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Torts

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Torts

Torts; common interest development--volunteer director tort immunity

Civil Code §§ 1365.5, 1365.7 (amended).
SB 2693 (Wright); 1992 STAT. Ch. 866

Under existing law, a volunteer officer or director of a residential common interest development (CID)¹ is granted immunity from liability to a person who suffers bodily injury as a result of the volunteer officer or director's tortious act or omission, if the act or omission was: (1) Performed in good faith; (2) the officer or director resides in the common interest development; (3) the officer or director was acting in the scope of his or her association duties; and (4) the association maintains general liability insurance in specified amounts.² Under Chapter 866, tort immunity extends to claims for property damage resulting from the negligent act or omission of the volunteer officer or director.³ In addition, Chapter 866 separately

1. See CAL. CIV. CODE § 1351(c) (West 1992) (defining common interest development as either a community apartment project, a condominium project, a planned development, or a stock cooperative).

2. *Id.* § 1365.7(a)(1)-(4) (amended by Chapter 866) The association is required to maintain and have in effect at the time of the act or omission, and at the time a claim is made, general liability insurance in either the amount of five hundred thousand dollars (\$500,000), if the common interest development consists of 100 or fewer separate interests, or at least one million dollars (\$1,000,000), if it consists of more than 100 separate interests. *Id.* § 1365.7(a)(4) (amended by Chapter 866); see *id.* § 1351(l) (West Supp. 1992) (defining separate interest). See generally *Francis T. v. Village Green Owners Ass'n*, 42 Cal. 3d 490, 495, 723 P.2d 573, 574, 229 Cal. Rptr. 456, 457 (1986) (finding the condominium association to be liable for the plaintiff's injuries received when she was assaulted and raped outside her unit after the association negligently refused to permit her to install additional lighting at her own expense when similar, previous events had occurred in the CID).

3. CAL. CIV. CODE § 1365.7(a) (amended by Chapter 866). The existing volunteer immunity was enacted in response to *Francis T. v. Village Green Owner's Ass'n*, 42 Cal. 3d 490, 723 P.2d 573, 229 Cal. Rptr. 456 (1986), and is expanded by Chapter 866 because many directors and officers are reluctant to serve, or are resigning from service because of the fear of personal liability. CALIFORNIA STATE ASSEMBLY JUSTICE COMMITTEE, ANALYSIS OF AB 2693, at 2 (Mar. 30, 1992); see Letter from Robyn Boyer Stewart, Legislative Representative, Executive Council of Homeowners, to Senator Bill Lockyer, Chair, Senate Judiciary Committee (June 10, 1992) (on file with the *Pacific Law Journal*) (stating that there are over 20,000 common interest developments in California, with an average of 88 units per project, 30,000 to 40,000 new volunteers must stand for office each year with the average term being two years to govern and operate these committees, 25% of the boards have been threatened with a lawsuit, and over 50% of CID boards reported being a party to litigation within the

provides immunity for damages resulting from bodily injury, emotional distress, or wrongful death.⁴ Existing law includes emotional distress or wrongful death within the definition of bodily injury.⁵

Prior law required a volunteer officer or director to reside in a common interest development either as a tenant or as an owner of no more than two separate interests in order to be granted immunity for tortious acts or omissions.⁶ Chapter 866 requires the volunteer officer or director to be a tenant of a separate interest, or an owner of no more than two separate interests, but does not require the volunteer officer or director to reside in the common interest development in order to be granted immunity from personal liability for negligent acts or omissions.⁷

Chapter 866 requires the association to maintain and have in effect one or more policies of insurance which include coverage for general liability of the association, and individual liability of officers and directors of the association for negligent acts or omissions.⁸ Volunteer officers and directors are not personally liable for injuries in excess of the coverage of insurance.⁹

Under existing law, an officer or director who received either direct or indirect compensation as an employee from the declarant¹⁰

last three years).

4. CAL. CIV. CODE § 1365.7(a) (amended by Chapter 866).

5. *Id.* § 1365.7(a) (amended by Chapter 866) (stating that bodily injury includes, but is not limited to emotional distress or wrongful death).

