

## Memorandum 2006-33

**Statutory Clarification and Simplification of CID Law: Discussion of Issues**

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In this study, the Commission is working to reorganize and simplify common interest development statutory law. The intention is to make CID law easier to understand and use by improving its presentation and resolving ambiguities and conflicts.

Most of the improvements in the proposed law will be technical. Some noncontroversial substantive improvements will also be included. However, if a proposed change is determined to be controversial, it will not be included in the proposed law. Instead, it will be identified for separate study by the Commission. This is not intended as a way of dismissing or prejudging the merits of controversial proposals. It merely separates "lightning rod" issues from the larger body of inoffensive improvements, so as to increase the likelihood that the larger body of noncontroversial improvements will be enacted.

A staff draft of the proposed law is attached. The draft is cumulative and includes previously reviewed material on the following topics:

- General Provisions and Definitions
- Member Rights
- Record Inspection
- Governing Documents
- Board Meetings
- Member Meetings
- Record Keeping
- Annual Reports
- Director Standard of Conduct
- Managing Agents
- Dispute Resolution

In addition, the draft presents new material on the following topics:

- Accounting

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Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

- Use of Reserve Funds
- Reserve Fund Study and Plan
- Assessment Setting and Collection

For ease of reference, material in the draft that is new or significantly different from the previous draft has been shaded with a grey background.

The attached draft includes about 80 percent of the material that will need to be covered before we are ready to circulate a tentative recommendation. We still need to cover the following topics:

- Insurance
- Property Ownership and Maintenance
- Construction Defect Litigation

The staff hopes to complete work on the staff draft in one or two more installments.

Unless otherwise indicated, statutory references in this memorandum are to the Civil Code.

#### COMMENT LETTER

We received a letter from CID homeowner Paul M. Katosh commenting generally on the statutory clarification and simplification project. See Exhibit. Mr. Katosh appreciates the work being done, but suggests that our priorities are misplaced. He believes that we should be putting more effort into providing for public enforcement of CID law.

The Commission recommended that a state agency be created to provide assistance to homeowner associations. See *Common Interest Development Ombudsperson Pilot Project* (March 2005). Legislation is pending to implement part of the substance of that recommendation. See AB 770 (Mullin). The decision of whether to enact the bill will be made by the Legislature and the Governor.

#### ACCOUNTING

Existing Sections 1365 and 1365.5 impose some basic accounting requirements. Those requirements are restated in proposed Section 5500. The staff is reasonably confident that the restatement would not result in any substantive change, but a note has been added asking for input on the issue.

## RESERVE FUNDING

### **Background**

The distinguishing feature of a common interest development is that the owners of separate interests also have an interest in common property (either directly or through an entity created for that purpose). The homeowner association exists, in large part, to maintain that common property.

Ideally, an association will set aside funds in reserve, to provide for future maintenance, repair, and replacement costs as they come due. If an association fails to do so, the members may need to pay a special assessment in order to pay for a needed repair or the replacement of a failed component. The staff has heard credible examples of repair assessments in the range of \$25,000 to \$50,000 per unit. A large unexpected assessment can pose a serious financial hardship for an owner, especially one who is retired and cannot easily make up the loss.

An unfunded reserve can also lead to unexpected liability for a new purchaser. A prospective purchaser who does not realize that the association has insufficient reserves to cover looming repair costs cannot take those costs into account in negotiating a purchase price. The new buyer may be left holding the bag for costs that accrued before the purchase. The staff was contacted by one person who purchased a condominium for \$125,000 without being told of pending unfunded repair costs. Within a short time after the purchase, a \$25,000 special assessment was imposed on the unit.

Underfunding of reserves appears to be common. One survey of 687 associations found an average funding rate of 54%. That is, the surveyed associations only had 54% of the funds in reserve that would be needed for future repair and replacement costs. See T. Berding, *The Uncertain Future of Community Associations, Thoughts on Financial Reform* 25 (January 2005).

### **Reserve Study and Plan**

Existing law does not require that an association fully fund its reserves.

Instead, the law requires study and disclosure. An association must prepare an annual reserve study, which identifies all of its future repair responsibilities and compares the cost of those repairs to the amount set aside in the reserve fund. This serves two important purposes:

- (1) It educates the board and the membership about the adequacy of the association's reserve fund and reserve funding policy.

- (2) It provides information that a prospective buyer can use to assess the hidden cost of purchasing a unit in a CID with underfunded reserves.

A pending bill would go one step farther. In addition to the required study, a board would need to adopt a “reserve funding plan.” The plan would “include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve....” See AB 2100 (Laird). Any proposed assessment increase would need to be approved separately, subject to existing assessment increase procedures.

This means that the association would be required to understand the scope of its reserve funding needs and develop a plan to provide the necessary reserve funds. It would not be required to implement the plan.

That is probably a necessary compromise. The question of reserve funding is politically controversial. Many owners of limited means do not want increased assessments, especially to pay for costs that will not accrue for many years.

The current provisions on reserve funding are spread across three different sections: Sections 1365(a)(2), 1365.2.5, and 1365.5. At present, it is difficult to read those sections together and get a clear picture of what is required.

The attached draft combines the substantive requirements from all three sections into a single provision, proposed Section 5555. That should be significantly easier to read and use.

The staff put a fair amount of time into thinking about ways that the existing reserve study requirements might be streamlined, but ultimately abandoned the effort. After consulting with reserve funding professionals and legislative staff involved in recent reform efforts, the staff concluded that the reserve funding provisions are too complex and politically charged to tinker with in a project that is intended to be mostly technical and nonsubstantive. For that reason, the attached draft takes a conservative approach.

#### USE OF RESERVE FUNDS

Existing Sections 1365 and 1365.5 limit the use of funds that have been deposited into the association’s reserve account. Those limitations would be continued in proposed Sections 5510-5520.

## ASSESSMENT SETTING

An association is required to impose assessments sufficient to perform its obligations. However, an assessment may not exceed the amount required to accomplish the purpose for which it is assessed. Those rules are continued in proposed Section 5575.

Existing Section 1366(b) provides that, notwithstanding a more restrictive limitation stated in the governing documents, an association board may, without member approval, increase the regular assessments by 20% in a year or impose special assessments of up to 5% of the budgeted expenses for the year. An increase that exceeds those limits must be approved by a majority of a quorum of the membership:

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum means more than 50 percent of the owners of an association.

Those provisions are not stated as clearly as they could be. One could plausibly read the first clause as an acknowledgement that other more restrictive limitations may exist, rather than as a provision overriding such limitations.

The staff researched the legislative history of the bill that added that language and confirmed that the intention was to override such limitations. See Senate Housing and Urban Affairs Committee Analysis of AB 279 (July 1, 1987) (on file with Commission); Letter from Senate Housing and Urban Affairs Committee to Senator Leroy F. Greene (August 20, 1987) (on file with Commission). In addition, every treatise that the staff consulted construes Section 1366(b) as overriding the governing documents. See, e.g., C. Sproul and K. Rosenberry, *Advising California Common Interest Communities* § 5.4, at 283-84 (Cal. Cont. Ed. Bar, 2006).

Proposed Section 5580(a)-(b) would restate the substance of Section 1366(b) much more directly:

5580. (a) Subject to the limitations of Section 5575 and subdivision (b), the board may increase the regular assessment by any amount that is required to fulfill its obligations and may impose a special assessment of any amount that is required to fulfill its obligations. This subdivision supersedes any contrary provision of the governing documents.

(b) In the following circumstances, the approval of a majority of a quorum of the members (Section 4070) is required for an increase in the regular assessment or the imposition of a special assessment:

(1) The association has not complied with Section 4800 for the fiscal year in which the assessment increase or special assessment would take effect.

(2) The total increase in the regular assessment for the fiscal year would be more than 20 percent of the regular assessment at the end of the preceding fiscal year.

(3) The total for all special assessments imposed in the fiscal year would be more than 5 percent of the budgeted gross expenses of the association for the fiscal year in which the special assessment would be imposed.

The staff is confident that the proposed restatement would not result in any substantive change in the law.

#### ASSESSMENT COLLECTION

Assessment collection is governed by a handful of complex and partially overlapping sections. See Sections 1366.2.7, 1367, 1367.1, 1367.4, 1367.5.

The attached draft busts those sections up, regroups the material by subject matter, and presents it as a series of relatively short sections that roughly track the order of the procedural steps involved in collecting an overdue assessment. See proposed Sections 5600-5675.

This reorganization should make it easier for homeowners to understand the complex procedure for collecting assessments, which is outlined below.

#### **Lien**

The assessment collection procedure begins with the creation of a lien on the separate interest for which assessments are owed:

- **Decision to Create Lien.** The decision to create a lien must be made by the board and cannot be delegated. Proposed Section 5630(g). The decision may not be made in closed session.
- **Pre-Lien Notice:** At least 30 days before recording a lien, the association must deliver a notice of delinquency to the delinquent member. Proposed Section 5615.

- **Payment Plan Meeting:** The member must be given the opportunity to meet with the board and request a payment plan. Proposed Section 5620.
- **Pre-Lien Meet & Confer:** The member must be given the opportunity to meet with a representative of the board, presumably to dispute the debt. Proposed Section 5625.
- **Lien Creation:** A lien is created by recording a notice of delinquent assessment. Proposed Section 5630(a).
- **Notice of Delinquent Assessment:** The recorded notice of delinquent assessment must be delivered to each owner by certified mail. Proposed Section 5630(e).
- **Lien Release.** Specific rules are provided for the release of a lien if the debt is paid in full or the lien was created in error. Proposed Section 5635.

Thirty days or more after the lien is created, the association can enforce the lien “in any manner permitted by law” including sale by the court or by a trustee. Proposed Section 5645.

## **Foreclosure**

Recent legislation has limited the use of foreclosure to collect an assessment debt. The foreclosure limitations and procedures are outlined below:

- **Limitations on Foreclosure.** Nonjudicial foreclosure may not be used to collect a disciplinary fine. Proposed Section 5640(b). Neither judicial nor nonjudicial foreclosure may be used to collect an assessment that is less than twelve months overdue and is for an amount less than \$1,800 (excluding collection costs, fees, and interest). Proposed Section 5650.
- **Decision to Foreclose:** A decision to foreclose must be made by the board, at least 30 days before sale of the separate interest. The decision must be made in executive session, and cannot be delegated. Proposed Section 5655(a)(1).
- **Service of Notice of Decision:** The board’s decision to foreclose must be personally served on the owner. Proposed Section 5565(a)(3). The manner of service is not specified.
- **Pre-Foreclosure ADR:** The board must offer, and if the owner accepts, must participate in ADR before beginning the foreclosure process. The homeowner is given the choice of the form of ADR to be used, but binding arbitration may not be chosen if the board intends to pursue judicial foreclosure. Proposed Section 5565(a)(2).
- **General Foreclosure Procedure:** The association must then follow the general procedures provided in Sections 2924, 2924b, and 2924c. The procedures include the recordation of a notice of default, followed by a three month period in which several

prescribed notices are sent by registered or certified mail. During the three month period, the owner can stop the foreclosure process by paying the amount due.

- **Service of Notice:** The Davis-Stirling Act also requires that a copy of the notice of default be personally served on the owner, in the manner provided for service of a summons. Proposed Section 5565(c).
- **Redemption:** Recent legislation created a right of redemption for 90 days after a nonjudicial foreclosure sale. In other words, the owner may pay the redemption price and recover the property within 90 days after its sale. See proposed Section 5660. The law does not provide a specific procedure for how the right of redemption would be administered in a nonjudicial foreclosure. Pending Assembly Bill 2624 (Houston) would add a specific procedure for administration of the right of redemption. If the bill is enacted, the attached draft will be revised to reflect the new procedure.

The attached draft also continues provisions that allow an association to record a statement specifying who is authorized to receive payments for the association (proposed Section 5665), and providing a notice to members that describes the collection process (proposed Section 5670).

### **Application Dates**

The existing collection provisions have differing application dates:

- Section 1367 applies to a lien created on or after January 1, 1986, and before January 1, 2003.
- With one exception, Section 1367.1 applies to a lien created on or after January 1, 2003. The requirement that the board make the decision to record a lien applies on or after January 1, 2006. See Section 1367.1(c)(2).
- Section 1367.4 applies to a lien created on or after January 1, 2006. However, Section 1367.1 is expressly “subordinate to” Section 1367.4. Arguably, that means that Section 1367.4 also applies to any lien created on or after January 1, 2003. A note asks for comment on that issue.

This staggered and overlapping scheme of application adds to the complexity of existing collection law. The attached draft takes a considerably simpler approach. Proposed Section 5650 (limitations on foreclosure) is expressly limited to a lien created on or after January 1, 2006. Proposed Section 5675 provides a general rule:



5675. (a) Except as otherwise provided, this article applies to any lien created on or after January 1, 2003.

(b) A lien created before January 1, 2003, is governed by the law in existence at the time the lien was created.

**Comment.** Section 5675 is new. A lien created between January 1, 1986 and January 1, 2003 is governed by former Section 1367. Note that Section 5650 only applies to a lien created on or after January 1, 2006.

If implementing legislation were introduced next year, it would not become effective until January 1, 2008. It seems likely that any assessment lien recorded before 2003 would have been enforced by then.

#### ASSESSMENT COLLECTION AND EXECUTIVE SESSION

The assessment collection sections contain two provisions that require the board to meet in executive session:

- (1) Section 1367.1(c)(3) provides that a board shall consider a payment plan request in executive session. Proposed Section 4540 has been revised to reflect that rule.
- (2) Section 1367.4(c)(2) provides that a board decision on whether to foreclose on a lien shall be made in executive session. Proposed Section 4540 has been revised to reflect that rule.

Respectfully submitted,

Brian Hebert  
Assistant Executive Secretary

**Paul M. Katosh**

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Law Revision Commission  
RECEIVED

**Date:** 21 July 2006

**JUL 27 2006**

**To:** Mr. Brian Hebert  
Assistant Executive Secretary  
California Law Revision Commission (CLRC)

**File:** \_\_\_\_\_

**Re:** Common Interest Development (CID) Law

Dear Brian:

Thank you for continuing to keep us informed about developments within the CLRC as it pertains to CID law. While the work being done is much appreciated, it seems to be missing some key ingredients as it relates to the specific problems within our association.

As the CLRC concentrates on legal syntax and fine-tuning existing law, we feel the big picture is not receiving much needed attention. Therefore, let us submit another, more recent example of our Board's failure to recognize or execute under California law:

Our association's 2005-2006 budget was raised 20% - the maximum allowed. One of the line items involved snow removal, and a contract was negotiated at \$77,000. Yet the budget reflected snow removal cost at \$83,000. (Most likely done to "fill in" so the maximum 20% increase could be attained.)

As the attached copy of the minutes indicates, I stood up and reminded the Board and annual meeting attendees that this procedure broke State Law, i.e., Civil Code 1366.1, which clearly states:

*"Assessments/fees limited to actual costs 1366.1. An association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied."*

When it was stated that, in a big snow year, we might need more money, I mentioned State law allows our association to use reserve funds – which were available well above the \$6,000 amount. Civil Code Section 1365.5(c) (2).

*"However, the Board may authorize the temporary transfer of moneys from a reserve fund to the Association's General Operating Fund to meet short-term cash flow requirements or other expenses..."*

A Planning Committee member stated that this was not how our association did business, because of our by-laws (which, incidentally, have never been amended pursuant to California Law Civil Code 1356).

This is the same, tired argument that the Board has used for years on almost every important decision related to our association.

**State law is trumped by association by-laws!**

Associations are to obey State laws, not to interpret them for their own benefit and control. As the CLRC works diligently to help homeowners being subjected to illegal practices, we wonder if it is a band-aid solution to a ruptured aorta!

How many other associations in California are being manipulated by law-breaking Board members? Since there are no educational requirements, little or no enforcement policies in place, and an absolute total lack of punishment for these Board members, is the State really addressing the core problem?

We sent a letter to the newly appointed (not elected by a quorum) president of our association and requested Alternative Dispute Resolution (ADR) on this issue and others that involved clear violations of State law.

The response was a telephone call with predictable verbiage:


*"Our association law allows the Board to overstep State law on every issue presented."*

Of course, we can pursue civil action, and our Board will spend thousands to fight us in court. Yet, when we first joined the effort with the CLRC to help resolve these problems, it appeared that there was serious discussion concerning education, regulation, enforcement, and punishment.

The existing laws (while always requiring fine-tuning) are quite clear and not open to interpretation. We respectfully ask the State of California to direct attention not only to revising and simplifying these laws, but to enforcement as well!

Again, Brian, our thanks to you and the entire CLRC staff for all your efforts. If you or any of your readers can offer suggestions on how offended homeowners can reach State authorities without pursuing civil action, we would greatly appreciate it.

Regards,



Paul M. Katosh – On Behalf of All Concerned Association Members

Enclosure

Tom Henie, Manager of the KMPUD, stated that the PUD can refund monies to ██████ if reserves get large or that the PUD could use some of the reserves to decrease the cost of a future snow removal contract. He also noted that if the cost of snow removal during the contract period is greater than the contract amount, the district "eats the loss" but that if the cost of snow removal during the contract period is less than the contract amount, ██████ then has this difference added to its reserve account with the KMPUD.

██████████ (Lot 2) suggested extending the contract period to simplify accounting. ██████ reminded the membership that ██████ had a benefit with the contract period as it exists but invited ██████ to bring suggestions for extending the contract period to the ██████ Board for consideration.

██████████ (Lot 141B) asked if the reserve account earned interest.

Tom Henie replied that it did not but that the KMPUD will address that issue.

Paul Katosh, based on his interpretation of "state law", stated ██████ could not charge more than the contract amount. ██████ reminded him that the state defers to each homeowner's association and that the state requires each and every homeowners association to adopt By-laws which govern how the association does business.

██████████ suggested a cost only contract with the KMPUD. ██████ responded that budgeting would be impossible as no one knows how much it will snow by May 15 for the following ski season.

#### **-2005-2006 Budget and Regular Assessment**

██████████ expressed concern about a 20% increase in the assessment last year and again for this year. ██████ reminded the membership that the Board may increase the assessment a maximum of 20% per year without a vote of the membership. ██████ responded that based on the 2005-2006 budget that he supported the 20% increase for 2005-2006.

## CONTENTS

PROPOSED LEGISLATION	
Civ. Code §§ 4000-____ (added). Common Interest Developments .....	1
PART 5. COMMON INTEREST DEVELOPMENTS .....	1
CHAPTER 1. PRELIMINARY PROVISIONS .....	1
Article 1. General Provisions .....	1
§ 4000. Short title .....	1
§ 4005. Effect of headings .....	1
§ 4010. Continuation of prior law .....	1
§ 4015. Application of part .....	2
§ 4020. Nonresidential development.....	3
§ 4025. Application of Corporations Code .....	3
§ 4030. Construction of zoning ordinance.....	4
§ 4035. “Delivered to the board” .....	4
§ 4040. “Individual notice” .....	4
§ 4045. “General notice” .....	5
§ 4050. Time and proof of delivery.....	5
§ 4055. Delivery failure .....	6
§ 4060. Approved by the board .....	6
§ 4065. Approved by a majority of all members.....	6
§ 4070. Approved by a majority of a quorum of the members.....	6
Article 2. Definitions .....	7
§ 4075. Application of definitions.....	7
§ 4080. “Association” .....	7
§ 4085. “Board” .....	7
§ 4090. “Board meeting” .....	7
§ 4095. “Common area” .....	8
§ 4100. “Common interest development”.....	8
§ 4105. “Community apartment project” .....	9
§ 4110. “Community service organization”.....	9
§ 4115. “Condominium” .....	9
§ 4120. “Condominium plan” .....	9
§ 4125. “Condominium project” .....	9
§ 4130. “Declarant” .....	10
§ 4135. “Declaration” .....	10
§ 4140. “Director” .....	11
§ 4145. “Exclusive use common area”.....	11
§ 4150. “Governing documents” .....	11
§ 4155. “Managing agent” .....	12
§ 4160. “Member” .....	12
§ 4165. “Operating rule.....	12
§ 4170. “Person” .....	12
§ 4175. “Planned development” .....	12
§ 4180. “Rule change” .....	13
§ 4185. “Separate interest” .....	13
§ 4190. “Stock cooperative” .....	13
CHAPTER 2. MEMBER RIGHTS .....	14
Article 1. Bill of Rights [Reserved].....	14
Article 2. Limitation of Association Authority to Regulate Property Use.....	14
§ 4300. Application of article .....	14
§ 4305. Noncommercial display .....	15
§ 4310. Pets.....	15

§ 4315. Roofing materials.....	16
§ 4320. Television antenna or satellite dish.....	16
§ 4325. Marketing restriction.....	18
§ 4330. Access to separate interest property.....	18
CHAPTER 3. COMMUNITY ASSOCIATION GOVERNANCE.....	18
Article 1. Association Existence and Powers.....	18
§ 4400. Association.....	18
§ 4405. Association powers.....	19
§ 4410. Standing.....	19
§ 4415. Comparative fault.....	19
§ 4420. No limitation of rights.....	20
Article 2. Board Meeting.....	20
§ 4500. Short title.....	20
§ 4505. Convening or adjourning a meeting.....	20
§ 4510. Quorum.....	20
§ 4515. Board action.....	21
§ 4520. Notice of board meeting.....	21
§ 4525. Board meeting open.....	22
§ 4530. Board meeting location.....	22
§ 4535. Teleconference.....	23
§ 4540. Executive session.....	23
§ 4545. Action without a meeting.....	24
§ 4550. Minutes.....	24
§ 4555. Civil action to enforce article.....	24
§ 4560. Application of article.....	25
Article 3. Member Meeting.....	25
§ 4575. General rules for conduct of meeting.....	25
§ 4580. Quorum.....	26
§ 4585. Member action.....	26
§ 4590. Teleconference.....	27
§ 4595. Notice of regular meeting.....	27
§ 4600. Special meeting of the members.....	28
§ 4605. Meeting adjournment.....	29
§ 4610. Waiver of requirements.....	29
§ 4615. Court-ordered meeting.....	29
§ 4620. Court-ordered modification of meeting requirements.....	30
Article 4. Elections [Reserved].....	31
Article 5. Inspection of Records.....	31
§ 4700. Scope of inspection right.....	31
§ 4705. Inspection procedure.....	33
§ 4710. Redaction.....	34
§ 4715. Optional redaction from membership list.....	35
§ 4720. Fees.....	35
§ 4725. Permissible purpose.....	35
§ 4730. Denial of request.....	36
§ 4735. Action to enforce.....	36
§ 4740. Action to enjoin improper use of records.....	38
§ 4745. Limited liability.....	38
§ 4750. Application of article.....	38
Article 6. Record Keeping.....	39
§ 4775. Duty to maintain records.....	39
§ 4780. Record retention periods.....	40
§ 4785. Director inspection.....	40
Article 7. Annual Reports.....	41
§ 4800. Annual budget report.....	41
§ 4805. Annual financial statement.....	41

§ 4810. Member handbook .....	42
§ 4815. Community service organization report .....	42
§ 4820. Notice of availability .....	43
§ 4825. Financial statement .....	43
§ 4830. Judicial enforcement .....	43
Article 8. Director Standard of Conduct.....	44
§ 4850. Director standard of conduct .....	44
§ 4855. Transaction involving incorporated association and director or officer.....	45
Article 9. Managing Agent.....	45
§ 4900. Prospective managing agent disclosure .....	45
§ 4905. Trust fund account .....	46
CHAPTER 4. DISPUTE RESOLUTION AND ENFORCEMENT .....	47
Article 1. Disciplinary Action .....	47
§ 5000. Authority to impose disciplinary fine .....	47
§ 5005. Disciplinary hearing.....	47
§ 5015. Responsibility for guest, invitee, or tenant.....	48
§ 5020. Removing vehicle from common interest development.....	48
Article 2. Internal Dispute Resolution.....	49
§ 5050. Application of article .....	49
§ 5055. Fair, reasonable, and expeditious dispute resolution procedure .....	49
§ 5060. Minimum requirements of association procedure.....	49
§ 5065. Default meet and confer procedure.....	50
§ 5070. Notice in member handbook .....	51
Article 3. Alternative Dispute Resolution Prerequisite to Civil Action .....	51
§ 5075. Definitions .....	51
§ 5080. ADR prerequisite to enforcement action .....	51
§ 5085. Request for resolution .....	52
§ 5090. ADR process.....	52
§ 5095. Tolling of statute of limitations.....	53
§ 5100. Certification of efforts to resolve dispute .....	53
§ 5105. Stay of litigation for dispute resolution .....	53
§ 5110. Attorney’s fees .....	53
§ 5115. Notice in member handbook .....	54
Article 4. Civil Actions.....	54
§ 5125. Enforcement of governing documents.....	54
§ 5130. Enforcement of this part .....	54
CHAPTER 5. FINANCES .....	54
Article 1. Accounting.....	54
§ 5500. Accounting .....	54
Article 2. Use of Reserve Funds .....	55
§ 5510. Use of reserve funds .....	55
§ 5515. Temporary transfer of reserve funds.....	55
§ 5520. Use of reserve funds for litigation .....	56
Article 3. Reserve Funding.....	56
§ 5550. Inspection of major components .....	56
§ 5555. Reserve funding study .....	57
§ 5560. Reserve funding plan .....	61
Article 2. Assessments.....	62
§ 5575. Levy of assessment .....	62
§ 5580. Assessment increase .....	62
§ 5585. Exemption from execution .....	63
Article 3. Payment and Collection of Assessment.....	64
§ 5600. Payment .....	64
§ 5605. Delinquency.....	64
§ 5610. Assignment or pledge .....	65
§ 5615. Pre-lien notice .....	65

§ 5620. Payment plan .....	66
§ 5625. Pre-lien meeting .....	66
§ 5630. Lien creation and priority .....	66
§ 5635. Lien release.....	67
§ 5640. Lien for damage or fine .....	68
§ 5645. Collection generally .....	69
§ 5650. Prohibition on foreclosure for small amount.....	69
§ 5655. Foreclosure .....	70
§ 5660. Right of redemption after trustee sale.....	71
§ 5665. Recorded association information.....	71
§ 5670. Statement of collection procedure.....	71
§ 5675. Application of article .....	73
Article 4. Insurance and Liability [Reserved] .....	74
CHAPTER 6. PROPERTY OWNERSHIP, USE, AND MAINTENANCE [RESERVED] .....	74
CHAPTER 7. GOVERNING DOCUMENTS.....	74
Article 1. General Provisions .....	74
§ 6000. Creation of common interest development .....	74
§ 6005. Document authority .....	74
Article 2. Declaration.....	75
§ 6025. Content of declaration.....	75
§ 6030. Disclosure of airport in vicinity .....	75
§ 6035. Disclosure of BCDC jurisdiction .....	76
§ 6040. Amendment authorized.....	76
§ 6045. Approval of amendment .....	77
§ 6050. Approval of amendment to delete obsolete construction or marketing provision .....	78
§ 6055. Effective date of amendment.....	79
Article 3. Articles of Incorporation.....	79
§ 6060. Content of articles .....	79
Article 4. Condominium Plan .....	80
§ 6075. Content of condominium plan.....	80
§ 6080. Amendment of condominium plan .....	80
Article 5. Operating Rules.....	81
§ 6100. Requirements for validity and enforceability .....	81
§ 6110. Application of rulemaking procedures .....	81
§ 6115. Approval of rule change by board .....	82
§ 6120. Reversal of rule change by members.....	82
§ 6125. Applicability of article to changes commenced before and after January 1, 2004 .....	83
Article 6. Unlawful Restrictions .....	84
§ 6150. Discriminatory restriction.....	84
Article 7. Construction of Documents .....	84
§ 6175. Liberal construction of instruments .....	84
§ 6180. Boundaries of units .....	85
CHAPTER 8. CONSTRUCTION DEFECT LITIGATION [RESERVED] .....	85



## PROPOSED LEGISLATION

1 **☞ Staff Note.** This is a work in progress. The proposed organizational structure and section  
2 numbering may change. Additional material will be added. Accordingly, some cross-references  
3 have not yet been updated. These references appear within [brackets] or as underscored spaces:

4 \_\_\_\_.

