

CACM Presents: AB 771 & SB 150 What You Need to Know



AB 771

The California Association of Realtors® (CAR) sponsored several bills in 2010 aimed at its perception that homeowners associations were causing problems for home sales. At first blush, the information they presented to the legislature showed HOA “transfer fees” in the thousands of dollars, which appeared to be egregious and unfair. As a result, Assembly Bill (AB) 771 was introduced by Assemblywoman Betsy Butler (D - Torrance/Redondo Beach/Marina del Rey), originally to limit the fees that could be charged by an association’s agent for the production of documents required for escrow.

During our investigation, CACM was able to provide hundreds of pages of true data to refute CAR’s claims of “gouging” and found that most of the larger fees being quoted were lump sums that included past-due assessment amounts (sometimes in the thousands of dollars). Once the true nature of the fees was established, CACM and CAR worked together to craft a bill that protects the interest of sellers and buyers while retaining an agent’s rights to provide documents at a reasonable profit, driven by market competition.

What AB 771 DOES

- Requires production of copies of approved 12 months of open minutes, IF REQUESTED by the purchaser
- Creates a new form (Civil Code § 1368.2) showing the different documents that are available through the escrow process
- Requires a written or electronic estimate of fees to be provided on the 1368.2 form upon receipt of a written request for the 1368 documents
- Permits the association to maintain the documents in electronic form
- Permits the association to post the documents to the association’s website
- Prohibits extra charges for providing the documents electronically
- Specifies fees for any documents called out in Civil Code § 1368 must be distinguished from other fees, fines, assessments (see 1368.2 form)
- States delivery of documents cannot be withheld for any reason except lack of payment of the document procurement fees outlined in the 1368.2 form
- Codifies the association’s ability to contract with a person or entity to provide documents on their behalf
- Association or agent must provide the completed 1368.2 form at the time the documents are delivered (again)
- States the form for billing disclosures must be substantially provided in the format of 1368.2

What AB 771 Does NOT Do

- Does not require 12 months of open minutes be provided for every escrow (only when the minutes are requested)
- Does not restrict third parties from charging reasonable fees
- Does not cap fees
- Does not require docs to be posted to a website
- Does not require HOAs that don’t currently keep documents electronically to convert them

NOTE: 1368.2 states that the info “shall be in substantially the following form.” Don’t alter the form too much, and be sure to include the statement about additional fees.

SB 150

In 2008, CAR sponsored AB 2259, the first of three rental restriction bills to be introduced in Sacramento. At that time, the first wave of foreclosures was taking the housing market by storm, creating uncertainty for those owners who had purchased their homes at the peak of the market, expecting to sell for a profit later. CACM and other industry groups opposed the bill and then Governor Schwarzenegger vetoed it noting that it was important to allow property owners in CIDs to continue self-governance using the democratic process, thus allowing them to live by majority rule.

In 2010, CAR sponsored AB 1927 which would have required a two-thirds supermajority of the membership to approve rental restrictions in a community where no rental restrictions previously existed. Although CACM had worked with CAR and remained neutral on the bill, Governor Schwarzenegger again vetoed the bill.

This year, CAR reintroduced its first bill as SB 150. With the change in the economic environment and a new Governor, it was clear that this bill would pass. The good news is that SB 150 does not legislate terms of use for rental agreements, and if an association has rental restrictions in place by December 31, 2011, they are "grandfathered" in. SB 150 was slated to become effective only if AB 771 was signed into law as well.

What SB 150 DOES

- Adds Civil Code § 1360.2 (a) through (f), which address rental restrictions
- Precludes associations from adopting restrictions that prohibit rental or leasing of separate interests
- Applies to all rental restrictions created (for new) or added (for existing) on or AFTER January 1, 2012
- Allows owners to expressly consent to be subject to restrictions included or added after the deadline
- Allows HOAs to continue to restrict timeframes and other lease terms
- Requires owners to provide name and contact info of tenant or tenant's representative to the HOA prior to leasing
- In conjunction with AB 771, requires disclosure with escrow documents if there is (a) a provision in the governing documents that prohibits rental or leasing of the separate units and (b) a statement describing the prohibition and its applicability

Commercial Associations

Civil Code § 1373 (exempting industrial or commercial CIDs from portions of the Davis-Stirling Act) excludes SB 150 requirements from those types of developments.

