

Memorandum 2011-6

**Commercial and Industrial Common Interest Developments
(Staff Draft Tentative Recommendation)**

This memorandum continues the Commission's study of the application of the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1378) (hereafter, "Davis-Stirling Act") to a commercial or industrial common interest development ("CID").

At its October 2010 meeting, the Commission approved the distribution of a tentative recommendation in this study, with instructions to make the following technical revisions:

- Revise the proposed legislation to incorporate, to the extent relevant, changes made through that date in parallel provisions of the Commission's draft recommendation on *Statutory Clarification and Simplification of CID Law*.
- Add technical "conforming revisions" to the proposed legislation to revise relevant cross-references to provisions of the Davis-Stirling Act, so that the provisions would also refer to the corresponding provision of the proposed law on commercial and industrial CIDs.
- Make other minor revisions as specifically directed.

See Minutes (Oct. 2010), pp. 6-8.

At the time, it was thought that the revised draft might be ready for public release prior to the Commission's December 2010 meeting. Based on that hope, the Commission decided to approve the release of the tentative recommendation without bringing a full version of the revised draft back for Commission review and approval. Instead, the revised draft would be shared with the Chairperson for his review. On his approval of the revisions, the tentative recommendation would be released.

As it turned out, the revisions were not completed prior to the December 2010 meeting. This presented a new opportunity. Without significant additional delay,

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). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

all of the relevant changes that the Commission made to the draft recommendation on *Statutory Clarification and Simplification of CID Law*, including those made at the December 2010 meeting, could be incorporated into the proposed law on commercial and industrial CIDs. The staff concluded that the benefit of having a more “final” version of the proposed language would justify the additional delay.

The attached draft includes all of the following technical revisions:

- Revisions required to comply with the Commission’s directions at the October 2010 meeting.
- Revisions required to conform to the final language of the draft recommendation on *Statutory Clarification and Simplification of CID Law* (i.e., to reflect changes made to that language at the December 2010 meeting).
- Revisions to section Comments, to conform to the structural changes made to the Comments in the staff draft recommendation on *Statutory Clarification and Simplification of CID Law* (as described in Memorandum 2011-5).
- Changes to reflect the recent repeal of Civil Code Section 1375.05 (i.e., deletion of the provision that would have continued the repealed section in the proposed law and the deletion of cross-references to the repealed provision).

To simplify Commission review, all of the changes to proposed statutory language and to the narrative preliminary part are set out in strikeout and underscore in the attached draft. This shows differences between the attached draft and the previously approved draft. It does *not* indicate changes to existing law. This use of strikeout and underscore is temporary. It will be removed when the tentative recommendation is released to the public.

(Note that strikeout and underscore are used differently in the “conforming revisions” portion of the attached draft tentative recommendation. There, strikeout and underscore *do* indicate proposed changes to existing law. That use of strikeout and underscore will be preserved in the tentative recommendation.)

Because the revisions to the proposed legislation were completed just prior to the February 2011 Commission meeting, the staff decided it would be best to submit the draft for review by the Commission as a whole, rather than just the Chairperson. Chairperson review is often useful as an expedited review procedure, when time is of the essence. Because time now permits review by the whole body, the staff believed that would be the better practice. This should only

delay release of the tentative recommendation by another two weeks or so. It should not affect our ability to complete work on this study this year.

The attached draft assembles the component parts of the staff draft tentative recommendation, with the technical revisions described above. All of those components have already been approved by the Commission. **No significant new legal or policy questions are presented for decision.**

If the technical revisions indicated in the attached draft are acceptable, the staff recommends that the Commission approve the attached draft for distribution as a tentative recommendation.

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Commercial and Industrial Common Interest Developments

February 2011

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission may consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

In 1988, the Legislature drew a statutory distinction between (1) residential common interest developments and (2) commercial and industrial common interest developments, declaring that statutes developed for the protection of residential developments may be unnecessary and unduly burdensome for commercial and industrial developments. Civil Code Section 1373 was enacted to exempt commercial and industrial developments from a number of such statutes.

In the 22 years since that enactment, the statutes governing common interest developments have more than tripled in size, without any comprehensive analysis of whether the added provisions should be applied to commercial and industrial developments.

The Law Revision Commission has conducted such an analysis and recommends the broad expansion of the policy expressed by the Legislature in 1988.

The proposed law would establish a separate statute governing commercial and industrial common interest developments, comprised only of those provisions that are necessary and appropriate for such developments.

This tentative recommendation was prepared pursuant to Resolution Chapter 98 of the Statutes of 2009.

COMMERCIAL AND INDUSTRIAL
COMMON INTEREST DEVELOPMENTS

SUMMARY

1
2 A common interest development (“CID”) is a real property development that
3 includes all of the following: (1) separate ownership of a lot or unit, coupled with
4 an undivided interest in common property, (2) covenants, conditions, and
5 restrictions that limit use of both the common area and separate ownership
6 interests, and (3) management of common property and enforcement of
7 restrictions by a community association.¹

8 The Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”)²
9 is the main body of statutory law that governs CIDs in California. The Davis-
10 Stirling Act was enacted in 1985,³ primarily to consolidate and standardize
11 statutory provisions governing different types of CIDs.⁴

12 Shortly after enactment of the Davis-Stirling Act, concerns were expressed
13 about the application of the Act to CIDs that are comprised entirely of commercial
14 or industrial units, and do not contain any residences.⁵ In response to those
15 concerns, a bill was introduced to entirely exempt these nonresidential CIDs from
16 the application of the Davis-Stirling Act.⁶

17 A building industry group suggested that the bill be amended to instead follow a
18 more selective approach. While agreeing that the Davis-Stirling Act was
19 “primarily ... enacted for the purpose of regulating residential developments,” the
20 group argued that a number of the Act’s provisions were also necessary for
21 commercial CIDs.⁷ The bill was thereafter amended to add Civil Code Section
22 1373 to the Davis-Stirling Act, and enacted.⁸

1. Civ. Code §§ 1352, 1363(a); C. Sproul & K. Rosenberry, *Advising California Common Interest Communities*, §§ 1.2, 1.14, 1.15, pp. 3-4, 15-19 (2010).

2. Civ. Code §§ 1350-1378.

3. 1985 Cal. Stat. ch. 874.

4. C. Sproul & K. Rosenberry, *Advising California Common Interest Communities*, § 1.4, pp. 5-6 (2010).

5. See letter from Jerold L. Miles to Michael Krisman (Sept. 16, 1986) (on file with Commission).

6. AB 2484 (Hauser) (1987).

7. See letter from Jeffrey G. Wagner to Assembly Member Daniel Hauser (June 12, 1987) (attached to Commission Staff Memorandum 2008-63 (Dec. 2, 2008), Exhibit pp. 1-2).

8. 1988 Cal. Stat. ch. 123.

1 Section 1373 made several provisions of the Davis-Stirling Act inapplicable to
2 commercial and industrial CIDs.⁹ Section 1373 also included an explanatory
3 statement of legislative findings:

4 The Legislature finds that the [provisions declared inapplicable to commercial
5 or industrial CIDs] may be appropriate to protect purchasers in residential
6 common interest developments, however, the provisions are not necessary to
7 protect purchasers in commercial or industrial developments since the application
8 of those provisions results in unnecessary burdens and costs for these types of
9 developments.¹⁰

10 In the 22 years since the enactment of Section 1373, the Davis-Stirling Act has
11 more than tripled in size,¹¹ without any comprehensive analysis of whether the
12 added provisions should apply to commercial and industrial CIDs.

13 The Commission has conducted such an analysis, and recommends that the
14 legislative policies reflected in the enactment of Section 1373 be extrapolated to
15 address subsequent changes in the Davis-Stirling Act.

16 This would be achieved by exempting commercial and industrial CIDs from the
17 existing Davis-Stirling Act, and creating a new statute that would govern only
18 those CIDs. The new statute would carry forward all Davis-Stirling Act provisions
19 that should continue to apply to these nonresidential CIDs. However, provisions
20 presently in the Davis-Stirling Act that “are not necessary to protect purchasers in
21 commercial or industrial developments” and would “[result] in unnecessary
22 burdens and costs for these types of developments”¹² would not be carried forward
23 into the new body of law.

24 The establishment of a separate body of law for commercial and industrial CIDs
25 would make it easier for the Legislature to tailor the future development of CID
26 law so that it appropriately reflects important distinctions between residential and
27 commercial or industrial CIDs.

28 PRIOR LEGISLATIVE POLICY

29 Examination of the content of the Davis-Stirling Act at the time that Section
30 1373 was added to that Act is helpful in understanding the legislative policy
31 underlying the enactment of Section 1373. At that time, the Davis-Stirling Act
32 consisted of only 25 sections, which mostly governed the establishment and basic

9. Civ. Code § 1373(a). The provisions declared inapplicable were Civ. Code §§ 1356, 1363(b), 1365, 1365.5, 1366(b), 1366.1, and 1368. See 1988 Cal. Stat. ch. 123.

10. Civ. Code § 1373(b).

11. The Act has grown from 25 code sections in 1986 (spanning 10 pages of the Deering's *Civil Practice Code*), to 89 code sections in 2010 (spanning 46 pages of the equivalent LexisNexis Standard California Codes).

12. Civ. Code § 1373(b).

1 structure of a CID, rather than mandating how a CID should conduct its daily
2 affairs.

3 The provisions of the Act that continued to apply to a commercial or industrial
4 CID after the enactment of Section 1373 included all of the following:

- 5 • *Definitions and other general provisions.*¹³ These provisions are necessary to
6 the operation of the statute and the definition of the CID property ownership
7 form, and impose no significant burden on the operation of a CID.
- 8 • *Governing document provisions.*¹⁴ These provisions define the character of a
9 CID's founding documents.
- 10 • *Property ownership and transfer provisions.*¹⁵ These provisions provide
11 special rules relevant to the CID form of property ownership.
- 12 • *Basic governance provisions.*¹⁶ These provisions establish the basic
13 governance structure for the management and maintenance of CID common
14 area, and the enforcement of mutual restrictions. They enable governance,
15 without regulating governance operations.

16 By preserving the application of those types of provisions, the Legislature seems
17 to have concluded that such provisions are necessary for commercial and
18 industrial CIDs and are not unduly burdensome to their operations.

19 Significantly, Section 1373 exempted commercial and industrial CIDs from the
20 following types of provisions:

- 21 • *Provisions regulating fiscal planning and reporting.*¹⁷ These provisions state
22 mandatory requirements governing an association's fiscal planning and
23 reporting.
- 24 • *Judicial override of supermajority amendment requirement.*¹⁸ This provision
25 authorizes a court to approve an amendment of a CID's declaration,
26 notwithstanding a failure to satisfy a supermajority member approval
27 requirement stated in the declaration.

13. Civ. Code §§ 1350 (short title), 1351 (definitions), 1352 (application of Act).

14. Civ. Code §§ 1353 (content of declaration), 1354 (enforcement of restrictions as equitable servitudes), 1355 and 1357 (amendment of declaration).

15. Civ. Code §§ 1358 (transfer of separate interest), 1359 (partition), 1360 (separate interest improvements), 1361 (rights of ingress, egress, and support), 1362 (ownership of common area), 1369 (mechanics liens on common area), 1370 (liberal construction of title documents), 1371 (presumption regarding unit boundaries), 1372 (construction of local zoning ordinances).

16. Civ. Code §§ 1363(a) (existence and powers of association), 1364 (maintenance obligations), 1366(a) (authority to levy assessments), 1366(c) (authority to recover collection costs), 1366(d) (exemption from interest rate limitations), 1367 (authority to lien to collect overdue assessments).

17. Civ. Code §§ 1363(b) and 1365 (mandatory financial statement), 1365.5 (fiscal duties of board), 1366(b) and 1366.1 (limitations on assessment setting).

18. Civ. Code § 1356.

- 1 • *Transfer disclosure requirements.*¹⁹ This provision requires that specified
2 information be provided to a prospective purchaser of a separate interest in a
3 CID, before transfer of title.

4 The exemption of commercial and industrial CIDs from those provisions
5 indicates that the Legislature found them to be unnecessary and unduly
6 burdensome for those types of CIDs.