5 For ease of reference, material that is new or significantly different from a previous draft has  
6 been shaded with a grey background.

7 **Civ. Code §§ 4000-\_\_\_\_ (added). Common Interest Developments**

8 SEC. \_\_\_\_ Part 5 (commencing with Section 4000) is added to Division 4 of the  
9 Civil Code, to read:

### PART 5. COMMON INTEREST DEVELOPMENTS

#### CHAPTER 1. PRELIMINARY PROVISIONS

##### Article 1. General Provisions

###### § 4000. Short title

14 4000. This part shall be known and may be cited as the Davis-Stirling Common  
15 Interest Development Act.

16 **Comment.** Section 4000 continues former Section 1350 without change.

###### § 4005. Effect of headings

18 4005. Division, part, title, chapter, and article headings do not in any manner  
19 affect the scope, meaning, or intent of this part.

20 **Comment.** Section 4005 continues former Section 1350.5 without substantive change. It is a  
21 standard provision found in many codes. See, e.g., Evid. Code § 5; Fam. Code § 5; Prob. Code §  
22 4.

###### § 4010. Continuation of prior law

24 4010. A provision of this part, insofar as it is substantially the same as a  
25 previously existing provision relating to the same subject matter, shall be  
26 considered as a restatement and continuation thereof and not as a new enactment,  
27 and a reference in a statute to the provision of this part shall be deemed to include  
28 a reference to the previously existing provision unless a contrary intent appears.

29 **Comment.** Section 4010 is new. It is a standard provision found in many codes. See, e.g., Bus.  
30 & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a); Veh. Code § 2. See also  
31 Gov't Code §§ 9604 (construction of restatements and continuations), 9605 (construction of  
32 amended statutory provision). The last clause makes clear that a statutory reference to a provision  
33 within this part includes a reference to the former law from which it is drawn. Cf. Gov't Code §  
34 9604 (reference to previously existing provision deemed reference to restatement or  
35 continuation).

1 A number of terms and phrases are used in the Comments to the sections of this part to indicate  
2 the sources of the sections and to describe how they compare with prior law. The following  
3 discussion is intended to provide guidance in interpreting the terminology most commonly used  
4 in the Comments.

5 (1) *Continues without change.* A new provision “continues” a former provision “without  
6 change” if the two provisions are identical or nearly so. In some cases, there may be insignificant  
7 technical differences, such as where punctuation is changed without a change in meaning. Some  
8 Comments may describe the relationship by simply stating that the Family Code provision  
9 “continues” or is “the same as” a former provision, or is “the same as” a provision of a uniform  
10 act.

11 (2) *Continues without substantive change.* A new provision “continues” a former provision  
12 “without substantive change” if the substantive law remains the same, but the language differs to  
13 an insignificant degree.

14 (3) *Restates without substantive change.* A new provision “restates” a former provision  
15 “without substantive change” if the substantive law remains the same but the language differs to a  
16 significant degree. Some Comments may describe the new provision as being the “same in  
17 substance.”

18 (4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,”  
19 the Comment may say that the former provision is continued or restated, but also note the specific  
20 differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

21 (5) *Generalizes, broadens, restates in general terms.* A new provision may be described as  
22 “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This  
23 description means that a limited rule has been expanded to cover a broader class of cases.

24 (6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new  
25 provision deals with the same subject as the former provision, but treats it in a significantly  
26 different manner.

27 (7) *New.* A provision is described as “new” where it has no direct source in prior statutes.

28 (8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for  
29 a new provision, typically a source other than California statutes. For example, a provision may  
30 be “drawn from” a uniform act, model code, or the statutes of another state. In these cases, it may  
31 be useful to consult any available commentary or interpretation of the source from which the new  
32 provision is drawn for background information.

33 (9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has not  
34 previously been enacted into statutory law.

35 (10) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular  
36 rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under  
37 prior law was doubtful or contradictory.

38 (11) *Statement in Comment that section is “comparable” to another section.* A Comment may  
39 state that a provision is “comparable” to another provision. If the Comment to a section notes that  
40 another section is “comparable,” that does not mean that the other section is the same or  
41 substantially the same. The statement is included in the Comment so that the statute user is  
42 alerted to the other section and can review the cases under that section for possible use in  
43 interpreting the section containing the statement in the Comment.

#### 44 § 4015. Application of part

45 4015. (a) This part applies to a common interest development.

46 (b) Nothing in this part may be construed to apply to a development that does  
47 not include common area.

48 **Comment.** Subdivision (a) of Section 4015 continues the substance of the first clause of  
49 former Section 1352. The part of former Section 1352 that is not continued in this section is  
50 continued in Section 6000 (creation of common interest development).

51 Subdivision (b) continues the substance of former Section 1374 without substantive change.

1 See also Section 4095 (“common area”), 4100 (“common interest development”).

2 **☞ Staff Note.** Is subdivision (b) necessary, given that the definition of “common interest  
3 development” requires the existence of common area? See proposed Section 4100.

4 **§ 4020. Nonresidential development**

5 4020. (a) The following provisions do not apply to a common interest  
6 development that is limited to industrial or commercial uses by zoning or by a  
7 declaration of covenants, conditions, and restrictions that is recorded in the official  
8 records of each county in which the common interest development is located:

9 (1) Section 4025.

10 (2) Section 4620.

11 (3) Article 7 (commencing with Section 4800) of Chapter 3.

12 (4) Article 2 (commencing with Section 5510) of Chapter 5.

13 (5) Article 3 (commencing with Section 5550) of Chapter 5.

14 (6) Subdivision (b) of Section 5575.

15 (7) Section 5580.

16 (8) Article 5 (commencing with Section 6100) of Chapter 7.

17 (9) [Section 1368.]

18 (10) [Section 1378.]

19 (b) The Legislature finds that the provisions listed in subdivision (a) are  
20 appropriate to protect purchasers in residential common interest developments but  
21 may not be necessary to protect purchasers in commercial or industrial  
22 developments. Those provisions could result in unnecessary burdens and costs for  
23 nonresidential developments.

24 **Comment.** Section 4020 continues former Section 1373 without substantive change.

25 See also Section 4100 (“common interest development”).

26 **§ 4025. Application of Corporations Code**

27 4025. (a) An association that is incorporated is governed by this part and by the  
28 Corporations Code, except that the following provisions of the Corporations Code  
29 do not apply to an association:

30 (1) Section 7211 of the Corporations Code.

31 (2) Sections 7510 to 7512, inclusive, of the Corporations Code.

32 (3) Chapter 13 (commencing with Section 8310) of Part 3 of Division 2 of the  
33 Corporations Code.

34 (b) An association that is not incorporated is governed by this part and by any  
35 provision of the Corporations Code that is applicable pursuant to this part.

36 (c) If a provision of this part conflicts with a provision of the Corporations  
37 Code, the provision of this part prevails to the extent of the inconsistency.

38 **Comment.** Section 4025 is new.

39 The provisions referenced in subdivision (a)(1) are superseded by Sections 4505-4515,  
40 4520(d)-(e).

41 Subdivision (a)(2) continues the substance of former Section 1356.2(m) without substantive  
42 change, except that Corporations Code Section 8332, 8334-8338 are also superseded.

1 The chapter cited in subdivision (a)(3) is superseded by Sections 4700 to 4830.  
2 Subdivision (b) makes clear that this part may apply specified provisions of the Corporations  
3 Code to an association that is unincorporated. See, e.g., Sections 4405(a)(2), [6120(d) & (f)].  
4 See also Section 4080 (“association”).

5 **§ 4030. Construction of zoning ordinance**

6 4030. Unless a contrary intent is clearly expressed, a local zoning ordinance is  
7 construed to treat like structures, lots, parcels, areas, or spaces in like manner  
8 regardless of whether the common interest development is a community apartment  
9 project, condominium project, planned development, or stock cooperative.

10 **Comment.** Section 4030 continues former Section 1372 without substantive change.  
11 See also Sections 4100 (“common interest development”), 4125 (“condominium project”),  
12 4175 (“planned development”), 4190 (“stock cooperative”).

13 **§ 4035. “Delivered to the board”**

14 4035. If a provision of this part requires that a document be “delivered to the  
15 board” the document shall be delivered by first-class mail, postage prepaid, to the  
16 person designated in the member handbook (Section 4810) to receive documents  
17 on behalf of the association. If no person has been designated to receive  
18 documents, the document shall be delivered to the president of the association.

19 **Comment.** Section 4035 is new. It provides a standard rule for delivery of a document to the  
20 board.  
21 See also Sections 4080 (“association”), 4085 (“board”), 4170 (“person”).

22 **§ 4040. “Individual notice”**

23 4040. (a) If a provision of this part requires “individual notice,” the notice shall  
24 be delivered to an identified person by one of the following methods:

- 25 (1) Personal delivery.  
26 (2) First-class mail, postage prepaid, addressed to the person at the address last  
27 shown on the books of the association or otherwise provided by the person.  
28 (3) E-mail, facsimile, or other electronic means, if the person has agreed to that  
29 method of delivery.  
30 (4) Any other method of delivery that is reasonably calculated to provide actual  
31 notice to the person.

32 (b) A member may request in writing that a notice to that member be sent to up  
33 to two different addresses.

34 (c) For the purposes of this section, a provision of the operating rules, articles, or  
35 bylaws of the association that provides for a particular method of delivery does not  
36 constitute agreement by a member of the association to that method of delivery.

37 **Comment.** Section 4040 is new. See also Sections 4080 (“association”), 4150 (“governing  
38 documents”), 4160 (“member”).  
39 Subdivision (b) generalizes the substance of former Sections 1365.1(c) and 1367.4(k).

40 **Staff Note.** Existing Section 1350.7(d) provides that an agreement to a particular method of  
41 notice delivery cannot be inferred from an unrecorded provision of the governing documents.  
42 That provision has been recast in Section 4040(b) to eliminate the reference to recordation.

1 Instead, the restated provision makes clear that agreement to a particular method of notice shall  
2 not be inferred from a provision of the governing documents other than the declaration. This  
3 eliminates any implication that a less formal governing document (e.g., an operating rule) could  
4 be used to mandate use of a particular method of notice if the document is subsequently recorded.  
5 The Commission invites comment on whether this change would create any problems.

6 **§ 4045. “General notice”**

7 4045. If a provision of this part requires “general notice,” the notice shall be  
8 provided to all members by one or more of the following methods:

9 (a) Any method provided for delivery of an individual notice (Section 4040).

10 (b) Inclusion in a billing statement, newsletter, or other document that is  
11 delivered by one of the methods provided in this section.

12 (c) Posting in a location that is accessible to all members and that has been  
13 designated in the member handbook (Section 4810) for the posting of general  
14 notices by the association.

15 (d) Publication in a periodical that is circulated primarily to members of the  
16 association.

17 (e) If the association broadcasts television programming for the purpose of  
18 distributing information on association business to its members, by inclusion in the  
19 programming.

20 **Comment.** Section 4045 restates part of the substance of former Section 1350.7.

21 Subdivision (c) is new.

22 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),  
23 4810 (“member handbook”).

24 **§ 4050. Time and proof of delivery**

25 4050. (a) This section governs the delivery of a document pursuant to this part.

26 (b) If a document is delivered by mail, delivery is complete at the time of  
27 deposit into the mail, but if this part specifies a time period after delivery for  
28 notice or for any other action or response, the time period is extended as follows:

29 (1) If the place of mailing and the address of delivery are both in the State of  
30 California, by five calendar days.

31 (2) If either the place of mailing or the address of delivery is outside the State of  
32 California, by 10 calendar days.

33 (3) If either the place of mailing or the address of delivery is outside the United  
34 States, by 20 calendar days.

35 (c) If a document is delivered by electronic mail, facsimile, or other electronic  
36 means, delivery is complete at the time of transmission.

37 (d) An affidavit of delivery of a notice, that is executed by the secretary,  
38 assistant secretary, or managing agent of the association, is prima facie evidence  
39 of delivery.

40 **Comment.** The first clause of subdivision (b) of Section 4050 continues part of the substance  
41 of former Section 1350.7(b)(2).

42 The second clause of subdivision (b) and paragraphs (b)(1)-(3) are drawn from Code Civ. Proc.  
43 § 1013(a).

1 Subdivision (c) continues part of the substance of former Section 1350.7(b)(3).  
2 Subdivision (d) is comparable to part of Corporations Code Section 7511(b).

3 **§ 4055. Delivery failure**

4 4055. (a) If a notice to a member is returned by the United States Postal Service  
5 marked to indicate that the United States Postal Service is unable to deliver the  
6 notice to the member at the given address, the association shall address any future  
7 notices to that member to the address of a separate interest owned by the member.

8 (b) If electronic delivery of a notice to a member fails, the association shall not  
9 deliver any future notice to that member electronically, unless the member  
10 provides a new address or the association determines that a technical problem with  
11 the given address has been corrected.

12 **Comment.** Section 4055 is new.

13 **§ 4060. Approved by the board**

14 4060. If a provision of this part requires that an action be approved by the board,  
15 the action shall be approved or ratified by the vote of the board or by the vote of a  
16 committee authorized to exercise the powers of the board, pursuant to Article 2  
17 (commencing with Section 4500) of Chapter 3.

18 **Comment.** Section 4060 is comparable to Corporations Code Section 5032. It is added for  
19 drafting convenience.

20 See also Sections 4085 (“board”), 4160 (“member”).

21 **§ 4065. Approved by a majority of all members**

22 4065. If a provision of this part requires that an action be approved by a majority  
23 of all members, the action shall be approved or ratified by an affirmative vote of  
24 members representing more than 50 percent of the total voting power of the  
25 association, or if the governing documents of an association divide the members  
26 into two or more classes for the purposes of voting, by an affirmative vote of  
27 members representing more than 50 percent of the voting power in each class that  
28 is required to approve the action.

29 **Comment.** Section 4065 is comparable to Corporations Code Section 5033. It is added for  
30 drafting convenience.

31 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

32 **§ 4070. Approved by a majority of a quorum of the members**

33 4070. If a provision of this part requires that an action be approved by a majority  
34 of a quorum of the members, the action shall be approved or ratified by an  
35 affirmative vote of members representing more than 50 percent of the votes cast in  
36 an election at which a quorum is achieved, or if the governing documents of an  
37 association divide the members into two or more classes for the purposes of  
38 voting, by an affirmative vote of members representing more than 50 percent of  
39 the votes cast in an election at which a quorum is achieved, in each class that is  
40 required to approve the action.

1 **Comment.** Section 4070 is comparable to Corporations Code Section 5034. It is added for  
2 drafting convenience.

3 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

## 4 Article 2. Definitions

### 5 § 4075. Application of definitions

6 4075. Unless the provision or context otherwise requires, the definitions in this  
7 article govern the construction of this part.

8 **Comment.** Section 4075 continues the introductory clause of former Section 1351 without  
9 substantive change.

### 10 § 4080. “Association”

11 4080. “Association” means a nonprofit corporation or unincorporated  
12 association created for the purpose of managing a common interest development.

13 **Comment.** Section 4080 continues the substance of former Section 1351(a).

14 See also Sections 4100 (“common interest development”), 4500 (existence of association).

### 15 § 4085. “Board”

16 4085. “Board” means the board of directors of an association.

17 **Comment.** Section 4085 is new. It is added for drafting convenience.

18 See also Section 4080 (“association”).

### 19 § 4090. “Board meeting”

20 4090. “Board meeting” means a congregation of a majority of the directors at  
21 the same time and place to hear, discuss, or deliberate upon any item that is within  
22 the authority of the board.

23 **Comment.** Section 4090 restates the substance of former Section 1363.05(f), with the  
24 following changes:

25 (1) The reference to association business “scheduled to be heard by the board” has been  
26 replaced with a reference to any business within the authority of the board. The requirements  
27 of this article apply regardless of whether the matters to be considered have been formally  
28 scheduled.

29 (2) The exception for matters considered in executive session is continued in Section 5030.

30 Nothing in this section precludes a director from participating in a board meeting by  
31 teleconference. See Section 4535 (teleconference).

32 **Staff Note.** The requirement that a meeting be a gathering of directors “at the same time and  
33 place” excludes business that is conducted by a series of separate conversations, electronic mail  
34 messages, and the like. This is a significant loophole that has been closed in the state and local  
35 open meeting laws. For example, Government Code Section 11122.5(b) provides, with certain  
36 enumerated exceptions, that:

37 [Any] use of direct communication, personal intermediaries, or technological devices that is  
38 employed by a majority of the members of the state body to develop a collective concurrence  
39 as to action to be taken on an item by the members of the state body is prohibited.

40 That provision ensures that business that should be conducted in the open is not discussed  
41 privately, through informal contacts. However, such a restriction does impose a procedural

1 burden, which may be too onerous for volunteer directors conducting board business in their  
2 spare time. The Commission invites comment on this issue.

3 The Commission also invites comment on whether the policies served by open meeting  
4 requirements would be better served if the existing procedure for the conduct of board business  
5 without a meeting (on the unanimous written consent of the directors) were modified or  
6 eliminated. See Corp. Code § 7211(b).

7 **§ 4095. “Common area”**

8 4095. (a) “Common area” means the entire common interest development  
9 except the separate interests therein.

10 (b) In a development in which the entire development is comprised of separate  
11 interests, common area may consist of mutual or reciprocal easement rights  
12 appurtenant to the separate interests.

13 **Comment.** Section 4095 continues former Section 1351(b) without substantive change, except  
14 that language providing that “[the] estate in the common area may be a fee, a life estate, an estate  
15 for years, or any combination of the foregoing” is continued in Section \_\_\_\_.

16 See also Sections 4100 (“common interest development”), 4185 (“separate interest”).

17 **Staff Note.** The language providing that “[the] estate in the common area may be a fee, a life  
18 estate, an estate for years, or any combination of the foregoing” is substantive and is not required  
19 as part of the definition of the term. It will be located with other provisions that relate to the form  
20 of title in a CID. See, e.g., Civ. Code § 1362.

21 **§ 4100. “Common interest development”**

22 4100. (a) “Common Interest development” means a real property development  
23 in which a separate interest is coupled with either of the following:

- 24 (1) An undivided interest in all or part of the common area.  
25 (2) Membership in an association that owns all or part of the common area.

26 (b) In a development where there is no common area other than that established  
27 by mutual or reciprocal easement rights appurtenant to the separate interests,  
28 “common interest development” means a development in which a separate interest  
29 is coupled with membership in an association with the power to enforce an  
30 obligation of an owner of a separate interest with respect to the beneficial use and  
31 enjoyment of common area by means of an assessment that may become a lien  
32 upon the separate interest.

33 (c) “Common interest development” includes all of the following types of  
34 developments:

- 35 (1) A community apartment project.  
36 (2) A condominium project.  
37 (3) A planned development.  
38 (4) A stock cooperative.

39 **Comment.** Section 4100 restates the definition of “common interest development” to improve  
40 its clarity, without substantive change. See former Sections 1351(c), (d), (f), (k), (m); 1352.

41 See also Sections 4080 (“association”), 4095 (“common area”), 4125 (“condominium  
42 project”), 4175 (“planned development”), 4185 (“separate interest”), 4190 (“stock cooperative”).



1    **§ 4105. “Community apartment project”**

2       4105. “Community apartment project” means a real property development in  
3       which a right of exclusive occupancy of a specified part of the development is  
4       coupled with an undivided interest in the development as a whole.

5       **Comment.** Section 4105 continues former Section 1351(d) without substantive change.

6    **§ 4110. “Community service organization”**

7       4110. (a) “Community service organization” means a nonprofit entity, other than  
8       the association, that is organized to provide services to residents of a common  
9       interest development or to the public in addition to the residents, to the extent that  
10      the common area is available to the public.

11      (b) “Community service organization” does not include an entity that has been  
12      organized solely to raise moneys and contribute to other nonprofit organizations  
13      that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue  
14      Code and that provide housing or housing assistance.

15      **Comment.** Section 4110 continues former Section 1368(c)(c) without substantive change.

16      ☞ **Staff Note.** The Commission invites comment on whether the definition of “community  
17      service organization” should be expanded to include a nonprofit entity organized to provide  
18      services to an association directly, rather than to its residents. For example, a nonprofit entity may  
19      be organized to maintain part of the common area that is dedicated as closed natural habitat.  
20      Arguably, that is a service to the association and not to the residents.

21    **§ 4115. “Condominium”**

22      4115. “Condominium” means a separate interest in a condominium project,  
23      coupled with an undivided interest in all or part of the common area of the  
24      condominium project.

25      **Comment.** Section 4115 restates the definition of “condominium” in former Section 1351(f),  
26      without substantive change.

27      See also Sections 4095 (“common area”), 4125 (“condominium project”), 4185 (“separate  
28      interest”).

29    **§ 4120. “Condominium plan”**

30      4120. “Condominium plan” means a plan of the type described in Section 6075.

31      **Comment.** Section 4120 is new. It is added for drafting convenience.

32    **§ 4125. “Condominium project”**

33      4125. (a) “Condominium project” means a real property development in which  
34      separate ownership of a specified part of the development is coupled with an  
35      undivided interest in all or part of the common area.

36      (b) The undivided interest in the common area and the separate interest may be a  
37      specified three-dimensional space filled with air, earth, or water, or any  
38      combination thereof, and need not be physically attached to land except by  
39      easements for access and, if necessary, support.

1 (c) The boundaries of the undivided interest in the common area shall be  
2 described on a recorded final map, parcel map, or condominium plan.

3 (d) The boundaries of a separate interest shall be described on a recorded final  
4 map, parcel map, or condominium plan. A description of a separate interest may  
5 refer to (1) boundaries described in the recorded final map, parcel map, or  
6 condominium plan, (2) physical boundaries, either in existence, or to be  
7 constructed, such as walls, floors, and ceilings of a structure or any portion  
8 thereof, (3) an entire structure containing one or more separate interests, or (4) any  
9 combination thereof.

10 (e) An individual condominium within a condominium project may include, in  
11 addition, a separate interest in other portions of the real property.

12 **Comment.** Section 4125 restates former Section 1351(f), without substantive change, except  
13 that the definition of “condominium” has been relocated to Section 4115.

14 See also Sections 4095 (“common area”), 4115 (“condominium”), 4120 (“condominium  
15 plan”), 4185 (“separate interest”).

16 **Staff Notes.** (1) Proposed Section 4125 restates existing Section 1351(f) in order to parallel  
17 the language and construction used in proposed Sections 4105 (“community apartment project”),  
18 4175 (“planned development”), and 4190 (“stock cooperative”). The section also eliminates  
19 duplicative language and makes fuller use of defined terms. These changes are intended to  
20 improve clarity and are not intended to affect the substance of the existing definition of  
21 “condominium project.” The Commission requests public input on whether any of the drafting  
22 changes would have a substantive effect.

23 (2) The content of subdivision (e) has been left unchanged because its purpose is unclear. Does  
24 the provision merely reflect the fact that a separate interest may include noncontiguous parcels of  
25 land? If so, is it necessary? Does its presence in this section imply that a separate interest in one  
26 of the other types of CIDs must be a single contiguous parcel?

27 **§ 4130. “Declarant”**

28 4130. “Declarant” means the person or group of persons designated in the  
29 declaration as declarant, or if no declarant is designated, the person or group of  
30 persons who sign the original declaration or who succeed to special rights,  
31 preferences, or privileges designated in the declaration as belonging to the person  
32 who signed the original declaration.

33 **Comment.** Section 4130 continues former Section 1351(g) without substantive change.

34 See also Section 4135 (“declaration”), 4170 (“person”).

35 **§ 4135. “Declaration”**

36 4135. “Declaration” means the document, however denominated, that contains  
37 information that is substantially equivalent to the information required by Section  
38 6025.

39 **Comment.** Section 4135 continues former Section 1351(h) without substantive change except  
40 that exact equivalence with the requirements of Section 6025 is not required. A declaration  
41 recorded before January 1, 1986 may not contain all of the information required by Section 6025.

42 **Staff Note.** The staff invites comment on whether the proposed change to Section 1351(h)  
43 would cause any problems.

1    **§ 4140. “Director”**

2       4140. “Director” means a natural person elected, designated, or selected to serve  
3    on the board.

4       **Comment.** Section 4140 is new. It is added for drafting convenience. See Corp. Code §§ 7220,  
5    7224-7225, 7520-7527 (election or selection of director).

6       See also Section 4085 (“board”).

7    **§ 4145. “Exclusive use common area”**

8       4145. (a) “Exclusive use common area” means a part of the common area  
9    designated by the declaration to be used exclusively by one or more, but fewer  
10   than all, of the members. The right of exclusive use is appurtenant to the separate  
11   interests of those members.

12      (b) Unless the declaration otherwise provides, shutters, awnings, window boxes,  
13   doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and  
14   hardware incident thereto, screens and windows or other fixtures designed to serve  
15   a single separate interest, but located outside the boundaries of the separate  
16   interest, are exclusive use common areas allocated exclusively to that separate  
17   interest.

18      (c) Notwithstanding the provisions of the declaration, internal and external  
19   wiring designed to serve a single separate interest, but located outside the  
20   boundaries of the separate interest, are exclusive use common areas allocated  
21   exclusively to that separate interest.

22      **Comment.** Section 4145 restates former Section 1351(i) without substantive change, except  
23   that the reference in subdivision (c) to “telephone” wiring is generalized.

24      See also Sections 4095 (“common area”), 4135 (“declaration”), 4160 (“member”), 4185  
25   (“separate interest”).

26      ☞ **Staff Note.** The reference to “telephone” wiring is technologically obsolete. It has been  
27   generalized so that it would include other types of wiring (e.g., Internet connection wiring,  
28   television cable, etc.). Would that change create any problems? Note that this provision does not  
29   authorize the installation of such wiring, it merely classifies the wiring as exclusive use common  
30   area.

31    **§ 4150. “Governing documents”**

32      4150. “Governing documents” means the declaration, bylaws, articles of  
33   incorporation or association, and operating rules.

34      **Comment.** Section 4150 continues the substance of former Section 1351(j) except that the  
35   phrase “any other documents ... which govern the operation of the common interest development  
36   or association” has been replaced with a reference to the association’s operating rules..

37      See also Sections 4080 (“association”), 4100 (“common interest development”), 4135  
38   (“declaration”).

39      ☞ **Staff Note.** Proposed Section 4150 would not replace the existing catch-all provision with a  
40   specific reference to the operating rules. This would eliminate any existing uncertainty as to the  
41   types of documents affected by provisions that apply to the governing documents. See, e.g.,  
42   existing Sections 1355 (governing documents may specify procedure for amendment of  
43   declaration); 1360.5 (amendment of governing documents triggers pet restriction override), 1368

1 (provision of governing documents to prospective purchaser). The Commission invites comment  
2 on whether the proposed change would cause any problems.

3 **§ 4155. “Managing agent”**

4 4155. (a) “Managing agent” means a person who, for compensation or in  
5 expectation of compensation, exercises control over the assets of a common  
6 interest development.

7 (b) “Managing agent” does not include either of the following:

8 (1) A full-time employee of the association.

9 (2) A regulated financial institution operating within the normal course of its  
10 regulated business practice.

11 **Comment.** Section 4155 generalizes former Section 1363.1(b).

12 See also Sections 4080 (“association”), 4100 (“common interest development”), 4170  
13 (“person”).

14 **§ 4160. “Member”**

15 4160. “Member” means an owner of a separate interest in a common interest  
16 development.

17 **Comment.** Section 4160 is new. It is added for drafting convenience.

18 See also Section 4100 (“common interest development”), 4185 (“separate interest”).

19 **§ 4165. “Operating rule”**

20 4165. “Operating rule” means a regulation adopted by the board that applies  
21 generally to the management and operation of the common interest development  
22 or the conduct of the business and affairs of the association.

23 **Comment.** Section 4165 generalizes former Section 1357.100(a) without substantive change.

24 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest  
25 development”).

26 **§ 4170. “Person”**

27 4170. “Person” means an individual, corporation, government or governmental  
28 subdivision or agency, business trust, estate, trust, partnership, limited liability  
29 company, association, or other entity.

30 **Comment.** Section 4170 is new. It is added for drafting convenience.

