



Law Bulletin

2005 LEGISLATIVE UPDATE

AB 1836 - ALTERNATIVE DISPUTE RESOLUTION

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SUITE 300

NEWPORT BEACH CA

92660

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FAX: 949.729.8012

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This bill, approved by the Governor on September 24, 2004, and filed with the Secretary of State on the same day, will take effect on January 1, 2005. It modifies Section 1354 of the Civil Code regulating the rules for Alternative Dispute Resolution (ADR) in common interest developments (CID). The purpose of Section 1354 and this bill is to facilitate the out of court settlement of disputes between homeowners and the associations in which they live through ADR. Currently, Section 1354 provides that before any party within a CID association brings an action to enforce the association's governing documents, that party must submit their dispute to ADR.

When people choose to own property in a CID, they take possession of the property subject to the association's governing documents; the purpose of which are the maintenance and enhancement of aesthetic appeal and value of property within the association. For the most part, associations and members within the associations try to resolve disputes relating to the association's governing documents amicably, however, this is not always the case.

On occasion, disputes between a homeowner and the association lead to bitter confrontations both in and out of the legal system. Where the parties seek court enforcement of their rights according to the association's governing documents, oftentimes, these disputes lead to costly and protracted litigation. While from a monetary standpoint, the victors of litigated cases in association disputes can recover their attorney's fees and costs from the losing party,

both parties must weigh the risks and benefits of engaging in litigation. This is especially true since our courts are overburdened with cases. In some cases, litigating a claim could take several years to obtain a judgment.

As an alternative, Civil Code §1354 currently provides for ADR to assist in the resolution of disputes between parties within a CID. This bill improves the effectiveness of this ADR process by providing a quick and inexpensive method for resolving disputes.

As a significant addition to Section 1354's ADR requirement, this bill adds Civil Code §1363.820, which requires that each association provide a "fair, reasonable, and expeditious procedure for resolving their disputes." Through Section 1363.820, associations "shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development." The Section 1363.820 ADR procedures are colloquially called the "internal dispute resolution procedures."

With regard to the fees associated with this procedure, Section 1363.830(g) provides that members "shall not be charged a fee to participate in this process." It follows that the association is responsible for the costs associated with the internal dispute resolution procedures. On the other hand, if an association does not provide its own dispute resolution procedure, Civil Code §1363.840 provides for a default "meet and confer" procedure. While members may choose to use the dispute resolution procedure under

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Section 1363.820 or the “meet and confer” procedure of Section 1363.840, they are not required to do so. Associations on the other hand, may not refuse a “meet and confer” request.

If the parties still can not resolve their dispute after attempting internal dispute resolution or “meet and confer” procedures, the parties will still have to comply with the procedures of Section 1354’s traditional ADR procedures before bringing an action involving an association’s governing documents. In this formal ADR procedure, the costs of the ADR is “born by the parties” as opposed to the free internal dispute resolution procedure provided for under Section 1363.820. In essence, these ADR provisions provide the parties with two chances to resolve their disputes through ADR before litigating their case.

This bill also expands the scope of the current requirement that parties in a CID dispute use ADR. Currently, certain CID disputes are not covered under the existing provisions of Section 1354. This bill extends the ADR process to cover disputes involving the Davis-Stirling Common Interest Development Act, nonprofit corporation law, and judicial writs.

Furthermore, this bill simplifies the service requirement by providing that a Request for Resolution may be served via personal delivery,

first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

Under existing law, the statute of limitations for commencing an enforcement action is not tolled by serving a Request for Resolution. Thus, a party could potentially avoid the ADR requirement by waiting until near the expiration of the statute of limitations to file a lawsuit, and then claim that there was not sufficient time to request ADR. To resolve this loophole, this bill provides for a tolling of the statute of limitations if a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action. With this bill, the statute of limitation is tolled for thirty days by service of a Request for Resolution to allow the party served time to respond. If the party served accepts ADR, then the statute of limitation is further tolled to allow for the ADR to take place, and may be further tolled by written stipulation of the parties.

To facilitate the resolution of disputes through ADR, this bill further protects the confidentiality of statements made during ADR sessions by incorporating the general rules governing mediation confidentiality contained in the [California Evidence Code](#). n

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SB 64**HOMEOWNER'S
INSURANCE****S**

B 64 is part of four recently signed insurance-related bills collectively known as the Homeowners Bill of Rights. This particular bill helps homeowners settle disputes relating to their homeowner's insurance claims with their insurance company by voluntarily mediating these disputes with the Department of Insurance ("Department").