6. 1988 Cal. Stat. ch. 1188, sec. 1, at 2888 (enacting CAL. CIV. CODE § 1365.7).

7. CAL. CIV. CODE § 1365.7(e) (amended by Chapter 866).

8. *Id.* § 1365.7(a)(4) (amended by Chapter 866). Chapter 866 requires the same minimum amount of insurance be maintained as required under existing law, at least five hundred thousand dollars (\$500,000) for 100 or fewer separate interests, and one million dollars (\$1,000,000), if there are more than 100 separate interests. *Id.* § 1365.7(a)(4)(A)-(B) (West Supp. 1992). *See generally* Letter to Ed Davis, California State Senator, from James P. Lingl, Attorney at Law, (July 21, 1992) (on file with the *Pacific Law Journal*) (stating that Chapter 866 will not prevent lawsuits or prevent anyone injured from being compensated, but would prevent volunteer directors whose associations meet specific criteria from being individually named as defendants in the lawsuits).

9. CAL. CIV. CODE § 1365.7(a) (amended by Chapter 866).

10. *See id.* § 1351(g) (West Supp. 1992) (defining declarant as the person or group of persons designated in the declaration as the declarant, or, if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to the special rights, preferences, or privileges designated in the declaration as belonging to the signatory of the original declaration); *see id.* § 1353(a)-(b) (West Supp. 1992) (requiring the declaration to contain the legal description of the common interest development and which type it is, the name of the association, and the restrictions

of the common interest development, or from a financial institution owning a separate interest,¹¹ is not a volunteer for purposes of immunity.¹² In addition, under Chapter 866, an officer or director who was a declarant at the time of the tortious act or omission, is not a volunteer to whom the immunity applies.¹³

LES

Torts; disclosure of trade secrets

Public Resources Code § 40062 (new); § 44102 (amended and renumbered).

AB 2696 (Wright); 1992 STAT. Ch. 301

Under existing law, when any person¹ furnishes any information² required by the California Integrated Waste Management Act of 1989³ to enforcement agencies⁴ or the Integrated Waste Management Board (Board),⁵ that person may not make those portions which contain trade secrets⁶ available for public

on the use or enjoyment of any portion of the common interest development).

11. See *id.* § 1351(l) (West Supp. 1992) (defining separate interest according to the location of the interest). In a community apartment project, separate interest is the exclusive right to occupy an apartment. *Id.* In a condominium project, separate interest is an individual unit. *Id.* In a planned development, separate interest is a separately owned lot, parcel, area, space. *Id.*

12. *Id.* § 1365.7(c) (amended by Chapter 866).

13. *Id.*

1. CAL. PUB. RES. CODE § 40170 (West Supp. 1992) (defining person).

2. See *id.* § 40062(a) (enacted by Chapter 301) (stating that information includes any report, notice, application, or other document and including any plan in the definition of information).

3. See *id.* §§ 4000-49620 (West Supp. 1992) (codifying the California Integrated Waste Management Act).

4. See *id.* § 43202 (West Supp. 1992) (providing that enforcement agencies may be designated).

5. See *id.* § 40400 (West Supp. 1992) (creating the California Integrated Waste Management Board).

6. See CAL. CIV. CODE § 3426.1(d) (West Supp. 1992) (defining trade secrets); see also *Courtesy Temporary Serv. v. Camacho*, 222 Cal. App. 3d 1278, 1287, 272 Cal. Rptr. 352, 357 (1990) (holding that a customer list and related information were protectable trade secrets where they were procured by substantial time, effort, and expense); *American Credit Indem. Co. v. Sacks*, 213 Cal. App. 3d 622, 630-31, 262 Cal. Rptr. 92, 97 (1989) (finding that a customer list was a trade secret

inspection.⁷ Chapter 301 requires any person furnishing such information to identify, at the time of submission, all information which the person believes is a trade secret.⁸ Any information not identified by the person as a trade secret will be made available to the public, unless exempted from disclosure by another provision of law.⁹