31 **§ 4175. “Planned development”**

32 4175. “Planned development” means a real property development of any of the  
33 following types:

34 (a) A development, other than a condominium project, in which separate  
35 ownership of a specified part of the development is coupled with an undivided  
36 interest in the common area.

37 (b) A development in which separate ownership of a specified part of the  
38 development is coupled with: (1) membership in an association that owns the

1 common area, and (2) an appurtenant right to the beneficial use and enjoyment of  
2 the common area.

3 (c) If the common area consists entirely of mutual or reciprocal easement rights  
4 appurtenant to the separate interests, a development in which separate ownership  
5 of a specified part of the development is coupled with membership in an  
6 association that has the power to enforce an obligation of an owner of a separate  
7 interest with respect to the beneficial use and enjoyment of the common area by  
8 means of an assessment that may become a lien upon the separate interests in  
9 accordance with Article 3 (commencing with Section 5600) of Chapter 5.

10 **Comment.** Section 4175 continues former Section 1351(k) without substantive change.  
11 Subdivision (b) incorporates a related provision from former Section 1351(b).

12 See also Sections 4080 (“association”), 4095 (“common area”), 4125 (“condominium  
13 project”), 4185 (“separate interest”).

14 **§ 4180. “Rule change”**

15 4180. “Rule change” means the adoption, amendment, or repeal of an operating  
16 rule by the board.

17 **Comment.** Section 4180 generalizes former Section 1357.100(b).

18 See also Sections 4085 (“board”), 4165 (“operating rule”).

19 **§ 4185. “Separate interest”**

20 4185. (a) In a community apartment project or stock cooperative, “separate  
21 interest” means the exclusive right to occupy an apartment or unit.

22 (b) In a condominium project or planned development, “separate interest” means  
23 a separately owned lot, parcel, area, space, or unit.

24 (c) Unless the declaration or a condominium plan otherwise provides, if walls,  
25 floors, or ceilings are designated as boundaries of a separate interest, the interior  
26 surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets  
27 located within the separate interest are part of the separate interest and any other  
28 portions of the walls, floors, or ceilings are part of the common area.

29 **Comment.** Section 4185 restates former Section 1351(l) without substantive change, except  
30 that language providing that “[the] estate in a separate interest may be a fee, a life estate, an estate  
31 for years, or any combination of the foregoing” is continued in Section \_\_\_\_.

32 See also Sections 4095 (“common area”), 4120 (“condominium plan”), 4125 (“condominium  
33 project”), 4135 (“declaration”), 4175 (“planned development”), 4190 (“stock cooperative”).

34 **Staff Note.** Existing language providing that “[the] estate in a separate interest may be a fee,  
35 a life estate, an estate for years, or any combination of the foregoing” is substantive and is not  
36 required as part of the definition of the term. It will be located with other provisions that relate to  
37 the form of title in a CID. See, e.g., Civ. Code § 1362.

38 **§ 4190. “Stock cooperative”**

39 4190. (a) “Stock cooperative” means a real property development in which a  
40 right of exclusive occupancy of a specified part of the development is coupled  
41 with an ownership interest in a corporation that is formed or availed of primarily  
42 for the purpose of holding title to the development as a whole.

1 (b) An owner’s interest in the corporation, whether evidenced by a share of  
2 stock, a certificate of membership, or otherwise, is deemed to be an interest in a  
3 common interest development and a real estate development for purposes of  
4 subdivision (f) of Section 25100 of the Corporations Code.

5 (c) It is not necessary that all shareholders of the corporation receive a right of  
6 exclusive occupancy of a specified part of the development.

7 (d) A “stock cooperative” includes a limited equity housing cooperative that  
8 meets the criteria of Section 33007.5 of the Health and Safety Code.

9 **Comment.** Section 4190 continues former Section 1351(m) without substantive change, except  
10 that language providing that the corporation’s ownership of the development may be “either in  
11 fee simple or for a term of years” is continued in Section \_\_\_\_.

12 See also Section 4100 (“common interest development”)

13 **Staff Note.** Existing language providing that the corporation’s ownership of the development  
14 may be “either in fee simple or for a term of years” is substantive and is not required as part of  
15 the definition of the term. It will be located with other provisions that relate to the form of title in  
16 a CID. See, e.g., Civ. Code § 1362.

17 CHAPTER 2. MEMBER RIGHTS

18 Article 1. Bill of Rights [Reserved]

19 Article 2. Limitation of Association Authority  
20 to Regulate Property Use

21 **§ 4300. Application of article**

22 4300. This article includes provisions that limit the authority of an association to  
23 regulate the use of a member’s separate interest. Nothing in this article is intended  
24 to affect the application of any other provision that limits the authority of an  
25 association to regulate the use of a member’s separate interest, including, but not  
26 limited to, the following provisions:

27 (a) Sections 712 and 713, relating to the display of signs.

28 (b) Sections 714 and 714.1, relating to solar energy systems.

29 (c) Section 714.5, relating to structures that are constructed offsite and moved to  
30 the property in sections or modules.

31 (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the  
32 Government Code, relating to racial restrictions.

33 (e) Section 12927 of the Government Code, relating to the modification of  
34 property to accommodate a disability.

35 (f) Section 1597.40 of the Health and Safety Code, relating to the operation of a  
36 family day care home.

37 **Comment.** Section 4300 is new. It provides a non-exclusive list of provisions outside of this  
38 part that limit the authority of an association to regulate separate interest property use.

1 **☞ Staff Note.** The Commission requests comment on whether there are any other provisions  
2 that should be added to the nonexclusive list of cross-references provided in Section 4300.

3 Note that existing Section 1360 would not be continued in the proposed law. The section  
4 provides rules for a modification that is necessary to accommodate a disability. It is limited by its  
5 own terms to a separate interest that is wholly contained within a building (e.g., a condominium  
6 unit).

7 The issue of accommodation of a disability is addressed more comprehensively in Government  
8 Code Section 12927. Proposed Section 4300(e) acknowledges the application of that section to a  
9 CID. See also [Section 1378] (association decision on modification of separate interest must  
10 comply with Fair Employment and Housing Act). The Commission requests input on whether the  
11 omission of existing Section 1360 would cause any problems.

12 **§ 4305. Noncommercial display**

13 4305. (a) Except as otherwise provided in this section, the governing documents  
14 of an association may not prohibit the display of the flag of the United States or  
15 any other noncommercial sign, poster, flag, or banner within a member's separate  
16 interest or exclusive use common area.

17 (b) Notwithstanding Section 434.4 of the Government Code, an association may  
18 prohibit the display of the flag of the United States or any other noncommercial  
19 sign, poster, flag, or banner within a member's separate interest or exclusive use  
20 common area if any of the following conditions is satisfied:

21 (1) The display endangers public health or safety.

22 (2) The display violates a local, state, or federal statute or regulation.

23 (3) The display includes the painting of architectural surfaces, or includes lights,  
24 roofing, siding, paving materials, plants, or balloons, or any other building,  
25 landscaping, or architectural materials.

26 (4) The display is not a flag and is more than 9 square feet in size.

27 (c) An association may prohibit the display of a flag other than the flag of the  
28 United States, if the flag is more than 15 square feet in size.

29 (d) In an action under this section to challenge a prohibition on the display of the  
30 flag of the United States, the prevailing party shall be awarded reasonable  
31 attorney's fees and costs.

32 **Comment.** Section 4305 continues former Sections 1353.5 and 1353.6 without substantive  
33 change, except that Section 4305(b)(2) now applies to a flag of the United States.

34 **☞ Staff Note.** Proposed Section 4305 preserves two existing distinctions between the  
35 treatment of the U.S. flag and any other noncommercial display: (1) an association may not limit  
36 the display of a U.S. flag that is more than 15 square feet in size, and (2) a person who prevails in  
37 challenging a restriction on the display of the U.S. flag is entitled to attorney's fees. The  
38 Commission invites comment on whether those distinctions should be preserved (and if not,  
39 whether the special rules should be eliminated or generalized).

40 **§ 4310. Pets**

41 4310. (a) No governing documents shall prohibit the owner of a separate interest  
42 within a common interest development from keeping at least one pet within the  
43 common interest development, subject to reasonable rules and regulations of the

1 association. This section may not be construed to affect any other rights provided  
2 by law to an owner of a separate interest to keep a pet within the development.

3 (b) For purposes of this section, “pet” means any domesticated bird, cat, dog,  
4 aquatic animal kept within an aquarium, or other animal as agreed to between the  
5 association and the homeowner.

6 (c) If the association implements a rule or regulation restricting the number of  
7 pets an owner may keep, the new rule or regulation shall not apply to prohibit an  
8 owner from continuing to keep any pet that the owner currently keeps in his or her  
9 separate interest if the pet otherwise conforms with the previous rules or  
10 regulations relating to pets.

11 (d) For the purposes of this section, “governing documents” shall include, but  
12 are not limited to, the conditions, covenants, and restrictions of the common  
13 interest development, and the bylaws, rules, and regulations of the association.

14 (e) This section shall become operative on January 1, 2001, and shall only apply  
15 to governing documents entered into, amended, or otherwise modified on or after  
16 that date.

17 **Comment.** Section 4310 continues former Section 1360.5 without change.

18 **§ 4315. Roofing materials**

19 4315. (a) An association may not require that a homeowner install or repair a  
20 roof in a manner that is in violation of Section 13132.7 of the Health and Safety  
21 Code.

22 (b) The governing documents of a common interest development located within  
23 a very high fire severity zone, as designated by the Director of Forestry and Fire  
24 Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of  
25 Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to  
26 Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of  
27 the Government Code, shall allow for at least one type of fire retardant roof  
28 covering material that meets the requirements of Section 13132.7 of the Health  
29 and Safety Code.

30 **Comment.** Section 4315 continues former Section 1353.7 without substantive change. See also  
31 [Section 1378(a)(3)] (Notwithstanding a contrary provision of the governing documents, a  
32 decision on a proposed change may not violate any governing provision of law, including, but not  
33 limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of  
34 Division 3 of Title 2 of the Government Code), or a building code or other applicable law  
35 governing land use or public safety.”).

36 **§ 4320. Television antenna or satellite dish**

37 4320. (a) Except as otherwise provided in this section, a provision of the  
38 governing documents is void to the extent that it would prohibit or restrict the use  
39 or installation of an antenna.

40 (b) The following restrictions on the use or installation of an antenna are not  
41 void pursuant to this section:



1 (1) A restriction or prohibition that is consistent with a provision of law that  
2 imposes the same restriction or prohibition.

3 (2) A requirement that the antenna not be visible from a street or from the  
4 common area.

5 (3) A restriction that does not significantly increase the cost of the antenna,  
6 including all related equipment, or significantly decrease its efficiency or  
7 performance.

8 (4) A requirement that the association approve the installation before installation  
9 takes place.

10 (5) A requirement that an association approve the installation of an antenna on  
11 the separate interest of a member other than the member seeking to install the  
12 antenna.

13 (6) A provision for the maintenance, repair, or replacement of roofs or other  
14 building components.

15 (7) A requirement that the installer indemnify or reimburse the association or a  
16 member for loss or damage caused by the installation, maintenance, or use of the  
17 antenna.

18 (c) Whenever approval is required for the installation or use of an antenna, the  
19 application for approval shall be processed by the appropriate approving entity for  
20 the common interest development in the same manner as an application for  
21 approval of an architectural modification to the property, and the issuance of a  
22 decision on the application shall not be willfully delayed.

23 (d) In any action to enforce compliance with this section, the prevailing party  
24 shall be awarded reasonable attorney's fees.

25 (e) For the purposes of this section "antenna" means a video or television  
26 antenna, including a satellite dish, of less than 36 inches in diameter or diagonal  
27 measurement.

28 **Comment.** Section 4320 restates the substance of former Section 1376.

29 **Staff Notes.** (1) Proposed Section 4320 would significantly revise existing Section 1376, to  
30 improve its clarity. The Commission requests comment on whether any of the revisions would  
31 make a substantive change in the law.

32 (2) Proposed subdivision (a) replaces the phrase "a covenant, condition, or restriction contained  
33 in a deed, contract, security instrument, or other instrument affecting the transfer or sale of, or an  
34 interest in, a common interest development" with the more general term "a provision of the  
35 governing documents." The Commission requests comment on whether that simplification in  
36 phrasing would cause a substantive change in the law.

37 (3) Proposed subdivision (b)(5) seems to be subsumed within subdivision (b)(4). The  
38 Commission requests comment on whether subdivision (b)(5) can be deleted without substantive  
39 effect?

40 (4) Proposed subdivision (b)(6) seems to be subsumed within subdivision (b)(7). The  
41 Commission requests comment on whether subdivision (b)(6) can be deleted without substantive  
42 effect?

43 (5) Under existing law, the right to install and use an antenna is limited to "video or  
44 television." A federal regulation preempting CC&Rs that restrict the installation of antennas  
45 seems to have a broader scope. See 47 C.F.R. § 1.4000 (protecting, among other things the use of  
46 an antenna to receive "direct broadcast satellite service, including direct-to-home satellite

1 service,” which might include satellite audio or data reception). The Commission requests  
2 comment on whether the right to install an antenna or dish should be generalized to include any  
3 device within the specified size limitations.

4 **§ 4325. Marketing restriction**

5 4325. (a) A provision of the governing documents that arbitrarily or  
6 unreasonably restricts a member’s ability to market the member’s interest in a  
7 common interest development is void.

8 (b) An association shall not charge a fee in connection with the marketing of a  
9 member’s interest that exceeds the actual cost to the association that results from  
10 the marketing of the member’s interest.

11 (c) An association shall not require that a member use a particular real estate  
12 broker to market the member’s interest.

13 (d) For the purposes of this section, “market” and “marketing” mean listing,  
14 advertising, or obtaining or providing access to show the member’s interest.

15 **Comment.** Subdivision (a) of Section 4325 restates the substance of former Section 1368.1(a).  
16 The phrase “rule or regulation” has been generalized to include any provision of the association’s  
17 governing documents.

18 Subdivision (b) restates the substance of former Section 1368.1(b)(1). Subdivision (b) is a  
19 specific application of the general rule provided in 5575(b).

20 Subdivision (c) restates the substance of former Section 1368.1(b)(2). Language making clear  
21 that the provision does not affect marketing by an association is not continued because the  
22 restated language makes clear that the limitation only affects marketing by an individual member.

23 Subdivision (d) continues former Section 1368.1(c) without substantive change.

24 Subdivision (e) continues former Section 1368.1(d) without substantive change.

25 **§ 4330. Access to separate interest property**

26 4330. Except as otherwise provided in law, an order of the court, or an order  
27 pursuant to a final and binding arbitration decision, an association may not deny a  
28 member or other occupant of a separate interest physical access to the separate  
29 interest, either by restricting access through the common area, or by restricting  
30 access solely to the separate interest.

31 **Comment.** Section 4330 continues the substance of former Section 1361.5.

32 **CHAPTER 3. COMMUNITY ASSOCIATION GOVERNANCE**

33 **Article 1. Association Existence and Powers**

34 **§ 4400. Association**

35 4400. A common interest development shall be governed by an association,  
36 which may be incorporated or unincorporated.

37 **Comment.** Section 4400 continues the first sentence of former Section 1363(a).

1    **§ 4405. Association powers**

2    4405. (a) Whether incorporated or unincorporated, an association may exercise  
3    the following powers:

4       (1) The powers granted in this part.

5       (2) Unless the governing documents provide otherwise, the powers granted to a  
6    nonprofit mutual benefit corporation pursuant to Section 7140 of the Corporations  
7    Code.

8    (b) Notwithstanding subdivision (a), an unincorporated association may not  
9    adopt or use a corporate seal or issue membership certificates in accordance with  
10   Section 7313 of the Corporations Code.

11    **Comment.** Section 4405 restates the substance of former Section 1363(c).

12    **§ 4410. Standing**

13    4410. An association has standing to institute, defend, settle, or intervene in  
14    litigation, arbitration, mediation, or administrative proceedings in its own name as  
15    the real party in interest and without joining with it the individual owners of the  
16    common interest development, in matters pertaining to the following:

17       (a) Enforcement of the governing documents.

18       (b) Damage to the common area.

19       (c) Damage to a separate interest that the association is obligated to maintain or  
20    repair.

21       (d) Damage to a separate interest that arises out of, or is integrally related to,  
22    damage to the common area or a separate interest that the association is obligated  
23    to maintain or repair.

24    **Comment.** Section 4410 continues former Section 1368.3 without substantive change.

25    **§ 4415. Comparative fault**

26    4415. (a) In an action maintained by an association pursuant to subdivision (b),  
27    (c), or (d) of Section 4410, the amount of damages recovered by the association  
28    shall be reduced by the amount of damages allocated to the association or its  
29    managing agents in direct proportion to their percentage of fault based upon  
30    principles of comparative fault.

31       (b) The comparative fault of the association or its managing agents may be  
32    raised by way of defense, but shall not be the basis for a cross-action or separate  
33    action against the association or its managing agents for contribution or implied  
34    indemnity, where the only damage was sustained by the association or its  
35    members.

36       (c) It is the intent of the Legislature in enacting this subdivision to require that  
37    comparative fault be pleaded as an affirmative defense, rather than a separate  
38    cause of action, where the only damage was sustained by the association or its  
39    members.

40       (d) In an action involving damages described in subdivision (b), (c), or (d) of  
41    Section 4410, the defendant or cross-defendant may allege and prove the

1 comparative fault of the association or its managing agents as a setoff to the  
2 liability of the defendant or cross-defendant even if the association is not a party to  
3 the litigation or is no longer a party whether by reason of settlement, dismissal, or  
4 otherwise.

5 (e) This section applies to actions commenced on or after January 1, 1993.

6 (f) Nothing in this section affects a person's liability under Section 1431, or the  
7 liability of the association or its managing agent for an act or omission that causes  
8 damages to another.

9 **Comment.** Section 4415 continues former Section 1368.4 without substantive change.

#### 10 **§ 4420. No limitation of rights**

11 4420. Except as expressly provided by statute, the rights of members provided in  
12 this chapter may not be limited by contract or by the governing documents.

13 **Comment.** Section 4420 generalizes the substance of Corporations Code Section 8313.

14 **Staff Note.** Proposed Section 4420 is drawn from existing Corporations Code Section 8313.  
15 The existing section only applies to provisions that govern reports and records. Proposed Section  
16 4420 would expand the scope of application to include the provisions that govern board and  
17 member meetings, elections, director conduct, and managing agents. The Commission invites  
18 comment on whether that expansion would create problems. The Commission also invites  
19 comment on whether proposed Section 4420 should be expanded further, to encompass the entire  
20 Davis-Stirling Common Interest Development Act.

## 21 Article 2. Board Meeting

#### 22 **§ 4500. Short title**

23 4500. This article shall be known and may be cited as the Common Interest  
24 Development Open Meeting Act.

25 **Comment.** Section 4500 continues the substance of former Section 1363.05(a).

#### 26 **§ 4505. Convening or adjourning a meeting**

27 4505. (a) A board meeting may be called by the board chair, the president, the  
28 vice president, the secretary, or any two directors.

29 (b) A majority of the directors present at a meeting, whether or not a quorum is  
30 present, may adjourn the meeting to another time and place.

31 **Comment.** Subdivision (a) of Section 4505 is comparable to Corporations Code Section  
32 7211(a)(1).

33 Subdivision (b) is comparable to the first sentence of Corporations Code Section 7211(a)(4).  
34 See Section 4025. See also Section 4520(d) (notice of meeting adjourned for more than 24 hours).

#### 35 **§ 4510. Quorum**

36 4510. Unless the governing documents provide otherwise, a majority of the total  
37 number of directors authorized by the governing documents constitutes a quorum.  
38 The governing documents may not provide for a quorum that is less than one-fifth  
39 of the number of directors authorized, or less than two, whichever is larger.

1       **Comment.** Section 4510 is comparable to Corporations Code Section 7211(a)(7). See Section  
2 4025. Note that in an association with only one director, one director is a majority of the total  
3 number of directors and would therefore constitute a quorum.

4       **§ 4515. Board action**

5       4515. (a) Except as otherwise provided by law, an action approved by a majority  
6 of directors present at a meeting at which a quorum is present is the action of the  
7 board. The governing documents may not provide a lower threshold for approval  
8 of a board action.

9       (b) A meeting at which a quorum is initially present may continue to transact  
10 business notwithstanding the withdrawal of directors, if any action taken is  
11 approved by either a majority of the required quorum or, if a higher percentage is  
12 required by law or the governing documents, by that higher percentage.

13       **Comment.** Section 4515 is comparable to Corporations Code Section 7211(a)(8).

14       **§ 4520. Notice of board meeting**

15       4520 (a) Unless the time and place of a meeting is fixed by the governing  
16 documents, the association shall provide general notice (Section 4045) of a board  
17 meeting, and shall provide individual notice (Section 4040) of the board meeting  
18 to directors and to any association member who has requested notice of meetings.  
19 The notice shall state the time and place of the board meeting and shall include an  
20 agenda for the board meeting.

21       (b) Unless the governing documents provide for a longer period of notice, the  
22 association shall deliver notice of the time and place of a board meeting at least  
23 four days before the meeting.

24       (c) The president of the association, or two directors other than the president,  
25 may call an emergency board meeting if there are circumstances that could not  
26 have been reasonably foreseen, that require immediate attention and possible  
27 action by the board, so that it would be impracticable to give notice pursuant to  
28 this section. Advance notice of an emergency board meeting is not required.

29       (d) If a meeting is adjourned to another time and place for more than 24 hours  
30 the association shall deliver notice of the time and place at which the meeting will  
31 reconvene, by general notice (Section 4045) and by individual notice (Section  
32 4040) to a director who was not present at the meeting and to any member who  
33 has requested notice of board meetings. The notice shall be delivered before the  
34 meeting reconvenes.

35       (e) Notice of a meeting need not be given to a director who does any of the  
36 following:

37       (1) Provides a written waiver of notice. The waiver shall be filed with the  
38 association records or made part of the minutes of the meeting.

39       (2) Provides a written consent to holding the meeting or approving the minutes  
40 of the meeting. The consent shall be filed with the association records or made  
41 part of the minutes of the meeting.

1 (3) Attends the meeting without protesting the lack of notice, either before the  
2 meeting or at the meeting.

3 **Comment.** Subdivisions (a) and (b) of Section 4520 restate the substance of former Section  
4 1363.05(g), with three changes:

5 (1) The term “bylaws” has been broadened to “governing documents.”

6 (2) Language regarding the manner of providing notice has not been continued. Notice  
7 delivery methods are governed by Sections 4040 and 4045.

8 (3) The notice is now required to include an agenda for the meeting. This is consistent with  
9 the requirements of other open meeting laws. See, e.g., Gov’t Code § 11125(b).

10 Subdivision (c) restates the substance of former Section 1363.05(h).

11 Subdivision (d) is comparable to the second sentence of Corporations Code Section 7211(a)(4).

12 Subdivision (e) is comparable to Corporations Code Section 7211(a)(3).

13 **Staff Notes.** (1) Proposed Section 4520(a) would require that the notice of a meeting include  
14 an agenda for the meeting. That would increase the value of advance notice of a meeting, by  
15 letting a member know whether the meeting will include discussion of matters of interest to the  
16 member. The Commission invites comments on this minor substantive change.

17 (2) As in existing law, proposed Section 4520(a) would not require notice of a meeting if “the  
18 time and place of a meeting is fixed by the governing documents.” That exemption makes sense if  
19 the only purpose of the notice is to inform as to the time and place of the meeting. If, however,  
20 the notice is expanded to include the agenda for a meeting, notice would be useful even if the  
21 time and place of the meeting could be determined from the governing documents. The  
22 Commission invites comments on whether the specified exception should be discontinued.

### 23 § 4525. Board meeting open

24 4525. (a) Any member may attend a board meeting, except for any part of the  
25 meeting held in executive session.

26 (b) Any member may speak at a board meeting, except for any part of the  
27 meeting held in executive session. The board may set a reasonable time limit for  
28 member testimony at a board meeting.

29 **Comment.** Subdivision (a) of Section 4525 continues part of the substance of former Section  
30 1363.05(b). The part of former Section 1363.05(b) that described the basis for meeting in  
31 executive session is continued in Section 4540(a)-(b).

32 Subdivision (b) continues the substance of former Section 1363.05(i), except that the  
33 establishment of a time limit on member testimony is now optional.

### 34 § 4530. Board meeting location

35 4530. A board meeting shall be held within the common interest development  
36 unless the board determines that a larger meeting room is required than is  
37 available within the common interest development. A board meeting held outside  
38 of the common interest development shall be held as close as is practicable to the  
39 common interest development.

40 **Comment.** Section 4530 is comparable to a Department of Real Estate regulation requiring  
41 reasonable arrangements for board meetings. See 10 Cal. Code Regs. § 2792.20(b).

1    **§ 4535. Teleconference**

2    4535. (a) If all of the following conditions are satisfied, a director who is not  
3 physically present at the noticed location of a board meeting may participate in the  
4 meeting by teleconference:

5       (1) Each director participating in the meeting can communicate with all other  
6 directors concurrently.

7       (2) Each director participating in the meeting is provided the means of  
8 participating in all matters before the board, including the ability to propose or  
9 interpose an objection to a specific action taken by the board.

10      (3) At least one director is physically present at the meeting location stated in  
11 the notice.

12      (4) A member attending the meeting at the location stated in the notice can hear  
13 and be heard by all directors.

14      (5) Any vote taken at the meeting is by roll call vote.

15      (b) For the purpose of establishing a quorum, a director who participates in a  
16 meeting by teleconference pursuant to this section is deemed to be present at the  
17 meeting.

18      (c) For the purposes of this section, “teleconference” means a communication  
19 method that provides for two-way transmission of audio or audio and visual  
20 signals.

21      **Comment.** Section 4535 is comparable to Corporations Code Section 7211(a)(6) and  
22 Government Code Sections 11123(b) & 54953(b). See also Section 4090 (“board meeting”  
23 defined).

24    **§ 4540. Executive session**

25    4540. (a) The board may adjourn to executive session to consider litigation,  
26 matters relating to the formation of contracts with third parties, member discipline,  
27 an assessment dispute, or personnel matters.

28       (b) The board shall adjourn to executive session to consider member discipline  
29 or an assessment dispute, if requested to do so by the member who is the subject  
30 of the matter to be considered.

31       (c) The board shall adjourn to executive session to consider a request for a  
32 payment plan made under Section 5620 or to make a decision on whether to  
33 foreclose on a lien under Section 5655.

34       (d) Notwithstanding Section 4525, if the board meets in executive session to  
35 consider member discipline, an assessment dispute, or a request for a payment  
36 plan for overdue assessment debt, the member who is the subject of that matter  
37 may attend and speak during consideration of the matter.

38      **Comment.** Subdivisions (a)-(c) of Section 4540 continue part of the substance of former  
39 Section 1363.05(b). The remainder of former Section 1363.05(b) is continued in Section 4525(a).

40      Subdivision (c) generalizes part of the substance of former Section 1363.05(b) that allowed a  
41 subject of disciplinary action to attend an executive session at which the disciplinary action is  
42 considered.

1 **☞ Staff Note.** Proposed Section 4540(a) continues existing law that allows a board to conduct  
2 certain proceedings in closed session, without regard for whether the subject of those proceedings  
3 would prefer that they be conducted in open session. The Commission invites comment on  
4 whether that is the proper rule. If the only purpose served by conducting member discipline and  
5 assessment dispute proceedings in closed session is to protect the member’s privacy, should the  
6 member have the option to insist that the proceeding be conducted in the open? What other  
7 interests are served by conducting such proceedings in closed session (e.g., avoiding a claim of  
8 defamation, protecting complainant privacy, etc)?

9 **§ 4545. Action without a meeting**

10 4545. (a) An action required or permitted to be taken by the board may be taken  
11 without a meeting, if all directors individually or collectively consent in writing to  
12 that action. The written consent shall be filed with the minutes of the proceedings  
13 of the board.

14 (b) For the purposes of this section “all directors” does not include an  
15 “interested director” as defined in Section 5233 of the Corporations Code, to the  
16 extent that section is made applicable pursuant to Section 7238 of the Corporations  
17 Code.