7 The basis for these conclusions can be found in a legislative analysis of the bill
8 that added Section 1373, which discussed the special character of commercial and
9 industrial CIDs:

- 10 • Commercial and industrial CIDs are “business endeavors in which the parties
11 engage the services of attorneys, accountants, management companies, and
12 developers.”
- 13 • Unlike owners in residential CIDs, owners in commercial and industrial CIDs
14 are “well-informed” and “governed by other provisions of commercial law.”
- 15 • “The operational needs of commercial and industrial CIDs are different than the
16 needs of residential [CIDs].” For example, a commercial or industrial CID may
17 require greater flexibility than a residential CID, in order to address significant
18 business-related changes in the development’s use, facilities, and costs.
- 19 • Regulatory requirements designed to protect residential owners “interfere with
20 commerce, and increase the costs of doing business.”²⁰

21 Taken as a whole, the enactment of Section 1373 suggests the following
22 policy principles:

- 23 • Provisions that define the basic property ownership and governance structure
24 for CIDs are needed by commercial and industrial CIDs and do not unduly
25 burden those CIDs.
- 26 • Provisions that are designed to help homeowners avoid mismanagement, by
27 mandating specific management practices, are unnecessary and unduly
28 burdensome for business owners in commercial and industrial CIDs.
- 29 • Provisions that are designed to help homeowners understand the consequences
30 of purchasing a home in a CID are not needed by purchasers of units in
31 commercial or industrial developments. Business owners purchasing
32 commercial or industrial properties are presumably professionally advised and
33 do not need the same statutory guidance appropriate for homeowners.
- 34 • A provision authorizing the court to circumvent a supermajority approval
35 requirement for amendment of the declaration may be helpful in a residential
36 CID, where homeowner apathy and fractiousness may make it difficult to obtain
37 the approval required for a necessary amendment. By contrast, a business
38 property owner may not need judicial intervention to resolve a dispute about
39 amendment of the declaration. Furthermore, a business owner is likely to have
40 read and relied on a CID’s governing documents before purchasing a unit in a

19. Civ. Code § 1368.

20. Senate Rules Committee Analysis of AB 2484 (May 18, 1988) (on file with Commission).

1 commercial or industrial CID. A judicial override of the declaration could
2 frustrate reasonable expectations.

3 Section 1373 has been amended twice since its enactment. Both amendments are
4 consistent with the principles set out above. They exempted commercial and
5 industrial CIDs from provisions regulating governance operations:

- 6 • In 2003, Section 1373 was amended to exempt commercial and industrial
7 CIDs from new statutory procedures for the adoption of operating rules.²¹
- 8 • In 2004, Section 1373 was amended to exempt commercial and industrial
9 CIDs from new statutory procedures on architectural review
10 decisionmaking.²²

11 In summary, in enacting and amending Section 1373, the Legislature seems to
12 have drawn a distinction between two broad classes of Davis-Stirling Act
13 provisions:

- 14 • *Foundational Provisions.* These are provisions that address the fundamental
15 character of the CID property ownership form. They include (1) definitions of
16 key concepts, (2) provisions relating to a CID's founding documents, (3)
17 provisions on property ownership, transfer, and maintenance, and (4)
18 provisions establishing the governing association and prescribing its necessary
19 powers. Foundational provisions also include provisions necessary for the
20 operation of the statute, such as rules of construction and technical definitions.
21 These provisions are necessary for all CIDs and do not impose operational
22 burdens on CIDs.
- 23 • *Operational Provisions.* These are provisions that impose mandatory
24 procedures for the operation of a CID's governing association. These
25 provisions may assist and protect unsophisticated homeowners in managing
26 their communities but are not needed by sophisticated commercial property
27 owners. To the extent that they mandate "one-size-fits-all" management
28 practices, they can unduly burden commercial and industrial CIDs.

29 **RECOMMENDATION**

30 The Commission recommends that the prior legislative policy judgments
31 discussed above be continued and applied to the numerous provisions that have
32 been added to the Davis-Stirling Act since 1988. The proposed law would do so
33 by applying three broad principles:

- 34 • All foundational provisions should remain applicable to commercial and
35 industrial CIDs.
- 36 • Most operational provisions should be made inapplicable to commercial and
37 industrial CIDs.

21. 2003 Cal. Stat. ch. 557.

22. 2004 Cal. Stat. ch. 346.

- 1 • No change should be made to the law governing residential CIDs.

2 These policies should be effectuated by exempting commercial and industrial
3 CIDs from the existing Davis-Stirling Act and creating a new statute to govern
4 those CIDs. The creation of separate statutes for residential and commercial or
5 industrial CIDs would preclude the need for any future review and analysis of the
6 type described here. Going forward, any CID reform would need to be made
7 expressly applicable to commercial and industrial CIDs if it was to have that
8 application. This would allow for the independent development of law governing
9 the two distinct categories of CIDs, and would avoid the inadvertent application of
10 residential CID reforms to commercial or industrial CIDs.

11 Exceptions to these general principles are discussed below.

12 **Special Notice Requirement**

13 Civil Code Section 1363(g) requires distribution of a schedule of monetary
14 penalties that may be imposed as punishment for a violation of the governing
15 documents. Although the provision could be characterized as operational, it seems
16 appropriate as an element of a fair disciplinary procedure. The requirement does
17 not appear to impose any significant burden on CID operation.

18 The Commission recommends that the proposed law include this provision.²³

19 **Assessment Collection Provisions**

20 Civil Code Section 1367.1 contains a detailed procedural scheme for the
21 collection of delinquent assessment payments. While the section relates to an
22 operational aspect of CID governance, the Commission tentatively concluded that
23 the well-developed procedure might prove useful, and not unduly burdensome, in
24 a commercial or industrial CID.

25 With the exception of provisions requiring alternate dispute resolution, the
26 Commission recommends that the provisions of Section 1367.1 be continued in
27 the new statute.²⁴

28 **Exemption from Constitutional Interest Rate Limitations**

29 Civil Code Section 1366(f) generally exempts CIDs from interest rate
30 limitations imposed by Article XV of the California Constitution.

31 Although this provision could be characterized as operational, it does not appear
32 to impose any burden on CID operations. To the extent that it facilitates
33 assessment collection, it may provide a benefit to all CIDs, including commercial
34 and industrial CIDs.

23. See proposed Civ. Code § 6850 *infra*.

24. See proposed Civ. Code §§ 6808(a), 6810, 6812, 6814, 6816, 6818, 6820, 6822, 6824, and 6826 *infra*.

1 The Commission recommends that Section 1366(f) be continued in the new
2 statute.²⁵

3 **Construction Litigation Provisions**

4 ~~Four~~ Three sections of the Davis-Stirling Act govern construction defect
5 litigation in a CID.²⁶ Although they might be described as operational provisions,
6 the Commission recommends that they be preserved.²⁷ The well-developed
7 procedures provided in those sections relate to a dispute between an association
8 and a builder, a third party who is not involved in CID governance. Those
9 provisions appear to be equally appropriate for the resolution of such disputes in
10 any type of CID.²⁸

11 **Assessment Based on Taxable Value**

12 Civil Code Section 1366.4 provides that, with limited exception, an association
13 may not levy an assessment on a separate interest based on the taxable value of
14 that separate interest, unless on or before December 31, 2009, the association
15 levied assessments on such basis. Although the provision has a foundational aspect
16 (the fundamental financial responsibility of any association), the Commission
17 tentatively concluded that the operational aspect of the provision (the precise
18 manner in which assessments may be calculated) appeared to predominate, and
19 dictated that the provision not be included in the proposed law.²⁹

20 Section 1366.4 was enacted after the Commission had conducted most of its
21 evaluation of the applicability of provisions of the Davis-Stirling Act to
22 exclusively commercial or industrial CIDs.³⁰ **The Commission therefore**
23 **specifically invites comment on whether discontinuing the applicability of**
24 **Section 1366.4 to an exclusively commercial or industrial CID would be**
25 **problematic.**

25. See proposed Civ. Code § 6808(b) *infra*.

26. Civ. Code §§ 1368.5, 1375, ~~1375.05~~, and 1375.1.

27. A fourth section of the Davis-Stirling Act relating to CID construction defect litigation, Civil Code Section 1375.05, was repealed by operation of law on January 1, 2011, and is not continued in the proposed law.

28. See proposed Civ. Code §§ 6870, 6872, 6874, and 6876 *infra*.

29. The first sentence of Civil Code Section 1366(a), a provision of the Davis-Stirling Act providing an association with general authority to levy assessments, has been continued in the proposed law. See proposed Civ. Code § 6800 *infra*.

30. See 2009 Cal. Stat. ch. 431.

1 OVERVIEW OF PROPOSED LEGISLATION

2 **Application of Proposed Law**

3 The proposed law would only apply to an exclusively commercial or industrial
4 CID.³¹ The application of the proposed law would be defined using the same
5 language that is used to define the scope of existing Civil Code Section 1373,
6 which applies to:

7 [a] common interest development that is limited to industrial or commercial
8 uses by zoning or by a declaration of covenants, conditions, and restrictions that
9 has been recorded in the official records of each county in which the common
10 interest development is located.³²

11 **Source of Statutory Language and Organization**

12 The purpose of the proposed law is to establish a new statute governing
13 commercial and industrial CIDs, which would include only those provisions that
14 are necessary for such CIDs and are not unduly burdensome to their operations.
15 One way this could be accomplished would be by copying the exact language and
16 organization of the existing Davis-Stirling Act provisions that are to be included in
17 the proposed law.

18 The proposed law would take a different approach. It would instead incorporate
19 statutory language and organization that has been developed as part of a pending
20 Law Revision Commission proposal to simplify and reorganize the existing Davis-
21 Stirling Act, to make it easier to use and understand.³³ That proposal is a mostly
22 nonsubstantive cleanup project, though it does include some noncontroversial
23 substantive improvements as well. It is expected that the proposed recodification
24 of the Davis-Stirling Act will be presented to the Legislature for consideration
25 prior to completion of work on the current study.

26 By incorporating the language and structure of the proposed recodification of
27 the Davis-Stirling Act, the proposed law will include the benefits of improvements
28 made in that separate study. This approach will also maximize the uniformity of
29 language and structure between the law governing residential and commercial or
30 industrial CIDs.

31 Any changes to existing law proposed in the recodification proposal are also
32 included in the proposed law. Sections containing such changes will have the
33 words “NEW” or “REVISED” in their headings. All changes are noted and
34 described in the Comments and Notes following the new or revised provisions.
35 **The Commission specifically invites comment on whether any of those**
36 **changes would be problematic if applied to a commercial or industrial CID.**

31. See proposed Civ. Code § 6582(a) *infra*.

32. See proposed Civ. Code § 6556 *infra*.

33. See tentative recommendation on *Statutory Clarification and Simplification of CID Law* (Feb. 2010).

1 If further changes are made to the Commission’s recodification proposal before
2 it is finalized, those changes will also be considered for incorporation into the
3 proposed statute on commercial and industrial CIDs.

4 **Disposition Table**

5 A “disposition table” following the proposed law shows the relationship
6 between the existing provisions of the Davis-Stirling Act and the provisions of the
7 proposed law. This table also identifies the provisions of the Davis-Stirling Act
8 that have not been included in the proposed law, by an indication that those
9 provisions are “not continued.”

10 **Conforming Revisions**

11 There are a number of code sections that include a cross-reference to a provision
12 of the Davis-Stirling Act. To the extent that such a reference is relevant to
13 commercial or industrial CIDs, it will need to be revised to include a reference to
14 the corresponding provision of the proposed law. Amendments to accomplish this
15 are included in the “Conforming Revisions” portion of the proposed law.

16 However, conforming revisions have not been proposed for code sections that
17 fall into either of the following two categories:

- 18 • Code sections in which the referenced provision(s) of the Davis-Stirling Act
19 would not be continued in the proposed legislation.³⁴
- 20 • Code sections that, by virtue of either their plain language or another express
21 statutory provision, do not apply to exclusively commercial or industrial
22 CIDs.³⁵

23 In instances in which the Commission believed it unclear whether a code section
24 has any application to an exclusively commercial or industrial CID, a conforming
25 revision of the code section has been proposed, followed by a note soliciting
26 comment on whether the conforming revision is needed.³⁶

27 **REQUEST FOR COMMENT**

28 The Commission requests that interested persons and groups carefully review
29 the proposed legislation, and submit comments on both the inclusion and
30 exclusion of Davis-Stirling Act provisions, as well as on the proposed substantive
31 improvements.

