

**AYES:** Achadjian, Alejo, Travis Allen, Atkins, Baker, Bigelow, Bloom, Bonilla, Bonta, Brough, Brown, Burke, Calderon, Chang, Chau, Chávez, Chiu, Chu, Cooley, Cooper, Dababneh, Dahle, Daly, Dodd, Eggman, Frazier, Beth Gaines, Gallagher, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Grove, Hadley, Harper, Roger Hernández, Holden, Irwin, Jones, Jones-Sawyer, Kim, Lackey, Linder, Lopez, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Nazarian, Obernolte, O'Donnell, Olsen, Patterson, Quirk, Ridley-Thomas, Rodriguez, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Wagner, Waldron, Weber, Wilk, Williams, Wood, Rendon

**NO VOTE RECORDED:** Campos, Levine

Prepared by: Tobias Halvarson / JUD. / (916) 651-4113  
6/17/16 15:03:41

\*\*\*\* END \*\*\*\*

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Office of Governor  
**Edmund G. Brown Jr.**

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### GOVERNOR BROWN SIGNS LEGISLATION

7-22-2016

SACRAMENTO – Governor Edmund G. Brown Jr. today announced that he has signed the following bills:

- AB 857 by Assemblymember Jim Cooper (D-Elk Grove) – Firearms: identifying information.
- AB 1311 by Assemblymember Jim Cooper (D-Elk Grove) – Temporary services employees: wages.
- AB 1645 by Assemblymember Matthew M. Dababneh (D-Encino) – Mortgage guaranty insurance.
- AB 1684 by Assemblymember Mark Stone (D-Scotts Valley) – Civil actions: human trafficking.
- AB 1700 by Assemblymember Brian Maienschein (R-San Diego) – Trusts: Notice of proposed action by trustee.
- AB 1703 by Assemblymember Miguel Santiago (D-Los Angeles) – Inmates: medical treatment.
- AB 1722 by Assemblymember Donald P. Wagner (R-Irvine) – Limited liability companies: dissolution: cancellation of articles of organization.
- AB 1735 by Assemblymember Marie Waldron (R-Escondido) – Dissolution of marriage: bifurcated judgment: service.
- AB 1829 by Assemblymember Marc B. Levine (D-Marin County) – Vessels: operation under the influence of alcohol or drugs: chemical testing.
- AB 1850 by Assemblymember Eduardo Garcia (D-Coachella) – Educational services: permanent residents: foreign nationals.
- AB 1917 by Assemblymember Jay P. Obermole (R-Big Bear Lake) – Mental health care professionals: qualifications.
- AB 1963 by Assemblymember Ian C. Calderon (D-Whittier) – Common interest developments: construction defects.
- AB 2063 by Assemblymember James M. Gallagher (R-Plumas Lake) – Work-based learning opportunities: work experience education and job shadowing.
- AB 2161 by Assemblymember Bill Quirk (D-Hayward) – Parking lots: design: insurance discount.
- AB 2232 by Assemblymember Jay P. Obermole (R-Big Bear Lake) – Court records: misdemeanors.
- AB 2252 by Assemblymember Philip Y. Ting (D-San Francisco) – Elections: remote accessible vote by mail systems.
- AB 2289 by Assemblymember Jim L. Frazier Jr. (D-Oakley) – Department of Transportation: capital improvement projects.
- AB 2535 by Assemblymember Sebastian Ridley-Thomas (D-Los Angeles) – Employment: wages: itemized statements.
- AB 2605 by Assemblymember Adrin Nazarian (D-Sherman Oaks) – State government: Office of Permit Assistance.
- AB 2655 by Assemblymember Shirley N. Weber (D-San Diego) – Bail: jurisdiction.
- AB 2721 by Assemblymember Freddie Rodriguez (D-Pomona) – Elder and dependent adult fraud: informational notice.
- AB 2846 by Assemblymember Brian Maienschein (R-San Diego) – Powers of appointment.
- AB 2908 by the Committee on Higher Education – Postsecondary education: omnibus.
- SB 775 by Senator Ben Allen (D-Santa Monica) – Tenancy: rent control: certification.
- SB 914 by Senator Tony Mendoza (D-Artesia) – Workers' compensation: medical provider networks: independent medical reviews.
- SB 1087 by Senator Joel Anderson (R-Alpine) – Evidence: production of business records.
- SB 1171 by the Committee on Judiciary – Maintenance of the codes.
- SB 1281 by Senator Marty Block (D-San Diego) – Law schools: unaccredited law school disclosures.
- SB 1431 by Senator Mike L. Morrell (R-Rancho Cucamonga) – Service of summons or subpoena.
- SB 1481 by the Committee on Governance and Finance – Prepaid Mobile Telephony Services Surcharge Collection Act.

For full text of the bills, visit: <http://leginfo.legislature.ca.gov>

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**Governor Brown Issues Statement on Death of San Diego Police Officer** 07-29-2016



**Acting Governor Torlakson Declares State of Emergency in Los Angeles and Monterey Counties** 07-26-2016



**Governor Brown Issues Legislative Update** 07-25-2016



**Governor Brown Announces Appointments** 07-22-2016



**Governor Brown Signs Legislation** 07-22-2016



**Governor Brown Announces Appointments** 07-21-2016

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## **EXHIBIT 2**



## LEGISLATIVE INTENT SERVICE, INC.

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### DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 1963 of 2016. Assembly Bill 1963 was approved by the Legislature and was enacted as Chapter 71 of the Statutes of 2016.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 1963 of 2016. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

#### ASSEMBLY BILL 1963 OF 2016:

1. All versions of Assembly Bill 1963 (Calderon-2016);
2. Procedural history of Assembly Bill 1963 from the 2016 *Assembly Final History*;
3. Analysis of Assembly Bill 1963 prepared for the Assembly Committee on Judiciary;
4. Material from the legislative bill file of the Assembly Committee on Judiciary on Assembly Bill 1963;
5. Analysis of Assembly Bill 1963 prepared for the Senate Committee on Judiciary;
6. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 1963;

7. Consent analysis of Assembly Bill 1963 prepared by the Office of Senate Floor Analyses;
8. Post-enrollment documents regarding Assembly Bill 1963 - (Governor Brown's legislative files are under restricted access and are not available to the public.);
9. Press Release issued by the Office of the Governor on July 22, 2016 to announce that Assembly Bill 1963 had been signed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of August, 2016 at Woodland, California.



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JENNY S. LILLGE