18 **Comment.** Section 4545 generalizes Corporations Code Section 7211(b).

19 **§ 4550. Minutes**

20 4550. (a) Within 30 days after a board meeting, including a meeting held in  
21 executive session, the board shall prepare minutes of the board meeting.

22 (b) The minutes for any part of a board meeting held in executive session shall  
23 include only a general description of the matter considered in executive session.

24 (c) A member may request a copy of the minutes under Article 3 (commencing  
25 with Section 4700). Notwithstanding Section 4705, a request for a copy of meeting  
26 minutes is not required to include a statement of the purpose for the request.

27 (d) The member handbook (Section 4810) shall inform the members of their  
28 right to obtain copies of board meeting minutes and shall describe the procedure  
29 for obtaining a copy of the minutes.

30 **Comment.** Subdivision (a) of Section 4550 continues part of the first sentence of former  
31 Section 1363.05(d).

32 Subdivision (b) restates the substance of former Section 1363.05(c). Language addressing the  
33 timing of the preparation of the minutes for a meeting held in executive session is not continued.  
34 Subdivision (a) provides a general timing rule.

35 Subdivision (c) continues the substance of the second sentence of former Section 1363.05(d).  
36 The second sentence of subdivision (c) makes express what is implicit in former Section  
37 1363.05(d), that a member has an absolute right to inspect meeting minutes and is not required to  
38 state a permissible purpose in order to obtain a copy.

39 Subdivision (d) restates the substance of former Section 1363.05(e).

40 **§ 4555. Civil action to enforce article**

41 4555. (a) A member may bring a civil action for declaratory or equitable relief  
42 for a violation of this article by the member’s association, including injunctive



1 relief, restitution, or a combination thereof, within one year of the date the cause  
2 of action accrues.

3 (b) The court may impose a civil penalty of up to five hundred dollars (\$500) for  
4 each violation, except that each identical violation shall be subject to only one  
5 penalty if the violation affects each member of the association equally.

6 (c) A member who prevails in a civil action to enforce a requirement of this  
7 article is entitled to reasonable attorney's fees and court costs. A prevailing  
8 association shall not recover any costs, unless the court finds the action to be  
9 frivolous, unreasonable, or without foundation.

10 **Comment.** Section 4555 restates the substance of former Section 1363.09(a)-(b), to the extent  
11 that it applied to board meetings.

12 **☞ Staff Note.** Section 1363.09 provides for an award of costs and expenses to the association if  
13 the court finds that the requesting member's action is "frivolous, unreasonable, or without  
14 foundation." That seems to be aimed at limiting an award of association fees to a case involving a  
15 frivolous claim. However, the language may be too broad for that purpose. It allows for an award  
16 of fees where the action was "without foundation." The meaning of that phrase is unclear, but it  
17 could be read to encompass any case in which the court finds against the plaintiff. The  
18 Commission requests comment on whether it might be better to use language drawn from Code of  
19 Civil Procedure Section 1038, which governs an award of fees in a frivolous case brought under  
20 the Tort Claims Act. For example: "The court may award reasonable costs and expenses,  
21 including reasonable attorney's fees, to the association if it finds that the action was not brought  
22 in good faith and with reasonable cause."

### 23 § 4560. Application of article

24 4560. (a) This article applies to a board meeting or a meeting of a committee  
25 that exercises a power of the board.

26 (b) If two or more associations have consolidated any of their functions under a  
27 joint neighborhood association or other joint organization, the meetings of the  
28 joint organization are governed by this article.

29 **Comment.** Subdivision (a) of Section 4560 is drawn from Corporations Code Section 7211(c).  
30 Subdivision (b) continues part of the substance of former Section 1363(i).

## 31 Article 3. Member Meeting

### 32 § 4575. General rules for conduct of meeting

33 4575. (a) An association shall hold a regular member meeting to transact  
34 business that requires action by the members, with the frequency stated in the  
35 governing documents. Notwithstanding the governing documents, an association  
36 shall hold a regular member meeting in any year in which a director is to be  
37 elected, in order to conduct the election and to transact any other business that  
38 requires action by the members.

39 (b) An association may hold a special member meeting, pursuant to Section  
40 4600.

41 (c) A member meeting shall be held within the common interest development  
42 unless the board determines that a larger meeting room is required than is

1 available within the common interest development. A member meeting held  
2 outside of the common interest development shall be held as close as is practicable  
3 to the common interest development.

4 (d) A member meeting shall be conducted in accordance with a recognized  
5 system of parliamentary procedure or any parliamentary procedure the association  
6 may adopt in its governing documents.

7 **Comment.** Subdivision (a) of Section 4575 is comparable to Corporations Code Section  
8 7510(b).

9 Subdivision (b) is comparable to part of the substance of Corporations Code Section 7510(e).  
10 See Section 4600.

11 Subdivision (c) is new.


12 Subdivision (d) restates the substance of former Section 1363(d).

### 13 § 4580. Quorum

14 4580. (a) Unless the bylaws provide otherwise, the quorum for a member  
15 meeting is one-third of the voting power of the association.

16 (b) An amendment of the bylaws to increase the quorum for a member meeting  
17 shall be adopted with the approval of a majority of a quorum of the members  
18 (Section 4070).

19 **Comment.** Section 4580 is comparable to the first two sentences of Corporations Code Section  
20 7512(a).

21  **Staff Note.** Corporations Code Section 7512 provides that the bylaws may set a different  
22 quorum. Should that provision be broadened to allow a quorum requirement to be stated in the  
23 declaration or articles?


### 24 § 4585. Member action

25 4585. (a) Unless this part or the governing documents require a greater number  
26 of votes, an action approved by a majority of a quorum of the members (Section  
27 4070) is the action of the members.

28 (b) A meeting at which a quorum is initially present may continue to transact  
29 business notwithstanding the withdrawal of directors, if any action taken is  
30 approved by affirmative votes equaling at least a majority of the number of votes  
31 required for a quorum or, if a higher percentage of the vote is required by law or  
32 the governing documents, by that higher percentage.

33 (c) If a quorum has not been established at a member meeting, the meeting may  
34 be adjourned by affirmative votes equaling at least a majority of the votes cast, but  
35 no other business may be transacted.

36 **Comment.** Section 4585 is comparable to the third sentence of Corporations Code Section  
37 7512(a) and subdivisions (c)-(d) of that section.

38  **Staff Note.** Proposed Section 4585 does not include language on the application of proxies.  
39 The use of proxies will be examined in connection with the rules on elections and revisited in this  
40 section.

1    **§ 4590. Teleconference**

2       4590. (a) If all of the following conditions are satisfied, a member who is not  
3 physically present at the noticed location of a member meeting may participate in  
4 the meeting by teleconference:

5       (1) Each member participating in the meeting can communicate with all other  
6 members concurrently.

7       (2) Each member participating in the meeting is provided the means of  
8 participating in all matters being considered, including the ability to propose or  
9 interpose an objection to a specific action.

10      (3) At least one member is physically present at the meeting location stated in  
11 the notice.

12      (4) The vote of any member who is not present shall be cast orally.

13      (b) For the purposes of establishing a quorum, a member participating in a  
14 meeting by teleconference pursuant to this section is deemed to be present at the  
15 meeting.

16      (c) For the purposes of this section, “teleconference” means a communication  
17 method that provides for two-way transmission of audio or audio and visual  
18 signals.

19      **Comment.** Section 4590 is comparable to Corporations Code Section 7211(a)(6) and  
20 Government Code Sections 11123(b) & 54953(b).

21    **§ 4595. Notice of regular meeting**

22       4595. (a) The board shall deliver individual notice (Section 4040) of a regular  
23 meeting to each member who, on the date of the notice, is entitled to vote at the  
24 meeting. The notice shall be delivered at least 10 days, but not more than 90 days,  
25 before the date of the meeting.

26       (b) The notice of a regular meeting shall include the date, time, and place of the  
27 meeting. If the board makes arrangements for participation in the meeting by  
28 teleconference, the notice shall include instructions on how to participate by  
29 teleconference.

30       (c) The notice of a regular meeting shall state the matters that the board, at the  
31 time of the notice, intends to present for action by the members. The members  
32 may act on a matter that is not described in the notice, except in the following  
33 circumstances:

34       (1) If the bylaws of the association provide for a quorum of one-third or less of  
35 the voting power and less than one-third of the voting power is present, the  
36 members shall not act on any matter that was not described in the notice.

37       (2) The members shall not act on any matter that is not described in the notice  
38 and that requires the approval of the members under Section 7222, 7224, 7233,  
39 7812, 8610, or 8719 of the Corporations Code, unless the matter is required to be  
40 approved by the unanimous vote of those entitled to vote on the matter, or the  
41 general nature of the matter is described in each of the documents waiving notice  
42 under Section 4610.

1 (d) The notice of any meeting at which a director will be elected shall include  
2 the names of those who are nominees on the date of the notice.

3 **Comment.** The introductory clause of subdivision (c) of Section 4595 continues the substance  
4 of former Section 1363(e). Section 4595 is comparable to Corporations Code Sections 7511(a),  
5 (f); 7512(b).

6 **Staff Note.** Proposed Section 4595(c) restates the substance of Corporations Code Section  
7 7511(f). The Commission invites comment on whether the restatement would result in a  
8 substantive change.

9 **§ 4600. Special meeting of the members**

10 4600. (a) The following persons may call a special meeting of the members at  
11 any time, for any lawful purpose, by adoption of a board resolution or by delivery  
12 of a written request to the board (Section 4035) that states the business to be  
13 transacted at the special meeting:

14 (1) The board.

15 (2) The president of the association or chair of the board.

16 (3) Any person authorized to do so by the governing documents.

17 (4) Members representing five percent or more of the voting power of the  
18 association.

19 (b) Within 20 days after a special meeting is called, the board shall deliver  
20 individual notice (Section 4040) of the special meeting to each member who, on  
21 the date of the notice, is entitled to vote at the special meeting. The notice shall  
22 include all of the following information:

23 (1) The date and time of the special meeting, which shall be between 35 to 90  
24 days after the special meeting is called.

25 (2) The location of the special meeting.

26 (3) If arrangements are made for participation in the meeting by teleconference,  
27 instructions on how to participate by teleconference.

28 (4) The general nature of the business to be transacted at the special meeting. No  
29 other business may be transacted at the special meeting.

30 (c) If the board does not send the required notice within 20 days after the  
31 meeting is called, the person who called the special meeting may set the time,  
32 date, and place of the special meeting and send the notice. The association shall  
33 reimburse the person for the cost of the notice.

34 **Comment.** Section 4600 is comparable to Corporations Code Sections 7510(e) and 7511(a),  
35 (c).

36 **Staff Note.** Proposed Section 4600(c) continues existing law that allows a person who validly  
37 calls a special meeting to set the meeting date and distribute notices, if the board fails to do so in  
38 the time provided. In addition, it would provide for reimbursement of the cost of notice from the  
39 association. The Commission invites comment on that minor change.

1    **§ 4605. Meeting adjournment**

2       4605. (a) Unless the governing documents provide otherwise, a member meeting  
3 may be adjourned to another time or place without giving written notice of the  
4 reconvened meeting, if both of the following conditions are satisfied:

5       (1) The time, date, and place of the reconvened meeting are announced at the  
6 meeting that is being adjourned. If arrangements are made for participation in the  
7 reconvened meeting by teleconference, the announcement shall include  
8 instructions on how to participate by teleconference.

9       (2) The record date for notice and voting are not changed.

10      (b) The members may transact any business at a reconvened meeting that could  
11 have been transacted at the adjourned meeting.

12      (c) No meeting may be adjourned for more than 45 days.

13      **Comment.** Section 4605 is comparable to Corporations Code Section 7511(d).

14    **§ 4610. Waiver of requirements**

15       4610. (a) Notwithstanding the requirements of this article, a court may find that  
16 a notice is valid if it was given in a fair and reasonable manner.

17      (b) A failure to comply with the requirements of this article does not make a  
18 transaction at a member meeting invalid if there is a quorum at the meeting and if  
19 every member who is entitled to vote satisfies one or both of the following  
20 conditions:

21      (1) The member is present at the meeting and does not raise, at the beginning of  
22 the meeting, an objection to the meeting being held.

23      (2) The member provides a waiver of notice, consent to hold the meeting, or  
24 approval of the minutes of the meeting. The waiver, consent, or approval shall be  
25 written and shall be filed with the association's records and made part of the  
26 minutes of the meeting. Unless expressly required by law or the governing  
27 documents, the waiver, consent, or approval need not include a description of the  
28 business to be transacted at the meeting.

29      (c) Notwithstanding subdivision (b), if a matter is required to be described in the  
30 meeting notice and is not described in the meeting notice, action on that matter is  
31 not valid if any member expressly objects, at the meeting, that the matter may not  
32 be considered at the meeting.

33      **Comment.** Subdivision (a) of Section 4610 is comparable to Corporations Code Section  
34 7511(g).

35      Subdivisions (b)-(c) are comparable to Corporations Code Section 7511(e).

36      **Staff Note.** Proposed Section 4610(b)(1) does not include language on the application of  
37 proxies. The use of proxies will be examined in connection with the rules on elections and  
38 revisited in this section.

39    **§ 4615. Court-ordered meeting**

40       4615. (a) If an association is required to hold a member meeting or conduct a  
41 written ballot and does not do so, a member or the Attorney General may apply to

1 the superior court for a summary order compelling the association to hold the  
2 member meeting or conduct the written ballot.

3 (b) The time for submitting an application under this section shall be as follows:

4 (1) If a date is designated for holding a member meeting or conducting a written  
5 ballot, the application shall be made 60 days or more after the designated date.

6 (2) If a date is not designated for a member meeting, the application shall be  
7 made 15 months or more after the formation of the association or after the last  
8 regular member meeting.

9 (3) If a special meeting has been called pursuant to Section 4600, and the board  
10 has not given the required notice, the application shall be made 20 days or more  
11 after the special meeting is called.

12 (c) A copy of the application shall be served on the association, which shall have  
13 an opportunity to be heard before the court issues an order.

14 (d) The court may issue any appropriate order, including an order that sets the  
15 time and place of a meeting and the record date for determination of members  
16 entitled to vote, requires that notice of the meeting be delivered, or specifies the  
17 form or content of the notice.

18 (e) If a regular member meeting or a written ballot is held pursuant to a court  
19 order issued under this section, a quorum is not required for that meeting or  
20 written ballot, notwithstanding any contrary provision of this part or the governing  
21 documents.

22 **Comment.** Section 4615 is comparable to Corporations Code Sections 7510(c)-(d) and  
23 7511(c).

24 **Staff Note.** Proposed Section 4615(e) restates the first sentence of Corporations Code Section  
25 7510(d). The Commission would like to receive comment on whether the restated provision  
26 would cause any substantive change in the law. The Commission also requests comment on the  
27 policy reflected in proposed subdivision (e). Why should the quorum requirement be waived  
28 when a court orders that a regular meeting be held? Should the same result apply when the court  
29 orders that a special meeting be held? Would it be better to recast the provision so that it does not  
30 apply in every case, but is available to the court as one possible “appropriate order” that it can  
31 issue in granting relief?

32 **§ 4620. Court-ordered modification of meeting requirements**

33 4620. (a) A director, officer, or member may petition the superior court for an  
34 order modifying any requirement of this part or the governing documents that  
35 governs the conduct of a member meeting or a written ballot.

36 (b) If the court determines that it would be impractical or unduly difficult for the  
37 association to conduct a member meeting or otherwise obtain the consent of the  
38 members, the court may order that a member meeting or written ballot be held and  
39 may, to the extent it is fair and equitable to do so, modify or dispense with any  
40 provision of this part or of the governing documents that relates to the conduct of a  
41 member meeting or written ballot, including any quorum requirement or provision  
42 requiring a specified number or percentage of votes for member approval of a  
43 matter.

1 (c) An order issued pursuant to this section shall provide for a method of notice  
2 that is reasonably designed to give actual notice to all parties who are entitled to  
3 notice of the member meeting or written ballot. Compliance with the method of  
4 notice ordered by the court need not result in actual notice to all persons who are  
5 entitled to notice.

6 (d) To the extent practical, an order issued pursuant to this section shall limit the  
7 subject matter presented for member approval to the following matters:

8 (1) An amendment of the governing documents that would or might enable the  
9 association to manage its affairs without further resort to this section.

10 (2) Dissolution, merger, sale of assets, or reorganization of the association.

11 (3) A reasonable amendment of the declaration.

12 (e) In a proceeding under this section, the court may determine who is a member  
13 or director of the association.

14 (f) Member approval of a matter that is obtained in compliance with the  
15 requirements of an order issued under this section is valid and shall have the same  
16 force and effect as a member approval that complies with all of the requirements  
17 of this part and the governing documents.

18 **Comment.** Section 4620 is comparable to Corporations Code Section 7515.  
19 Subdivision (d)(3) continues the general substance of former Section 1356.

20 Article 4. Elections [Reserved]

21 Article 5. Inspection of Records

22 **§ 4700. Scope of inspection right**

23 4700. (a) Except as otherwise provided in this article, a member may inspect the  
24 following association records:

25 (1) The governing documents and any other document that governs the  
26 operation of the common interest development or its association.

27 (2) The membership list, including member names, property addresses, mailing  
28 addresses, and electronic mail addresses.

29 (3) The agenda and minutes of a member meeting, a board meeting, or a meeting  
30 of a committee that exercises a power of the board.

31 (4) A report prepared pursuant to Article 7 (commencing with Section 4800).

32 (5) A balance sheet, income and expense statement, budget comparison, or  
33 general ledger. This paragraph applies to any record of the types described,  
34 regardless of whether the record is interim or final, audited or unaudited, prepared  
35 pursuant to a fixed schedule or on an ad hoc basis. For the purposes of this  
36 paragraph, a “general ledger” is a report that shows all transactions that occurred  
37 in an association account over a specified period of time.

38 (6) An invoice, receipt, cancelled check, credit card statement, statement for  
39 services rendered, or reimbursement request.

1 (7) A statement of deposits to and withdrawals from the reserve account, or  
2 showing the current balance of the reserve account.

3 (8) An executed contract.

4 (9) Written board approval of a vendor or contractor proposal or invoice.

5 (10) A state or federal tax return.

6 (11) A record of the compensation provided to an employee or contractor. The  
7 compensation information shall be indicated by job classification or title and may  
8 not refer to an individual employee or contractor by name or by other identifying  
9 information. Except as provided in this subdivision, personnel records are not  
10 subject to inspection.

11 (12) Information required by the member to comply with [Section 1368].

12 (13) Written correspondence of the association, other than correspondence that  
13 relates to personnel matters, member discipline, an assessment dispute or a request  
14 for a payment plan for overdue assessments.

15 (b) Notwithstanding subdivision (a), a member may not inspect the following  
16 association records:

17 (1) A record that was prepared three or more fiscal years before the fiscal year in  
18 which the inspection request is delivered. This paragraph does not apply to the  
19 governing documents or the minutes of a member meeting, a board meeting, or a  
20 meeting of a committee that exercises a power of the board. The governing  
21 documents and meeting minutes must be made available for inspection  
22 permanently.

23 (2) A record that is protected from disclosure by an evidentiary privilege.  
24 Examples include documents subject to the attorney-client privilege or relating to  
25 litigation in which the association is or may become involved.

26 (3) The agenda or minutes of a board or committee meeting held in executive  
27 session.

28 (4) A record of a disciplinary action, collection activity, or a payment plan for  
29 overdue assessments, that involves a person other than the person making the  
30 request.

31 (5) An interior architectural plan of a separate interest.

32 (6) A plan showing any security features of a separate interest.

33 (7) A record of a good or service provided to a member for a fee.

34 (c) Inspection under this article may be made in person or by an agent or  
35 attorney and the right of inspection includes the right to copy and make extracts.

36 **Comment.** Subdivision (a) of Section 4700 continues the substance of former Section  
37 1365.2(a), except for the following changes:

38 Subdivision (a)(1) is new. Documents that are not “governing documents” within the meaning  
39 of Section 4150, but that “govern the operation of the common interest development or its  
40 association” include, without limitation, a board resolution, a roster of officers, written  
41 instructions to an agent, or an informal policy statement or procedure manual.

42 Subdivision (a)(2) includes an electronic mail address in the information that must be provided  
43 as part of the membership list. The substantive limitations on use of a membership list are not  
44 included in this section. They are continued in Sections 4715 and 4725.



1 Subdivision (a)(3) generalizes the requirements for inspection of documents prepared pursuant  
2 to former Section 1365. Any document that is delivered to the membership generally is subject to  
3 inspection.

4 Subdivision (a)(5) does not limit the inspection of financial statements to those that are  
5 “interim,” “unaudited,” and “periodic or as compiled.” All financial statements of the types  
6 described are subject to inspection.

7 Subdivision (a)(8) does not preclude inspection of contracts that are privileged. That  
8 requirement is subsumed in the general exemption of privileged documents from inspection that  
9 is provided in subdivision (b)(2).

10 Subdivision (a)(11) continues the substance of former Section 1365.2(d)(1)(E)(v) & (d)(2).

11 Subdivision (a)(13) is new. The new provisions does not affect the existing rule that privileged  
12 communications are not subject to inspection. See subdivision (b)(2)

13 Subdivision (b)(1) continues the substance of Section 1365.2(i) except that governing  
14 documents are required to be made available for inspection permanently.

15 Subdivision (b)(2) continues the substance of former Section 1365.2(d)(1)(C).

16 Subdivision (b)(3) continues the substance of former Section 1365.2(d)(1)(E)(iv).

17 Subdivision (b)(4) continues the substance of former Section 1365.2(d)(1)(E)(ii).

18 Subdivision (b)(5)-(6) continues the substance of former Section 1365.2(d)(1)(E)(vi).

19 Subdivision (b)(7) continues the substance of former Section 1365.2(d)(1)(E)(i).

20 Subdivision (c) restates the substance of former Section 1365.2(b)(2) and is comparable to  
21 Corporations Code Section 8311.

22 Nothing in this section affects the scope of discovery in a civil or criminal case.

23 **☞ Staff Notes.** Proposed Section 4700 restates portions of Section 1365.2 that define the scope  
24 of the record inspection right. The Commission requests comment on the following issues relating  
25 to this section:

26 (1) Section 1365.2 (a)(1)(C) provides for the inspection of certain financial documents  
27 provided that they are “interim,” “unaudited,” and “periodic or as compiled.” The proposed  
28 section does not continue that limitation. A final document or one that has been audited would  
29 still be relevant to a member interested in tracking association finances. Is there a good policy  
30 reason to restore the omitted limitation?

31 (2) The proposed law continues Section 1365.2(a)(1)(E), which provides for inspection of a:  
32 “Written board approval of a vendor or contractor proposal or invoice.” The Commission is  
33 unsure of the purpose of that provision. It would seem that most contract approval decisions  
34 would be memorialized in meeting minutes rather than in a separate written document. What  
35 purpose is served by that provision?

36 (3) The concept of “enhanced association records” established in Section 1365.2(a)(2) is not  
37 continued. The only application of that definition occurs in Section 1365.2(c)(5), which  
38 authorizes billing for time spent redacting personal information from “enhanced association  
39 records.” The proposed law broadens the compensation provision; any redaction that is required,  
40 in any type of document, imposes costs and should be compensated.

41 (4) Proposed Section 4700(b)(1) would limit the time that records remain subject to inspection.  
42 Is that provision necessary if Section 4780 (record retention periods) is added? If the limit were  
43 removed, a record would be subject to inspection as long as the association is required to  
44 maintain it.

#### 45 § 4705. Inspection procedure

46 4705. (a) A member may deliver to the board (Section 4035) a written request to  
47 inspect an association record. The request shall identify the record to be inspected  
48 and shall state a purpose for the inspection that is reasonably related to the  
49 member’s interest as a member. The request may designate an agent to inspect the  
50 record on the member’s behalf.

1 (b) Except as provided in Sections 4710, 4715 and 4725, the association shall  
2 make the requested record available for inspection according to the following  
3 deadlines:

4 (1) For a record prepared in the current fiscal year, within 10 business days after  
5 the request is delivered.

6 (2) For a record prepared in a prior fiscal year, within 30 calendar days after the  
7 request is delivered.

8 (3) For a record that has not yet been prepared, within 10 business days after the  
9 request is delivered or the record is prepared, whichever is later.

10 (4) For the membership list, within five business days.

11 (c) If the association has a business office in the common interest development,  
12 the requested record shall be made available for inspection in that office. If the  
13 association does not have a business office in the common interest development,  
14 the record shall be made available for inspection at a location agreed to by the  
15 association and the member who submitted the request.

16 (d) At the member's request, a copy of a specifically identified record shall be  
17 delivered to the member by individual delivery (Section 4040). If the record exists  
18 in electronic form, the association shall comply with a member request that the  
19 record be provided in electronic form. Notwithstanding the other provisions of this  
20 subdivision, the association may not provide a record in electronic form if the  
21 form of the record prevents a necessary redaction.

22 **Comment.** Subdivision (a) of Section 4705 is new.

23 Subdivision (b) continues part of the substance of former Section 1365.2(j). Special deadlines  
24 for inspection of specific types of records have been subsumed within the general deadlines.

25 Subdivisions (c) and (d) continue the substance of former Section 1365.2(c), (h).

26 **Staff Note.** Section 1365.2(c) does not specify where records are to be inspected if the  
27 association has no business office in the development and the association and requesting member  
28 cannot agree on a location. The only option offered is for the member to receive mailed copies of  
29 specifically identified records. That may not be feasible when a member is reviewing the records  
30 generally and does not wish to have copies of all of the records. The Commission invites  
31 comment on whether some other alternative should be offered.

32 **§ 4710. Redaction**

33 4710. (a) Before making a record available for inspection, the association shall  
34 redact all of the following information from the record:

35 (1) Any financial account number.

36 (2) Any password or personal identification number.

37 (3) Any social security number or taxpayer identification number.

38 (4) Any driver's license number.

39 (5) Any other information, if it is reasonably probable that disclosure of the  
40 information will compromise the privacy of a member, lead to unauthorized use of  
41 a person's identity or financial resources, or to other fraud.

1 (b) Before providing a membership list, the association shall redact the name  
2 and address of any person who has elected to have that information redacted from  
3 the membership list pursuant to Section 4715.

4 (c) If the member requests, the association shall provide a written statement  
5 explaining the legal justification for any redaction made.

6 **Comment.** Section 4710(a) restates former Section 1365.2(d)(1) except that the duty to redact  
7 certain information has been made mandatory.

8 Subdivision (c) restates the substance of former Section 1365.2(d)(4).

9 **Staff Note.** Under Section 1365.2(d)(1), redaction of personal information is optional. It is  
10 not clear why a CID director should have discretion in this regard. Proposed Section 4710 would  
11 make redaction mandatory. The Commission invites comment on this proposed change.

12 **§ 4715. Optional redaction from membership list**

13 4715. (a) A member may elect, in writing, to have the member's name and  
14 address redacted from the membership list.

15 (b) A member who requests the membership list may also request that the  
16 association deliver material to any member whose information is redacted from  
17 the membership list. The association shall deliver the material to those members  
18 by individual delivery (Section 4040), within 10 business days after delivery of the  
19 request.

20 **Comment.** Section 4715 restates former Section 1365.2(a)(1)(I)(iii).

21 **§ 4720. Fees**

22 4720. (a) The association may charge a fee to recover the direct and actual cost  
23 to copy or deliver a record. The association shall inform the member of the fee  
24 amount, and the member shall agree to pay the fee, before a copy is made or a  
25 record delivered.

26 (b) The association may charge a fee of up to ten dollars (\$10) per hour, not to  
27 exceed two hundred dollars (\$200) per written request, for the time actually and  
28 reasonably spent to retrieve and redact a record. The association shall inform the  
29 member of the estimated fee amount, and the member shall agree to pay the fee,  
30 before the record is retrieved and redacted.

31 **Comment.** Section 4720 continues former Section 1365.2(b)(1), (c)(4)-(5) without substantive  
32 change, except that the authority to charge a fee for redaction has been generalized.

33 **§ 4725. Permissible purpose**

34 4725. (a) A member may only inspect and use an association record for a  
35 purpose that is reasonably related to the requesting member's interest as a  
36 member. A member may not inspect or use an association record for a commercial  
37 purpose.