34. See, e.g., Civ. Code § 2079.3.

35. See, e.g., Bus. & Prof. Code §§ 10131.01; Bus. & Prof. Code § 11010.10 (read in conjunction with Bus. & Prof. Code § 11010.3).

36. See Bus. & Prof. Code §§ 11003.2, 11004, Civ. Code §§ 714, 1133, 2924b, Gov’t Code § 66412, 66424, 66452.10, 66475.2, Health & Safety Code § 13132.7, Ins. Code § 790.031, Water Code § 13553.

COMMERCIAL AND INDUSTRIAL COMMON
INTEREST DEVELOPMENTS

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PROPOSED LEGISLATION

1 **☞ Staff Note.** Strikeout and underscore used in this section of the proposed legislation are not
2 intended to reflect proposed amendments to existing law. Rather, these annotations are intended
3 only to highlight revisions that are proposed to conform the language of this legislation to the
4 language of legislation approved by the Commission in its CID recodification study, *Statutory*
5 *Clarification and Simplification of CID Law*.

6 Once the Commission decides whether or not to approve these highlighted revisions, the
7 annotations will be deleted from the tentative recommendation circulated for comment.

8 **Civ. Code § 1373 (amended). Commercial or industrial common interest development**

9 SECTION 1. Section 1373 of the Civil Code is amended to read:

10 1373. (a) This title does not apply to a commercial or industrial common interest
11 development, as defined in Section 6531.

12 **Comment.** Section 1373 is amended to make the provisions of the Davis-Stirling Common
13 Interest Development Act inapplicable to an exclusively commercial or industrial common
14 interest development, as defined in Section 6531. Many provisions of that act are continued and
15 made applicable to exclusively commercial or industrial common interest developments by the
16 Commercial and Industrial Common Interest Development Act, Part 5.5 (commencing with
17 Section 6500) of Division 4. To determine whether that act continues a particular provision of the
18 Davis-Stirling Common Interest Development Act, see *Commercial and Industrial Common*
19 *Interest Developments*, __ Cal. L. Revision Comm'n Reports __ (201__).

20 **Civ. Code §§ 6500-6876 (added). Commercial and industrial common interest developments**

21 SEC. ____. Part 5.5 (commencing with Section 6500) is added to Division 4 of
22 the Civil Code to read:

23 **☞ Note.** Each of the provisions below has a parenthetical description following the section
24 number in its heading. The descriptions have the following meanings:

25 **(UNCHANGED).** A section with this description would continue existing law almost
26 verbatim, to the extent that existing law presently applies to an exclusively commercial or
27 industrial common interest development. Minor technical changes might be made to (1) correct a
28 cross-reference to reflect the new number of the referenced provision, (2) add or modify
29 subdivision or paragraph designators (e.g., unnumbered paragraphs might be designated as
30 subdivisions), or (3) conform to technical stylistic conventions (e.g., to avoid use of the word
31 “such” or the phrase “he or she”). If any of these changes are made, they will be clearly identified
32 in the Comment following the section.

33 **(REVISED).** A section with this description would continue or restate existing law verbatim to
34 the extent that existing law presently applies to an exclusively commercial or industrial common
35 interest development, except as specifically indicated in the Comment and “Note” that follow the
36 section. Changes made to a “(REVISED)” section may include the rewording of ambiguous or
37 confusing language or minor substantive improvements to existing law. Any such changes will be
38 expressly identified.

39 **(NEW).** A section with this description would be largely new. A boxed “Note” following the
40 Comment will explain the purpose of the new section.

1 PART 5.5. COMMERCIAL
2 AND INDUSTRIAL COMMON INTEREST
3 DEVELOPMENTS

4 CHAPTER 1. GENERAL PROVISIONS

5 Article 1. Preliminary Provisions

6 § 6500 (NEW). Short title

7 6500. This part shall be known and may be cited as the ~~Nonresidential~~
8 Commercial and Industrial Common Interest Development Act. In a provision of
9 this part, the part may be referred to as the act.

10 **Comment.** Section 6500 is new.

11 Common interest developments in general are governed by the Davis-Stirling Common Interest
12 Development Act. See Sections 1350-1378. However, common interest developments that are
13 exclusively commercial or industrial were exempted from the provisions of that act by 2011 Cal.
14 Stat. ch. _____. See Section 1373.

15 This part (Sections 6500-6876) was added to establish a separate body of law, largely based on
16 provisions of the Davis-Stirling Common Interest Development Act, that would apply to and
17 govern exclusively commercial or industrial common interest developments.

18 The Comments to the sections of this act identify sections of the Davis-Stirling Common
19 Interest Development Act that are sources of the provisions of this act, and describe how each
20 provision in this act compares with its source.

21 **Note.** Proposed Section 6500 would provide a short title for this part, to distinguish it from
22 the Davis-Stirling Common Interest Development Act. It would also provide for simplified
23 reference to the part as a whole.

24 § 6502 (REVISED). Effect of headings

25 6502. Division, part, title, chapter, article, and section headings do not in any
26 manner affect the scope, meaning, or intent of this ~~part~~ act.

27 **Comment.** With respect to a commercial or industrial common interest development, Section
28 6502 continues Section 1350.5 without change, except as indicated below.

29 The following nonsubstantive changes were made:

- 30 • “Article” has been added to the list of headings.
31 • The last word of the sentence is replaced with “act.”

32 Section 6502 is a standard provision found in many codes. See, e.g., Evid. Code § 5; Fam.
33 Code § 5; Prob. Code § 4.

34 For further information, see Section 6500 Comment.

35 **Note.** Proposed Section 6502 would add “article” to the list of headings in existing Section
36 1350.5. The omission of articles from that list appears to have been inadvertent.

37 § 6505 (NEW). Application of act

38 6505. Nothing in the act that added this part shall be construed to invalidate a
39 document prepared or action taken before January 1, 2014, if the document or

1 action was proper under the law governing common interest developments at the
2 time that the document was prepared or the action was taken.

3 **Comment.** Section 6505 is new. It makes clear that any changes to former law made by
4 enactment of this act shall not be construed to retroactively invalidate documents prepared or
5 actions taken prior to the operative date of the act.

6  **Note.** Proposed Section 6505 would make clear that any changes to former law made by
7 enactment of this act are not intended to retroactively invalidate documents prepared or actions
8 taken prior to the operative date of the act.

9 **§ 6510 (REVISED). Construction of zoning ordinance**

10 6510. Unless a contrary intent is clearly expressed, a local zoning ordinance is
11 construed to treat like structures, lots, parcels, areas, or spaces in like manner
12 regardless of ~~whether~~ the form of the common interest development ~~is a~~
13 ~~community apartment project, condominium project, planned development, or~~
14 ~~stock cooperative.~~

15 **Comment.** With respect to a commercial or industrial common interest development, Section
16 6510 continues Section 1372 without change, except as indicated below.

17 The following nonsubstantive change was made:

- 18 • A list of all of the types of common interest developments has been replaced with general
19 language.

20 For further information, see Section 6500 Comment.

21 **§ 6512 (NEW). Delivered to an association**

22 6512. (a) If a provision of this ~~part~~ act requires that a document be delivered to
23 an association, the document shall be delivered ~~by first class mail, postage~~
24 ~~prepaid, or by certified mail. If no person has been designated to receive~~
25 ~~documents, the document shall be delivered~~ to the president or secretary of the
26 association.

27 (b) A document delivered pursuant to this section may be delivered by any of
28 the following methods:

29 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
30 overnight delivery by an express service carrier.

31 (2) By e-mail, facsimile, or other electronic means, if the association has
32 assented to that method of delivery.

33 (3) By personal delivery, if the association has assented to that method of
34 delivery. If the association accepts a document by personal delivery it shall
35 provide a written receipt acknowledging delivery of the document.

36 **Comment.** Section 6512 is new. It provides a standard rule for delivery of a document to the
37 association.

38  **Note.** Proposed Section 6512 is new. It would provide a clear rule for official communication
39 with the association.

1 § 6514 (NEW). Individual notice

2 6514. (a) If a provision of this ~~part~~ act requires that an association deliver a
3 document by “individual delivery” or “individual notice,” the notice document
4 shall be delivered to the member to be notified by one of the following methods:

5 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
6 overnight delivery by an express service carrier. The document shall be addressed
7 to the member recipient at the address last shown on the books of the association
8 or otherwise provided by the member.

9 (2) E-mail, facsimile, or other electronic means, if the recipient has agreed
10 consented, in writing, to that method of delivery. The agreement obtained by the
11 association shall be consistent with the conditions for obtaining consumer consent
12 described in Section 20 of the Corporations Code. The consent may be revoked, in
13 writing, by the recipient.

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

16 (c) For the purposes of this section, an unrecorded provision of the governing
17 documents providing for a particular method of delivery does not constitute
18 agreement by a member to that method of delivery.

19 **Comment.** Section 6514 is new. It specifies acceptable methods for delivery of a notice to an
20 individual member, as distinguished from a notice that is to be delivered to every member. See
21 Section 6516 (general notice). The methods listed in subdivision (a) are drawn from Section
22 1350.7(b)(2)-(3).

23 Subdivision (b) is drawn from Section 1350.7(d). It precludes use of electronic delivery
24 methods when the recipient has not consented to use of those methods or has withdrawn such
25 consent.

26 **Note.** Proposed Section 6514 is new. It is drawn from and generalizes much of the substance
27 of existing Section 1350.7.

28 § 6516 (NEW). General notice

29 6516. (a) If a provision of this ~~part~~ act requires “general delivery” or “general
30 notice,” the ~~notice~~ document shall be provided by one or more of the following
31 methods:

32 (1) Any method provided for delivery of an individual notice pursuant to Section
33 6514.

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

36 (3) Posting the printed document in a prominent location that is accessible to all
37 members, if the location has been designated for the posting of general notices by
38 the association.

39 (4) ~~Publication in a periodical that is circulated primarily to members of the~~
40 ~~association.~~

41 (5) If the association broadcasts television programming for the purpose of
42 distributing information on association business to its members, by inclusion in the
43 programming.

1 (b) Notwithstanding subdivision (a), if a member requests to receive general
2 notices by individual delivery, all general notices to that member, given under this
3 section, shall be delivered pursuant to Section 6514.

4 **Comment.** Section 6516 is new. It specifies acceptable methods for delivery of a notice to the
5 membership generally, as distinguished from a notice that is to be delivered to a specific member.
6 See Section 6514 (individual notice). Nothing in this section prevents an association from using
7 supplemental notice methods, such as posting on an Internet website, so long as one or more
8 methods authorized by this section are also used.

9 Subdivision (b) reserves the right of any member, on request, to receive general notices by the
10 delivery methods provided for delivery of an individual notice. Thus, in an association that posts
11 general notices on a notice board in a prominent location pursuant to subdivision (a)(3),
12 individual members would still have the right, on request, to receive those notices by mail.

13 **Note.** Proposed Section 6516 is new. It would enhance efficiency by allowing an association
14 to “broadcast” notices of general interest, while reserving the right of individual members to
15 receive those notices as individual notices on request.

16 **§ 6518 (NEW). Time and proof of delivery**

17 6518. (a) This section governs the delivery of a document pursuant to this ~~part~~
18 act.

19 (b) If a document is delivered by mail, delivery is deemed to be complete on
20 deposit into the United States mail.

21 (c) If a document is delivered by electronic means, delivery is complete at the
22 time of transmission.

23 **Comment.** Section 6518 is new. Subdivision (b) is drawn from the second sentence of Section
24 1350.7(b)(2).

25 Subdivision (c) is drawn from the second sentence of Section 1350.7(b)(3).

26 **Note.** Proposed Section 6518 is new. It would generalize the timing rules provided in existing
27 Section 1350.7, so that they would apply to any notice delivered by the specified methods. This
28 will provide greater certainty in resolving timing disputes.

29 **§ 6522 (NEW). Approved by majority of all members**

30 6522. If a provision of this ~~part~~ act requires that an action be approved by a
31 majority of all members, the action shall be approved or ratified by an affirmative
32 vote of ~~members representing more than 50 percent of the total voting power of~~
33 ~~the association~~ a majority of the votes entitled to be cast.