Insurance Code §10089.70(a) required the Department to maintain programs for the mediation of disputes between insured complainants and insurers involving all earthquake claims resulting from the Northridge earthquake of 1994 and all earthquakes since, as well as auto insurance claims arising from automobile collision coverage or automobile physical damage coverage. These provisions were set to expire on January 1, 2006, however, SB 64 extended the effect of these provisions to January 1, 2008.

Under this bill, the Department must also establish a program for the mediation of disputes arising from claims under policies between insured complainants and insurers regarding residential property insurance losses, other than earthquake, occurring after September 30, 2003, and for which the Governor has declared a state of emergency. Unless the time limit is extended, the Department must maintain this program until January 1, 2008. This bill allows the Department to refer to mediation any of these disputes in which the parties wish to discuss possible payments beyond policy limits.

To encourage insurers to bring their disputed claims to the Department for mediation, SB 64 provides a maximum amount which the Department may charge for mediation of disputes covered by these provisions. Specifically, the Department may not set a fee greater than fifteen hundred dollars (\$1,500.00) for any mediation of claims covered by these provisions.



Additionally, to ensure that the mediation process is fair to both parties, SB 64 provides procedural requirements for the mediation of disputes covered by these provisions. Under this bill, the parties must present all documents relevant to the successful mediation of the claim, including documents relating to the degree of loss, the value of the claim, and the fact or extent of damage. If the mediator feels that other documents may be relevant to the dispute, the mediator may request that the Department determine whether the documents should be produced. Both parties may elect to have counsel present at the mediation, however, if the insured complainant is not represented by counsel at the mediation, then the insurer also can not be represented by counsel during the mediation.

Because of the increasing number of claim disputes between insured disaster victims and their insurers, SB 64 went into effect immediately as an urgency statute upon being signed by the Governor in August of 2004. [n](#)

AB 2718

CORPORATE

DISCLOSURES

As a homeowner association begins to age, deterioration of its major common area components is inevitable. To ensure adequate funding for repairs, an association is required to maintain a reserve account and prepare a reserve study for distribution to homeowners, which outlines potential repairs and/or replacement of major components and estimates the funds necessary to maintain the association's reserves.

Currently, when a homeowner in a common interest development attempts to sell his or her interest, the prospective purchaser is often left in the dark with respect to the association's reserve funds and financial obligations thereof. AB 2718, whose provisions become effective July 1, 2005, is designed to address the concerns expressed by many new purchasers who later become incensed once they learn the status of their association's reserves and are faced with substantial assessment increases.

Disclosure Requirements

Pursuant to Civil Code §1365, an association is required to provide its members with certain information, including the association's operating budget, a reserve study and determination of anticipated or scheduled special assessments, the association's policies regarding lien rights and assessment collection, and a summary of the association's current insurance. AB 2718 initiates two changes to Civil Code §1365. The first will require a Board of Directors to notify members of the mechanisms by which the Board intends to fund reserves, whether by way of assessments, borrowing funds, deferring repairs, or through use of other assets. The second change to Civil Code §1365 amends the time in which an association must provide its annual operating budget and related documents to its members. Under existing law, an association must distribute its operating

budget and policies governing legal remedies for default on unpaid assessments not less than 45 days and not more than 60 days prior to the start of the association's fiscal year. AB 2718 amends this timeframe to now permit an association to distribute said documents not less than 30 days nor more than 90 days prior to the start of the association's fiscal year.

Reporting Requirements for Community Service Organizations

AB 2718 adds a new section to the Davis-Stirling Act, Civil Code §1365.3. The new section governs reporting requirements of Community Service Organizations (CSO). A CSO is a nonprofit organization designed to provide services to residents of a common interest development and/or the public to the extent that the facilities or common areas are made available to the public. The new section will require that the CSO provide the association with details as to administrative costs and payees, and information so as to allow the association to complete its disclosures and reserve studies.