38 (b) The association may deny a record inspection request if it believes, in good  
39 faith and with a substantial basis, that the record will be used for an impermissible  
40 purpose or that disclosure of the record would violate a member's constitutional  
41 rights.

1       **Comment.** Subdivision (a) of Section 4725 continues the substance of former Section  
2 1365.2(e). See also Corp. Code § 8338 (use of membership list).

3       Subdivision (b) is comparable to Corporations Code Sections 8331(a) and 8332, but it applies  
4 to any record and not just the association's membership list.

5       **§ 4730. Denial of request**

6       4730. (a) An association that denies a request for records under this article shall  
7 provide the requesting member a notice of denial, by individual delivery (Section  
8 4040), within 10 business days after delivery of the inspection request.

9       (b) The notice of denial shall include all of the following information:

10       (1) An explanation of the basis for the denial decision.

11       (2) An offer to attempt to resolve the matter through the association's internal  
12 dispute resolution procedure provided pursuant to Article 2 (commencing with  
13 Section 5050) of Chapter 4. The offer may include an alternative proposal for  
14 achieving the member's purpose.

15       **Comment.** Section 4730 is new.

16       **§ 4735. Action to enforce**

17       4735. (a) If an association has not complied with a document inspection request  
18 within the time provided, the requesting member may bring an action in the  
19 superior court to enforce the record inspection request. The action may be filed in  
20 the small claims division of the superior court if the amount of the demand does  
21 not exceed the jurisdiction of that court.

22       (b) If the court determines that there is no legal basis for the failure to comply  
23 with the record inspection request, it shall order compliance.

24       (c) If the court determines that disclosure is not required under this article, that  
25 disclosure would violate a member's constitutional rights, or that there is a  
26 reasonable probability that disclosure would lead to misuse of a record, it shall  
27 modify or set aside the record inspection request.

28       (d) The court may grant any other relief appropriate to the circumstances,  
29 including the following relief:

30       (1) If the association acted unreasonably in denying the request, the imposition  
31 of a civil penalty of up to \$500 against the association.

32       (2) The tolling of any deadline affected by association delay in providing access  
33 to a record.

34       (3) The postponement of a scheduled board meeting or member meeting, if  
35 association delay in providing access to a record would prejudice the requesting  
36 member's interest in a decision to be made at the meeting.

37       (4) The appointment of an investigator or accountant to inspect or audit  
38 association records on behalf of the requesting member. The cost of investigation  
39 shall ordinarily be borne by the requesting member, but the court may order that  
40 the association bear or share the cost.

41       (5) An order requiring that the association distribute material to the membership  
42 on behalf of the requesting member, in lieu of disclosing the membership list.

1 (e) The association bears the burden of proving the legal grounds for  
2 noncompliance with the records request.

3 (f) If the court finds that the association acted unreasonably in denying the  
4 record inspection request, it shall award reasonable costs and expenses, including  
5 reasonable attorney’s fees, to the requesting member.

6 (g) If the court finds that an action brought under this section is frivolous,  
7 unreasonable, or without foundation, it may award reasonable costs and expenses,  
8 including reasonable attorney’s fees, to the association.

9 (h) Nothing in this section limits the right of the association to bring an action  
10 under Section 4740.

11 **Comment.** Subdivisions (a)-(c) of Section 4735 are comparable to former Section 1365.2(f)  
12 and Corporations Code Sections 8336 (action to enforce inspection right) and 8337 (costs and  
13 expenses).

14 Subdivision (d)(1) continues part of the substance of former Section 1365.2(f).

15 Subdivision (d)(2) is new. It authorizes the court to toll a procedural deadline if the  
16 association’s delay in providing access to a record affected the member’s ability to comply with  
17 the deadline. For example, Section 6120 provides for a member meeting to reverse a rule change,  
18 within 30 calendar days after notice of the rule change. The signatures of five percent or more of  
19 the members are required to call the meeting. A member who requests access to the membership  
20 list in order to solicit signatures might be unable to meet the deadline due to association delay in  
21 providing the list. Subdivision (b)(2) would authorize the court to toll that time period to prevent  
22 injustice. See also subdivision (b)(3); Corp. Code § 8335 (postponement of meeting).

23 Subdivision (d)(3) is comparable to Corporations Code Section 8335, except that it applies to  
24 all records and not just to a membership list.

25 Subdivision (d)(4) is comparable to Corporations Code Section 8336.

26 Subdivision (d)(5) is comparable to Corporations Code Sections 8331(g) and 8332.

27 Subdivision (e) is comparable to former Section 1365.2(a)(1)(I)(ii) and Corporations Code  
28 Sections 8331(f)(1) and 8332, except that it applies to all records and not just to a membership  
29 list.

30 Subdivisions (f)-(g) continue part of the substance of former Section 1365.2(f)..

31 Subdivision (h) is comparable to Corporations Code Section 8331(j).

32 **Staff Notes.** (1) Section 1365.2(f) provides for an award of costs and expenses to the  
33 requesting member if the association acted “unreasonably” in withholding access to records. That  
34 is different standard from the standard provided in Corporations Code Section 8337, which  
35 provides for an award of costs to the member if the association acted “without justification.”  
36 Proposed Section 4735(f) continues the standard provided in the Davis-Stirling Act on the  
37 grounds that, in general, a specific standard is intended to control over a general one.

38 (2) Section 1365.2(f) provides for an award of costs and expenses to the association if the court  
39 finds that the requesting member’s action is “frivolous, unreasonable, or without foundation.”  
40 That seems to be aimed at limiting an award of association fees to a case involving a frivolous  
41 claim. However, the language may be too broad for that purpose. It allows for an award of fees  
42 where the action was “without foundation.” The meaning of that phrase is unclear, but it could be  
43 read to encompass any case in which the court finds against the plaintiff. The Commission  
44 requests comment on whether it might be better to use language drawn from Code of Civil  
45 Procedure Section 1038, which governs an award of fees in a frivolous case brought under the  
46 Tort Claims Act. For example: “The court may award reasonable costs and expenses, including  
47 reasonable attorney’s fees, to the association if it finds that the action was not brought in good  
48 faith and with reasonable cause.”

1    **§ 4740. Action to enjoin improper use of records**

2       4740. An association may bring an action for injunctive relief and actual  
3 damages against any person who misuses association records. In addition, a court  
4 in its discretion may award exemplary damages for a fraudulent or malicious  
5 misuse of association records. If the association prevails in an action brought  
6 under this section, the court shall award the association reasonable costs and  
7 expenses, including reasonable attorney’s fees.

8       **Comment.** Section 4740 is comparable to Corporations Code Section 8338(b)-(d).

9    **§ 4745. Limited liability**

10       4745. An association, or an officer, director, employee, agent, or volunteer of an  
11 association, is not liable for damages that result from a failure to withhold or  
12 redact information pursuant to this article, unless the failure to withhold or redact  
13 the information was intentional, willful, or negligent.

14       **Comment.** Section 4745 restates the substance of former Section 1365.2(d)(3).

15    **Staff Note.** Former Section 1356.2(d)(3) immunizes the association and its officers and  
16 agents from liability for damages resulting from a breach of the duty to withhold or redact certain  
17 personal information. However, that provision seems to allow for liability where the breach was  
18 merely negligent. Should the liability limitation provision be strengthened or otherwise modified,  
19 especially if the duty to redact is made mandatory? See proposed Section 4710 and note. For  
20 example, broader protection could be given to individuals by eliminating simple negligence as a  
21 basis for personal liability.

22    **§ 4750. Application of article**

23       4750. (a) For the purposes of this article, a community service organization is  
24 deemed to be an association, and a member of the community service organization  
25 or similar entity is deemed to be a member of an association.

26       (b) This article does not apply to common interest development in which  
27 separate interests are being offered for sale by a subdivider under the authority of a  
28 public report issued by the Department of Real Estate, so long as the subdivider or  
29 all subdividers offering those separate interests for sale, or any employees of those  
30 subdividers or any other person who receives direct or indirect compensation from  
31 any of those subdividers, comprise a majority of the members of the board of  
32 directors of the association. Notwithstanding the foregoing, this article applies to a  
33 common interest development no later than 10 years after the close of escrow for  
34 the first sale of a separate interest to a member of the general public pursuant to  
35 the public report issued for the first phase of the development.

36       (c) If two or more associations have consolidated any of their functions under a  
37 joint neighborhood association or other joint organization, the members of each  
38 participating association shall have access to the records of the joint organization  
39 as if they were the records of the participating association.

40       **Comment.** Subdivision (a) of Section 4750 continues the substance of former Section  
41 1365.2(g).

42       Subdivision (b) continues the substance of former Section 1365.2(n).

1 Subdivision (c) continues part of the substance of former Section 1363(i).

2 **☞ Staff Note.** Subdivision (b) exempts a CID from the application of this article if it is still in  
3 the period of developer control. Presumably, such a development would be subject to the record  
4 inspection provisions of the Corporations Code. It seems appropriate that some record inspection  
5 right be preserved. A member's interest in the proper management of a CID is not reduced simply  
6 because the association is within the control of the developer. The Commission requests comment  
7 on whether this exemption serves a useful purpose and should be continued.

## 8 Article 6. Record Keeping

### 9 § 4775. Duty to maintain records

10 4775. (a) An association shall maintain at least one copy of the following  
11 association records, for the periods specified in Section 4780:

12 (1) The original governing documents and any amendment of or addition to the  
13 governing documents.

14 (2) The membership list, including the name, address, and membership class of  
15 each member.

16 (3) The notice, agenda, and minutes of a member meeting, board meeting, or  
17 meeting of a committee that exercises a power of the board.

18 (4) A written waiver, consent, or approval received under Section 4610.

19 (5) A report prepared pursuant to Article 7 (commencing with Section 4800).

20 (6) Books and records of account.

21 (7) A tax return or other tax-related record.

22 (8) A deed or other record that relates to title of real property within the  
23 common interest development.

24 (9) A record that relates to the design, construction, or physical condition of the  
25 common interest development.

26 (10) A record that relates to a proposed modification of a member's separate  
27 interest.

28 (11) A record that relates to litigation involving the association or legal services  
29 provided to the association.

30 (12) An employment or payroll record.

31 (13) An insurance policy or record relating to insurance coverage or claims.

32 (14) A contract to which the association is a party.

33 (15) A loan document.

34 (16) A ballot, proxy, or other record that relates to an election.

35 (17) A reserve funding study.

36 (18) A record that relates to enforcement of a restriction.

37 (b) The association may keep a record in paper form or in any other form that  
38 can be converted to a paper copy, provided that the paper copy accurately portrays  
39 the content of the record. A paper copy produced from a non-paper record is  
40 admissible in evidence and is accepted for all other purposes, to the same extent as  
41 an original paper record of the same information.

1 **Comment.** Subdivisions (a)(2)-(3), (a)(6), and (b) of Section 4775 are comparable to  
2 Corporations Code Section 8320. The other provisions of subdivision (a) are new.

3 **§ 4780. Record retention periods**

4 4780. (a) Unless a longer period is required by law or by the governing  
5 documents, an association shall retain a record listed in Section 4775 for at least  
6 four years after its date of execution or, in the case of a document that expires or  
7 becomes superseded, four years after the document has expired or been  
8 superseded.

9 (b) The association shall retain the following records permanently:

10 (1) The original governing documents and each amendment of or addition to the  
11 governing documents.

12 (2) The minutes of a member meeting, board meeting, or meeting of a  
13 committee that exercises a power of the board.

14 (4) A tax return or other tax-related record.

15 (5) A deed or other record that relates to title of real property within the  
16 common interest development.

17 (6) A record that relates to the design, construction, or physical condition of the  
18 common interest development.

19 (c) This section does not apply to a record that is discarded or destroyed before  
20 January 1, 2008.

21 **Comment.** Section 4780 is new. Subdivision (a) states a default retention period of four years,  
22 but makes clear that other law or an association's governing documents may impose a longer  
23 retention period.

24 Subdivision (c) provides that the requirements of this section only apply to a record held by an  
25 association at the time that the section became operative. Note that other record retention  
26 requirements may govern documents that were held by the association before that date. See, e.g.,  
27 Section 4770(b) (period during which records must be made available for member inspection); 22  
28 Cal. Code Regs. § 1085-2 (four year period for retention of employment records); 26 C.F.R. §  
29 1.6001-1 (retention of federal tax records while material to assessment or collection of tax); 29  
30 C.F.R. §§ 516.5 (three year period for retention of payroll records).

31 **Staff Note.** The Commission invites comment on whether the proposed retention periods  
32 would be helpful and are of appropriate length. The Commission also requests information about  
33 any other record retention requirement that could apply to a homeowner association.

34 **§ 4785. Director inspection**

35 4785. A director shall have the absolute right at any reasonable time to inspect  
36 all association books, records, and documents of every kind and to inspect the  
37 common area.

38 **Comment.** Section 4785 is comparable to Corporations Code Section 8334.

39 **Staff Note.** Corporations Code Section 8334 confers on a director an "absolute" right to  
40 inspect association records. In one case applying that section, the court concluded that the  
41 director's right to inspect records must yield to the right of a member to cast a secret ballot. See  
42 *Chantiles v. Lake Forest II Master Homeowners Ass'n*, 37 Cal. App. 4th 914 (1995) (director did  
43 not have right to review ballots and proxies; director's attorney permitted to prepare tallies  
44 without revealing individual member votes).



1 The specific issue in *Chantiles* should not arise again. Section 1363.03(c)(3)(E), which  
2 becomes operative on July 1, 2006, will require that an independent election inspector count all  
3 votes in a CID election. Furthermore, the ballots will not identify the person who cast the ballot.  
4 See Section 1363.03(e). In addition, Section 1363.03(f) provides that any member may witness  
5 the process of counting the ballots.

6 The Commission invites comment on whether the changes to election procedure are sufficient  
7 to protect member privacy. If not, should Section 4785 be revised to better balance member  
8 privacy and a director's duty as a fiduciary?

## 9 Article 7. Annual Reports

### 10 § 4800. Annual budget report

11 4800. (a) From 30 to 90 days before the end of the fiscal year, the board shall  
12 prepare an annual budget report.

13 (b) The annual budget report shall include all of the following information:

14 (1) The estimated revenue and expenses for the operating and reserve accounts,  
15 on an accrual basis.

16 (2) The reserve funding study prepared pursuant to Section 5555.

17 (3) The statement of the association's insurance coverage, prepared pursuant to  
18 [subdivision (e) of Section 1365].

19 (c) The board shall promptly deliver a copy of the current annual budget report  
20 to any member who requests a copy, at no cost to the member.

21 (d) The type used in the annual budget report shall be at least 12 points in size.

22 **Comment.** Section 4800 continues part of the substance of former Sections 1365(a) & (e);  
23 1365.2.5.

### 24 § 4805. Annual financial statement

25 4805. (a) Within 120 days after the end of the fiscal year, the board of an  
26 association that receives ten thousand dollars (\$10,000) or more in gross revenues  
27 or receipts during the fiscal year shall prepare an annual financial statement.

28 (b) If the association receives more than seventy-five thousand dollars (\$75,000)  
29 in a fiscal year, the annual financial statement shall be reviewed by a licensee of  
30 the California Board of Accountancy using generally accepted accounting  
31 principles.

32 (c) The annual financial statement shall include all of the following information:

33 (1) A balance sheet as of the end of the fiscal year and an income statement and  
34 statement of changes in financial position for the fiscal year.

35 (2) If the financial statement is reviewed by an independent accountant, a copy  
36 of the accountant's report.

37 (3) If the financial statement is not reviewed by an independent accountant, the  
38 certificate of an authorized officer of the association that the financial statement  
39 was prepared without audit from the books and records of the association.

40 (4) If the association is incorporated, a statement of any transaction or  
41 indemnification of a type described in Section 8322 of the Corporations Code.

1 (d) The board shall promptly deliver a copy of the current annual financial  
2 statement to any member who requests a copy, at no cost to the member.

3 (e) The type used in the annual financial statement shall be at least 12 points in  
4 size.

5 **Comment.** Section 4805 is comparable to Corporations Code Section 8321, except that  
6 subdivision (b) continues the substance of former Section 1365(b).

7 **§ 4810. Member handbook**

8 4810. (a) Within 120 days after the end of the fiscal year, the board shall prepare  
9 a member handbook that contains all of the following information:

10 (1) A statement explaining that a member may submit a request to have notices  
11 sent to up to two different specified addresses.

12 (2) The name and address of the person designated to receive official  
13 communications to the board, pursuant to Section 4035.

14 (3) Notice of a member's right to receive copies of meeting minutes, pursuant to  
15 subdivision (d) of Section 4550.

16 (4) The statement required by Section 5670.

17 (5) A statement describing the association's policies and practices in enforcing  
18 lien rights or other legal remedies for default in the payment of assessments.

19 (6) A summary of alternative dispute resolution procedures, pursuant to Sections  
20 5070 and 5115.

21 (7) A summary of any requirements for association approval of a physical  
22 change to property, pursuant to [subdivision (c) of Section 1378].

23 (8) The location, if any, designated for posting of a general notice (Section  
24 4045).

25 (9) Any other information that is required by law or the governing documents or  
26 that the board determines to be appropriate for inclusion.

27 (b) The board shall promptly deliver a copy of the current member handbook to  
28 any new member and to any member who requests a copy, at no cost to the  
29 member.

30 (c) The type used in the annual financial statement shall be at least 12 points in  
31 size.

32 **Comment.** Section 4810 is new.  
33 Subdivision (a)(5) continues the substance of former Section 1365(d).

34 **§ 4815. Community service organization report**

35 4815. (a) Unless the governing documents impose more stringent standards, a  
36 community service organization that receives 10 percent or more of its funding  
37 from an association or its members shall prepare and distribute to the association  
38 an annual report that includes all of the following information:

39 (1) A financial statement.

40 (2) A detailed statement of administrative costs that identifies the person paid  
41 for each cost.

1 (3) If the report is not consistent with the requirements of Article 5  
2 (commencing with Section 4700), a statement describing the noncompliance in  
3 detail.

4 (4) If a community service organization is responsible for the maintenance of  
5 major components for which an association would otherwise be responsible,  
6 information regarding those components that the association requires to complete  
7 disclosures and reserve reports required under [this article.]

8 (b) An association may rely upon information received from a community  
9 service organization.

10 **Comment.** Section 4815 restates the substance of former Section 1365.3 except that the report  
11 must be made annually.

12 **Staff Notes.** (1) Existing Section 1365.3 requires that a report prepared by a community  
13 service organization be consistent with the provisions of Section 1365.2 and “comply with the  
14 standards.” The Commission is unsure of the meaning of that requirement and invites comment  
15 on the issue. Is the requirement intended to incorporate the redaction provisions of Section  
16 1365.2(d)?

17 (2) The reference in proposed Section 4815(a)(4) to “this article” is a reference to the  
18 provisions relating to reserve funding, which have not yet been added to the proposed law. The  
19 reference will be corrected when reserve fund requirements are addressed.

20 **§ 4820. Notice of availability**

21 4820. (a) When a report is prepared pursuant to Section 4800, 4805, 4810, or  
22 4815, the board shall deliver individual notice (Section 4040) to all members of  
23 the availability of the report.

24 (b) The notice of availability shall include a general description of the content of  
25 the report and instructions on how to request, at no cost, a complete copy of the  
26 report.

27 (c) A board may deliver, by individual notice (Section 4040) to all members, a  
28 complete copy of a report instead of the notice of availability of the report.

29 **Comment.** Section 4820 is new.

30 **§ 4825. Financial statement**

31 4825. A financial statement required by this article shall be prepared in  
32 conformity with generally accepted accounting principles or some other basis of  
33 accounting that reasonably sets forth the assets and liabilities and the income and  
34 expenses of the association or community service organization and discloses the  
35 accounting basis used in its preparation.

36 **Comment.** Section 4825 is similar to Corporations Code Section 5012.

37 **§ 4830. Judicial enforcement**

38 4830. (a) Any member may bring an action in superior court to enforce the  
39 requirements of this article. The court may, for good cause shown, extend the time  
40 for compliance with the requirements of this article.

1 (b) In any action or proceeding under this section, if the court finds the failure of  
2 the association to comply with the requirements of this article to be without  
3 justification, the court may award the member reasonable expenses, including  
4 attorney's fees, in connection with the action or proceeding.

5 **Comment.** Section 4830 generalizes the substance of Corporations Code Section 8323.

## 6 Article 8. Director Standard of Conduct

### 7 § 4850. Director standard of conduct

8 4850. (a) An association officer or director is not personally liable for a tortious  
9 act or omission of the officer or director, in excess of the amount of insurance  
10 coverage specified in paragraph (6), if all of the following requirements are met:

11 (1) The officer or director is a volunteer.

12 (2) The officer or director is a tenant of a separate interest or an owner of no  
13 more than two separate interests.

14 (3) The association is exclusively residential.

15 (4) The act or omission was performed within the scope of the officer's or  
16 director's association duties.

17 (4) The act or omission was performed in good faith.

18 (5) The act or omission was not willful, wanton, or grossly negligent.

19 (6) The association maintained and had in effect, at the time of the act or  
20 omission and at the time that a claim is made, insurance coverage for the general  
21 liability of the association and for the individual liability of an officer or director  
22 of the association for negligent acts or omissions in that capacity. In an association  
23 with 100 or fewer separate interests, the coverage for each type of liability shall be  
24 at least five hundred thousand dollars (\$500,000). In an association of more than  
25 100 separate interests, the coverage for each type of liability shall be at least one  
26 million dollars (\$1,000,000).

27 (b) For the purposes of this section, "volunteer" does not include the declarant or  
28 a person who receives direct or indirect compensation as an employee of the  
29 declarant, or as an employee of a financial institution that purchased a separate  
30 interest at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on  
31 real property. Payment of actual expenses incurred by a director or officer in the  
32 execution of the duties of that position does not affect the director's or officer's  
33 status as a volunteer.

34 (c) Nothing in this section limits the liability of the association for its negligent  
35 act or omission or for any negligent act or omission of an officer or director of the  
36 association.

37 (d) For the purposes of this section, an officer's or director's association duties  
38 include making a decision on whether to conduct an investigation of the common  
39 interest development for latent deficiencies before the expiration of the applicable  
40 statute of limitations and whether to commence a civil action against the builder  
41 for defects in design or construction. This subdivision is intended to clarify the


1 application of this section. It is not intended to expand or limit the fiduciary duties  
2 owed by a director or officer.

3 **Comment.** Section 4850 restates the substance of former Section 1365.7. See also Corp. Code  
4 § 7231 (standard of care and liability of director of nonprofit mutual benefit corporation).

5 **§ 4855. Transaction involving incorporated association and director or officer**

6 4855. A contract or other transaction between an incorporated association and a  
7 director or officer of the association is governed by Sections 7233 to 7235,  
8 inclusive, of the Corporations Code.

9 **Comment.** Section 4855 is new. Nothing in this section is intended to expand or limit the law  
10 governing a transaction between an incorporated association and a director or officer of the  
11 association.

12  **Staff Note.** Section 4 of AB 2100 (Laird) would add a provision on self-interested  
13 decisionmaking by a director. If that bill is enacted, the Commission will revise this provision to  
14 conform to the change.

15 **Article 9. Managing Agent**

16 **§ 4900. Prospective managing agent disclosure**


17 4900. (a) A prospective managing agent of a common interest development shall  
18 provide a written disclosure to the board before entering into a management  
19 agreement. The disclosure shall be provided as soon as is practicable after entering  
20 into negotiations, but in no event more than 90 days before entering into an  
21 agreement.

22 (b) The disclosure required under this section shall contain all of the following  
23 information:

24 (1) The name and business address of each owner or general partner of the  
25 managing agent. If the managing agent is a corporation, the disclosure shall  
26 include the name and business address of each shareholder owning more than 10  
27 percent of the shares of the corporation and each director or officer of the  
28 corporation

29 (2) For each person named in paragraph (1), a list of any relevant license or  
30 professional certification or designation held by that person. A license,  
31 certification, or designation is relevant if it relates to a service to be provided by  
32 the managing agent, including architectural design, construction, engineering, real  
33 estate, accounting, real property management, or community association  
34 management. The list shall indicate the type of license, certification, or  
35 designation, the issuing authority, the issuance date, and any expiration date.

36 **Comment.** Section 4900 restates the substance of former Section 1363.1. See also Section  
37 4100 (“managing agent” defined).

38  **Staff Notes.** (1) Proposed Section 4900 significantly revises Section 1363.1. The  
39 Commission would like to receive comment on whether the revisions would make any change to  
40 the substance of the existing section.

1 (2) Section 1363.1(a) requires that the disclosure be made no later than 90 days before entering  
2 into an agreement. If that requirement is adhered to, the contracting process would take at least 90  
3 days to complete. Is that time frame realistic in practice? Should the 90 day minimum be adjusted  
4 or deleted?

5 **§ 4905. Trust fund account**

6 4905. (a) A managing agent who receives funds belonging to an association,  
7 other than for deposit into an escrow account or account under the control of the  
8 association, shall deposit the funds into a trust fund account.

9 (b) The trust fund account shall be maintained in California, in a federally  
10 insured financial institution. The account shall be maintained in the name of the  
11 managing agent as trustee for the association or in the name of the association.

12 (c) On the written request of the board, the trust fund account shall be created as  
13 an interest bearing account. No interest earned on funds in the account shall inure  
14 directly or indirectly to the benefit of the managing agent or to an employee of the  
15 managing agent.

16 (d) The managing agent shall inform the board of the nature of the trust fund  
17 account, including a statement of how any interest will be calculated and paid,  
18 whether service charges will be paid to the depository and by whom, and whether  
19 there are any notice requirements or penalties for withdrawal of funds from the  
20 account.

21 (e) Funds in a trust fund account may only be disbursed in accordance with  
22 written instructions from the association that is entitled to the funds.

23 (f) The managing agent shall maintain a separate record of the receipt and  
24 disposition of all funds described in this section, including any interest earned on  
25 the funds.

26 (g) The managing agent shall not commingle the funds of an association with  
27 the funds of any other person, except as provided in subdivision (h).

28 (h) A managing agent who commingled the funds of two or more associations  
29 on or before February 26, 1990 may continue to do so if all of the following  
30 requirements are met:

31 (1) The board of each affected association has given its written assent to the  
32 commingling.

33 (2) The managing agent maintains a fidelity and surety bond in an amount that is  
34 adequate to protect each association and that provides each association at least 10  
35 days' notice before cancellation. The managing agent shall provide each affected  
36 board with the name and address of the bonding company, the amount of the bond,  
37 and the expiration date of the bond. If there are any changes in the bond coverage  
38 or the company that provides the coverage, the managing agent shall disclose that  
39 fact to the board of each affected association as soon as practical, but in no event  
40 more than 10 days after the change.

41 (3) The managing agent provides a written statement to each affected board  
42 describing any benefit received by the managing agent from the commingled  
43 account or the financial institution where the funds will be on deposit.

1 (4) A completed payment on behalf of an association is deposited within 24  
2 hours or the next business day and does not remain commingled for more than 10  
3 calendar days. As used in this subdivision, “completed payment” means funds  
4 received that clearly identify the account to which the funds are to be credited.

5 (i) The prevailing party in an action to enforce this section shall be entitled to  
6 recover reasonable legal fees and court costs.

7 (j) As used in this section, “financial institution” has the meaning provided in  
8 Section 31041 of the Financial Code.

9 **Comment.** Section 4905 restates the substance of former Section 1363.2. See also Section  
10 4100 (“managing agent” defined).

11 **Staff Notes.** (1) Proposed Section 4905 significantly revises Section 1363.2. The  
12 Commission would like to receive comment on whether the revisions would make any change to  
13 the substance of the existing section.

14 (2) The Commission invites comment on whether proposed Section 4905(h) continues to serve  
15 a useful purpose. It would seem to be the better practice not to allow commingling at all. Should  
16 subdivision (h) be deleted? A transitional period could be provided for the separation of accounts  
17 that are currently commingled under that provision.

