

Assembly Bill No. 569

CHAPTER 661

An act to amend Sections 11003.4 and 11013.1 of, and to add Section 11013.6 to, the Business and Professions Code, and to amend Section 5100 of the Civil Code, relating to land use.

[Approved by Governor September 27, 2014. Filed with
Secretary of State September 27, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 569, Chau. Real property: divided lands.

(1) Existing law exempts a limited-equity housing cooperative or a workforce housing cooperative trust from provisions of existing law governing subdivided land transactions that are applicable to stock cooperatives if the limited-equity housing cooperative or workforce housing cooperative trust complies with specified conditions.

This bill would revise the conditions for the exemption, among other things, to require that each party that executes a regulatory agreement with the cooperative satisfy itself that the rights of the cooperative members are provided adequate protection, as specified. By expanding the applicability of a crime, this bill would impose a state-mandated local program.

(2) Existing law prohibits the sale or lease of lots or parcels within a subdivision that is subject to a blanket encumbrance unless the encumbrance includes a specified release clause or certain conditions are met.

This bill would authorize the sale or lease of an individual interest in a defined stock cooperative or limited-equity housing cooperative that is subject to a blanket encumbrance if specified conditions are met.

(3) The Davis-Stirling Common Interest Development Act establishes procedures for elections.

This bill would exempt a stock cooperative with bylaws that provide that all members and shareholders automatically become directors of the homeowners' association from the procedures applicable to the election of directors of the homeowners' association.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 11003.4 of the Business and Professions Code is amended to read:

11003.4. (a) A “limited-equity housing cooperative” or a “workforce housing cooperative trust” is a corporation that meets the criteria of Section 11003.2 and that also meets the criteria of Sections 817 and 817.1 of the Civil Code, as applicable. Except as provided in subdivision (b), a limited-equity housing or workforce housing cooperative trust shall be subject to all the requirements of this chapter pertaining to stock cooperatives.

(b) A limited-equity housing cooperative or a workforce housing cooperative trust shall be exempt from the requirements of this chapter if the limited-equity housing cooperative or workforce housing cooperative trust complies with all the following conditions:

(1) The United States Department of Housing and Urban Development, the United States Department of Agriculture, the National Consumers Cooperative Bank, the California Housing Finance Agency, the Public Employees’ Retirement System (PERS), the State Teachers’ Retirement System (STRS), the Department of Housing and Community Development, the Federal Home Loan Bank System or any of its member institutions, a state or federally chartered credit union, a state or federally certified community development financial institution, or the city, county, school district, or redevelopment agency in which the cooperative is located, alone or in any combination with each other, directly finances or subsidizes at least 50 percent of the total construction or development cost or one hundred thousand dollars (\$100,000), whichever is less; or the real property to be occupied by the cooperative was sold or leased by the Transportation Agency, other state agency, a city, a county, or a school district for the development of the cooperative and has a regulatory agreement approved by the Department of Housing and Community Development for the term of the permanent financing, notwithstanding the source of the permanent subsidy or financing.

(2) No more than 20 percent of the total development cost of a limited-equity mobilehome park, and no more than 10 percent of the total development cost of other limited-equity housing cooperatives, is provided by purchasers of membership shares.

(3) A regulatory agreement that covers the cooperative for a term of at least as long as the duration of the permanent financing or subsidy, notwithstanding the source of the permanent subsidy or financing, has been duly executed between the recipient of the financing and either (A) one of the federal or state agencies specified in paragraph (1) or (B) a local public agency that is providing financing for the project under a regulatory agreement meeting standards of the Department of Housing and Community Development. The regulatory agreement shall make provision for at least all of the following:

(A) Assurances for completion of the common areas and facilities to be owned or leased by the limited-equity housing cooperative, unless a construction agreement between the same parties contains written assurances for completion.

(B) Governing instruments for the organization and operation of the housing cooperative by the members.

(C) The ongoing fiscal management of the project by the cooperative, including an adequate budget, reserves, and provisions for maintenance and management.