Notice Required for Intended Short-Term Use of Reserve Funds

Civil Code §1365.5 requires an association to provide its members every three years with a reserve study which identifies major components with a useful life of less than 30 years which the association is obligated to repair or replace, estimates the probable useful life of major components and potential cost of repair, and the annual contribution necessary to maintain the components and the association's reserve fund. AB 2718, once effective, will amend this section to require that a Board provide homeowners with written notice when reserve funds are being considered to meet short-term cash flow

C O N T I N U E D
F R O M P A G E 4

AB 2718

requirements of the association. Under AB 2718, the notice must provide the proposed use of reserve funds, viable options for repayment and whether a special assessment will be considered.

Permissible Document Reproduction Charges

Civil Code §1368 sets forth the information and documents a homeowner in a common interest development must provide a prospective purchaser, which include:

1. A copy of the association's governing documents;
2. A statement regarding age restriction, if any;
3. A copy of the most recent set of documents distributed pursuant to Civil Code §1365;
4. A statement regarding assessment levels and past due assessments;
5. A preliminary list of defects provided to homeowners pursuant to Civil Code §1375;
6. A copy of the association's post-litigation defect correction summary; and
7. Any change in assessments approved by the Board but not yet due and payable.

This section further requires that, upon request by a homeowner, the association produce said information and documents within 10 days. To that end, an association is currently permitted to charge the homeowner a reasonable fee for producing the documents which may not exceed the association's reasonable cost to prepare them. AB 2718 modifies this provision, deleting the "may not exceed" language, and provides

that the reasonableness of a fee may be based on the "association's actual cost to procure, prepare, and reproduce the requested items."

Assessment and Reserve Funding Summary

AB 2718 is intended to simplify and make more user-friendly the manner in which information regarding assessments and reserve accounts is presented. To that end, the bill adds Civil Code §1365.2.5, which contains a summary

the "association's actual cost to procure, prepare, and reproduce the requested items."

form which an association must use to provide its disclosure to homeowners. The form, will require an association to set forth the following:

1. The current level of assessments per unit;
2. A statement outlining any scheduled assessment(s) that have been approved by the Board, including the date amount and purpose of the scheduled assessment(s);
3. A statement as to whether projected reserve account balances will be sufficient to fund repair and/or replacement of major components over the next 30 years;
4. A projection of anticipated assessment(s) which may be necessary to ensure adequate reserve funding over the next 30 years, including the approximate date and amount of the anticipated assessment(s); and
5. A statement as to the current balance in the association's reserve account.

Civil Code §1365.2.5 will require the summary form to be distributed in conjunction with the association's operating budget at the end of each fiscal year. [n](#)

AB 2376**An act to amend
§§ 1357.120 and 1373
of the California
Civil Code
and to add
Civil Code § 1378**

In the beginning, there was darkness. Then the Legislature enacted the "Open Meeting Act" giving members of an association the right to attend and subsequently to speak at meetings of their association's board of directors. Prior to January 1, 2004, members had little in the way of legal rights to participate in the adoption of rules and regulations promulgated by the association's board of directors. Although politically savvy directors sought membership input, the boards were not legally required to seek that input. If members were unhappy with a rule or rules adopted by their board, their only practical remedy was to recall the entire board of directors, and if successful, elect a new board which would amend, modify or rescind various rules adopted by prior boards. The 2004 legislation (California Civil Code §1357.130 et. Seq.) has changed all that.

Under this new 2004 legislation, not only were boards now required to provide the membership with advance notice of contemplated rule changes and an opportunity to comment on same, but members were also given the right to compel the calling of a special meeting of the members for purposes of rescinding a board promulgated rule or regulation.

Resisting the temptation to comment upon the succinctness and clarity in writings created by lawyers and legislators, I will focus on attempting to distill the salient features of this legislation and what could prove to be a trap for the unwary.

1. Annual Notice to Members: In addition to the various and sundry other documents that an association is required to mail out annually to its members, the association is now required to "annually provide" its members with notice of any requirements for association approval of physical changes to property. The notice must describe the types of changes that require association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

Although this bill does not become effective until January 1, 2005, I would recommend that associations initially comply with this requirement of notice to the membership as soon as possible

and then simply set up a procedure to send out the required notice at the time it makes its other annual mailings to the membership. That would seem to be more prudent than leaving it up to a judge to decide when that first notice required by AB 2376 (actually AB 1836) had to be sent to the membership.