## 18 CHAPTER 4. DISPUTE RESOLUTION AND ENFORCEMENT

### 19 Article 1. Disciplinary Action

#### 20 § 5000. Authority to impose disciplinary fine

21 5000. An association shall not fine a member for a violation of the governing  
22 documents unless, at the time of the violation, the governing documents expressly  
23 authorize the use of a fine and include a schedule of the amounts that can be  
24 assessed for each type of violation.

25 **Comment.** Section 5000 restates the substance of former Section 1363(g), with two  
26 exceptions:

27 (1) It does not continue language relating to the distribution of copies of the enforcement  
28 policy. Distribution of the governing documents is governed by other law. See Sections  
29 [1368(a)(1)] (seller’s disclosure), 4700(a)(1) (record inspection), 6115 (notice of proposed rule  
30 change).

31 (2) It provides that the authority to fine and schedule of fine amounts must exist at the time of  
32 the violation. This prevents ex post facto punishment.

33 **Staff Note.** The authority to impose a fine is a significant power. Should a board that is not  
34 authorized to impose fines by the declaration, articles, or bylaws be able to grant itself that power  
35 by adopting an operating rule (which can be adopted by the board unilaterally)? Or should the  
36 authority to impose fines derive only from the declaration, articles, or bylaws?

#### 37 § 5005. Disciplinary hearing

38 5005. (a) The board shall only impose discipline at a meeting of the board at  
39 which the accused member shall have an opportunity to be heard.

1 (b) At least 10 days before meeting to hear a disciplinary matter, the board shall  
2 deliver an individual notice to the accused member (Section 4040) that includes all  
3 of the following information:

4 (1) The provision of the governing documents that the member is alleged to  
5 have violated and a brief summary of the facts constituting the alleged violation.

6 (2) The penalty that may be imposed for the violation.

7 (3) The time, date, and location of the meeting at which the matter will be heard.

8 (4) A statement that the accused member has a right to attend the meeting,  
9 address the board, and request that the matter be considered in closed executive  
10 session.

11 (c) Within 15 days after hearing a disciplinary matter, the board shall deliver a  
12 written decision to the accused member, by individual notice (Section 4040). If the  
13 board imposes a penalty, the written decision shall state the provision of the  
14 governing documents violated and the penalty for the violation.

15 **Comment.** Section 5005 restates the substance of former Section 1363(h), with the following  
16 changes:

17 (1) Subdivision (a) is new. It states expressly what is clearly implied.

18 (2) Subdivision (b)(2) is new.

19 **Staff Note.** The disciplinary hearing provision only applies to a violation of the governing  
20 documents. However, a board can also impose a monetary charge to recover the cost to repair  
21 damage to the common area that was caused by the member or the member's guest or tenant.  
22 There is no provision for a hearing to consider whether the member actually caused the damage.  
23 A charge to reimburse for repair of damages can lead to nonjudicial foreclosure. See Section  
24 1367.1(d). Should there be some sort of hearing required before such a charge can be assessed  
25 against a member?

## 26 § 5015. Responsibility for guest, invitee, or tenant

27 5015. For the purposes of this article, a member is responsible for a violation of  
28 the governing documents by the member's guest, invitee, or tenant.

29 **Comment.** Section 5015 is consistent with former Sections 1363(g), except that the rule has  
30 been broadened to provide that a member is responsible for a tenant's violation.

31 **Staff Note.** Existing Section 1363(g) provides that a member is responsible for a violation of  
32 the governing documents by the member's guest or invitee. By contrast, existing Sections  
33 1367(b) and 1367.1(d) provide that a member may be charged for damage to the common area  
34 caused by the member or the member's guest or tenant.

35 Proposed Section 5015 would resolve that inconsistency by broadening the scope of  
36 responsibility to include a violation by a member's tenant. The damage reimbursement provisions  
37 of Sections 1367 and 1367.1 will be given the same scope (i.e., a member will be liable for  
38 damage caused by the member's guest, invitee, and tenant). The Commission invites comment on  
39 that approach.

## 40 § 5020. Removing vehicle from common interest development

41 5020. The authority of an association to cause the removal of a vehicle from a  
42 common interest development is governed by Section 22658.2 of the Vehicle  
43 Code.





1 (b) The procedure shall provide for prompt deadlines. The procedure shall state  
2 the maximum time for the association to act on a request invoking the procedure.

3 (c) If the procedure is invoked by a member, the association shall participate in  
4 the procedure.

5 (d) If the procedure is invoked by the association, the member may elect not to  
6 participate in the procedure. If the member participates but the dispute is resolved  
7 other than by agreement of the member, the member shall have a right of appeal to  
8 the association's board of directors.

9 (e) A resolution of a dispute pursuant to the procedure, that is not in conflict  
10 with the law or the governing documents, binds the association and is judicially  
11 enforceable. An agreement reached pursuant to the procedure, that is not in  
12 conflict with the law or the governing documents, binds the parties and is  
13 judicially enforceable.

14 (f) The procedure shall provide a means by which the member and the  
15 association may explain their positions.

16 (g) A member of the association shall not be charged a fee to participate in the  
17 process.

18 **Comment.** Section 5060 continues former Section 1363.830 without substantive change.

19 **§ 5065. Default meet and confer procedure**

20 5065. (a) This section applies in an association that does not otherwise provide a  
21 fair, reasonable, and expeditious dispute resolution procedure. The procedure  
22 provided in this section is fair, reasonable, and expeditious, within the meaning of  
23 this article.

24 (b) Either party to a dispute within the scope of this article may invoke the  
25 following procedure:

26 (1) The party may request the other party to meet and confer in an effort to  
27 resolve the dispute. The request shall be in writing.

28 (2) A member of an association may refuse a request to meet and confer. The  
29 association may not refuse a request to meet and confer.

30 (3) The association's board of directors shall designate a member of the board to  
31 meet and confer.

32 (4) The parties shall meet promptly at a mutually convenient time and place,  
33 explain their positions to each other, and confer in good faith in an effort to  
34 resolve the dispute.

35 (5) A resolution of the dispute agreed to by the parties shall be memorialized in  
36 writing and signed by the parties, including the board designee on behalf of the  
37 association.

38 (c) An agreement reached under this section binds the parties and is judicially  
39 enforceable if both of the following conditions are satisfied:

40 (1) The agreement is not in conflict with law or the governing documents of the  
41 common interest development or association.

1 (2) The agreement is either consistent with the authority granted by the board of  
2 directors to its designee or the agreement is ratified by the board of directors.

3 (d) A member of the association may not be charged a fee to participate in the  
4 process.

5 **Comment.** Section 5065 continues former Section 1363.840 without substantive change.

6 **§ 5070. Notice in member handbook**

7 5070. The member handbook (Section 4810) shall include a description of the  
8 internal dispute resolution process provided pursuant to this article.

9 **Comment.** Section 5070 continues former Section 1363.850 without substantive change.

10 **Article 3. Alternative Dispute Resolution**  
11 **Prerequisite to Civil Action**

12 **§ 5075. Definitions**

13 5075. As used in this article:

14 (a) “Alternative dispute resolution” means mediation, arbitration, conciliation,  
15 or other nonjudicial procedure that involves a neutral party in the dispute  
16 resolution process. The form of alternative dispute resolution chosen pursuant to  
17 this article may be binding or nonbinding, with the voluntary consent of the  
18 parties.

19 (b) “Enforcement action” means a civil action or proceeding, other than a cross-  
20 complaint, for any of the following purposes:

21 (1) Enforcement of this part.

22 (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3  
23 commencing with Section 7110) of Division 2 of Title 1 of the Corporations  
24 Code).

25 (3) Enforcement of the governing documents of a common interest  
26 development.

27 **Comment.** Section 5075 continues former Section 1369.510 without substantive change. The  
28 term “decisionmaking process” has been replaced with the more technically accurate term  
29 “dispute resolution process.” This is a nonsubstantive change.

30 **§ 5080. ADR prerequisite to enforcement action**

31 5080. (a) An association or an owner or a member of a common interest  
32 development may not file an enforcement action in the superior court unless the  
33 parties have endeavored to submit their dispute to alternative dispute resolution  
34 pursuant to this article.

35 (b) This section applies only to an enforcement action that is solely for  
36 declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim  
37 for monetary damages not in excess of five thousand dollars (\$5,000).

38 (c) This section does not apply to a small claims action.

1 (d) Except as otherwise provided by law, this section does not apply to an  
2 assessment dispute.

3 **Comment.** Section 5080 continues former Section 1369.520 without substantive change,  
4 except that subdivision (d) is obsolete and is not continued. That subdivision provided that the  
5 alternative dispute resolution requirements do not apply to an assessment dispute, except as  
6 otherwise provided by law. The application of this article to an assessment dispute is now  
7 governed by Article 3 (commencing with Section 5600) of Chapter 5.

8 **§ 5085. Request for resolution**

9 5085. (a) Any party to a dispute may initiate the process required by Section  
10 5080 by serving on all other parties to the dispute a request for resolution. The  
11 request for resolution shall include all of the following:

12 (1) A brief description of the dispute between the parties.

13 (2) A request for alternative dispute resolution.

14 (3) A notice that the party receiving the request for resolution is required to  
15 respond within 30 days of service or the request will be deemed rejected.

16 (4) If the party on whom the request is served is the owner of a separate interest,  
17 a copy of this article.

18 (b) Service of the request for resolution shall be by personal delivery, first-class  
19 mail, express mail, facsimile transmission, or other means reasonably calculated to  
20 provide the party on whom the request is served actual notice of the request.

21 (c) A party on whom a request for resolution is served has 30 days following  
22 service to accept or reject the request. If a party does not accept the request within  
23 that period, the request is deemed rejected by the party.

24 **Comment.** Section 5085 continues former Section 1369.530 without substantive change.

25 **§ 5090. ADR process**

26 5090. (a) A party on whom a request for resolution is served may agree to  
27 participate in alternative dispute resolution by delivering a written acceptance to  
28 the party that served the request for resolution. The written acceptance shall be  
29 delivered as an individual notice (Section 4040).

30 (b) The parties shall complete the alternative dispute resolution within 90 days  
31 after delivery of the written acceptance, unless this period is extended by written  
32 stipulation signed by both parties.

33 (c) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence  
34 Code applies to any form of alternative dispute resolution initiated by a Request  
35 for Resolution under this article, other than arbitration.

36 (d) The costs of the alternative dispute resolution shall be borne by the parties.

37 **Comment.** Section 5090 continues former Section 1369.540 without substantive change,  
38 except that a procedure is added in subdivision (a) for written acceptance of a request for  
39 resolution.

1    **§ 5095. Tolling of statute of limitations**

2    5095. If a request for resolution is served before the end of the applicable time  
3    limitation for commencing an enforcement action, the time limitation is tolled  
4    during the following periods:

5       (a) The period provided in Section 5085 for response to a request for resolution.

6       (b) If the request for resolution is accepted, the period provided by Section 5090  
7    for completion of alternative dispute resolution, including any extension of time  
8    stipulated to by the parties pursuant to Section 5090.

9       **Comment.** Section 5095 continues former Section 1369.550 without substantive change.

10   **§ 5100. Certification of efforts to resolve dispute**

11   5100. (a) At the time of commencement of an enforcement action, the party  
12   commencing the action shall file with the initial pleading a certificate stating that  
13   one or more of the following conditions is satisfied:

14       (1) Alternative dispute resolution has been completed in compliance with this  
15   article.

16       (2) One of the other parties to the dispute did not accept the terms offered for  
17   alternative dispute resolution.

18       (3) Preliminary or temporary injunctive relief is necessary.

19       (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a  
20   demurrer or a motion to strike unless the court finds that dismissal of the action for  
21   failure to comply with this article would result in substantial prejudice to one of  
22   the parties.

23       **Comment.** Section 5100 continues former Section 1369.560 without substantive change.

24   **§ 5105. Stay of litigation for dispute resolution**

25   5105 (a) After an enforcement action is commenced, on written stipulation of  
26   the parties, the matter may be referred to alternative dispute resolution. The  
27   referred action is stayed. During the stay, the action is not subject to the rules  
28   implementing subdivision (c) of Section 68603 of the Government Code.

29       (b) The costs of the alternative dispute resolution shall be borne by the parties.

30       **Comment.** Section 5105 continues former Section 1369.570 without substantive change.

31   **§ 5110. Attorney's fees**

32   5110. In an enforcement action in which fees and costs may be awarded, the  
33   court, in determining the amount of the award, may consider whether a party's  
34   refusal to participate in alternative dispute resolution before commencement of the  
35   action was reasonable.

36       **Comment.** Section 5110 generalizes former Section 1369.580 so that it applies to any  
37   enforcement action and not just to an action to enforce the governing documents.

1 **§ 5115. Notice in member handbook**

2 5115. The member handbook (Section 4810) shall include a summary of the  
3 provisions of this article that specifically references this article. The summary  
4 shall include the following language: “Failure of a member of the association to  
5 comply with the alternative dispute resolution requirements of Civil Code Section  
6 5080 may result in the loss of your right to sue the association or another member  
7 of the association regarding enforcement of the governing documents or the  
8 applicable law.”

9 **Comment.** Section 5115 restates the substance of former Section 1369.590.

10 **Article 4. Civil Actions**

11 **§ 5125. Enforcement of governing documents**

12 5125. (a) The covenants and restrictions in the declaration shall be enforceable  
13 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind  
14 all owners of separate interests in the development. Unless the declaration states  
15 otherwise, these servitudes may be enforced by any owner of a separate interest or  
16 by the association, or by both.

17 (b) A governing document other than the declaration may be enforced by the  
18 association against an owner of a separate interest or by an owner of a separate  
19 interest against the association.

20 (c) In an action to enforce the governing documents, the prevailing party shall be  
21 awarded reasonable attorney's fees and costs.

22 **Comment.** Section 5125 continues former Section 1354 without substantive change.

23 **§ 5130. Enforcement of this part**

24 5130. In addition to any other remedy provided by law, a member may bring an  
25 action in superior court to enforce a provision of this part.

26 **Comment.** Section 5130 is new.

27 **Staff Note.** Section 5130 would provide for judicial enforcement of any provision of the  
28 Davis-Stirling Common Interest Development Act. This would eliminate the implication that a  
29 civil action may only be brought to enforce a provision of this part if there is specific statutory  
30 authorization for that action. See, e.g., §§ 1353.5 (display of U.S. flag), 1363.09 (election and  
31 board meeting), 1365.2(f) (record inspection), 1368(d) (seller disclosure). The Commission  
32 invites comment on whether this provision would be problematic.

33 **CHAPTER 5. FINANCES**

34 **Article 1. Accounting**

35 **§ 5500. Accounting**

36 5500. (a) The board shall maintain separate operating and reserve accounts.

1 (b) The board shall maintain current income and expense records for each  
2 account, on an accrual basis.

3 (c) If the reserve account includes funds received by the association as a  
4 compensatory damage award or settlement in litigation involving a construction or  
5 design defect, the deposit or withdrawal of those funds shall be itemized  
6 separately.

7 (d) On at least a quarterly basis, the board shall reconcile the income and  
8 expense record for each account against the most recent statement provided by the  
9 financial institution for that account.

10 **Comment.** Subdivisions (a)-(b) of Section 5500 are new.

11 Subdivision (c) restates the substance of former Section 1365(a)(2)(B)(iii).

12 Subdivision (d) restates and simplifies the substance of former Section 1365.5(a).

13 **Staff Note.** Proposed Section 5500 significantly simplifies existing Section 1365.5(a) and  
14 states explicitly the implicit requirement that an association maintain separate operating and  
15 reserve accounts and detailed records for both. The Commission invites comment on whether  
16 those changes would cause any problems.

17 Note that the requirement of accrual accounting in proposed subdivision (b) is consistent with  
18 existing law. See Section 1365(a)(1).

## 19 Article 2. Use of Reserve Funds

### 20 § 5510. Use of reserve funds

21 5510. (a) Funds on deposit in the reserve account may only be used for the  
22 following purposes:

23 (1) The maintenance, repair, or replacement of a major component that the  
24 association is required to maintain.

25 (2) Litigation that relates to the maintenance, repair, or replacement of a major  
26 component that the association is required to maintain.

27 (3) A temporary transfer of funds to the operating account pursuant to Section  
28 5515.

29 (b) The withdrawal of funds from the reserve account requires either the  
30 signature of two directors or the signature of one director and an officer who is not  
31 a director.

32 **Comment.** Subdivision (a) of Section 5510 restates the substance of former Section  
33 1365(c)(1).

34 Subdivision (b) restates the substance of former Section 1365(b).

### 35 § 5515. Temporary transfer of reserve funds

36 5515. (a) The board may authorize, at a board meeting, a temporary transfer of  
37 funds from the reserve account to the operating account in order to address a short  
38 term cash flow requirement or other expense.

39 (b) Notice of the meeting at which the transfer is to be authorized must include  
40 the following information:

1 (1) A statement that the board will consider a transfer of funds from the reserve  
2 account to the operating account.

3 (2) The reason for the proposed transfer.

4 (3) Options for repayment of the transferred amount.

5 (4) Whether a special assessment may be necessary for repayment of the  
6 transferred amount.

7 (c) If the board authorizes the transfer, the minutes of the meeting shall include a  
8 written description of the amount to be transferred, the reasons for the transfer,  
9 and when and how the transferred amount will be repaid to the reserve account.

10 (d) Funds transferred under this section shall be repaid to the reserve account  
11 within one year of the date of the initial transfer, except that the board may delay  
12 repayment in the same manner that it would authorize a new transfer. A board may  
13 only delay repayment if it makes a written finding, supported by documentation,  
14 that the delay would be in the best interest of the common interest development.

15 (e) The board shall exercise prudent fiscal management in maintaining the  
16 integrity of the reserve account, and shall, if necessary, levy a special assessment  
17 to recover the full amount of the transferred funds within the time limits required  
18 by this section. This special assessment is subject to the limitation imposed by  
19 Section 5580. The board may, in its discretion, extend the date the payment on the  
20 special assessment is due. An extension of the due date does not prevent the board  
21 from pursuing any legal remedy to enforce the collection of an unpaid special  
22 assessment.

23 **Comment.** Section 5515 restates the substance of former Section 1365.5(c)(2).

24 **§ 5520. Use of reserve funds for litigation**

25 5520. (a) If funds in the reserve account are expended or transferred for the  
26 purpose of litigation, the board shall provide general notice to the members  
27 (Section 4045) of the expenditure or transfer. The notice shall inform the members  
28 of their rights under subdivision (b).

29 (b) The board shall make an accounting, at least quarterly of any funds in the  
30 reserve account that are expended or transferred for the purpose of litigation. A  
31 member may inspect the accounting at the office of the association.

32 **Comment.** Section 5520 restates the substance of former Section 1365.5(d).

33 **Article 3. Reserve Funding**

34 **§ 5550. Inspection of major components**

35 5550. At least once every three years, the board shall conduct a reasonably  
36 competent and diligent visual inspection of the accessible areas of the major  
37 components that the association is obligated to maintain.

38 **Comment.** Section 5550 restates part of the substance of former Section 1365.5(e), except that  
39 an exception from the inspection requirement, for major components with a replacement value of  
40 less than half of the association's operating budget, is not continued.



1 § 5555. Reserve funding study

2 5555. (a) At least once every three years, the board shall prepare a reserve  
3 funding study. The board shall review the study annually and make any necessary  
4 adjustments to the study.

5 (b) The study shall describe each major component that the association is  
6 obligated to maintain and that has a remaining useful life of less than 30 years.  
7 The study shall provide at least the following information for each included  
8 component, as of the end of the fiscal year for which the study is prepared or  
9 updated:

10 (1) An identifying description of the component.

11 (2) The total useful life of the component, in years.

12 (3) The estimated repair and replacement cost of the component over its useful  
13 life.

14 (4) The average annual repair and replacement cost for the component. This is  
15 calculated by dividing the lifetime repair and replacement cost by the total useful  
16 life of the component.

17 (5) The number of years the component has been in service.

18 (6) The desired balance for the component. This is calculated by one of the two  
19 following methods: (i) by multiplying the average annual repair and replacement  
20 cost and the number of years that the component has been in service, or (ii) by a  
21 generally accepted alternative method that is described in the study.

22 (c) The study shall include a summary page in the following form, with the  
23 indicated attachments:

24 **Summary of Reserve Funding Study**

25 (1) The information provided in this summary is current as of the end of fiscal  
26 year \_\_\_\_\_. It is based on a reserve study prepared by \_\_\_\_\_ on  
27 \_\_\_\_\_. A copy of the complete study is available from the association on  
28 request, at no charge.

29 (2) **Current Fiscal Year Projection:** At the end of this fiscal year, the balance  
30 in the reserve account is projected to be \$\_\_\_\_\_. This figure includes only  
31 assets held in cash or cash equivalents and projected income.

32 The desired balance in the reserve account for all components included in  
33 the reserve funding study is \$\_\_\_\_\_. A description of the method used to  
34 calculate the desired balance is attached.

35 The balance of the reserve account is \_\_\_\_\_% of the desired amount.

36 If the balance of the reserve account is less than the desired amount, the  
37 difference is \$\_\_\_\_\_. The difference per separate interest is \$\_\_\_\_\_.

38 Note: If the units in this development do not pay equal assessments, then the  
39 proportional share of the difference, for each class of unit, is attached.

1 (3) **Five Year Projection:** The tables below provide projections for each of the  
 2 five fiscal years following the current fiscal year. Table 1 shows the  
 3 projected balance in the reserve account if the most recently approved  
 4 reserve funding plan is implemented. Table 2 shows the projected balance in  
 5 the reserve account if the most recently approved reserve funding plan is not  
 6 implemented.

7 Table 1. Five Year Projection with Implementation of Funding Plan

Fiscal Year	Projected Balance	Desired Balance	Ratio of Projected Balance to Desired Balance (as percentage)

8 Table 2. Five Year Projection without Implementation of Funding Plan

Fiscal year	Projected Balance	Desired Balance	Ratio of Projected Balance to Desired Balance (as percentage)

9 (4) The current regular assessment per unit is \$ \_\_\_\_\_ per \_\_\_\_\_.

1 Note: If the units in this development do not pay equal assessments, then a  
 2 schedule showing the current regular assessment for each class of unit is  
 3 attached.

4 (5) Additional regular assessments that have already been approved for any  
 5 purpose are listed in the schedule below:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

6 Note: If the units in this development do not pay equal assessments, then a  
 7 schedule showing the approved regular assessments for each class of unit is  
 8 attached.

9 (6) Special assessments that have been approved for any purpose are listed in  
 10 the schedule below:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

11 Note: If the units in this development do not pay equal assessments, then a  
 12 schedule showing the approved special assessments for each class of unit is  
 13 attached.

14 (7) If the association has any outstanding loans with an original term of more  
 15 than one year, information about those loans is included in the schedule  
 16 below:

Lender	Amount owed	Interest rate	Annual payment	Date when loan to be retired

17 (8) Based on the most recent reserve study and other information available to  
 18 the board of directors, will the current regular assessment, approved  
 19 increases in the regular assessment, and approved special assessments  
 20 provide sufficient reserve funds at the end of each year to meet the

1 association's obligation for repair and replacement of major components  
2 over the next 30 years?

3 Yes \_\_\_\_\_ No \_\_\_\_\_

4 (9) If the answer to question (8) is no, please refer to the most recently  
5 approved reserve funding plan for a description of any additional assessment  
6 increases or special assessments that may be proposed in order to provide  
7 sufficient reserve funds at the end of each year to meet the association's  
8 obligation for repair and replacement of major components over the next 30  
9 years.

10 (10) The financial representations set forth in this summary are based on the best  
11 estimates of the preparer at that time. The estimates are subject to change. A  
12 statement describing the procedures used to make the calculations used in  
13 this summary is attached.

14 (d) The summary prepared pursuant to subdivision (c) shall be included with the  
15 notice of availability of the annual budget report that is delivered to members  
16 pursuant to Section 4820. The form may be supplemented or modified in order to  
17 make the information provided clearer or more complete, so long as the minimum  
18 information required by subdivision (c) is provided.

19 (e) The summary prepared pursuant to subdivision (c) shall not be admissible in  
20 evidence to show improper financial management of an association. Other relevant  
21 and competent evidence of the financial condition of the association is not made  
22 inadmissible by this subdivision.

23 (f) A component with an estimated remaining useful life of more than 30 years  
24 may be included in a study as a capital asset or disregarded from the reserve  
25 calculation, so long as the decision is revealed in the reserve study report and  
26 reported in the summary prepared pursuant to subdivision (c).

27 **Comment.** Subdivision (a) of Section 5555 is drawn from former Section 1365.5(e).

28 Subdivision (b)(1) restates the substance of former Sections 1365.2.5(a)(5) and 1365.5(e)(1).

29 Subdivision (b)(2) is consistent with former Section 1365(a)(2)(A) and is required in order to  
30 perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

31 Subdivision (b)(3) is consistent with former Sections 1365(a)(2)(A) and 1365.5(e)(3) and is  
32 required in order to perform the calculation required by former Sections 1365(a)(2)(B)(i) and  
33 1365.2.5(a)(6).

34 Subdivision (b)(4) is required in order to perform the calculation required by former Sections  
35 1365.2.5(a)(6) and 1365.5(e)(4).

36 Subdivision (b)(5) is consistent with former Section 1365(a)(2)(A) and is required in order to  
37 perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

38 Subdivision (b)(6) is required in order to perform the calculation required by former Sections  
39 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

40 Subdivision (c) restates the disclosure requirements of former Sections 1365(a)(2) and  
41 1365.2.5, as follows:

42 Item (1) is drawn from Sections 1365(a)(2)(B) and 1365.2.5(a)(6).

43 Item (2) is drawn from former Sections 1365(a)(2)(B)(i)-(ii), (C)-(D) and 1365.2.5(a)(6).

44 Item (3) is drawn from former Sections 1365(a)(2)(B)(i)-(ii), (C) and 1365.2.5(a)(7).

45 Item (4) is drawn from Section 1365.2.5(a)(1).

- 1 Items (5) and (6) are drawn from former Section 1365.2.5(a)(2).
- 2 Item (7) is drawn from former Section 1365(a)(3)(D).
- 3 Item (8) is drawn from former Section 1365.2.5(a)(3).
- 4 Item (9) is drawn from former Section 1365.2.5(a)(4), except that the schedule of proposed
- 5 assessment increases will be set out in the reserve funding plan. See Section 5560.
- 6 Item (10) is drawn from former Section 1365.2.5(a)(7).
- 7 Subdivision (d) restates the substance of former Section 1365.2.5(b)(3).
- 8 Subdivision (e) restates the substance of the second paragraph of former Section 1365(a)(4).
- 9 Subdivision (f) restates the substance of former Section 1365.2.5(b)(2).

10 **☛ Staff Notes.** (1) Proposed Section 5555 would incorporate changes to Section 1365 and  
 11 1365.2.5 that are proposed in AB 2100 (Laird). If that bill is amended or is not enacted, the  
 12 Commission will revisit this provision.

13 (2) The Commission invites comment on the meaning and purpose of existing Section  
 14 1365.2.5(b)(2) (proposed Section 5555(f)). When would it be appropriate to consider a  
 15 component of the common area a capital asset in connection with the study of reserve funding  
 16 needs? Why is it necessary to explain the exclusion of components that have a useful life of more  
 17 than 30 years, when that would put them outside the stated scope of the study?

18 **§ 5560. Reserve funding plan**

19 5560. (a) At least once every three years, the board shall prepare a reserve  
 20 funding plan that describes how the association will contribute sufficient funds to  
 21 the reserve account to meet the association’s obligation to repair and replace the  
 22 major components included in the most recent reserve funding study.

23 (b) The plan may provide for an increase in the general assessment, a special  
 24 assessment, borrowing, use of other assets, deferral of selected replacement or  
 25 repairs, or other mechanisms.

26 (c) If the plan proposes an increase in the general assessment, it shall describe  
 27 the proposed increase in the following form:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	<b>Total:</b>	

28 (d) If the plan proposes an increase one or more special assessments, it shall  
 29 describe the proposed increase in the following form:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	<b>Total:</b>	

30 (e) If the separate interests in the development do not pay equal assessments, the  
 31 plan shall indicate the amount of any increase or special assessment for each class  
 32 of separate interest.