34 **Comment.** Section 6522 is new. It is added for drafting convenience. This section only
35 governs an election conducted pursuant to a provision of this act (i.e., the Commercial and
36 Industrial Common Interest Development Act). An election that is not required by this act would
37 be governed by the association’s governing documents.

38 **Note.** Proposed Section 6522 is new. It would add guidance on the procedure for approval of
39 a proposed action that must be approved “by a majority of all members.”

40 **§ 6524 (NEW). Approved by majority of quorum of members**

41 6524. If a provision of this ~~part~~ act requires that an action be approved by a
42 majority of a quorum of the members, the action shall be approved or ratified by

1 an affirmative vote of ~~members representing more than 50 percent of the votes~~
2 ~~cast in an election at which a quorum is achieved~~ a majority of the votes
3 represented and voting at a duly held meeting at which a quorum is present, which
4 affirmative votes also constitute a majority of the required quorum.

5 **Comment.** Section 6524 is new. It is added for drafting convenience. This section only
6 governs an election conducted pursuant to a provision of this act (i.e., the Commercial and
7 Industrial Common Interest Development Act). An election that is not required by this act would
8 be governed by the association’s governing documents.

9  **Note.** Proposed Section 6524 is new. It would add guidance on the procedure for approval of
10 a proposed action that must be approved “by a majority of a quorum of the members.”

11 Article 2. Definitions

12 § 6526 (REVISED). Application of definitions

13 6526. The definitions in this article govern the construction of this ~~part~~ act.

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6526 continues the substance of the introductory clause of Section 1351.

16 For further information, see Section 6500 Comment.

17  **Note.** Proposed Section 6526 recasts the introductory clause of Section 1351 to better fit
18 within the new organization, without any substantive change in its meaning.

19 § 6528 (UNCHANGED). “Association”

20 6528. “Association” means a nonprofit corporation or unincorporated
21 association created for the purpose of managing a common interest development.

22 **Comment.** With respect to a commercial or industrial common interest development, Section
23 6528 continues Section 1351(a) without change.

24 For further information, see Section 6500 Comment.

25 § 6530 (NEW). “Board”

26 6530. “Board” means the board of directors of the association.

27 **Comment.** Section 6530 is new.

28  **Note.** Proposed Section 6530 is added for drafting convenience.

29 § 6531 (NEW). “Commercial or industrial common interest development”

30 6531. A “commercial or industrial common interest development” means a
31 common interest development that is limited to industrial or commercial uses by
32 zoning or by a declaration of covenants, conditions, and restrictions that has been
33 recorded in the official records of each county in which the common interest
34 development is located.

35 **Comment.** Section 6531 is drawn from Section 1373(a). It is added for drafting convenience.

36  **Note.** The Commission invites comment as to the adequacy of this definition of commercial
37 or industrial common interest development.

1 § 6532 (REVISED). “Common area”

2 6532. (a) “Common area” means the entire common interest development
3 except the separate interests therein. The estate in the common area may be a fee,
4 a life estate, an estate for years, or any combination of the foregoing.

5 (b) Notwithstanding subdivision (a), in a planned development described in
6 subdivision (b) of Section 6562, the common area may consist of mutual or
7 reciprocal easement rights appurtenant to the separate interests.

8 **Comment.** With respect to a commercial or industrial common interest development,
9 subdivision (a) of Section 6532 continues the first two sentences of Section 1351(b) without
10 change.

11 With respect to a commercial or industrial common interest development, subdivision (b)
12 continues the substance of the third sentence of Section 1351(b), but restates it for clarity.

13 For further information, see Section 6500 Comment.

14 **Note.** Proposed Section 6532(b) would restate the third sentence of existing Section 1351(b),
15 to improve its clarity without changing its meaning.

16 § 6534 (UNCHANGED). “Common interest development”

17 6534. “Common interest development” means any of the following:

18 (a) A community apartment project.

19 (b) A condominium project.

20 (c) A planned development.

21 (d) A stock cooperative.

22 **Comment.** With respect to a commercial or industrial common interest development, Section
23 6534 continues Section 1351(c) without change.

24 For further information, see Section 6500 Comment.

25 § 6536 (UNCHANGED). “Community apartment project”

26 6536. “Community apartment project” means a development in which an
27 undivided interest in land is coupled with the right of exclusive occupancy of any
28 apartment located thereon.

29 **Comment.** With respect to a commercial or industrial common interest development, Section
30 6536 continues Section 1351(d) without change.

31 For further information, see Section 6500 Comment.

32 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
33 common interest development may be organized as a community apartment project.

34 § 6540 (NEW). “Condominium plan”

35 6540. “Condominium plan” means a plan ~~consisting of:~~ described in Section
36 6624.

37 ~~(a) A description or survey map of a condominium project, which shall refer to~~
38 ~~or show monumentation on the ground.~~

39 ~~(b) A three dimensional description of a condominium project, one or more~~
40 ~~dimensions of which may extend for an indefinite distance upwards or~~

1 ~~downwards, in sufficient detail to identify the common area and each separate~~
2 ~~interest.~~

3 ~~(c) A certificate consenting to the recordation of the condominium plan pursuant~~
4 ~~to this part that is signed and acknowledged as provided in Section 6624.~~

5 **Comment.** Section 6540 is new. It is included for drafting convenience.

6  **Note.** Proposed Section 6540 is added for drafting convenience.

7 **§ 6542 (REVISED). “Condominium project”**

8 6542. (a) A “condominium project” means a real property development
9 consisting of condominiums.

10 (b) A condominium consists of an undivided interest in common in a portion of
11 real property coupled with a separate interest in space called a unit, the boundaries
12 of which are described on a recorded final map, parcel map, or condominium plan
13 in sufficient detail to locate all boundaries thereof. The area within these
14 boundaries may be filled with air, earth, ~~or~~ water, or fixtures, or any combination
15 thereof, and need not be physically attached to land except by easements for
16 access and, if necessary, support. The description of the unit may refer to (1)
17 boundaries described in the recorded final map, parcel map, or condominium plan,
18 (2) physical boundaries, either in existence, or to be constructed, such as walls,
19 floors, and ceilings of a structure or any portion thereof, (3) an entire structure
20 containing one or more units, or (4) any combination thereof.

21 (c) The portion or portions of the real property held in undivided interest may be
22 all of the real property, except for the separate interests, or may include a
23 particular three-dimensional portion thereof, the boundaries of which are described
24 on a recorded final map, parcel map, or condominium plan. The area within these
25 boundaries may be filled with air, earth, ~~or~~ water, or fixtures, or any combination
26 thereof, and need not be physically attached to land except by easements for
27 access and, if necessary, support.

28 (d) An individual condominium within a condominium project may include, in
29 addition, a separate interest in other portions of the real property.

30 **Comment.** With respect to a commercial or industrial common interest development, Section
31 6542 continues Section 1351(f) without change, except as indicated below.

32 The following nonsubstantive changes were made:

- 33 • The section has been organized into subdivisions for ease of reference.
- 34 • In subdivision (a), a reference to a “development” is revised to refer to a “real property
35 development.”
- 36 • Subdivisions (b) and (c) make clear that the contents of the area within the boundaries of
37 a condominium may include “fixtures.”

38 For further information, see Section 6500 Comment.

39 **§ 6544 (UNCHANGED). “Declarant”**

40 6544. “Declarant” means the person or group of persons designated in the
41 declaration as declarant, or if no declarant is designated, the person or group of

1 persons who sign the original declaration or who succeed to special rights,
2 preferences, or privileges designated in the declaration as belonging to the signator
3 of the original declaration.

4 **Comment.** With respect to a commercial or industrial common interest development, Section
5 6544 continues Section 1351(g) without change.

6 For further information, see Section 6500 Comment.

7 **§ 6546 (REVISED). “Declaration”**

8 6546. “Declaration” means the document, however denominated, that contains
9 the information required by Section 6614.

10 **Comment.** With respect to a commercial or industrial common interest development, Section
11 6546 continues Section 1351(h) without change, except as indicated below.

12 The following nonsubstantive changes were made:

- 13 • The word “which” has been replaced with “that.”
- 14 • The cross-reference has been updated to reflect the new location of the referenced
15 provision.

16 For further information, see Section 6500 Comment.

17 **§ 6548 (NEW). “Director”**

18 6548. “Director” means a natural person ~~elected, designated, or selected to serve~~
19 who serves on the board.

20 **Comment.** Section 6548 is new. It is added for drafting convenience.

21  **Note.** Proposed Section 6548 is added for drafting convenience.

22 **§ 6550 (REVISED). “Exclusive use common area”**

23 6550. (a) “Exclusive use common area” means a portion of the common area
24 designated by the declaration for the exclusive use of one or more, but fewer than
25 all, of the owners of the separate interests and which is or will be appurtenant to
26 the separate interest or interests.

27 (b) Unless the declaration otherwise provides, any shutters, awnings, window
28 boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes,
29 and hardware incident thereto, screens and windows or other fixtures designed to
30 serve a single separate interest, but located outside the boundaries of the separate
31 interest, are exclusive use common area allocated exclusively to that separate
32 interest.

33 (c) Notwithstanding the provisions of the declaration, internal and external
34 ~~communication~~ telephone wiring designed to serve a single separate interest, but
35 located outside the boundaries of the separate interest, are exclusive use common
36 area allocated exclusively to that separate interest. ~~For the purposes of this section,~~
37 ~~“wiring” includes nonmetallic transmission lines.~~

38 **Comment.** With respect to a commercial or industrial common interest development, Section
39 6550 continues Section 1351(i) without change, except as indicated below.

40 The following nonsubstantive change was made:

- 41 • Several references to “common areas” are singularized.

1 For further information, see Section 6500 Comment.

2 **§ 6551 (NEW). “General notice”**

3 6551. “General notice” means the delivery of a document pursuant to Section
4 6516.

5 **Comment.** Section 6551 is new. It is added for drafting convenience.

6  **Note.** Proposed Section 6551 is added for drafting convenience.

7 **§ 6552 (REVISED). “Governing documents”**

8 6552. “Governing documents” means the declaration and any other documents,
9 such as bylaws, operating rules ~~of the association~~, articles of incorporation, or
10 articles of association, which govern the operation of the common interest
11 development or association.

12 **Comment.** With respect to a commercial or industrial common interest development, Section
13 6552 continues Section 1351(j) without change, except as indicated below.

14 The following nonsubstantive change was made:

- 15 • The superfluous words “of the association” have not been continued.

16 For further information, see Section 6500 Comment.

17 **§ 6553 (NEW). “Individual notice”**

18 6553. “Individual notice” means the delivery of a document pursuant to Section
19 6514.

20 **Comment.** Section 6553 is new. It is added for drafting convenience.

21  **Note.** Proposed Section 6553 is added for drafting convenience.

22 **§ 6554 (NEW). “Member”**

23 6554. “Member” means ~~either of the following persons:~~ (a) ~~An~~ an owner of a
24 separate interest.

25 ~~(b) A person that is designated as a member in the declaration, articles of~~
26 ~~incorporation or association, or bylaws. The incidents of a membership established~~
27 ~~under this paragraph may be limited by the document that establishes the~~
28 ~~membership.~~

29 **Comment.** Section 6554 is new. It is added for drafting convenience.

30  **Note.** Proposed Section 6554 is added for drafting convenience.

31 **§ 6560 (NEW). “Person”**

32 6560. “Person” means ~~an individual~~ a natural person, corporation, government
33 or governmental subdivision or agency, business trust, estate, trust, partnership,
34 limited liability company, association, or other entity.

35 **Comment.** Section 6560 is new. It is added for drafting convenience.

36  **Note.** Proposed Section 6560 is new. It reflects the standard statutory definition of “person”
37 as including both natural persons and legal entities. See, e.g., Prob. Code § 56.

1 § 6562 (REVISED). “Planned development”

2 6562. “Planned development” means a real property development (other than a
3 community apartment project, a condominium project, or a stock cooperative)
4 having either or both of the following features:

5 (a) ~~The common~~ Common area that is owned either by an association or in
6 common by the owners of the separate interests who possess appurtenant rights to
7 the beneficial use and enjoyment of the common area.

