

Date of Hearing: April 5, 2010

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

AB 2016 (Torres) – As Introduced: February 17, 2010

SUBJECT: Common interest developments: requests for notices of default.

SUMMARY: Allows a homeowner's association (HOA) to record one notice with a county recorder against all properties with a trustee's deed upon sale in a Common Interest Development (CID). Specifically, this bill:

- 1) Provides that a request by HOAs for notification of a trustee's deed upon sale does not constitute a request for a document that either effects or evidences a transfer of encumbrance of an interest in real property or that releases or terminates any interest, right or encumbrance of an interest in real property.

EXISTING LAW

- 1) The Davis-Stirling Common Interest Development Act (The Act) defines and regulates CIDs, including the ability of the association to levy regular and special assessments sufficient to perform its obligations. [Civil Code Section 1350]
- 2) Defines "Association" as a nonprofit corporation or unincorporated association created for the purpose of managing a CID. [Civil Code Section 1351]
- 3) Allows an association to file in a county recorder's office a request that a mortgagee, trustee, or other person authorized to record a notice of default regarding any of those separate interests, mail to the CID a copy of any trustee's deed upon sale concerning a separate interest. The requested information shall be mailed to the association within 15 business days following the date the trustee's deed is recorded. [Civil Code Section 2924b]
- 4) Provides that any regular or special assessment, and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. That amount is a lien on the owner's interest in the common interest development from the time the association records a notice of delinquent assessment with the county recorder. Prior to recording that lien, the association must send the owner a certified letter that includes a general description of the collection and enforcement, right to request a meeting with the board, right to dispute the assessment debt, and to request alternative dispute resolution. [Civ. Code 1367-1367.1.]
- 5) Prevents an association from using judicial or non-judicial foreclosure to collect delinquent assessments that are less than \$1,800. [Civ. Code 1367.4.]
- 6) Regulates the non-judicial foreclosure of properties pursuant to the power of sale contained within a mortgage contract. Requires the trustee, mortgagee, or beneficiary to record a Notice of Default and allow three months to lapse before setting a date for sale of the property. [Civ. Code 2924, 2924f.]

- 7) Allows a person to record a request to be notified upon the filing of a notice of default or notice of sale and requires the trustee to mail notice to those persons. [Civ. Code 2924b (a), 2924b (b) (1).]

FISCAL EFFECT: None.

COMMENTS:

AB 2016 will allow homeowners associations in CIDs to record one notice against all properties where there has been a trustee's deed upon sale in that homeowner's association. The notice will notify the trustee that the HOA is requesting further notice of the name and mailing address of the successor in interest if a property in a HOA is foreclosed upon. In California, the county assessor's office interprets current law to require an association to record a notice on each individual home versus the entire association in one notice request. This interpretation is more costly and time consuming to a HOA. AB 2016 also clarifies that when a HOA files a request in the county recorder's office for the trustee's deed upon sale; this action does not constitute a request for a document that evidences a transfer of interest in a property or that releases or terminates any interest in a property.

To summarize, this measure will allow a CID to record one notice with the county recorder's office pertaining to all properties within that CID rather than record a notice for each individual property within the CID. It is imperative that a CID has the ability to know when there has been a trustee's deed upon sale on any property in the CID so assessments can be collected as soon as possible. It is also good to note that the failure to request a notice does not affect the title to real property.

**BACKGROUND:** Currently, over 40,000 HOAs exist in California. If a consumer purchases a home in a CID, membership in an HOA is automatic. The foreclosure crisis has caused HOAs to fight to stay out of the red as owners facing foreclosure become increasingly delinquent in their assessments. If a homeowner is struggling to make their mortgage payment, HOA dues are usually the first to fall by the wayside. The community management industry estimates that delinquent assessments have increased tenfold due to foreclosure activity. In one CID, unpaid dues by homeowners in foreclosure amounted to \$20,000 for just one month.

HOAs are hugely popular because they help protect homeowners' investments by maintaining both the appearance and infrastructure of the community. If there isn't enough money available to provide services, pay for contractors or secure insurance coverage, the quality and safety of the community is compromised for all owners. In a market where owners are struggling to maintain home value, a poorly-funded HOA could become a greater liability than asset, since the negative impacts would be evident throughout the community and not limited to solely those homes in or near foreclosure.

**PREVIOUS LEGISLATION:** SB 1511 ((Ducheny) Chapter 527, Statutes of 2007) allows a HOA with respect to a trustee's deed upon sale relating to separate interests governed by the HOA, to request the mortgagee or trustee to mail to the HOA a copy of any trustee's deed upon sale concerning a separate interest. Requires the mortgagee or trustee to mail that information to the HOA within 15 business days following the date the trustee's deed is recorded.

REGISTERED SUPPORT / OPPOSITION:

Support

The Community Associations Institute (CAI)

Opposition

None on file.

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081