1 (f) The plan shall be considered by the board at a board meeting.

2 (g) Board approval of the plan does not constitute approval of an assessment  
3 increase described in the plan. Any assessment increase must be considered  
4 separately by the board and is subject to the procedure provided in Section 5580.

5 (h) The plan may not assume a rate of return on cash reserves in excess of 2  
6 percent above the discount rate published by the Federal Reserve Bank of San  
7 Francisco at the time the plan is prepared.

8 **Comment.** Section 5560 restates the substance of former Sections 1365(a)(3)-(4);  
9 1365.5(e)(5).

10 **Staff Note.** Proposed Section 5560 would incorporate changes to Section 1365.5(e) that are  
11 proposed in AB 2100 (Laird). If that bill is amended or is not enacted, the Commission will  
12 revisit this provision.

## 13 Article 2. Assessments

### 14 § 5575. Levy of assessment

15 5575. (a) An association shall levy regular and special assessments sufficient to  
16 perform its obligations under the governing documents and this title.

17 (b) An association shall not levy an assessment or fee that exceeds the amount  
18 necessary to defray the costs for which it is levied.

19 **Comment.** Subdivision (a) of Section 5575 continues the substance of the first sentence of  
20 former Section 1366(a).

21 Subdivision (b) continues the substance of former Section 1366.1.

### 22 § 5580. Assessment increase

23 5580. (a) Subject to the limitations of Section 5575 and subdivision (b), the  
24 board may increase the regular assessment by any amount that is required to fulfill  
25 its obligations and may impose a special assessment of any amount that is required  
26 to fulfill its obligations. This subdivision supersedes any contrary provision of the  
27 governing documents.

28 (b) In the following circumstances, an assessment increase or special assessment  
29 may only be adopted with the approval of an affirmative majority of the votes cast  
30 at a meeting at which at least fifty percent of the voting power is represented:

31 (1) The association has not complied with Section 4800 for the fiscal year in  
32 which the assessment increase or special assessment would take effect.

33 (2) The total increase in the regular assessment for the fiscal year would be more  
34 than 20 percent of the regular assessment at the end of the preceding fiscal year.

35 (3) The total for all special assessments imposed in the fiscal year would be  
36 more than 5 percent of the budgeted gross expenses of the association for the fiscal  
37 year in which the special assessment would be imposed.

38 (c) Subdivision (b) does not apply to an assessment increase that is required to  
39 address the following emergency expenses:

40 (1) An extraordinary expense required by an order of a court.

1 (2) An extraordinary expense necessary to repair or replace any part of the  
2 development that the association is obligated to maintain, where a threat to  
3 personal safety is discovered on the property.

4 (3) An extraordinary expense necessary to repair or replace any part of the  
5 development that the association is obligated to maintain that could not have been  
6 reasonably foreseen by the board in preparing and distributing the budget report  
7 under Section 4800. Before imposing an assessment under this subdivision, the  
8 board shall adopt a resolution containing written findings as to the necessity of the  
9 extraordinary expense involved and why the expense was not or could not have  
10 been reasonably foreseen in the budgeting process, and the resolution shall be  
11 distributed to the members with the notice of assessment.

12 (d) The association shall provide the members with individual notice (Section  
13 4040) of any increase in the regular or special assessments of the association at  
14 least 30 days before the increased assessment takes effect.

15 **Comment.** Subdivisions (a)-(c), (e) of Section 5580 restate the substance of the last two  
16 sentences of former Section 1366(a), and former Section 1366(b). Subdivision (a) makes clear  
17 that a board's authority to impose an assessment increase that is required to fulfill its legal  
18 obligations may not be limited by the governing documents.

19 Subdivision (d) restates the substance of former Section 1366(d), except that the prohibition on  
20 giving notice more than 60 days before the increase takes effect is not continued.

21 **Staff Note.** Existing Section 1366(b) requires member approval before the board may  
22 "impose a regular assessment that is more than 20 percent greater than the regular assessment for  
23 the association's preceding fiscal year...." That language is somewhat ambiguous. Does it mean  
24 that the **increase** may not exceed 20 percent of the **prior year's assessment**? Or does it mean  
25 that the **difference** between the increased assessment and the prior year's assessment may not  
26 exceed 20 percent **of the increased assessment**. For example, an association has a monthly  
27 assessment of \$80. Would an increase of \$20 per month trigger the member approval  
28 requirement? Twenty dollars would be 20 percent of the increased assessment amount, but would  
29 be more than 20 percent of the prior year's assessment amount.

30 Proposed Section 5580(b)(2) is intended to make clear that **the total increase may not exceed**  
31 **20 percent of the prior assessment amount**. That would seem to be the more natural reading of  
32 the existing language. The Commission invites comment on whether this would create any  
33 problems.

34 **§ 5585. Exemption from execution**

35 5585. (a) A regular assessment imposed or collected to perform an obligation of  
36 an association under the governing documents or this title is exempt from  
37 execution by a judgment creditor of the association only to the extent necessary  
38 for the association to perform essential services, such as paying for utilities and  
39 insurance. In determining the appropriateness of an exemption, a court shall  
40 ensure that only essential services are protected under this subdivision.

41 (b) This section does not apply to a consensual pledge, lien, or encumbrances  
42 that is approved by a majority of a quorum of the members (Section 4070), or to  
43 any state tax lien, or to any lien for labor or materials supplied to the common  
44 area.

45 **Comment.** Section 5585 continues the substance of former Section 1366(c).

Article 3. Payment and Collection of Assessment

§ 5600. Payment

5600. (a) The association shall provide a mailing address for the overnight payment of an assessment. The address shall be included in the member handbook (Section 4810).

(b) On the request of a member, the association shall provide that member with a receipt for a payment made to the association. The receipt shall indicate the date and amount of the payment and the person who received the payment for the association.

(c) A payment made for a delinquent assessment shall first be applied to the assessment owed. Only after the assessment owed is paid in full shall the payment be applied to collection costs, a late fee, or interest.

**Comment.** Section 5600 continues the substance of former Section 1367.1(b).

**Staff Note.** Proposed Section 5600(a) requires that the association provide a mailing address for “overnight payment” of assessments. Does this mean for receipt of payments sent by overnight delivery? If not, what does it mean?

§ 5605. Delinquency

5605 (a) An assessment becomes delinquent 15 days after it is due, unless the declaration provides a longer time period, in which case the longer time period applies.

(b) If an assessment is delinquent, the association may recover all of the following amounts:

(1) The unpaid amount of the assessment.

(2) The reasonable cost incurred in collecting the delinquent assessment, including a reasonable attorney’s fee.

(3) A late charge not exceeding ten dollars (\$10).

(4) Interest on the delinquent assessment, the reasonable cost of collection, and the late charge. The annual interest rate shall not exceed 12 percent, commencing 30 days after the assessment becomes due, unless the declaration specifies a lower rate of interest, in which case the lower rate of interest applies.

(c) An association is exempt from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

(d) The amount described in subdivision (b) becomes a debt of the member at the time the assessment or other sum is levied.

**Comment.** Subdivisions (a)-(c) of Section 5605 restate the substance of former Section 1366(e)-(f).

Subdivision (d) continues the first sentence of former Sections 1367(a) and 1367.1(a).



1 **§ 5610. Assignment or pledge**

2 5610. (a) Except as otherwise provided in this section, an association may not  
3 voluntarily assign or pledge to a third party the association's right to collect a  
4 payment or assessment, or to enforce or foreclose a lien.

5 (b) An association may assign or pledge the association's right to collect a  
6 payment or assessment, or to enforce or foreclose a lien, to a financial institution  
7 or lender chartered or licensed under federal or state law, when acting within the  
8 scope of that charter or license, as security for a loan obtained by the association.

9 (c) Nothing in this section affects the right or ability of an association to assign  
10 an unpaid obligation of a former member to a third party for purposes of  
11 collection.

12 **Comment.** Section 5610 restates the substance of the first sentence of former Section  
13 1367.1(g).

14 **§ 5615. Pre-lien notice**

15 5615. (a) At least 30 days before recording a lien on the separate interest of the  
16 owner of record to collect a debt that is past due under this article, the association  
17 shall deliver to the owner of record, by certified mail, a written notice of  
18 delinquency.

19 (b) The notice of delinquency shall include the following information.

20 (1) An itemized statement of the charges owed, including any collection costs,  
21 late fee, and interest.

22 (2) A general description of the collection and lien enforcement procedures of  
23 the association and the method by which the amount due was calculated.

24 (c) The notice of delinquency shall include the following statement, in bold 14  
25 point type:

26 **IMPORTANT NOTICE**

27 **IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE**  
28 **BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE**  
29 **SOLD WITHOUT COURT ACTION.** However, before the association can  
30 initiate foreclosure, you have the right to request alternative dispute resolution  
31 with a neutral third party under Civil Code Section 5655(a)(2).

32 You have the right to inspect association records under Civil Code Section  
33 4700.

34 You have the right to request a meeting with a representative of the board under  
35 Civil Code Section 5625.

36 If you wish to request a payment plan, you have the right to request a meeting  
37 with the board under Civil Code Section 5620.

38 If the association determines that the assessment is not delinquent, you will not  
39 be liable for any collection costs, late fee, or interest.

40 **Comment.** Section 5615 continues part of the substance of former Section 1367.1(a).  
41 Subdivision (c) provides a standardized form for the disclosure of required statements.

1 **§ 5620. Payment plan**

2 5620. (a) A member that owes a delinquent assessment may deliver a written  
3 request (Section 4035) to meet with the board to discuss a payment plan for the  
4 debt. If the association has adopted standards for payment plans, the association  
5 shall provide a copy of the standards to the member.

6 (b) The association shall meet with the member and consider the request within  
7 45 days after receipt of the request, either at a regularly scheduled board meeting  
8 or at a specially scheduled meeting between the member and a committee  
9 appointed by the board for that purpose. The board shall deliver individual notice  
10 (Section 4040) to the member stating the date, time, and location of the meeting at  
11 which the request will be considered.

12 (c) A payment plan may incorporate an assessment that will accrue during the  
13 payment plan period. Additional late fees shall not accrue during the payment plan  
14 period if the owner is in compliance with the terms of the payment plan.

15 (d) A payment plan does not affect an association's ability to record a lien on the  
16 owner's separate interest to secure payment of a delinquent assessment. In the  
17 event of a default on any payment plan, the association may resume its efforts to  
18 collect all delinquent assessments.

19 **Comment.** Section 5620 continues the substance of former Section 1367.1(c)(3), except that a  
20 special rule that applies to an interest in a time share is not continued. Such an interest is  
21 expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212.

22 Subdivision (b) simplifies the former provision on the timing of a meeting to request a payment  
23 plan.

24 **Staff Note.** Proposed Section 5620(c) continues the existing rule that a late fee may not be  
25 imposed while a payment plan is in effect. Should that rule also apply to interest on the amount  
26 owed?

27 **§ 5625. Pre-lien meeting**

28 5625. Before recording a lien for delinquent assessments, an association shall  
29 offer the owner and, if so requested by the owner, participate in internal dispute  
30 resolution pursuant to Article 2 (commencing with Section 5050) of Chapter 4.

31 **Comment.** Section 5625 restates the substance of former Section 1367.1(c)(1)(A) and the  
32 second sentence of former Section 1367.4(b)(2).

33 **§ 5630. Lien creation and priority**

34 5630. (a) An association that has complied with Sections 5615 and 5625 may  
35 record a notice of delinquent assessment in the county in which the common  
36 interest development is located. Recording of the notice of delinquent assessment  
37 creates a lien against the property for which the delinquent assessment is owed.

38 (b) The recorded notice of delinquent assessment shall state the following  
39 information:

40 (1) The amount owed, including an itemized statement of any delinquent  
41 assessment amount, reasonable cost of collection, late fees, or interest.

42 (2) A legal description of the separate interest against which the lien is imposed.

1 (3) The name of the record owner of the separate interest against which the lien  
2 is imposed.

3 (c) A lien may not be enforced by nonjudicial foreclosure unless the recorded  
4 notice of delinquent assessment states the name and address of the trustee that is  
5 authorized by the association to enforce the lien by sale.

6 (d) The recorded notice of delinquent assessment shall be signed by the person  
7 designated in the declaration or by the association for that purpose, or if no one is  
8 designated, by the president of the association.

9 (e) A copy of the recorded notice of delinquent assessment shall be mailed by  
10 certified mail to every person whose name is shown as an owner of the separate  
11 interest in the association's records, no later than 10 calendar days after  
12 recordation.

13 (f) Unless the governing documents provide otherwise, a lien created pursuant to  
14 this section has priority over a subsequently recorded lien.

15 (g) The decision to record a lien for a delinquent assessment shall be made only  
16 by the board, at a meeting of the board, and may not be delegated to an agent of  
17 the association.

18 (h) Nothing in this article or in subdivision (a) of Section 726 of the Code of  
19 Civil Procedure prohibits an action against the owner of a separate interest to  
20 recover sums for which a lien is created pursuant to this section or prohibits an  
21 association from taking a deed in lieu of foreclosure.

22 (i) An association that fails to comply with Section 5615 or 5625 before  
23 recording a lien shall provide a new notice under Section 5615. Any additional  
24 costs that accrue from the failure to comply with Section 5615 or 5625 shall be  
25 borne by the association and not by the owner of the separate interest.

26 **Comment.** Subdivisions (a)-(e) of Section 5630 restate the substance of the first six sentences  
27 of former Section 1367.1(d). Subdivision (a) is consistent with the substance of former Section  
28 1367.1(l)(1).

29 Subdivision (f) restates the substance of former Section 1367.1(f).

30 Subdivision (g) restates the substance of former Section 1367.1(c)(2), except that the provision  
31 limiting the provision to liens recorded on or after January 1, 2006 is not continued. See Section  
32 5675 (application of article).

33 Subdivision (h) restates the substance of former Section 1367.1(h).

34 Subdivision (i) restates the substance of former Section 1367.1(l).

35 **§ 5635. Lien release**

36 5635. (a) Within 21 days after the payment of the sums stated in a recorded  
37 notice of delinquent assessment, the association shall record a lien release or  
38 notice of rescission in the county in which the notice of delinquent assessment is  
39 recorded. The association shall deliver to the record owner of the separate interest,  
40 by individual notice (Section 4040), a copy of the lien release or notice of  
41 rescission.

42 (b) Within 21 days after a determination that a notice of delinquent assessment  
43 was recorded in error, the association shall record a lien release or notice of

1 rescission in the county in which the notice of delinquent assessment is recorded.  
2 The association shall deliver to the record owner of the separate interest, by  
3 individual notice (Section 4040), a copy of the lien release or notice of rescission  
4 and a declaration that the notice of delinquent assessment was recorded in error.

5 (c) If a notice of delinquent assessment is recorded in error, the association shall  
6 reverse any collection cost, late fee, or interest that results from the error. The  
7 association shall bear any cost of alternative dispute resolution that relates to the  
8 error.

9 **Comment.** Subdivision (a) of Section 5635 restates the substance of the seventh sentence of  
10 former Section 1367.1(d).

11 Subdivision (b) restates the substance of former Section 1367.1(i).

12 Subdivision (c) restates the substance of former Section 1367.5. The requirement that the error  
13 be discovered as a result of alternative dispute resolution is not continued.

14 **Staff Note.** Existing Section 1367.1(i) provides for the release of a lien after it is determined  
15 that the lien was recorded in error. For the purposes of that provision, who makes the  
16 determination?

#### 17 § 5640. Lien for damage or fine

18 5640. (a) Unless the governing documents provide otherwise, a monetary charge  
19 imposed by the association as a means of reimbursing the association for costs  
20 incurred by the association in the repair of damage to common areas and facilities  
21 for which the member or the member's guests or tenants are responsible may  
22 become a lien against the member's separate interest that is enforceable by the sale  
23 of the interest under Sections 2924, 2924b, and 2924c.

24 (b) A fine imposed by the association for a violation of the governing  
25 documents, however described, shall not become a lien against the member's  
26 separate interest that is enforceable by the sale of the interest under Sections 2924,  
27 2924b, and 2924c. This subdivision does not apply to a penalty for late payment of  
28 a regular or special assessment.

29 **Comment.** Subdivision (a) of Section 5640 restates the substance of the eight and ninth  
30 sentences of former Section 1367.1(d).

31 Subdivision (b) restates the substance of former Section 1367.1(e)

32 **Staff Notes.** (1) Existing Section 1367.1(d) provides that foreclosure may be used to collect a  
33 charge imposed for damage to the common area, but expressly provides that there is no intent to  
34 "contravene" a Department of Real Estate regulation that limits the use of foreclosure to collect  
35 such a charge. See 10 Cal. Code Regs. § 2792.26.

36 The DRE regulations set standards for an association's initial governing documents. Once the  
37 period of developer control ends, an association can amend its governing documents to avoid the  
38 DRE imposed rules.

39 The staff reads Section 1367.1(d) as providing that foreclosure may be used to collect a  
40 damage charge, except in those associations where foreclosure is prohibited pursuant to the DRE  
41 regulation. Proposed Section 5640 is intended to achieve the same result, but in a more readily  
42 understandable way. The Commission invites comment on whether this restatement would cause  
43 any problems.

44 (2) Proposed Section 5640(b) is added in place of proposed Section 5010, which has been  
45 deleted from this draft.

1 (3) The words “however described” are used in proposed Section 5640(b) to make clear that  
2 the rule’s application does not depend on the terminology used to describe a fine.

3 **§ 5645. Collection generally**

4 5645. (a) Except as otherwise provided in this article, 30 days after recording a  
5 notice of delinquent assessment, an association may enforce the resulting lien in  
6 any manner permitted by law, including sale by the court, sale by the trustee  
7 designated in the recorded notice of delinquent assessment, or sale by a trustee  
8 substituted pursuant to Section 2934a.

9 (b) If the amount of the lien is within the jurisdictional limit of the small claims  
10 division of the superior court, the association may bring an action to collect the  
11 debt in the small claims division pursuant to Chapter 5.5 (commencing with  
12 Section 116.110) of Title 1 of the Code of Civil Procedure. An association may  
13 enforce a judgment of the small claims division as provided in Article 8  
14 (commencing with Section 116.810) of Chapter 5.5 of Title 1 of the Code of Civil  
15 Procedure. The amount recovered in an action in the small claims division, which  
16 may not exceed the jurisdictional limit of the small claims division, is the sum of  
17 the following:

18 (1) The amount owed as of the date of filing the complaint.

19 (2) In the discretion of the court, an additional amount equal to the amount owed  
20 for the period from the date the complaint is filed until satisfaction of the  
21 judgment, which may include accruing unpaid assessments and any reasonable  
22 late charges, fees and costs of collection, attorney’s fees, and interest.

23 **Comment.** Subdivision (a) of Section 5645 restates the substance of the second sentence of  
24 former Section 1367.1(g).

25 Subdivision (b) restates the substance of former Section 1367.4(b)(1).

26 **§ 5650. Prohibition on foreclosure for small amount**

27 5650. (a) An association may not foreclose on a lien, judicially or nonjudicially,  
28 if the debt is less than twelve months overdue and the amount owed, excluding  
29 any accelerated assessment, collection cost, late charge, or interest, is less than one  
30 thousand eight hundred dollars (\$1,800).

31 (b) Subdivision (a) does not apply to a separate interest owned by the declarant.

32 (c) This section applies to a lien recorded on or after January 1, 2006.

33 **Comment.** Subdivision (a) of Section 5650 restates the substance of the introduction of former  
34 Section 1367.4(b).

35 Subdivision (b) restates the substance of former Section 1367.4(d), except that the exemption  
36 of time share units is superfluous and has not been continued. A time share unit is not subject to  
37 this section. See Bus. & Prof. Code § 11211.7. The reference to “developers” has been replaced  
38 with a reference to the declarant. See Section 4130 (“declarant” defined).

39 **Staff Notes.** (1) Existing Section 1367.4(d) provides that the limitation on foreclosure for  
40 amounts under \$1,800 does not apply to a time share unit or to “assessments owed by  
41 developers.” The first exemption is unnecessary and has not been continued. A time share unit is  
42 already expressly exempted from Section 1367.4. The second exemption has been narrowed. As

1 currently drafted it would exempt any person who happens to be a developer, and not just the  
2 developer of the association that is owed assessments.

3 (2) By its own terms, Section 1367.4 applies to a lien recorded on or after January 1, 2006.  
4 However, Section 1367.1, which applies to a lien recorded on or after January 1, 2003, is  
5 expressly subordinate to Section 1367.4. The Commission invites comment on whether the  
6 limitations on foreclosure that are established in Section 1367.4 would also apply to a lien that is  
7 governed by Section 1367.1.

8 **§ 5655. Foreclosure**

9 5655. (a) Before commencing foreclosure to enforce a lien created under this  
10 article, the association shall satisfy all of the following requirements:

11 (1) The decision to foreclose shall be made by the board at least 30 days before  
12 any public sale. The decision may not be delegated to a committee or agent. The  
13 vote approving foreclosure shall be recorded in the minutes. The board shall  
14 maintain the confidentiality of the owner of the separate interest by identifying the  
15 matter in the minutes by the parcel number of the property only.

16 (2) The association shall offer to participate in either internal dispute resolution  
17 pursuant to Article 2 (commencing with Section 5050), or alternative dispute  
18 resolution pursuant to Article 3 (commencing with Section 5075), of Chapter 4.  
19 The decision of whether to participate and the type of alternative dispute  
20 resolution to use shall be made by the owner of the separate interest, except that  
21 binding arbitration may not be used if the association intends to commence a  
22 judicial foreclosure.

23 (3) The association shall provide notice of its decision to foreclose by personal  
24 service on the owner or the owner's legal representative. If the owner of the  
25 separate interest does not occupy the separate interest, the notice may be delivered  
26 by first class mail to the mailing address shown in the association's records. If the  
27 owner has not provided the association with a mailing address, the address of the  
28 separate interest is deemed to be the owner's mailing address.

29 (b) Any sale by a trustee shall be conducted in accordance with Sections 2924,  
30 2924b, and 2924c. The fees of a trustee may not exceed the amounts prescribed in  
31 Sections 2924c and 2924d.

32 (c) If the association records a notice of default pursuant to Section 2924, the  
33 association shall serve a copy of the notice of default on the owner or the owner's  
34 legal representative in the same manner as service of a summons under Article 3  
35 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of  
36 Civil Procedure.

37 **Comment.** Subdivision (a)(1) of Section 5655 restates the substance of former Sections  
38 1367.1(c)(2) and 1367.4(c)(2).

39 Subdivision (a)(2) restates the substance of former Sections 1367.1(c)(1)(B) and 1367.4(c)(1).

40 Subdivision (a)(3) restates the substance of former Section 1367.4(c)(3).

41 Subdivision (b) restates the substance of the third and fourth sentences of former Section  
42 1367.1(g).

43 Subdivision (c) restates the substance of former Section 1367.1(j), except that the notice of  
44 default may also be served on the owner.

1 **Staff Note.** Existing Section 1367.4(c)(3) requires that notice of a board decision to foreclose  
2 be served on the owner (or the owner’s legal representative) but does not specify the manner of  
3 service. By contrast, existing Section 1367.1(j) requires that the board serve a copy of a recorded  
4 notice of default on the owner’s legal representative and specifies the manner of service. Should  
5 proposed Section 5655(a)(3) specify the same manner of service (i.e., the manner of service  
6 specified in proposed Section 5655(c))?

7 **§ 5660. Right of redemption after trustee sale**

8 5660. A separate interest sold by a trustee under this article is subject to a right  
9 of redemption for 90 days after the sale.

10 **Comment.** Section 5660 restates the substance of former Section 1367.4(c)(4).

11 **Staff Note.** Pending Assembly Bill 2624 (Houston) would specify a procedure for  
12 administering the right of redemption. If the bill is enacted, the Commission will conform this  
13 section to the changes made by the bill.

14 **§ 5665. Recorded association information**

15 5665. (a) In order to facilitate the collection of a regular assessment, special  
16 assessment, transfer fee, or similar charge, the board is authorized to record a  
17 statement or amended statement identifying relevant information for the  
18 association. This statement may include any or all of the following information:

19 (1) The name of the association as shown in the conditions, covenants, and  
20 restrictions or the current name of the association, if different.

21 (2) The name and address of a managing agent or treasurer of the association or  
22 other individual or entity authorized to receive payment for assessments and fees  
23 imposed by the association.

24 (3) A daytime telephone number of the person identified in paragraph (2).

25 (4) A list of separate interests subject to assessment by the association, showing  
26 the assessor’s parcel number or legal description, or both, of the separate interests.

27 (5) The recording information identifying the declaration or declarations of  
28 covenants, conditions, and restrictions governing the association.

29 (6) If an amended statement is being recorded, the recording information  
30 identifying the prior statement or statements that the amendment is superseding.

31 (b) The county recorder is authorized to charge a fee for recording the document  
32 described in subdivision (a), based on the number of pages in the document and  
33 the recorder’s per-page recording fee.

34 **Comment.** Section 5665 restates the substance of former Section 1366.2.

35 **§ 5670. Statement of collection procedure**

36 5670. The member handbook (Section 4810) shall include the following  
37 statement:

38 **NOTICE REGARDING ASSESSMENTS AND FORECLOSURE**

39 This notice outlines some of the rights and responsibilities of owners of  
40 property in common interest developments and the associations that manage

1 them. Please refer to the sections of the Civil Code indicated for further  
2 information. A portion of the information in this notice applies only to liens  
3 recorded on or after January 1, 2003. You may wish to consult a lawyer if you  
4 dispute an assessment.

## 5 **ASSESSMENTS AND FORECLOSURE**

6 An assessment becomes delinquent 15 days after it is due, unless the governing  
7 documents provide for a longer time. The failure to pay an association assessment  
8 may result in the loss of an owner's property through foreclosure. Foreclosure  
9 may occur either as a result of a court action, known as judicial foreclosure or  
10 without court action, often referred to as nonjudicial foreclosure.

11 An association may not use judicial or nonjudicial foreclosure to enforce a lien  
12 that is recorded on or after January 1, 2006 if the debt is less than twelve months  
13 overdue and the amount of the delinquent assessments or dues, exclusive of any  
14 accelerated assessment, late charge, fee, attorney's fee, interest, or cost of  
15 collection, is less than one thousand eight hundred dollars (\$1,800).

16 An association may use judicial or nonjudicial foreclosure to collect a debt if it  
17 is more than twelve months overdue or if the amount owed for assessments or  
18 dues is more than one thousand eight hundred dollars (\$1,800). Foreclosure is  
19 subject to the conditions set forth in Civil Code Sections 5650 and 5655.

20 When using judicial or nonjudicial foreclosure, the association records a lien on  
21 the owner's property. The owner's property may be sold to satisfy the lien if the  
22 amounts secured by the lien are not paid. (Civil Code Sections 5645, 5650, and  
23 5655.)

24 In a judicial or nonjudicial foreclosure, the association may recover the  
25 delinquent assessment, the reasonable cost of collection including a reasonable  
26 attorney's fee, a late charge, and interest. The association may not use nonjudicial  
27 foreclosure to collect a fine or penalty. Unless the governing documents provide  
28 otherwise, an association may use nonjudicial foreclosure to collect the cost to  
29 repair damage to the common area that is caused by a member or the member's  
30 guests. (Civil Code Section 5640.)

31 The association must comply with the requirements of Civil Code Sections  
32 5615, 5620, and 5625 when collecting a delinquent assessment. If the association  
33 fails to follow these requirements, it may not record a lien on the owner's  
34 property until it has satisfied the requirements. Any additional cost that results  
35 from satisfying the requirements is the responsibility of the association. (Civil  
36 Code Section 5630.)

37 At least 30 days before recording a lien on an owner's separate interest, the  
38 association must provide the owner of record with certain documents by certified  
39 mail, including a description of its collection and lien enforcement procedure and  
40 the method used to calculate the amount owed. It must also provide an itemized  
41 statement of the charges owed by the owner. An owner has a right to review the  
42 association's records to verify the debt. (Civil Code Section 5615.)

43 If a lien is recorded against an owner's property in error, the person who  
44 recorded the lien is required to record a lien release within 21 days, and to provide  
45 an owner certain documents in this regard. (Civil Code Section 5635.)