Furthermore, under Chapter 301, when a person identifies information as a trade secret, the Board will determine whether any or all of the information has been properly identified as a trade secret.¹⁰ If the Board determines that the information is not a trade secret, the person must provide the Board with a complete justification and statement of the grounds on which the trade secret privilege is claimed.¹¹ If the Board ultimately determines that the

because it had potential economic value and the company took reasonable steps to insure its secrecy). *But see* *Self Directed Placement Corp. v. Control Data Corp.*, 908 F.2d 462, 465-466 (9th Cir. 1990) (stating that instruction techniques which were a matter of common public knowledge were not trade secrets), *appeal after remand*, 972 F.2d 1342 (1992); *Scott v. Snelling and Snelling, Inc.*, 732 F. Supp. 1034, 1044-45 (N.D. Cal. 1990) (finding that customer lists, employee lists, and business forms and procedures were not trade secrets because they were widely used in the industry); *Religious Technology Ctr. v. Wollersheim*, 796 F.2d 1076, 1090-91 (9th Cir. 1986) (holding that religious scripture was not a trade secret because it had no economic value), *cert. denied*, 479 U.S. 1103 (1987).

7. CAL. PUB. RES. CODE § 40062(a) (renumbered and amended by Chapter 301); *cf.* 5 U.S.C. § 552(b)(4) (1989) (exempting trade secrets from information that must be made public by federal agencies).

8. CAL. PUB. RES. CODE § 40062(b) (enacted by Chapter 301).

9. *Id.*

10. *Id.* § 40062(c)(1) (enacted by Chapter 301). The Board can upon its own initiative, or upon receipt of a request for public information, determine whether the identified information has been properly identified. *Id.*; *see* CAL. GOV'T CODE §§ 6250-6268 (West 1980 & Supp. 1992) (governing requests for public information).

11. CAL. PUB. RES. CODE § 40062(c)(1)-(2) (enacted by Chapter 301); *cf.* KY. REV. STAT. ANN. § 224.036(a) (Baldwin 1991) (providing for all hazardous waste records to be open to public inspection unless the information constitutes a trade secret upon a satisfactory showing by the owner); OR. REV. STAT. § 466.090(2) (1983) (requiring a satisfactory showing to the director that records, reports or information, or particular parts thereof, are entitled to protection as trade secrets so as not to be available for public inspection); *Slager v. Illinois Pollution Control Bd.*, 421 N.E.2d 929, 932 (Ill. 1982) (upholding a board decision that financial records of a waste hauling business were not trade secrets even after application of nondisclosure).

information is not protected as a trade secret, the information must be made available to the public.¹²

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Torts; fair employment and housing

Civil Code § 798.76 (amended); Government Code §§ 12955.1, 12955.2, 12955.3, 12955.4, 12955.5, 12955.6, 12989, 12989.1, 12989.2, 12989.3 (new); §§ 12920, 12927, 12930, 12931, 12935, 12955, 12980, 12981, 12984, 12986, 12987, 12995 (amended).
SB 1234 (Calderon); 1992 STAT. Ch. 182

Existing law prohibits discrimination¹ against anyone seeking housing accommodations² based on race, color, religion, sex, marital status, national origin, or ancestry.³ Chapter 182 additionally prohibits discrimination against anyone seeking housing accommodation based on familial status⁴ or disability.⁵

12. CAL. PUB. RES. CODE § 40062(c)(3) (enacted by Chapter 301). After receipt of the justification and statement, the Board must determine whether the information is protected as a trade secret within 15 days or, if no justification and statement is filed, within 45 days. *Id.* The information must be made available to the public after 15 days of mailing a final notice. *Id.*; *cf.* KY. REV. STAT. ANN. § 224.036(b) (Baldwin 1991) (requiring that any record, designated by the cabinet as not being a trade secret, not be released to the public before providing the owner 15 days written notice).

1. *See* CAL. GOV'T CODE § 12927(c) (amended by Chapter 182) (defining discrimination with respect to housing accommodations); *cf. id.* § 12955.1 (enacted by Chapter 182) (defining discrimination with respect to building specifications for multifamily dwellings). Section 12955.1(c) defines "covered multifamily dwellings" as buildings which have four or more units with one or more elevators. *Id.* § 12955.1(e) (enacted by Chapter 182).