It is my belief (and hope) that even before enactment of AB 2376 (AB 1836), attorneys advised their association clients that changes in procedures and guidelines for reviewing and approving or disapproving a proposed physical change to a member's separate interest or to the common area fell within the purview of California Civil Code §1357.130 (mailing of proposed rule change to membership, the Board meeting 30 days later and notice of adoption of the rule within 15 days after the meeting).

It would now seem clear that changes in architectural guidelines, procedures for making submissions and the requirements for submission all fall within the notice to membership of proposed rule change.

2. The Legislative Dilemma: AB 1836 was approved by the Governor and filed with the Secretary of State on September 24, 2004. Section 8 of this Bill incorporates amendments to Section 1357.120 of the Civil Code proposed by both AB 2376 and AB 1836.

AB 1836 states that (1) it should only become operative if both Bills are enacted and become effective on or before January 1, 2005 (that occurred), (2) each Bill amends Section 1357.120 of the Civil Code (that also occurred), and (3) AB 1836 is enacted after AB 2376 (that occurred) in which case Section 2 of AB 1836 shall not become operative.

AB 2376 provides

"Section 3.5 of this Bill shall only become operative if AB 1836 is enacted and becomes effective on or before January 1, 2005 and adds Section 1363.820 to the Civil Code in which case Section 3 of this Bill [AB 2376] shall not become operative."

One can only conclude that the designers of the

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F R O M P A G E 6

AB 2376

Florida ballot in the last Presidential election can't hold a candle to the California legislature. It would appear that only Section 2 and Section 3.5 of AB 2376 are operative. Section 2 simply amends Civil Code §1373 to provide that Civil Code §1378 does not apply to common interest developments that are limited to industrial or commercial uses by zoning or by a Declaration of Covenants, Conditions and Restrictions. Section 3.5 adds Section 1378 to the Civil Code.

So, what does Section 1378 require? It applies to associations (other than commercial or industrial) which have architectural control with respect to the development or any portion thereof. It imposes certain standards and requirements on the association in connection with the review and approval or disapproval of any proposed change. The association is required to satisfy the following requirements in the approval process, to wit:

1. The association must provide a fair, reasonable and expeditious procedure for making its decision, including prompt deadlines and maximum time for a response to an application or a request for reconsideration by the board of directors.

2. The association's decision must be made in good faith and may not be unreasonable, arbitrary or capricious.

3. The decision must be consistent with any governing provision of law including, but not limited to, the Fair Employment and Housing Act.

4. The decision must be in writing. If the proposed change is disapproved, a written decision must include both an explanation of why the proposed change was disapproved and a description of the procedure for reconsideration of the decision by the board of directors.

5. If the proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors of the association at an open meeting of the board unless the initial disapproval was made by the board of directors or a body (the architectural review committee) that has the same membership as the board of directors.

Sections 1, 2 and 3 would seem to simply embody, in statutory law, existing case law relative to the exercise of architectural control. Almost all CC&Rs have specific deadlines for association action on architectural applications. One of the questions raised is whether the prohibition against unreasonable, arbitrary or capricious decisions is measured by the Nahrstedt standard which in general provides that although the decision may be arbitrary or capricious as to the individual, if it is reasonable with respect to the community interest as a whole, the decision will be upheld. In other words, are we returning to the days when enforcement was dependent upon the Association proving that the decision was **reasonable as applied to the individual** or does the Nahrstedt test of reasonableness which looks at the community interest as a whole still apply.

The other significant provision is Section 5 which in effect creates a right of appeal from a disapproval unless the body making the disapproval was either the board of directors or an architectural committee composed of the board of directors. It should be noted that the statute does not grant any right of reconsideration or appeal to the board by aggrieved owners where the applicant is granted approval.

In conclusion, as one works his or her way through the five pages of AB 2376, you can distill the following:

1. With respect to those few CC&Rs that do not have time limits imposed in connection with the architectural review process, reasonable time limits must be established.