8 (b) ~~A power exists in the association to enforce an obligation of an owner of a~~
9 ~~separate interest with respect to the beneficial use and enjoyment of the common~~
10 ~~area by means of an assessment~~ Common area and an association that maintains
11 the common area with the power to levy assessments that may become a lien upon
12 the separate interests in accordance with Article 2 (commencing with Section
13 6808) of Chapter 6.

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6562 continues the substance of Section 1351(k), except as indicated below.

16 The following nonsubstantive changes were made:

- 17 • In the introductory clause, the term “development” has been revised to read “real
18 property development.”
- 19 • Subdivision (a) has been restated for clarity.
- 20 • Subdivision (b) has been restated for clarity and to update a cross-reference.

21 For further information, see Section 6500 Comment.

22 **Note.** Proposed Section 6562(b) replaces the existing reference in Section 1351(k) to
23 “Section 1367 or 1367.1” with a reference to “Article 2 (commencing with Section 6808) of
24 Chapter 6.” That reference encompasses all of the provisions of Sections 1367 and 1367.1 that
25 this act makes applicable to an exclusively commercial or industrial common interest
26 development under which an “assessment ... may become a lien.”

27 § 6564 (REVISED). “Separate interest”

28 6564. (a) “Separate interest” has the following meanings:

29 (1) In a community apartment project, “separate interest” means the exclusive
30 right to occupy an apartment, as specified in Section 6536.

31 (2) In a condominium project, “separate interest” means ~~an individual~~ a
32 separately owned unit, as specified in Section 6542.

33 (3) In a planned development, “separate interest” means a separately owned lot,
34 parcel, area, or space.

35 (4) In a stock cooperative, “separate interest” means the exclusive right to
36 occupy a portion of the real property, as specified in Section 6566.

37 (b) Unless the declaration or condominium plan, if any exists, otherwise
38 provides, if walls, floors, or ceilings are designated as boundaries of a separate
39 interest, the interior surfaces of the perimeter walls, floors, ceilings, windows,
40 doors, and outlets located within the separate interest are part of the separate
41 interest and any other portions of the walls, floors, or ceilings are part of the
42 common area.

1 (c) The estate in a separate interest may be a fee, a life estate, an estate for years,
2 or any combination of the foregoing.

3 **Comment.** With respect to a commercial or industrial common interest development, Section
4 6564 continues Section 1351(l) without change, except as indicated below.

5 The following nonsubstantive changes were made:

- 6 • In subdivision (a)(2), the term “individual unit” is replaced with “separately owned unit.”
- 7 • The last two unnumbered paragraphs of former Section 1351(l) are designated as
8 subdivisions (b) and (c).
- 9 • Cross-references are updated to reflect the new location of referenced provisions.
- 10 • A reference to “common areas” is singularized.

11 For further information, see Section 6500 Comment.

12 **§ 6566 (UNCHANGED). “Stock cooperative”**

13 6566. “Stock cooperative” means a development in which a corporation is
14 formed or availed of, primarily for the purpose of holding title to, either in fee
15 simple or for a term of years, improved real property, and all or substantially all of
16 the shareholders of the corporation receive a right of exclusive occupancy in a
17 portion of the real property, title to which is held by the corporation. The owners’
18 interest in the corporation, whether evidenced by a share of stock, a certificate of
19 membership, or otherwise, shall be deemed to be an interest in a common interest
20 development and a real estate development for purposes of subdivision (f) of
21 Section 25100 of the Corporations Code.

22 **Comment.** With respect to a commercial or industrial common interest development, Section
23 6566 continues the first paragraph of Section 1351(m) without change.

24 For further information, see Section 6500 Comment.

25  **Note.** The Commission invites comment on whether an exclusively commercial or industrial
26 common interest development may be organized as a stock cooperative.

27 CHAPTER 2. APPLICATION OF ACT

28 **§ 6580 (REVISED). Creation of common interest development**

29 6580. ~~(a)~~ Subject to Section ~~6506~~ 6582, this ~~part~~ act applies and a common
30 interest development is created whenever a separate interest coupled with an
31 interest in the common area or membership in the association is, or has been,
32 conveyed, provided all of the following are recorded:

33 ~~(1)~~ (a) A declaration.

34 ~~(2)~~ (b) A condominium plan, if any exists.

35 ~~(3)~~ (c) A final map or parcel map, if Division 2 (commencing with Section
36 66410) of Title 7 of the Government Code requires the recording of either a final
37 map or parcel map for the common interest development.

38 ~~(b) Notwithstanding subdivision (a), this part governs a stock cooperative that~~
39 ~~has not recorded a declaration.~~

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6580 continues Section 1352 without change, except as indicated below.

3 The following nonsubstantive changes were made:

- 4 • The term “title” is replaced with “act.”
- 5 • A cross-reference is added to refer to Section 6582.

6 For further information, see Section 6500 Comment.

7 **§ 6582 (REVISED). Application of act**

8 6582. (a) This ~~part act~~ act applies only to a ~~nonresidential~~ commercial or industrial
9 common interest development.

10 (b) Nothing in this ~~part act~~ act may be construed to apply to a real property
11 development ~~wherein there that~~ does not exist ~~a contain~~ common area ~~as defined~~
12 ~~in Section 6532~~. This subdivision is declaratory of existing law.

13 **Comment.** Subdivision (a) of Section 6582 is consistent with Section 1373 as that section
14 provided prior to the enactment of 2012 Cal. Stat. ch. ____, except that the act that added this
15 section makes the following provisions of the Davis-Stirling Common Interest Development Act
16 inapplicable to a commercial or industrial common interest development: Section 1350.7, the
17 second paragraph of Section 1351(d), the provisions of Section 1353 that require notice if a
18 development is within an airport influence area or within the jurisdiction of the San Francisco
19 Bay Conservation and Development Commission, Section 1353.7, a portion of Section 1355(b), a
20 portion of Section 1357(b)-(c), Sections 1363(d), (e), (f), (h), and (i), Section 1363.03, Section
21 1363.04, Section 1363.05, Section 1363.07, Section 1363.09, Section 1363.1, Sections 1363.810
22 through 1363.850, Section 1363.2, Section 1365.1, Section 1365.2, Section 1365.2.5, Section
23 1365.7, the last two sentences of Section 1366(a), Section 1366(d), Section 1366(e), Section
24 1366.2, Section 1367.1(c), Section 1367.1(n), Section 1367.4, Section 1367.5, Section 1367.6,
25 and Sections 1369.510 through 1369.590.

26 A common interest development is created as provided in Section 6580.

27 With respect to a commercial or industrial common interest development, subdivision (b)
28 continues Section 1374 without change, except as indicated below.

29 The following nonsubstantive changes were made:

- 30 • The term “title” is replaced with “act.”
- 31 • The phrase “wherein there does not exist” has been restated for clarity.

32 For further information, see Section 6500 Comment.

33 **Note.** This proposed legislation is intended to apply only to a CID that is exclusively
34 commercial or industrial (i.e., that does not contain any residential separate interests). Mixed use
35 developments would continue to be governed by the existing Davis-Stirling act. That rule is
36 expressed in proposed Section 6582(a) and in proposed Section 6531, which defines “commercial
37 or industrial common interest development” using language drawn from existing Section 1373.

38 The Commission invites comment on whether there are any problems with that approach. For
39 example, are there any scenarios in which the proposed definition of “commercial or industrial
40 common interest development” might include a development that has one or more residential
41 separate interests? If so, suggestions for how to eliminate that possibility are invited.

1 CHAPTER 3. GOVERNING DOCUMENTS

2 Article 1. General Provisions

3 § 6600 (NEW). Document authority

4 6600. (a) The governing documents may not include a provision that is
5 inconsistent with the law. To the extent of any inconsistency between the
6 governing documents and the law, the law controls.

7 (b) The articles of incorporation may not include a provision that is inconsistent
8 with the declaration. To the extent of any inconsistency between the articles of
9 incorporation and the declaration, the declaration controls.

10 (c) The bylaws may not include a provision that is inconsistent with the
11 declaration or the articles of incorporation. To the extent of any inconsistency
12 between the bylaws and the articles of incorporation or declaration, the articles of
13 incorporation or declaration control.

14 (d) The operating rules may not include a provision that is inconsistent with the
15 declaration, articles of incorporation, or bylaws. To the extent of any inconsistency
16 between the operating rules and the bylaws, articles of incorporation, or
17 declaration, the bylaws, articles of incorporation, or declaration control.

18 **Comment.** Subdivisions (a) and (b) of Section 6600 are new.

19 Subdivision (c) is consistent with Corporations Code Section 7151(c) providing that the bylaws
20 shall be consistent with the articles of incorporation.

21 Subdivision (d) is drawn from Section 1357.110 providing that an operating rule may not be
22 inconsistent with the declaration, articles of incorporation, or bylaws of the association.

23 **Note.** Proposed Section 6600 is new. Subdivision (a) would make clear that an association's
24 governing documents are subordinate to the law and are not enforceable to the extent they are
25 contradicted by the law. Subdivisions (b), (c), and (d) would provide guidance in resolving
26 conflicts between different governing documents.

27 § 6602 (REVISED). Liberal construction of instruments

28 6602. Any deed, declaration, or condominium plan for a common interest
29 development shall be liberally construed to facilitate the operation of the common
30 interest development, and its provisions shall be presumed to be independent and
31 severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of
32 Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the
33 governing documents.

34 **Comment.** With respect to a commercial or industrial common interest development, Section
35 6602 continues Section 1370 without change, except as indicated below.

36 The following nonsubstantive changes were made:

- 37 • "This division" has been replaced with "Division 2."
38 • The phrase "of a common interest development" has not been continued.

39 For further information, see Section 6500 Comment.

1 § 6604 (UNCHANGED). Boundaries of units

2 6604. In interpreting deeds and condominium plans, the existing physical
3 boundaries of a unit in a condominium project, when the boundaries of the unit are
4 contained within a building, or of a unit reconstructed in substantial accordance
5 with the original plans thereof, shall be conclusively presumed to be its boundaries
6 rather than the metes and bounds expressed in the deed or condominium plan, if
7 any exists, regardless of settling or lateral movement of the building and
8 regardless of minor variance between boundaries shown on the plan or in the deed
9 and those of the building.

10 **Comment.** With respect to a commercial or industrial common interest development, Section
11 6604 continues Section 1371 without change.

12 For further information, see Section 6500 Comment.

13 **Note.** The Commission has received comment suggesting that Section 1371 is inadequate to
14 address some situations. The Commission invites further comment on this issue and particularly
15 invites specific suggestions for how the language of proposed Section 6604 should be changed to
16 address any problems with the scope of the section.

17 § 6606 (REVISED). Deletion of unlawful restrictive covenants

18 6606. (a) No declaration or other governing document shall include a restrictive
19 covenant in violation of Section 12955 of the Government Code.

20 (b) Notwithstanding any other provision of law or provision of the governing
21 documents, the board, without approval of the members, shall amend any
22 declaration or other governing document that includes a restrictive covenant
23 prohibited by this section to delete the restrictive covenant, and shall restate the
24 declaration or other governing document without the restrictive covenant but with
25 no other change to the declaration or governing document.

26 (c) If the declaration is amended under this section, the board shall record the
27 restated declaration in each county in which the common interest development is
28 located. If the articles of incorporation are amended under this section, the board
29 shall file a certificate of amendment with the Secretary of State pursuant to
30 Section 7814 of the Corporations Code.

31 (d) If after providing written notice to an association, pursuant to Section 6512,
32 requesting that the association delete a restrictive covenant that violates
33 subdivision (a), and the association fails to delete the restrictive covenant within
34 30 days of receiving the notice, the Department of Fair Employment and Housing,
35 a city or county in which a common interest development is located, or any person
36 may bring an action against the association for injunctive relief to enforce
37 subdivision (a). The court may award attorney's fees to the prevailing party.

38 **Comment.** With respect to a commercial or industrial common interest development, Section
39 6606 continues Section 1352.5 without change, except as indicated below.

40 The following nonsubstantive changes were made:

- 41 • Subdivision (b) is revised to replace the term “board of directors of an association” with
42 the defined term “board.” See Section 6530 (“board” defined).