2. *See id.* § 12927(d) (amended by Chapter 182) (defining housing accommodations).

3. CAL. CIV. CODE § 51 (West Supp. 1992).

4. *See* CAL. GOV'T CODE § 12955.2 (enacted by Chapter 182) (defining familial status); 42 U.S.C.A. § 3602(k) (West Supp. 1992) (defining familial status); *Soules v. United States Dep't of Hous. and Urban Dev.*, 967 F.2d 817, 823 (2nd Cir. 1992) (holding that a real estate agent did not violate the Fair Housing Act where she refused to rent an apartment to a prospective tenant with a 12-year-old child); *Gorski v Troy*, 929 F.2d 1183, 1187 (7th Cir. 1991) (holding that tenants licensed as foster parents are protected under the Fair Housing Act on the basis of familial status). *See generally* Frederic S. Schwartz, *Making and Meeting the Prima Facie Case Under the Fair Housing Act*, 20 AKRON L. REV. 291, 291-92 (1986) (analyzing the substantive and procedural issues involved in housing discrimination cases under the Fair Housing Act, and reviewing selected federal cases

Chapter 182 specifies certain rights for parties involved in disputes resulting from discrimination and procedures that the Department of Fair Employment and Housing (Department)⁶ must initiate if the discrimination has not been corrected.⁷ In addition,

dealing with housing discrimination against individuals); Michael A. Wolff, *Fair Housing Amendments Act of 1988: A Critical Analysis of "Familial Status"*, 54 MO. L. REV. 383, 411 (1989) (arguing that housing discrimination based on familial status and handicap is an economic problem best solved by local regulation rather than federal legislation).

5. CAL. GOV'T CODE § 12955(d) (amended by Chapter 182); *see id.* § 12955.3(a)-(b) (enacted by Chapter 182) (defining disability as physical or mental impairment that substantially limits one or more of a person's major life activities, or a record of having or being perceived as having a physical or mental impairment); 42 U.S.C.A. § 423(d)(1)(A) (West 1991) (defining disability under the Social Security Act as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment); 42 U.S.C.A. §§ 12101-12213 (West Supp. 1992) (mandating equal opportunity for individuals with disabilities); CAL. CIV. CODE § 51 (West 1982) (providing that all persons are protected from discrimination based upon sex, race, color, religion, ancestry, national origin, or other physical disabilities); *see also* ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF S.B. 1234, at 2 (Jan. 9, 1992) (stating that California must bring its housing discrimination laws as provided for in the Fair Employment and Housing Act (FEHA) into substantial conformity with federal law as promulgated by the Federal Housing Amendments Act of 1988 (FHAA) in order to be eligible to receive federal reimbursements). Chapter 182 specifies that religious organizations are not required to comply with the rules and provisions relating to housing and discrimination, unless membership in the organization is based on race, color, or national origin. CAL. GOV'T CODE § 12955.4 (enacted by Chapter 182). Under Chapter 182, the FEHA shall not be construed as to interfere with any federal provisions. *Id.* § 12955.6(a)-(b) (enacted by Chapter 182); *see Keith v. Volpe*, 858 F.2d 467, 482 (9th Cir. 1988) (holding that in order for a plaintiff to establish a prima facie case of withholding of housing for an unlawful reason under the Fair Housing Act, the plaintiff must demonstrate at a minimum that defendant's actions had a discriminatory effect).

6. *See* CAL. GOV'T CODE § 12930(a)-(k) (amended by Chapter 182) (establishing the functions, powers, and duties of the Fair Employment & Housing Department).