What SB 150 Does NOT Do

- Does not eliminate existing rental restrictions
- Does not impact the voting process to amend the governing documents

To better understand the discussions surrounding these bills, you should be familiar with:

Brown v. Professional Community Management Co. (2005) - Court found that although assessments or fees are limited by Civil Code § 1366.1 to "the amount necessary to defray the costs for which (they are) levied," this only applies to the association and not a third-party contractor such as the management company.

Berryman v. Merit Property Management, Inc. (2007) - Relying on the Brown decision, court found that Civil Code § 1368 also applies only to the association and not a third-party contractor such as a management company that may charge transfer fees and document fees as part of their contract with the association.

California Association of Realtors (CAR) - CAR is the lobbying group for Realtors in California. Historically, CAR and CACM have a good working relationship in Sacramento. Although the two organizations' objectives do not always agree, both sides work to reach amicable resolutions that work for all.



**CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED BY
CALIFORNIA CIVIL CODE §1368***

Property Address _____
 Owner of Property _____
 Owner's Mailing Address _____
 (If known or different from property address)

Provider of Section 1368 Items:

| | | | |
|------------|-------------------|----------------------|---------------------|
| _____ | _____ | _____ | _____ |
| Print Name | Position or Title | Association or Agent | Date Form Completed |

Check or Complete Applicable Column or Columns Below

| Document | Civil Code Section | Included | Not Available (N/A) or Not Applicable |
|---|---------------------------------------|----------|---|
| Articles of Incorporation or statement that not incorporated | Section 1368(a)(1) | _____ | _____ |
| CC&Rs | Section 1368(a)(1) | _____ | _____ |
| Bylaws | Section 1368(a)(1) | _____ | _____ |
| Operating Rules | Section 1368(a)(1) | _____ | _____ |
| Age restrictions, if any | Section 1368(a)(2) | _____ | _____ |
| Pro forma operating budget or summary, including reserve study | Sections 1365 and 1368(a)(3) | _____ | _____ |
| Assessment and reserve funding disclosure summary | Sections 1365 and 1368(a)(4) | _____ | _____ |
| Financial statement review | Sections 1365 and 1368(a)(4) | _____ | _____ |
| Assessment enforcement policy | Sections 1365 and 1368(a)(4) | _____ | _____ |
| Insurance summary | Sections 1365 and 1368(a)(4) | _____ | _____ |
| Regular assessment | Section 1368(a)(4) | _____ | _____ |
| Special assessment | Section 1368(a)(4) | _____ | _____ |
| Emergency assessment | Section 1368(a)(4) | _____ | _____ |
| Other unpaid obligations of seller | Sections 1367.1 and 1368(a)(4) | _____ | _____ |
| Approved changes to assessments | Sections 1365 and 1368(a)(4), (8) | _____ | _____ |
| Settlement notice regarding common area defects | Sections 1368(a)(6), (7) and 1375.1 | _____ | _____ |
| Preliminary list of defects | Sections 1368(a)(6), 1375, and 1375.1 | _____ | _____ |
| Notice(s) of violation | Sections 1363 and 1368(a)(5) | _____ | _____ |
| Required statement of fees | Section 1368 | _____ | _____ |
| Minutes of regular meetings of the board of directors conducted over the previous 12 months, if requested | Section 1368(a)(9) | _____ | _____ |
| Total fees for these documents: | | _____ | _____ |

* The information provided by this form may not include all fees that may be imposed before the close of escrow. Additional fees that are not related to the requirements of Section 1368 may be charged separately.