2. It grants a right of appeal or reconsideration by the board of directors with respect to a disapproval.

3. It possibly resurrects the question as to which standard of reasonableness is to be applied when judging the validity of a disapproval. [n](#)

AB 488

MEGAN'S LAW

Information

Regarding

Registered Sex

Offenders Provided

to the Public Via

Internet Web Site

Existing law requires the Department of Justice ("Department") to compile information, categorized by community of residence and ZIP code, regarding any person required to register as a sex offender for a conviction for the commission or attempted commission of any specified sex offense. Prior to Assembly Bill 488, adding Section 290.46 to the Penal Code, the Department had been required to operate a "900" number for the public to inquire whether a named individual was among the Department's database of registrants. The Department was also required to provide a CD-ROM or other electronic medium containing a specified portion of the compiled sex offender information to certain law enforcement agencies, who are required to make it available to the public.

The newly added Section 290.46 now requires that on or before July 1, 2005, the Department must make certain information about registered sex offenders available to the public via an internet Web site. The Department is required to update that information on an ongoing basis. In recognition of California's diverse population, the enacted statute requires that the Web site be translated into languages other than English, as determined by the Department. Registered sex offenders may not enter the Web site and may face a fine up to \$1,000 and/or imprisonment in the county jail for not more than six months if they do.

Information Provided

The information posted on the Web site will include all of the information on the CD-ROM generated by the Department categorized by "community residence and ZIP code." In addition, the Web site will include the offenders' names and known aliases, a photograph, a physical description [including gender and race], date of birth, criminal history [related to the crime for which they were required to register], the address at which the person resides, and any other information that the Department of Justice deems relevant. The home address of the offender is only provided for a limited number of offenses, typically those sexual offenses coupled with assault, kidnapping, and victims under 14 years old.

The Web site will not provide information on all registered sex offenders as some offenders may be permitted to file an application with the Department for exclusion. Those offenders who may be granted an exclusion include: sexual battery or annoying a child under the age of 18. Also excluded from the Web site is information identifying the victims by name, the registered sex offender's criminal history, [other than the crime for which they were required to register] and the name and address of their employers.

Use of Information

Individuals are only authorized to use the information disclosed on the Web site for the purpose of protecting a person at risk. Among prohibited uses specified in the Section, two may be relevant to common interest developments: use of the information for purposes relating to housing accommodations and use of the information for purposes relating to benefits, privileges, or services provided by any business establishment. Associations would be considered "business establishments" providing benefits, privileges or services to its members. Thus, an Association would not be able to curtail a member's rights to the facilities [i.e. after finding out from the Web site that the member is a registered sex offender].

Any use of the information disclosed for purposes other than for the protection of a person at risk may make the user liable for actual damages including any amount that may be determined by a jury or judge, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty up to twenty-five thousand dollars (\$25,000). Preventive relief, such as permanent and temporary injunctions may be sought against any person or group of persons engaged in a pattern or practice of misuse of the information available via the Web site.

AB 488 recognized the urgency of adding Section 290.46 to the Penal Code and therefore, this legislation takes effect immediately. [n](#)

AB 224**ROOF
COVERING
MATERIALS**

This bill deals primarily with the application of fire retardant roof coverings in areas designated as very high fire hazard severity zones. It adds Section 1353.7 to the Civil Code and, in essence, prohibits an association located within a very high fire hazard severity zone from requiring a homeowner to install or repair a roof in a manner that is in violation of Section 13132.7 of the Health and Safety Code. It further provides that the association's governing documents must allow for at least one type of fire retardant roof covering material that meets the requirements of the aforementioned Health and Safety Code.

Lest there be questions of interpretation, the Health and Safety Code makes clear that the term "governing documents" is as defined in Section 1351 of the Civil Code. In other words, **architectural guidelines must allow for one type of fire retardant roof covering** that meets the Health and Safety Code requirements. Developments located in a very high fire hazard

severity zone as designated by the Director of Forestry and Fire Protection are, pursuant to the Health and Safety Code, subject to the following:

"the entire roof covering of every existing structure where more than fifty percent (50%) of the total roof area is replaced within any one year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class B as defined in the Uniform Building Code."

In most other cases, Class C material is required.