7. *Id.* § 12981(a)-(b) (amended by Chapter 182); *id.* § 12939 (enacted by Chapter 182). Under existing law, the Director of FEHA is required to issue a written accusation in the Department's name in certain cases where discrimination has not been corrected, unless the discrimination involves an unfair housing practice, in which case, the Department is required to issue an accusation within 100 days after the complaint has been filed. *Id.* § 12981(a) (amended by Chapter 182). Chapter 182 additionally provides that the Director of FEHA must issue a written accusation in the Department's name within 100 days after the complaint is filed, and the Department must complete its investigation within one year. *Id.* If the Department is unable to complete the investigation within one year, in which case, the Department is required to notify the parties involved as to why it failed to complete its investigation. *Id.* Chapter 182 permits respondents to answer the complaint at either an administrative hearing or civil proceeding. *Id.* Chapter 182 requires the Department to refer any allegations involving questions of land use or the legality of any zoning measures to the Attorney General for proper actions. *Id.* § 12981(b) (amended by Chapter 182). Chapter 182 additionally provides that where the Department has issued a written accusation, the parties involved in the dispute may provide the Department with notice of their decision to have the dispute resolved through civil adjudication. *Id.* § 12989(a) (enacted by Chapter 182). Once the Department has received notice of election, Chapter 182 requires the Department to dismiss the

Chapter 182 changes the time period within which the Department must file, serve and notify a respondent of a complaint, as well as specifying when the Attorney General⁸ must file a civil action.⁹ Finally, Chapter 182 changes specified remedies that the Department or a court may award against a respondent who has been found to have discriminated.¹⁰

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accusation within 30 days and file a civil action with the municipal or superior court. *Id.* § 12989(c) (enacted by Chapter 182). Chapter 182 also allows any aggrieved party to intervene in the action as a matter of right. *Id.* § 12989(d) (enacted by Chapter 182).

8. CAL. CONST. art. V, § 13 (providing the powers and duties of the Attorney General).

9. CAL. GOV'T CODE § 12986 (amended by Chapter 182); *id.* § 12989.39(c)-(d) (enacted by Chapter 182). Prior law required that the Department serve a housing owner in person or by mail with a verified complaint within 45 days after the complaint was filed. 1987 Cal. Stat. ch. 604, sec. 1, at 1942 (amending CAL. GOV'T CODE § 12986). Under Chapter 182, the Department must serve the complaint within 10 days. CAL. GOV'T CODE § 12986 (amended by Chapter 182). Chapter 182 specifies that the Department must notify the respondent in writing of the respondent's procedural rights and obligations as well as permitting the respondent to file an answer to the complaint. *Id.* Under Chapter 182, the Attorney General must commence a civil action if the Attorney General believes that a group is engaging in pattern of housing discrimination. *Id.* § 12989.3(a) (enacted by Chapter 182). The action must be commenced within 18 months after the discriminatory housing practiced occurred. *Id.* § 12989.3(c) (enacted by Chapter 182).

10. CAL. GOV'T CODE § 12989.2 (enacted by Chapter 182); *id.* § 12987 (amended by Chapter 182). Chapter 182 authorizes courts in civil actions involving housing discrimination to award actual and punitive damages for housing discrimination that has occurred or is about to occur. *Id.* § 12989.2 (enacted by Chapter 182). Chapter 182 permits the plaintiff to collect attorney's fees and costs. *Id.* Under existing law, the Department may require a respondent who has engaged in discriminatory housing practices to take actions providing affirmative or prospective relief. *Id.* § 12987(3) (amended by Chapter 182). Chapter 182 additionally permits the Department to refer any case where a respondent has breached a conciliation agreement to the Attorney General with a recommendation that a civil action be filed to enforce the agreement. *Id.* § 12981(e) (amended by Chapter 182). Under existing law, the FEHA could require a respondent to pay a complainant up to one thousand dollars in punitive damages. *Id.* § 12987(2) (amended by Chapter 182). Chapter 182 increases the amount that the FEHA may require a respondent to pay complainant, permitting the FEHA to award complainant up to ten thousand dollars in civil penalties for first time violators. *Id.* § 12987(a)(3) (amended by Chapter 182). Section 12987 further provides that respondents who have previously violated § 12955 within a five year period may be subject to civil penalties up to \$25,000, or up to \$50,000 if the respondent has violated § 12955 more than twice within a seven year period. *Id.*