- 1 • Subdivision (b) is revised to replace “owners” with “members.” See Section 6554
- 2 (“member” defined).
- 3 • Subdivision (c) is added.
- 4 • Subdivision (d) is revised to include a reference to the provision governing notice to an
- 5 association (Section 6512).

6 For further information, see Section 6500 Comment.

7  **Note.** Proposed Section 6606(c) is added to require that a governing document that is in the

8 public record be publicly updated to reflect an amendment made pursuant to this section.

9 **§ 6608 (REVISED). Deletion of declarant provisions in governing documents**

10 6608. (a) Notwithstanding any provision of the governing documents to the

11 contrary, the board may, after the ~~declarant~~ developer has completed construction

12 of the development, has terminated construction activities, and has terminated

13 marketing activities for the sale, lease, or other disposition of separate interests

14 within the development, adopt an amendment deleting from any of the governing

15 documents any provision which is unequivocally designed and intended, or which

16 by its nature can only have been designed or intended, to facilitate the ~~declarant~~

17 developer in completing the construction or marketing of the development.

18 However, provisions of the governing documents relative to a particular

19 construction or marketing phase of the development may not be deleted under the

20 authorization of this subdivision until that construction or marketing phase has

21 been completed.

22 (b) The provisions which may be deleted by action of the board shall be limited

23 to those which provide for access by the ~~declarant~~ developer over or across the

24 common area for the purposes of (1) completion of construction of the

25 development, and (2) the erection, construction, or maintenance of structures or

26 other facilities designed to facilitate the completion of construction or marketing

27 of separate interests.

28 (c) At least 30 days prior to taking action pursuant to subdivision (a), the board

29 shall deliver to all members, by individual delivery pursuant to Section 6514, (1) a

30 copy of all amendments to the governing documents proposed to be adopted under

31 subdivision (a), and (2) a notice of the time, date, and place the board will consider

32 adoption of the amendments. The board may consider adoption of amendments to

33 the governing documents pursuant to subdivision (a) only at a meeting that is open

34 to all members, who shall be given opportunity to make comments thereon. All

35 deliberations of the board on any action proposed under subdivision (a) shall only

36 be conducted in an open meeting.

37 (d) The board may not amend the governing documents pursuant to this section

38 without the approval of a majority of a quorum of the members, pursuant to

39 Section 6524. For the purposes of this section, “quorum” means ~~members~~

40 ~~representing~~ more than 50 percent of the ~~voting power of the association,~~

41 ~~excluding~~ members who own no more than two separate interests in the

42 development.

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6608 continues Section 1355.5 without change, except as indicated below.

3 The following substantive change was made:

- 4 • Subdivision (c) is revised to provide for individual delivery of the specified notice. See
5 Section 6514.

6 The following nonsubstantive changes were made:

- 7 • The phrase “his or her” is not continued in subdivision (a).
- 8 • The phrase “of a common interest development” has not been continued in subdivision
9 (a).
- 10 • The terms “board of directors” and “board of directors of the association” are replaced
11 throughout with the defined term “board.” See Section 6530 (“board” defined).
- 12 • Subdivision (b) has been revised to use numerals to number the listed items, rather than
13 letters.
- 14 • Subdivisions (c) and (d) are revised to use the defined term “member.” See Section 6554
15 (“member” defined).
- 16 • Subdivision (c) is revised to delete the unnecessary word “such.”
- 17 • Subdivision (c) is revised to replace “which” with “that.”
- 18 • Subdivision (d) is revised to use the standard term “approval of a majority of a quorum of
19 the members.” See Section 6524.

20 For further information, see Section 6500 Comment.

21 **§ 6610 (NEW). Correction of statutory cross-reference**

22 6610. (a) Notwithstanding any other provision of law or provision of the
23 governing documents, if the governing documents include a reference to a
24 provision of the Davis Stirling Common Interest Development Act that was
25 continued in a new provision by the act that added this section, the board may
26 amend the governing documents, solely to correct the cross-reference, by adopting
27 a board resolution that shows the correction.

28 (b) A ~~governing document~~ declaration that is corrected under this section may
29 be restated in corrected form and recorded, provided that a copy of the board
30 resolution authorizing the corrections is recorded along with the restated
31 ~~governing document~~ declaration.

32 **Comment.** Section 6610 is new. It is intended to provide a simplified method to correct
33 statutory cross-references in an association’s governing documents that are required as a result of
34 the enactment of the act that added this section. No other amendment can be made under this
35 section.

36  **Note.** Proposed Section 6610 is new. It would provide a simplified method to update
37 statutory cross-references to reflect changes made by the proposed law. This would reduce the
38 transitional complications resulting from the enactment of this act.

39 **Article 2. Declaration**

40 **§ 6614 (REVISED). Content of declaration**

41 6614. (a) A declaration, recorded on or after January 1, 1986, shall contain a
42 legal description of the common interest development, and a statement that the
43 common interest development is a community apartment project, condominium

1 project, planned development, stock cooperative, or combination thereof. The
2 declaration shall additionally set forth the name of the association and the
3 restrictions on the use or enjoyment of any portion of the common interest
4 development that are intended to be enforceable equitable servitudes.

5 (b) The declaration may contain any other matters the declarant or the members
6 consider appropriate.

7 **Comment.** With respect to a commercial or industrial common interest development,
8 subdivision (a) of Section 6614 continues the first two sentences of Section 1353(a)(1) without
9 change.

10 With respect to a commercial or industrial common interest development, subdivision (b)
11 continues Section 1353(b) without change, except as indicated below.

12 The following nonsubstantive changes were made:

- 13 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
- 14 • The defined term “declarant” is used in place of “original signator of the declaration.”
15 See Section 6544 (“declarant”).

16 For further information, see Section 6500 Comment.

17 **Note.** Proposed Section 6614(b) would use the defined term “declarant” in place of “original
18 signator of the declaration.” That would seem to be a slight substantive change, as the existing
19 language could be read to apply only to the *original* declarant (as opposed to any successor
20 declarant). However, the staff does not see any good policy reason to preclude a successor
21 declarant, who may own a large percentage of the separate interests within a CID, from having a
22 say as to what is appropriate for inclusion in the declaration. The Commission invites comment
23 on whether the proposed change would cause any problems.

24 **§ 6616 (REVISED). Amendment authorized**

25 6616. Except to the extent that a declaration provides by its express terms that it
26 is not amendable, in whole or in part, a declaration that fails to include provisions
27 permitting its amendment at all times during its existence may be amended at any
28 time.

29 **Comment.** With respect to a commercial or industrial common interest development, Section
30 6616 continues the first sentence of Section 1355(b) without change, except as indicated below.

31 The following nonsubstantive change was made:

- 32 • The term “which” is replaced with “that.”

33 For further information, see Section 6500 Comment.

34 **Note.** Proposed Section 6616 continues the authority to amend a declaration that is silent as
35 to whether it may be amended, but does not continue the procedure specified for doing so.
36 Instead, the amendment would be made using the general procedure for amending a declaration,
37 which is provided in proposed Section 6620.

38 **§ 6618 (REVISED). Amendment to extend term of declaration authorized**

39 6618. (a) The Legislature finds that there are common interest developments that
40 have been created with deed restrictions ~~which~~ that do not provide a means for the
41 members to extend the term of the declaration. The Legislature further finds that
42 covenants and restrictions, contained in the declaration, are an appropriate method
43 for protecting the common plan of developments and to provide for a mechanism

1 for financial support for the upkeep of common area including, but not limited to,
2 roofs, roads, heating systems, and recreational facilities. If declarations terminate
3 prematurely, common interest developments may deteriorate and the ~~housing~~
4 supply of affordable units could be impacted adversely. The Legislature further
5 finds and declares that it is in the public interest to provide a vehicle for extending
6 the term of the declaration if the extension is approved by a majority of all
7 members, pursuant to Section 6522.

8 (b) A declaration that specifies a termination date, but that contains no provision
9 for extension of the termination date, may be extended, before its termination date,
10 by the approval of members pursuant to Section 6620.

11 (c) No single extension of the terms of the declaration made pursuant to this
12 section shall exceed the initial term of the declaration or 20 years, whichever is
13 less. However, more than one extension may occur pursuant to this section.

14 **Comment.** With respect to a commercial or industrial common interest development,
15 subdivision (a) of Section 6618 continues Section 1357(a) without change, except as indicated
16 below.

17 The following nonsubstantive changes were made:

- 18 • The defined term “member” is used. See Section 6554 (“member”).
- 19 • A reference to “common areas” is singularized.
- 20 • The term “which” is replaced with “that.”
- 21 • A reference to approval by “members having more than 50 percent of the votes in the
- 22 association” is replaced with standard terminology.
- 23 • A reference to “housing” is deleted.

24 With respect to a commercial or industrial common interest development, subdivision (b)
25 continues part of the substance of Section 1357(b), authorizing extension of the termination date
26 of a declaration that does not provide for extension of the termination date, except as indicated
27 below.

28 The following nonsubstantive change was made:

- 29 • Language has been added to make clear that the extension must occur before the
- 30 termination date.

31 The procedure for extension of the termination date provided in Section 1357(b)-(c) is not
32 continued. An extension would instead be made pursuant to the general procedure for amendment
33 of a declaration. See Section 6620.

34 With respect to a commercial or industrial common interest development, subdivision (c)
35 continues Section 1357(d) without change.

36 For further information, see Section 6500 Comment.

37 **Note.** Proposed Section 6618 continues the authority to amend a declaration to extend its
38 term, but does not continue the procedure specified for doing so. Instead, the extension would be
39 made using the general procedure for amending a declaration, which is provided in proposed
40 Section 6620.

41 **§ 6620 (REVISED). Amendment procedure**

42 6620. (a) A declaration may be amended pursuant to the ~~governing documents~~
43 declaration or this ~~part~~ act. An amendment is effective after all of the following
44 requirements have been met:

1 (1) The proposed amendment has been delivered by individual notice to all
2 members not less than 15 days and not more than 60 days prior to any approval
3 being solicited.

4 (2) ~~the approval of~~ The amendment has been approved by the percentage of
5 members required by the governing documents has been given declaration and any
6 other person whose approval is required by the declaration.

7 (3) That fact has been certified in a writing executed and acknowledged by the
8 officer designated in the declaration or by the association for that purpose, or if no
9 one is designated, by the president of the association.

10 (4) ~~that writing~~ The amendment has been recorded in each county in which a
11 portion of the common interest development is located.

12 (b) If the ~~governing documents do~~ declaration does not specify the percentage of
13 members who must approve an amendment of the declaration, an amendment may
14 be approved by a majority of all members, pursuant to Section 6522.

15 **Comment.** With respect to a commercial or industrial common interest development,
16 subdivision (a) of Section 6620 continues Section 1355(a) without change, except as indicated
17 below.

18 The following substantive changes were made:

- 19 • A notice requirement drawn from Section 1355(b) is added.
- 20 • References to the “governing documents” have been replaced with references to the
21 declaration.
- 22 • Paragraph (a)(2) is revised to recognize that a declaration may require that an amendment
23 be approved of a non-member.

24 The following nonsubstantive changes were made:

- 25 • The first word is replaced with “a.”
- 26 • The term “title” is replaced with “act.”
- 27 • A reference to a statutory exception that is not continued in this act is deleted.
- 28 • The defined term “member” is used. See Section 6554 (“member” defined).
- 29 • The subdivision has been divided into paragraphs, with conforming technical adjustments
30 to the language.

31 Subdivision (b) generalizes a rule stated in Sections 1355(b) and 1357.

32 For further information, see Section 6500 Comment.

33 **Note.** Proposed Section 6620(b) would provide a default rule on member approval of an
34 amendment where the governing documents are silent on the matter. That rule is drawn from
35 Sections 1355(b) and 1357.

36 Article 3. Articles of Incorporation

37 § 6622 (REVISED). Content of articles

38 6622. (a) The articles of incorporation of ~~a common interest development~~ an
39 association filed with the Secretary of State on or after January 1, 1995, shall
40 include a statement, which shall be in addition to the statement of purposes of the
41 corporation, that does all of the following:

1 (1) Identifies the corporation as an association formed to manage a common
2 interest development under the ~~Nonresidential~~ Commercial and Industrial
3 Common Interest Development Act.

4 (2) States the business or corporate office of the association, if any, and, if the
5 office is not on the site of the common interest development, states the nine-digit
6 ZIP Code, front street, and nearest cross street for the physical location of the
7 common interest development.