Local ordinances adopted prior to January 1, 2005 may be more restrictive. However, if they are less restrictive than the requirements set forth in the Health and Safety Code, the local ordinance is not valid. [n](#)

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SB 1306

USE OF ELECTRONIC TRANSMISSION AND VOTING PROCEDURES



Although this particular Senate bill is forty-eight pages long, only seven of those pages are directed specifically to mutual benefit corporations which are governed by the Mutual Benefit Section of the Nonprofit Corporations Code. Corporations Code §7211 is amended to provide **that unless otherwise provided in the articles or in the bylaws**, required notices of meetings may be given by electronic transmission by the association. This is in addition to the other methods of notice permitted, e.g. first-class mail, personal delivery, etc. It also provides that members of the board may participate in a board meeting via electronic transmission by and to the association, though this may present some problems of compliance with the Open Meeting Act. The usual requirements relative to participation when a director is not physically present continue to apply, e.g.:

1. Each board member can communicate with all of the other members concurrently;
2. Each board member is provided a means of participating in all matters before the board, including the capacity to propose or to interpose an objection to a specific action to be taken.

For purposes of quorum requirements, a director who is participating via electronic transmission is deemed present. Permitted electronic transmissions include facsimile to a telephone number on record with the association, electronic mail to an address on record with the association, posting on a designated electronic message board or network with separate notice to the recipient or other means of communication.

It should be noted that the recipient must consent to notice by electronic communication, and the consent must not have been revoked at the time of the delivery of the notice. The communication must create a record that is capable of retention by being converted into legible, tangible form. If all that isn't complicated enough, the requirements applicable to consent as set forth in 15 U.S.C. Sec. 7001(c)(1) must also be met.

SB 1306 also empowers, but does not require, boards to permit members to attend membership meetings by way of electronic transmission by and to the association. Although the provisions relating to attendance at membership meetings may have some practical applicability when the membership of a mutual benefit corporation is scattered across the country, it hardly seems to be the kind of procedure that homeowner associations will be adopting. Additionally, the bill also permits minutes to be maintained in either written form or any other form capable of being converted into clearly legible, tangible form.

At the end of the day, it appears that this particular Senate bill will have little practical impact on associations. Directors who are unable to attend a board meeting will probably continue to utilize speaker phones where they can hear everything that is being said and all of the directors can hear them. I don't think we'll be seeing a series of large plasma TV screens hanging in the clubhouse of an association at its membership meetings. [n](#)

SB 1746**UNINCORPORATED
ASSOCIATIONS**

SB 1746 repeals existing law governing unincorporated associations, including nonprofit associations, and enacts a more organized statutory scheme to govern these associations. Additionally, this bill defines the liabilities of these associations and their members. In passing SB 1746, the legislature limited application of this bill to unincorporated associations, including nonprofit associations. This bill does not apply to corporations, government or governmental subdivisions or agencies, partnerships or joint ventures, limited liability companies, or labor organizations governed by their own constitution or by-laws.

Some significant aspects of SB 1746 are that it:

1. Defines important terms regarding unincorporated associations;
2. Makes consistent rules governing property ownership and transfer, dissolution of the association, and a creditor's rights to association property distributed to an individual;
3. Establishes a more comprehensive set of rules regarding contract liability of members, directors, officers and agents of unincorporated associations;
4. Allows for "piercing the corporate veil" of a nonprofit association if a member is misusing the association to defraud others or to work an injustice.

This bill adds several new chapters and sections to Title 3 of the Corporations Code, which relates to unincorporated associations. Within Title 3, Part 1 Chapter 1 defines terms used with regard to unincorporated associations. Section 18035 of Chapter 1 specifically defines an unincorporated association as "an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not."

Title 3 Part 2 Chapter 1, beginning with Section 18605, establishes a set of rules regarding the liability of members, directors, officers and agents of nonprofit associations. Generally, a member, director, or agent of a nonprofit association is not liable for a debt,

obligation, or liability of the association solely by being a member, director, officer, or agent. While normally protected from contractual obligations of the association, a director, officer, agent or member may be liable if that person: expressly assumes personal responsibility for the obligation in writing, executes the contract without disclosing that they are acting on behalf of the association, or executes the contract without authority to do so.

Under the terms of this bill, members may also be liable if they act in their individual capacity rather than as a director, officer, or agent of the association, to expressly authorize or ratify the specific contract in writing. Furthermore, members may be liable for the contractual obligations of the association if they have notice of and receive a benefit from an association contract. Finally, under a doctrine called "piercing the corporate veil," a member or person in control of a nonprofit association may be liable for a debt, obligation, or liability of the association under common law principles governing alter ego liability of shareholders of a corporation. Thus, if a member commits fraud or other wrongful acts in the name of the association, a court may allow an injured party to collect damages from that member. [n](#)

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