46 The collection practices of the association may be governed by state and federal  
47 laws regarding fair debt collection. Penalties can be imposed for debt collection  
48 practices that violate these laws.



## PAYMENTS

An owner that makes a payment may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Civil Code Section 5600.)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association under Civil Code Section 5625. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party under Civil Code Section 5655, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for a late charge, interest, or the cost of collection, if it is established that the assessment was paid properly on time. (Civil Code Section 5635.)

## MEETINGS AND PAYMENT PLANS

An owner of a separate interest may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform the owner of the standards for payment plans, if any exist. (Civil Code Section 5620.)

The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. A payment plan must conform with the payment plan standards of the association, if they exist. (Civil Code Section 5620.)

**Comment.** Section 5670 restates the substance of former Section 1365.1, except for the following changes:

(1) A special rule that applies to an interest in a time share is not continued. Such an interest is expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212. Related references to time share interests are not continued.

(2) The substance of former Section 1365.1(c) is generalized in Section 4040.

### § 5675. Application of article

5675. (a) Except as otherwise provided, this article applies to a lien created on or after January 1, 2003.

(b) A lien created before January 1, 2003, is governed by the law in existence at the time the lien was created.

**Comment.** Section 5675 is new. A lien created between January 1, 1986 and January 1, 2003 is governed by former Section 1367. Note that Section 5650 only applies to a lien created on or after January 1, 2006.

**Staff Note.** The Commission invites comment on whether the simplified application rules provided in proposed Section 5675 would cause any problems.

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Article 4. Insurance and Liability [Reserved]

CHAPTER 6. PROPERTY OWNERSHIP, USE, AND  
MAINTENANCE [RESERVED]

CHAPTER 7. GOVERNING DOCUMENTS

Article 1. General Provisions

**§ 6000. Creation of common interest development**

6000. For the purposes of this part, a common interest development is created when a separate interest coupled with an interest in the common area or membership in the association is, or has been, conveyed, provided that all of the following are recorded:

- (a) A declaration.
- (b) A condominium plan, if any exists.
- (c) A final map or parcel map, if Division 2 (commencing with Section 66410) of Title 7 of the Government Code requires the recording of either a final map or parcel map for the common interest development.

**Comment.** Section 6000 continues part of the substance of former Section 1352. It governs the application of this part and is not intended to govern the date of creation of a common interest development for other purposes. See *City of West Hollywood v. Beverly Towers, Inc.* 52 Cal. 3d 1184, 278 Cal. Rptr. 375, 805 P.2d 329 (1991) (failure to convey a unit not determinative of whether condominium project exists for purposes of local planning law).

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4120 (“condominium plan”), 4135 (“declaration”), 4185 (“separate interest”).

**§ 6005. Document authority**

6005. (a) The articles of incorporation may not include a provision that is inconsistent with the declaration. To the extent of any inconsistency between the articles of incorporation and the declaration, the declaration controls.

(b) The bylaws may not include a provision that is inconsistent with the declaration or the articles of incorporation. To the extent of any inconsistency between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration control.

(c) The operating rules may not include a provision that is inconsistent with the declaration, articles of incorporation, or bylaws. To the extent of any inconsistency between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration control.

**Comment.** Section 6005 is new. Subdivision (b) is consistent with Corporations Code Section 7151(c) providing that the bylaws shall be consistent with the articles of incorporation. Subdivision (c) is consistent with Section 6100(c) providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

1 See also Sections 4080 (“association”), 4135 (“declaration”), 4165 (“operating rule”).

2 Article 2. Declaration

3 **§ 6025. Content of declaration**

4 6025. A declaration, recorded on or after January 1, 1986, shall contain all of the  
5 following:

6 (a) A legal description of the common interest development.

7 (b) A statement that the common interest development is a community  
8 apartment project, condominium project, planned development, stock cooperative,  
9 or combination thereof.

10 (c) The name of the association.

11 (d) Any restriction on the use or enjoyment of any portion of the common  
12 interest development that is intended to be an enforceable equitable servitude.

13 (e) Any other matter that the declarant or the members consider appropriate.

14 **Comment.** Section 6025 continues part of former Sections 1353(a)(1) and (b) without  
15 substantive change. The remainder of former Section 1353(a)(1) is continued without substantive  
16 change in Section 6030.

17 See also Sections 4080 (“association”), 4100 (“common interest development”), 4125  
18 (“condominium project”), 4130 (“declarant”), 4135 (“declaration”), 4160 (“member”), 4175  
19 (“planned development”), 4190 (“stock cooperative”).

20 **Staff Note.** The defined term “declarant” is substituted for the existing phrase “original  
21 signator of the declaration” in proposed 6025(e). The Commission invites comment on whether  
22 this would cause any problem.

23 **§ 6030. Disclosure of airport in vicinity**

24 6030. (a) If a common interest development is located within an airport  
25 influence area and its declaration is recorded after January 1, 2004, the declaration  
26 shall contain the following statement:

27 “NOTICE OF AIRPORT IN VICINITY

28 This property is presently located in the vicinity of an airport, within what  
29 is known as an airport influence area. For that reason, the property may be  
30 subject to some of the annoyances or inconveniences associated with  
31 proximity to airport operations (for example: noise, vibration, or odors).  
32 Individual sensitivities to those annoyances can vary from person to person.  
33 You may wish to consider what airport annoyances, if any, are associated  
34 with the property before you complete your purchase and determine whether  
35 they are acceptable to you.”

36 (b) For purposes of this section, an “airport influence area,” also known as an  
37 “airport referral area,” is the area in which current or future airport-related noise,  
38 overflight, safety, or airspace protection factors may significantly affect land uses  
39 or necessitate restrictions on those uses as determined by an airport land use  
40 commission.

1 (c) A statement in a declaration acknowledging that a property is located in an  
2 airport influence area is not a title defect, lien, or encumbrance.

3 **Comment.** Section 6030 continues part of former Sections 1353(a)(1)-(2), (4) without  
4 substantive change. The remainder of former Section 1351(a)(1) is continued without substantive  
5 change in Section 6025. See Bus. & Prof. Code § 11010 (disclosure of property within airport  
6 influence area); Pub. Util. Code § 21675 (designation of “airport influence area” by county  
7 airport land use commission).

8 See also Sections 4100 (“common interest development”), 4135 (“declaration”).

9 **§ 6035. Disclosure of BCDC jurisdiction**

10 6035. (a) If a common interest development is within the jurisdiction of the San  
11 Francisco Bay Conservation and Development Commission, as described in  
12 Section 66610 of the Government Code, and its declaration is recorded on or after  
13 January 1, 2006, the declaration shall contain the following notice:

14 “NOTICE OF SAN FRANCISCO BAY CONSERVATION AND  
15 DEVELOPMENT COMMISSION JURISDICTION

16 This property is located within the jurisdiction of the San Francisco Bay  
17 Conservation and Development Commission. Use and development of  
18 property within the commission’s jurisdiction may be subject to special  
19 regulations, restrictions, and permit requirements. You may wish to  
20 investigate and determine whether they are acceptable to you and your  
21 intended use of the property before you complete your transaction.”

22 (b) A statement in a declaration acknowledging that a property is located within  
23 the jurisdiction of the San Francisco Bay Conservation and Development  
24 Commission is not a title defect, lien, or encumbrance.

25 **Comment.** Section 6035 continues former Section 1353(a)(3)-(4) without substantive change.

26 See also Section 4100 (“common interest development”), 4135 (“declaration”).

27 **§ 6040. Amendment authorized**

28 6040. (a) Unless a declaration expressly provides otherwise, any provision of the  
29 declaration can be amended.

30 (b) If a provision of a declaration can be amended, it can be amended at any  
31 time.

32 (c) The Legislature finds that there are common interest developments that have  
33 been created with deed restrictions that do not provide a means for the property  
34 owners to extend the term of the declaration. The Legislature further finds that  
35 covenants and restrictions, contained in the declaration, are an appropriate method  
36 for protecting the common plan of developments and to provide for a mechanism  
37 for financial support for the upkeep of common areas including, but not limited to,  
38 roofs, roads, heating systems, and recreational facilities. If declarations terminate  
39 prematurely, common interest developments may deteriorate and the supply of  
40 affordable housing units could be impacted adversely. The Legislature further  
41 finds and declares that it is in the public interest to provide a vehicle for extending

1 the term of the declaration if owners having more than 50 percent of the votes in  
2 the association choose to do so.

3 (d) A declaration may be amended to extend the termination date of the  
4 declaration, notwithstanding any contrary provision of the declaration. No single  
5 extension of the term of the declaration made pursuant to this subdivision shall  
6 exceed the initial term of the declaration or 20 years, whichever is less. However,  
7 more than one extension may be made pursuant to this subdivision.

8 **Comment.** Subdivisions (a)-(b) of Section 6040 restate the first sentence of former Section  
9 1355(b) without substantive change.

10 Subdivisions (c)-(d) restate Section 1357 without substantive change except that the procedure  
11 for approving an amendment of a declaration to extend its termination date is not continued. An  
12 amendment under this subdivision would be approved pursuant to Section 6045.

13 See also Sections 4080 (“association”), 4100 (“common interest development”), 4135  
14 (“declaration”).

15 **Staff Notes.** (1) The Commission invites comment on whether the proposed restatement of  
16 the first sentence of Section 1355(b) would cause any substantive change in the law.

17 (2) Existing law acknowledges that a declaration may be drafted so as to limit or prohibit its  
18 amendment. That could result in permanent restrictions that become inappropriate over time, due  
19 to changed circumstances or the changed desires of the property owners. The common law  
20 recognizes a defense to the enforcement of an equitable servitude where “the original purpose for  
21 the restrictions has become obsolete and continued enforcement of the restrictions would be  
22 oppressive and inequitable.” H. Miller & M. Starr, California Real Estate § 24:20 (3d ed. 2004).  
23 As a matter of policy, should there be a procedure for amendment of a declaration by the  
24 members of a homeowner association, even if the declaration prohibits its own amendment?

## 25 § 6045. Approval of amendment

26 6045. (a) If the governing documents provide a procedure for approval of an  
27 amendment of the declaration, an amendment may be approved by that procedure.

28 (b) If the governing documents do not provide a procedure for approval of an  
29 amendment of the declaration, an amendment may be approved by a majority of  
30 all members (Section 4065).

31 (c) The board shall provide individual notice (Section 4040) to all members of  
32 an amendment approved under this section.

33 **Comment.** Section 6045 is comparable to the provisions of former Section 1355 that relate to  
34 approval of an amendment of the declaration. See Sections 4040 (individual notice), 4065  
35 (approved by all members).

36 See also Sections 4085 (“board”), 4135 (“declaration”), 4150 (“governing documents”), 4160  
37 (“member”).

38 **Staff Notes.** (1) The Corporations Code provisions governing the amendment of the articles  
39 of incorporation and bylaws address the possibility that the governing documents may require the  
40 approval of a specific class of voters or of a specified third party in order to amend the governing  
41 documents. See, e.g. Corp. Code § 7150(b), (d). Should similar provisions be applied to  
42 amendment of the declaration? For example, suppose that the declaration provides that a minority  
43 class of voters must approve any action that changes the proportional share of assessments  
44 collected from each class. Should the majority class be able to delete that provision from the  
45 declaration without the approval of a majority of the other class?

46 (2) Civil Code Section 1356 authorizes a director or member to petition the superior court for  
47 an order lowering the number or percentage of affirmative votes required to approve an

1 amendment of the declaration. A comparable order may be obtained under Corporations Code  
2 Section 7515, which is continued in proposed Section 4620. The staff does not see the benefit in  
3 providing two separate and slightly different provisions to achieve the same result. For that  
4 reason, Section 1356 is not continued in the proposed law.

5 **§ 6050. Approval of amendment to delete obsolete construction or marketing provision**

6 6050. Notwithstanding Section 6045, the deletion of a provision of the  
7 declaration may be approved by the board (Section 4060) and by a majority of a  
8 quorum of the members (Section 4070) if all of the following conditions are  
9 satisfied:

10 (a) The provision to be deleted is unequivocally designed and intended, or by its  
11 nature can only have been designed or intended, to facilitate the developer in  
12 completing the construction or marketing of the development or of a particular  
13 phase of the development.

14 (b) The provision to be deleted authorizes access by the developer over or across  
15 the common area for the purposes of (1) completion of construction of the  
16 development, and (2) the erection, construction, or maintenance of structures or  
17 other facilities designed to facilitate the completion of construction or marketing  
18 of separate interests.

19 (c) The construction or marketing activities governed by the provision to be  
20 deleted have been completed or terminated.

21 **Comment.** Section 6050 is comparable to former Section 1355.5 but applies only to the  
22 amendment of a declaration. The requirement of former Section 1355.5(c), that members be given  
23 notice before the board approves the amendment is not continued. Member notice is required  
24 before board meetings and before a member vote is held. See Sections 4520 (board meeting),  
25 4595 (member meeting).

26 See Sections 4060 (approved by the board), 4070 (approved by majority of quorum of all  
27 members). See also Sections 4085 (“board”), 4095 (“common area”), 4135 (“declaration”), 4160  
28 (“member”), 4185 (“separate interest”).

29 **Staff Notes.** (1) Existing Section 1355.5 provides an optional procedure for deletion of  
30 obsolete developer provisions from any type of governing document, including the articles of  
31 incorporation and bylaws. However, it doesn’t appear that this section serves a useful purpose  
32 when applied to the articles or bylaws. The existing procedures for amendment of those  
33 documents is as expeditious or more expeditious than the procedure provided in Section 1355.5.  
34 See Corp. Code §§ 7151 (amendment of bylaws), 7810-7820 (amendment of articles).

35 (2) Existing Section 1355.5 limits the optional procedure to deletion of provisions that  
36 “[provide] for access by the developer over or across the common area for the purposes of (a)  
37 completion of construction of the development, and (b) the erection, construction, or maintenance  
38 of structures or other facilities designed to facilitate the completion of construction or marketing  
39 of separate interests. Does the use of “and” imply that the provision must satisfy both of the  
40 enumerated criteria? Should “and” be changed to “or”?

41 (3) Is it necessary to continue the requirement that the board approve an amendment under this  
42 section? It seems unlikely that a board would ever oppose such an amendment if it were approved  
43 by the members.

1 § 6055. Effective date of amendment

2 6055. Notwithstanding any contrary provision of the governing documents, an  
3 amendment approved pursuant to this article becomes effective once the following  
4 actions have been completed:

5 (a) An officer of the association certifies, in a writing that is signed and  
6 acknowledged by the officer, that the amendment was approved pursuant to this  
7 article. The certifying officer is the officer designated for that purpose by the  
8 governing documents, or if no one is designated, the president of the association.

9 (b) The written certification and the amended text of the declaration are recorded  
10 in each county in which the common interest development is located.

11 **Comment.** Subdivisions (a) and (b) of Section 6055 are comparable to the provisions of  
12 former Section 1355 that relate to certification and recordation of an amendment of the  
13 declaration. See Sections 1180-1207 (acknowledgement of instrument).

14 See also Sections 4080 (“association”), 4100 (“common interest development”), 4135  
15 (“declaration”), 4150 (“governing documents”).

16 Article 3. Articles of Incorporation

17 § 6060. Content of articles

18 6060. (a) The articles of incorporation of an association that are filed with the  
19 Secretary of State on or after January 1, 1995, shall include all of the following:

20 (1) A statement that the corporation is an association formed to manage a  
21 common interest development under the Davis-Stirling Common Interest  
22 Development Act.

23 (2) The address of the business or corporate office of the association, if any.

24 (3) If the association has no business or corporate office, or if the business or  
25 corporate office is not on the site of the common interest development, the nine-  
26 digit ZIP Code, front street, and nearest cross street for the physical location of the  
27 common interest development.

28 (4) The name and address of the association’s managing agent.

29 (b) The statement of principal business activity contained in the annual  
30 statement filed by an incorporated association with the Secretary of State pursuant  
31 to Section 1502 of the Corporations Code shall also contain the information  
32 specified in subdivision (a).

33 **Comment.** Section 6060 restates former Section 1363.5 without substantive change, except  
34 that the requirement to state the location of the common interest development is expanded to  
35 apply to an association that has no business or corporate office. See Corp. Code §§ 1502 (annual  
36 statement), 7130-7135 (content of articles of incorporation), 7810-7820 (amendment of articles of  
37 incorporation), 7150-7153 (content and amendment of bylaws).

38 See also Sections 4080 (“association”), 4100 (“common interest development”), 4155  
39 (“managing agent”).

1 Article 4. Condominium Plan

2 **§ 6075. Content of condominium plan**

3 6075. A condominium plan shall include all of the following:

4 (a) A description or survey map of a condominium project, which shall refer to  
5 or show monumentation on the ground.

6 (b) A three-dimensional description of a condominium project, one or more  
7 dimensions of which may extend for an indefinite distance upwards or  
8 downwards, in sufficient detail to identify the common areas and each separate  
9 interest.

10 (c) A certificate consenting to the recordation of the condominium plan pursuant  
11 to this part signed and acknowledged by all of the following persons:

12 (1) The record owner of fee title to that property included in the condominium  
13 project.

14 (2) In the case of a condominium project that will terminate upon the  
15 termination of an estate for years, by all lessors and lessees of the estate for years.

16 (3) In the case of a condominium project subject to a life estate, by all life  
17 tenants and remainder interests.

18 (4) The trustee or the beneficiary of each recorded deed of trust, and the  
19 mortgagee of each recorded mortgage encumbering the property.

20 (5) In a conversion of a community apartment project or stock cooperative to a  
21 condominium project that has been approved by the required number of owners,  
22 trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the  
23 Government Code, by those owners, trustees, beneficiaries, and mortgagees who  
24 approved the conversion.

25 (d) A person who owns only a mineral right, easement, right-of-way, or other  
26 nonpossessory interest in the property that is included in the condominium project  
27 does not need to sign the condominium plan.

28 **Comment.** Section 6075 continues former Section 1351(e) without substantive change, except  
29 that last paragraph is not continued. That paragraph is continued without substantive change in  
30 Section 5060.

31 See also Sections 4095 (“common area”), 4120 (“condominium plan”), 4125 (“condominium  
32 project”), 4170 (“person”), 4185 (“separate interest”), 4190 (“stock cooperative”).

33 **§ 6080. Amendment of condominium plan**

34 6080. A condominium plan may be amended or revoked by a recorded  
35 instrument that is acknowledged and signed by all the persons whose signatures  
36 are required pursuant to subdivision (c) of Section 6075.

37 **Comment.** Section 6080 continues the last paragraph of former Section 1351(e) without  
38 substantive change.

39 See also Sections 4120 (“condominium plan”), 4170 (“person”).



1 Article 5. Operating Rules

2 **§ 6100. Requirements for validity and enforceability**

3 6100. An operating rule is valid and enforceable only if all of the following  
4 requirements are satisfied:

5 (a) The rule is in writing.

6 (b) The rule is within the authority of the board conferred by law or by the  
7 declaration, articles of incorporation or association, or bylaws of the association.

8 (c) The rule is not inconsistent with governing law and the declaration, articles  
9 of incorporation or association, and bylaws of the association.

10 (d) The rule is adopted, amended, or repealed in good faith and in substantial  
11 compliance with the requirements of this chapter.

12 (e) The rule is reasonable.

13 **Comment.** Section 6100 continues former Section 1357.110 without substantive change.

14 See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4165 (“operating  
15 rule).

16 **§ 6110. Application of rulemaking procedures**

17 6110. (a) Sections 6115 and 6120 only apply to an operating rule that relates to  
18 one or more of the following subjects:

19 (1) Use of the common area or of an exclusive use common area.

20 (2) Use of a separate interest, including any aesthetic or architectural standards  
21 that govern alteration of a separate interest.

22 (3) Member discipline, including any schedule of monetary penalties for  
23 violation of the governing documents and any procedure for the imposition of  
24 penalties.

25 (4) Any standards for delinquent assessment payment plans.

26 (5) Any procedures adopted by the association for resolution of disputes.

27 (6) Any procedures for reviewing and approving or disapproving a proposed  
28 physical change to a member’s separate interest or to the common area.

29 (b) Sections 6115 and 6120 do not apply to the following actions by the board:

30 (1) A decision regarding maintenance of the common area.

31 (2) A decision on a specific matter that is not intended to apply generally.

32 (3) A decision setting the amount of a regular or special assessment.

33 (4) A rule change that is required by law, if the board has no discretion as to the  
34 substantive effect of the rule change.

35 (5) Issuance of a document that merely repeats existing law or the governing  
36 documents.

37 **Comment.** Section 6110 continues former Section 1357.120 without substantive change.

38 See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4145  
39 (“exclusive use common area”), 4150 (“governing documents”), 4160 (“member”), 4165  
40 (“operating rule), 4180 (“rule change”), 4185 (“separate interest”).

1    **§ 6115. Approval of rule change by board**

2       6115. (a) The board shall provide general notice (Section 4045) of a proposed  
3 rule change at least 30 calendar days before making the rule change. The notice  
4 shall include the text of the proposed rule change and a description of the purpose  
5 and effect of the proposed rule change. Notice is not required under this  
6 subdivision if the board determines that an immediate rule change is necessary to  
7 address an imminent threat to public health or safety or imminent risk of  
8 substantial economic loss to the association.

9       (b) A proposed rule change may be approved by the board (Section 4060).

10      (c) As soon as possible after approving a rule change, but not more than 15  
11 calendar days after approving the rule change, the board shall provide general  
12 notice (Section 4045) of the rule change. If the rule change was an emergency rule  
13 change made under subdivision (d), the notice shall include the text of the rule  
14 change, a description of the purpose and effect of the rule change, and the date that  
15 the rule change expires.

16      (d) If the board determines that an immediate rule change is required to address  
17 an imminent threat to public health or safety, or an imminent risk of substantial  
18 economic loss to the association, the board may approve an emergency rule  
19 change (Section 4060) without providing general notice (Section 4045) of the  
20 proposed rule change. An emergency rule change is effective for 120 calendar  
21 days, unless the board provides for a shorter effective period. A rule change made  
22 under this subdivision may not be readopted under this subdivision.

23      **Comment.** Section 6115 restates former Section 1357.130 without substantive change. See  
24 Sections 4045 (general notice), 4060 (approved by the board).

25      See also Sections 4080 (“association”), 4085 (“board”), 4180 (“rule change”).

26    **§ 6120. Reversal of rule change by members**

27      6120. (a) Members of an association owning five percent or more of the separate  
28 interests may call a special member meeting to reverse a rule change that was  
29 approved by the board.

30      (b) A special member meeting may be called by delivering a request to the board  
31 (Section 4035) that includes the requisite number of member signatures, after  
32 which the board shall provide general notice (Section 4045) of the meeting and  
33 hold the meeting in conformity with Article 2 (commencing with Section 4500) of  
34 Chapter 3. A written request may only be delivered within 30 calendar days after  
35 general notice (Section 4045) of the rule change or enforcement of the resulting  
36 rule, whichever occurs first.

37      (c) For the purposes of Article 3 (commencing with Section 4700) of Chapter 3,  
38 collection of signatures to call a special meeting under this section is a purpose  
39 reasonably related to the interests of the members of the association. A member  
40 request to copy or inspect the membership list solely for that purpose may not be  
41 denied on the grounds that the purpose is not reasonably related to the member’s  
42 interests as a member.

1 (d) A decision to reverse a rule change may be approved by a majority of a  
2 quorum of the members (Section 4070), or if the declaration or bylaws require a  
3 greater proportion, by the affirmative vote or written ballot of the proportion  
4 required. In lieu of calling the meeting described in this section, the board may  
5 distribute a written ballot to every member of the association in conformity with  
6 the requirements of [Section 7513 of the Corporations Code].

7 (e) Unless otherwise provided in the declaration, articles of incorporation, or  
8 bylaws, for the purposes of this section, a member may cast one vote per separate  
9 interest owned.

10 (f) A meeting called under this section is governed by Article 3 (commencing  
11 with Section 4575) of Chapter 3 and [Sections 7612 and 7613 of the Corporations  
12 Code].

13 (g) A rule change reversed under this section may not be readopted for one year  
14 after the date of the meeting reversing the rule change. Nothing in this section  
15 precludes the board from adopting a different rule on the same subject as the rule  
16 change that has been reversed.

17 (h) As soon as possible after the close of voting, but not more than 15 calendar  
18 days after the close of voting, the board shall provide general notice (Section  
19 4045) of the results of the member vote.

20 (i) This section does not apply to an emergency rule change made under  
21 subdivision (d) of Section 6115.

22 **Comment.** Section 6120 continues former Section 1357.140 without substantive change. See  
23 Sections 4035 (delivered to board) 4045 (general notice), 4070 (approved by majority of quorum  
24 of the members).

25 See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4160  
26 (“member”), 4180 (“rule change”), 4185 (“separate interest”).

27 **Staff Note.** A future installment of the proposed law will address general procedures for  
28 meetings. That installment will reconcile the differences the notice requirements provided in the  
29 proposed law and those provided in the Corporations Code.

30 **§ 6125. Applicability of article to changes commenced before and after January 1, 2004**

31 6125. (a) This article applies to a rule change commenced on or after January 1,  
32 2004.

33 (b) Nothing in this article affects the validity of a rule change commenced  
34 before January 1, 2004.

35 (c) For the purposes of this section, a rule change is commenced when the board  
36 takes its first official action leading to adoption of the rule change.

37 **Comment.** Section 6125 continues former Section 1357.150 without substantive change.  
38 See also Sections 4085 (“board”), 4180 (“rule change”).

1

## Article 6. Unlawful Restrictions

2 **§ 6150. Discriminatory restriction**

3 6150. (a) No governing document shall include a restrictive covenant in  
4 violation of Section 12955 of the Government Code.

5 (b) Notwithstanding any other provision of law or provision of the governing  
6 documents, the board shall amend the governing documents to delete the unlawful  
7 restrictive covenant and to restate the governing document without the deleted  
8 restrictive covenant. No other person is required to approve the amendment.

9 (c) If the declaration is amended under this section, the board shall record the  
10 restated declaration in each county in which the common interest development is  
11 located. If the articles of incorporation are amended under this section, the board  
12 shall file a certificate of amendment pursuant to Section 7814 of the Corporations  
13 Code.

14 (d) The Department of Fair Employment and Housing, a city or county in which  
15 a common interest development is located, or any other person may provide  
16 written notice to a board (Section 6030) requesting that it comply with this section.  
17 If the board fails to comply with this section within 30 calendar days after delivery  
18 of the notice under this subdivision, the person who sent the notice may bring an  
19 action against the association for injunctive relief to enforce this section. The court  
20 may award attorney's fees to the prevailing party.

21 **Comment.** Section 6150 restates former Section 1352.5 without substantive change, except  
22 that subdivision (c) is added. See Section 4030 (delivery to board).

23 See also Sections 4080 ("association"), 4085 ("board"), 4100 ("common interest  
24 development"), 4135 ("declaration"), 4150 ("governing documents"), 4170 ("person").

25 **Staff Note.** The use of the term "restrictive covenant" in existing Section 1352.5 would  
26 seem to limit its scope to a discriminatory provision in the recorded declaration (see Civ. Code §  
27 1468(d) (covenant must be recorded to bind successive owners)). That is contrary to the express  
28 terms of the section, which provide that it applies to a "declaration *or other governing*  
29 *documents.*" Would it be appropriate to replace the term "restrictive covenant" with the broader  
30 term "rule or restriction"?

31

## Article 7. Construction of Documents

32 **§ 6175. Liberal construction of instruments**

33 6175. (a) Any deed, declaration, or condominium plan for a common interest  
34 development shall be liberally construed to facilitate the operation of the common  
35 interest development, and its provisions shall be presumed to be independent and  
36 severable.

37 (b) Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2  
38 of Part 1 of Division 2 shall operate to invalidate any provisions of the governing  
39 documents of a common interest development.

40 **Comment.** Section 6175 continues former Section 1370 without substantive change.

41 See also Sections 4100 ("common interest development"), 4120 ("condominium plan"), 4135  
42 ("declaration"), 4150 ("governing documents").