8 (3) States the name and address of the association’s managing agent, if any.

9 (b) The statement of principal business activity contained in the annual
10 statement filed by an incorporated association with the Secretary of State pursuant
11 to Section 1502 of the Corporations Code shall also contain the statement
12 specified in subdivision (a).

13 **Comment.** With respect to a commercial or industrial common interest development, Section
14 6622 continues Section 1363.5 without change, except as indicated below.

15 The following substantive change was made:

- 16 • A reference to this act is substituted for a reference to the Davis Stirling Common Interest
17 Development Act.

18 The following nonsubstantive changes were made:

- 19 • A cross-reference to the definition of “managing agent” has not been continued.
20 • The term “common interest development association” is replaced with “association.”

21 For further information, see Section 6500 Comment.

22 See also Corp. Code §§ 1502 (annual statement), 7130-7135 (content of articles of
23 incorporation), 7810-7820 (amendment of articles of incorporation), 7150-7153 (content and
24 amendment of bylaws).

25 Article 4. Condominium Plan

26 § 6624 (REVISED). “Condominium plan”

27 6624. A condominium plan shall contain all of the following:

28 (a) A description or survey map of a condominium project, which shall refer to
29 or show monumentation on the ground.

30 (b) A three-dimensional description of a condominium project, one or more
31 dimensions of which may extend for an indefinite distance upwards or
32 downwards, in sufficient detail to identify the common area and each separate
33 interest.

34 (c) A certificate consenting to the recordation of the condominium plan pursuant
35 to this act that is signed and acknowledged as provided in Section 6626.

36 **Comment.** With respect to a commercial or industrial common interest development, Section
37 6624 continues Section 1351(e)(1)-(2) and a part of Section 1351(e)(3) without change, except as
38 indicated below.

39 The following nonsubstantive changes were made:

- 40 • The enumerated items are set out as subdivisions.
41 • A reference to “this title” has been changed to “this act.”

- The list of persons who must sign and acknowledge the certificate consenting to recordation of the condominium plan has been replaced with a reference to the section governing the creation and recordation of a condominium plan.

For further information, see Section 6500 Comment.

§ 6626 (REVISED). Recordation of condominium plan

6626. (a) The certificate consenting to the recordation of a condominium plan that is required by subdivision (c) of Section 6624 shall be signed and acknowledged by all of the following persons:

(1) The record owner of fee title to that property included in the condominium project.

(2) In the case of a condominium project that will terminate upon the termination of an estate for years, by all lessors and lessees of the estate for years.

(3) In the case of a condominium project subject to a life estate, by all life tenants and remainder interests.

(4) The trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

(b) Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the certificate.

(c) In the event a conversion to condominiums of a community apartment project or stock cooperative has been approved by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government Code, the certificate need only be signed by those owners, trustees, beneficiaries, and mortgagees approving the conversion.

Comment. With respect to a commercial or industrial common interest development, Section 6626 continues the substance of Section 1351(e)(3), except as indicated below.

The following nonsubstantive changes were made:

- The last paragraph of Section 1351(e) is not continued in this section.
- A cross-reference to Section 6624(c) is added to the first paragraph.
- Subdivision (b) is revised to make clear that it states an exception to who must sign the certificate of consent to recordation, rather than the condominium plan itself.

For further information, see Section 6500 Comment.

Note. Proposed Section 6626 would restate the procedural provisions of existing Section 1351(e)(3). Doing so necessitates a number of minor nonsubstantive language revisions.

§ 6628 (REVISED). Amendment or revocation of condominium plan

6628. A condominium plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the persons who, at the time of amendment or revocation, are persons whose signatures are required under Section 6626.

Comment. With respect to a commercial or industrial common interest development, Section 6628 continues the last paragraph of Section 1351(e) without change, except as indicated below.

The following nonsubstantive change was made:

- Language is added to make clear that the persons whose signatures are required for amendment or revocation of a condominium plan are the persons who fall within the groups described in Section 6626 at the time of amendment or revocation.

For further information, see Section 6500 Comment.

 **Note.** Proposed Section 6628 is revised to make its meaning more clear, as described in the Comment following the section.

CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS

Article 1. Ownership Rights and Interests

§ 6650 (REVISED). Ownership of common area

6650. Unless the declaration otherwise provides, in a condominium project, or in a planned development in which the common area is owned by the owners of the separate interests, the common area is owned as tenants in common, in equal shares, one for each ~~unit or lot~~ separate interest.

Comment. With respect to a commercial or industrial common interest development, Section 6650 continues Section 1362 without change, except as indicated below.

The following nonsubstantive changes were made:

- The references to “common areas” are singularized.
- The phrase “unit or lot” is replaced with the defined term “separate interest.”

For further information, see Section 6500 Comment.

§ 6652 (REVISED). Appurtenant rights and easements

6652. Unless the declaration otherwise provides:

(a) In a community apartment project and condominium project, and in those planned developments with common area owned in common by the owners of the separate interests, there are appurtenant to each separate interest nonexclusive rights of ingress, egress, and support, if necessary, through the common area. The common area is subject to these rights.

(b) In a stock cooperative, and in a planned development with common area owned by the association, there is an easement for ingress, egress, and support, if necessary, appurtenant to each separate interest. The common area is subject to these easements.

Comment. With respect to a commercial or industrial common interest development, Section 6652 continues Section 1361 without change, except as indicated below.

The following nonsubstantive change was made:

- The references to “common areas” are singularized.

For further information, see Section 6500 Comment.

1 § 6654 (REVISED). Access to separate interest property

2 6654. Except as otherwise provided in law, an order of the court, or an order
3 pursuant to a final and binding arbitration decision, an association may not deny a
4 member or occupant physical access to the member's or occupant's separate
5 interest, either by restricting access through the common area to the separate
6 interest, or by restricting access solely to the separate interest.

7 **Comment.** With respect to a commercial or industrial common interest development, Section
8 6654 continues Section 1361.5 without change, except as indicated below.

9 The following nonsubstantive changes were made:

- 10 • The phrase "his or her" has been replaced with "the member's or occupant's."
- 11 • References to the "owner's" separate interest have been revised to omit the word
12 "owner's." This will help to avoid any implication that the reference does not also apply
13 to an "occupant" of a separate interest.
- 14 • The defined term "member" is used in place of "owner" throughout. See Section 6554
15 ("member").
- 16 • The references to "common areas" is singularized.

17 For further information, see Section 6500 Comment.

18  **Note.** Although it is clear that Section 1361.5 is intended to protect both owners and
19 occupants of separate interests, that section twice refers to the "owner's separate interest,"
20 without any reference to an occupant. That could create the impression that the Legislature
21 intended to draw some sort of distinction between owners and occupants, which the staff does not
22 believe to be the case. Proposed Section 6654 would adjust the language of Section 1361.5 to
23 avoid that implication. Note also that the defined term "member" is used in place of "owner"
24 throughout.

25 Article 2. Restrictions on Transfers

26 § 6656 (REVISED). Partition of condominium project

27 6656. (a) Except as provided in this section, the common area in a condominium
28 project shall remain undivided, and there shall be no judicial partition thereof.
29 Nothing in this section shall be deemed to prohibit partition of a cotenancy in a
30 condominium.

31 (b) The owner of a separate interest in a condominium project may maintain a
32 partition action as to the entire project as if the owners of all of the separate
33 interests in the project were tenants in common in the entire project in the same
34 proportion as their interests in the common area. The court shall order partition
35 under this subdivision only by sale of the entire condominium project and only
36 upon a showing of one of the following:

37 (1) More than three years before the filing of the action, the condominium
38 project was damaged or destroyed, so that a material part was rendered unfit for its
39 prior use, and the condominium project has not been rebuilt or repaired
40 substantially to its state prior to the damage or destruction.

1 (2) Three-fourths or more of the project is destroyed or substantially damaged
2 and owners of separate interests holding in the aggregate more than a 50-percent
3 interest in the common area oppose repair or restoration of the project.

4 (3) The project has been in existence more than 50 years, is obsolete and
5 uneconomic, and owners of separate interests holding in the aggregate more than a
6 50-percent interest in the common area oppose repair or restoration of the project.

7 (4) Any conditions in the declaration for sale under the circumstances described
8 in this subdivision have been met.

9 **Comment.** With respect to a commercial or industrial common interest development, Section
10 6656 continues Section 1359 without change, except as indicated below.

11 The following nonsubstantive changes were made:

- 12 • References to “common areas” are singularized.
- 13 • Subdivision (b)(4) is rephrased to avoid use of “such.”

14 For further information, see Section 6500 Comment.

15 **Note.** Proposed Section 6656(b)(4) would rephrase Section 1359(b)(4) to avoid use of the
16 word “such,” which is strongly disfavored in statutory drafting. The Commission invites
17 comment on whether the rephrasing would cause any substantive change in the meaning of the
18 provision.

19 **§ 6658 (REVISED). Lien for work performed in condominium project**

20 6658. (a) In a condominium project, no labor performed or services or materials
21 furnished with the consent of, or at the request of, an owner in the condominium
22 project or the owners’ agent or contractor shall be the basis for the filing of a lien
23 against any other property of any other owner in the condominium project unless
24 that other owner has expressly consented to or requested the performance of the
25 labor or furnishing of the materials or services. However, express consent shall be
26 deemed to have been given by the owner of any condominium in the case of
27 emergency repairs thereto.

28 (b) Labor performed or services or materials furnished for the common area, if
29 duly authorized by the association, shall be deemed to be performed or furnished
30 with the express consent of each condominium owner.

31 (c) The owner of any condominium may remove that owner’s condominium
32 from a lien against two or more condominiums or any part thereof by payment to
33 the holder of the lien of the fraction of the total sum secured by the lien that is
34 attributable to the owner’s condominium.

35 **Comment.** With respect to a commercial or industrial common interest development, Section
36 6658 continues Section 1369 without change, except as indicated below.

37 The following nonsubstantive changes were made:

- 38 • Subdivisions are added.
- 39 • The phrase “his or her” is replaced with references to the “owner” throughout.
- 40 • A reference to “common areas” is singularized.
- 41 • The word “which” is replaced with “that” in subdivision (c).

42 For further information, see Section 6500 Comment.

Article 3. Transfer of Separate Interest

§ 6660 (UNCHANGED). Community apartment project

6660. In a community apartment project, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the community apartment project. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

Comment. With respect to a commercial or industrial common interest development, Section 6660 continues Section 1358(a) without change.

For further information, see Section 6500 Comment.

Note. The Commission invites comment on whether an exclusively commercial or industrial common interest development may be organized as a community apartment project, or whether this provision is unnecessary.

§ 6662 (REVISED). Condominium project

6662. In a condominium project the common area is not subject to partition, except as provided in Section 6656. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

Comment. With respect to a commercial or industrial common interest development, Section 6662 continues Section 1358(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- References to "common areas" are singularized.

For further information, see Section 6500 Comment.

§ 6664 (REVISED). Planned development

6664. In a planned development, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area, if any exists. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

Comment. With respect to a commercial or industrial common interest development, Section 6664 continues Section 1358(c) without change, except as indicated below.

The following nonsubstantive change was made:

- A reference to "common areas" is singularized.

For further information, see Section 6500 Comment.

§ 6666 (UNCHANGED). Stock cooperative

6666. In a stock cooperative, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the ownership interest in the

1 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary
2 or involuntary transfer of the owner's entire estate also includes the owner's
3 membership interest in the association.

4 **Comment.** With respect to a commercial or industrial common interest development, Section
5 6666 continues Section 1358(d) without change.

6 For further information, see Section 6500 Comment.

7 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
8 common interest development may be organized as a stock cooperative, or whether this provision
9 is unnecessary.

10 **§ 6668 (REVISED). Transfer of exclusive use common area**

11 6668. Nothing in this article prohibits the transfer of exclusive use areas,
12 independent of any other interest in a common interest subdivision, if
13 authorization to separately transfer exclusive use areas is expressly stated in the
14 declaration and the transfer occurs in accordance with the terms of the declaration.

15 **Comment.** With respect to a commercial or industrial common interest development, Section
16 6668 continues the next to last paragraph of Section 1358 without change, except as indicated
17 below.