(D) Distribution of a membership information report to any prospective purchaser of a membership share, prior to purchase of that share. The membership information report shall contain full disclosure of the financial obligations and responsibilities of cooperative membership, the resale of shares, the financing of the cooperative including any arrangements made with any partners, membership share accounts, occupancy restrictions, management arrangements, and any other information pertinent to the benefits, risks, and obligations of cooperative ownership.

(4) Each party that executes the regulatory agreement shall satisfy itself that the bylaws, articles of incorporation, occupancy agreement, subscription agreement, any lease of the regulated premises, any arrangement with partners, and arrangement for membership share accounts provide adequate protection of the rights of cooperative members.

(5) Each provider of financing or subsidies shall receive from the attorney for the recipient of the financing or subsidy a legal opinion that the cooperative meets the requirements of Section 817 of the Civil Code and the exemption provided by this section.

(c) Any limited-equity cooperative, or workforce housing cooperative trust that meets the requirements for exemption pursuant to subdivision (b) may elect to be subject to all provisions of this chapter.

(d) The developer of the cooperative shall notify the Bureau of Real Estate, on a form provided by the bureau, that an exemption is claimed under this section. The Bureau of Real Estate shall retain this form for at least four years for statistical purposes.

SEC. 2. Section 11013.1 of the Business and Professions Code is amended to read:

11013.1. It shall be unlawful, except as provided in Section 11013.2 or 11013.6, for the owner, subdivider, or agent to sell or lease lots or parcels within a subdivision that is subject to a blanket encumbrance unless there exists in the blanket encumbrance or other supplementary agreement a provision, hereinafter referred to as a release clause, which by its terms shall unconditionally provide that the purchaser or lessee of a lot or parcel can obtain legal title or other interest contracted for, free and clear of the blanket encumbrance, upon compliance with the terms and conditions of the purchase or lease.

SEC. 3. Section 11013.6 is added to the Business and Professions Code, to read:

11013.6. Notwithstanding Sections 11013.1 and 11013.2, an individual interest in a stock cooperative, as defined in Section 4190 of the Civil Code, or a limited equity housing cooperative, as defined in Section 817 of the Civil Code, may be sold or leased subject to a blanket encumbrance if all of the following conditions are met:

(a) The notice required pursuant to Section 1133 of the Civil Code is provided to each prospective purchaser and lessee of the interest and is included in every purchase and lease contract.

(b) The property subject to the sale or lease has obtained a public report from the Bureau of Real Estate that accounts for the blanket encumbrance.

(c) The governing documents for the association require the association to create and maintain during the term of the blanket encumbrance all of the following:

(1) Prior to the sale of any individual interests in the stock cooperative or limited-equity housing cooperative, a financing reserve amount equal to at least two months of the amount of the debt service payments due on the blanket encumbrance.

(2) Within one year of the sale of at least 25 percent of the individual interests in the stock cooperative or limited-equity housing cooperative, a financing reserve amount equal to at least three months of the amount of the debt service payments due on the blanket encumbrance.

(3) Within one year of the sale of at least 50 percent of the individual interests in the stock cooperative or limited-equity housing cooperative, a financing reserve amount equal to at least five months of the amount of the debt service payments due on the blanket encumbrance.

(4) Within one year of the sale of at least 75 percent of the individual interests in the stock cooperative or limited-equity housing cooperative, a financing reserve amount equal to at least eight months of the amount of the debt service payments due on the blanket encumbrance.

SEC. 4. Section 5100 of the Civil Code is amended to read:

5100. (a) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area pursuant to Section 4600 shall be held by secret ballot in accordance with the procedures set forth in this article.

(b) This article also governs an election on any topic that is expressly identified in the operating rules as being governed by this article.

(c) The provisions of this article apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

(d) The procedures set forth in this article shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

(e) In the event of a conflict between this article and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with

Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this article shall prevail.

(f) Directors shall not be required to be elected pursuant to this article if the governing documents provide that one member from each separate interest is a director.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.