18 The following nonsubstantive change was made:

- 19 • The term "section" is replaced with "article."

20 For further information, see Section 6500 Comment.

21 **§ 6670 (REVISED). Severability of interests**

22 6670. Any restrictions upon the severability of the component interests in real
23 property which are contained in the declaration shall not be deemed conditions
24 repugnant to the interest created within the meaning of Section 711. However,
25 these restrictions shall not extend beyond the period in which the right to partition
26 a project is suspended under Section 6656.

27 **Comment.** With respect to a commercial or industrial common interest development, Section
28 6670 continues the last paragraph of Section 1358 without change, except as indicated below.

29 The following nonsubstantive changes were made:

- 30 • A superfluous reference to the "Civil Code" is omitted.
- 31 • The cross-reference is updated to reflect the new location of the referenced provision.

32 For further information, see Section 6500 Comment.

33 **CHAPTER 4. PROPERTY USE AND MAINTENANCE**

34 **Article 1. Use of Separate Interest**

35 **§ 6700 (NEW). Application of article**

36 6700. This article includes provisions that limit the authority of an association or
37 the governing documents to regulate the use of a member's separate interest.
38 Nothing in this article is intended to affect the application of any other provision

1 that limits the authority of an association to regulate the use of a member’s
2 separate interest, including, but not limited to, the following provisions:

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

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

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

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

9 **Comment.** Section 6700 is new. It provides a non-exclusive list of provisions outside of this
10 act that limit the authority of an association to regulate separate interest property use.

11  **Note.** Proposed Section 6700 is new. It introduces the article and lists other provisions that
12 protect separate interest use rights.

13 **§ 6702 (REVISED). Display of U.S. flag**

14 6702. (a) Except as required for the protection of the public health or safety, no
15 declaration or other governing document shall limit or prohibit, or be construed to
16 limit or prohibit, the display of the flag of the United States by a member on or in
17 the member’s separate interest or within the member’s exclusive use common
18 area.

19 (b) For purposes of this section, “display of the flag of the United States” means
20 a flag of the United States made of fabric, cloth, or paper displayed from a staff or
21 pole or in a window, and does not mean a depiction or emblem of the flag of the
22 United States made of lights, paint, roofing, siding, paving materials, flora, or
23 balloons, or any other similar building, landscaping, or decorative component.

24 (c) In any action to enforce this section, the prevailing party shall be awarded
25 reasonable attorney’s fees and costs.

26 **Comment.** With respect to a commercial or industrial common interest development, Section
27 6702 continues Section 1353.5 without change, except as indicated below.

28 The following nonsubstantive changes were made:

- 29 • A superfluous cross-reference to governing definitions is omitted.
- 30 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

31 For further information, see Section 6500 Comment.

32 **§ 6704 (REVISED). Noncommercial sign**

33 6704. (a) The governing documents may not prohibit posting or displaying of
34 noncommercial signs, posters, flags, or banners on or in a member’s separate
35 interest, except as required for the protection of public health or safety or if the
36 posting or display would violate a local, state, or federal law.

37 (b) For purposes of this section, a noncommercial sign, poster, flag, or banner
38 may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or
39 displayed from the yard, window, door, balcony, or outside wall of the separate
40 interest, but may not be made of lights, roofing, siding, paving materials, flora, or

1 balloons, or any other similar building, landscaping, or decorative component, or
2 include the painting of architectural surfaces.

3 (c) An association may prohibit noncommercial signs and posters that are more
4 than nine square feet in size and noncommercial flags or banners that are more
5 than 15 square feet in size.

6 **Comment.** With respect to a commercial or industrial common interest development, Section
7 6704 continues Section 1353.6 without change, except as indicated below.

8 The following nonsubstantive changes were made:

- 9 • The redundant phrase “including the operating rules” is not continued.
- 10 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
- 11 • In subdivision (c), the numeral “9” was replaced with “nine” for stylistic reasons.

12 For further information, see Section 6500 Comment.

13 **§ 6706 (REVISED). Pets**

14 6706. (a) No governing documents shall prohibit the owner of a separate interest
15 within a common interest development from keeping at least one pet within the
16 common interest development, subject to reasonable rules and regulations of the
17 association. This section may not be construed to affect any other rights provided
18 by law to an owner of a separate interest to keep a pet within the development.

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

22 (c) If the association implements a rule or regulation restricting the number of
23 pets an owner may keep, the new rule or regulation shall not apply to prohibit an
24 owner from continuing to keep any pet that the owner currently keeps in the
25 owner’s separate interest if the pet otherwise conforms with the previous rules or
26 regulations relating to pets.

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

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

33 **Comment.** With respect to a commercial or industrial common interest development, Section
34 6704 continues Section 1360.5 without change, except as indicated below.

35 The following nonsubstantive changes were made:

- 36 • A reference to “homeowner” has been replaced with “owner” in subdivision (b).
- 37 • The words “his or her” have been replaced with “the owner’s” in subdivision (c).

38 For further information, see Section 6500 Comment.

39 **§ 6708 (REVISED). Television antenna or satellite dish**

40 6708. (a) Any covenant, condition, or restriction contained in any deed, contract,
41 security instrument, or other instrument affecting the transfer or sale of, or any
42 interest in, a common interest development that effectively prohibits or restricts

1 the installation or use of a video or television antenna, including a satellite dish, or
2 that effectively prohibits or restricts the attachment of that antenna to a structure
3 within that development where the antenna is not visible from any street or
4 common area, except as otherwise prohibited or restricted by law, is void and
5 unenforceable as to its application to the installation or use of a video or television
6 antenna that has a diameter or diagonal measurement of 36 inches or less.

7 (b) This section shall not apply to any covenant, condition, or restriction, as
8 described in subdivision (a), that imposes reasonable restrictions on the
9 installation or use of a video or television antenna, including a satellite dish, that
10 has a diameter or diagonal measurement of 36 inches or less. For purposes of this
11 section, “reasonable restrictions” means those restrictions that do not significantly
12 increase the cost of the video or television antenna system, including all related
13 equipment, or significantly decrease its efficiency or performance and include all
14 of the following:

15 (1) Requirements for application and notice to the association prior to the
16 installation.

17 (2) Requirement of a member to obtain the approval of the association for the
18 installation of a video or television antenna that has a diameter or diagonal
19 measurement of 36 inches or less on a separate interest owned by another.

20 (3) Provision for the maintenance, repair, or replacement of roofs or other
21 building components.

22 (4) Requirements for installers of a video or television antenna to indemnify or
23 reimburse the association or its members for loss or damage caused by the
24 installation, maintenance, or use of a video or television antenna that has a
25 diameter or diagonal measurement of 36 inches or less.

26 (c) Whenever approval is required for the installation or use of a video or
27 television antenna, including a satellite dish, the application for approval shall be
28 processed by the appropriate approving entity for the common interest
29 development in the same manner as an application for approval of an architectural
30 modification to the property, and the issuance of a decision on the application shall
31 not be willfully delayed.

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

34 **Comment.** With respect to a commercial or industrial common interest development, Section
35 6708 continues Section 1376 without change, except as indicated below.

36 The following nonsubstantive change was made:

- 37 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

38 For further information, see Section 6500 Comment.

39 See also 47 C.F.R. § 1.4000.

40 **Note:** In prior comments, it has been suggested that existing Section 1376 is largely
41 preempted by the FCC regulation cited in the Comment above and should not be continued. See
42 Memorandum 2008-43, p. 43. The staff requests public comment on the merits of that suggestion.

1 § 6710 (REVISED). Marketing restriction

2 6710. (a) Any provision of a governing document ~~of an association~~ that
3 arbitrarily or unreasonably restricts an owner’s ability to market the owner’s
4 interest in a common interest development is void.

5 (b) No association may adopt, enforce, or otherwise impose any governing
6 document that does either of the following:

7 (1) Imposes an assessment or fee in connection with the marketing of an
8 owner’s interest in an amount that exceeds the association’s actual or direct costs.

9 (2) Establishes an exclusive relationship with a real estate broker through which
10 the sale or marketing of interests in the development is required to occur. The
11 limitation set forth in this paragraph does not apply to the sale or marketing of
12 separate interests owned by the association or to the sale or marketing of common
13 area by the association.

14 (c) For purposes of this section, “market” and “marketing” mean listing,
15 advertising, or obtaining or providing access to show the owner’s interest in the
16 development.

17 (d) This section does not apply to rules or regulations made pursuant to Section
18 712 or 713 regarding real estate signs.

19 **Comment.** With respect to a commercial or industrial common interest development, Section
20 6710 continues Section 1368.1 without change, except as indicated below.

21 The following substantive changes were made:

- 22 • The introductory clause is revised to make clear that a void provision does not void the
23 entire governing document that contains it.
- 24 • The phrase “rule or regulation” is replaced with “governing document.” This broadens
25 the application of the section so that it governs any provision in the governing documents
26 and not just an operating rule.

27 The following nonsubstantive changes were made:

- 28 • The phrase “his or her” is replaced with “the owner’s” in subdivision (a).
- 29 • A reference to “common areas” is singularized.
- 30 • The superfluous words “of an association” are omitted.
- 31 • A reference to a statutory limitation ~~that~~ set forth in Section 1366.1, a provision that is
32 not continued in this act, is deleted.

33 For further information, see Section 6500 Comment.

34 **Note.** Proposed Section 6710 would apply to any governing document, and not just to a “rule
35 or regulation” (which is unclear and may only encompass an operating rule).

36 § 6712 (REVISED). Low water-using plants

37 6712. (a) Notwithstanding any other law, a provision of the governing
38 documents shall be void and unenforceable if it does any of the following:

39 (1) Prohibits, or includes conditions that have the effect of prohibiting, the use
40 of low water-using plants as a group.

41 (2) Has the effect of prohibiting or restricting compliance with either of the
42 following:

1 (A) A water-efficient landscape ordinance adopted or in effect pursuant to
2 subdivision (c) of Section 65595 of the Government Code.

3 (B) Any regulation or restriction on the use of water adopted pursuant to Section
4 353 or 375 of the Water Code.

5 (b) This section shall not prohibit an association from applying landscaping
6 rules established in the governing documents, to the extent the rules fully conform
7 with the requirements of subdivision (a).

8 **Comment.** With respect to a commercial or industrial common interest development, Section
9 6712 continues Section 1353.8 without change, except as indicated below.

10 The following nonsubstantive change was made:

- 11 • Surplus language is not continued (i.e., the phrases “of any,” “of a common interest
12 development,” and “and regulations”). The term “governing documents” includes all
13 governing documents of a common interest development. See Section 6552 (“governing
14 documents”).

15 For further information, see Section 6500 Comment.

16 Article 2. Modification of Separate Interest

17 § 6714 (REVISED). Improvements to separate interest

18 6714. (a) Subject to the governing documents and applicable law, a member
19 may do the following:

20 (1) Make any improvement or alteration within the boundaries of the member’s
21 separate interest that does not impair the structural integrity or mechanical systems
22 or lessen the support of any portions of the common interest development.

23 (2) Modify the member’s separate interest, at the member’s expense, to facilitate
24 access for persons who are blind, visually handicapped, deaf, or physically
25 disabled, or to alter conditions which could be hazardous to these persons. These
26 modifications may also include modifications of the route from the public way to
27 the door of the separate interest for the purposes of this paragraph if the separate
28 interest is on the ground floor or already accessible by an existing ramp or
29 elevator. The right granted by this paragraph is subject to the following conditions:

30 (A) The modifications shall be consistent with applicable building code
31 requirements.

32 (B) The modifications shall be consistent with the intent of otherwise applicable
33 provisions of the governing documents pertaining to safety or aesthetics.

34 (C) Modifications external to the dwelling shall not prevent reasonable passage
35 by other residents, and shall be removed by the member when the separate interest
36 is no longer occupied by persons requiring those modifications who are blind,
37 visually handicapped, deaf, or physically disabled.

38 (D) Any member who intends to modify a separate interest pursuant to this
39 paragraph shall submit plans and specifications to the association for review to
40 determine whether the modifications will comply with the provisions of this
41 paragraph. The association shall not deny approval of the proposed modifications
42 under this paragraph without good cause.

1 (b) Any change in the exterior appearance of a separate interest shall be in
2 accordance with the governing documents and applicable provisions of law.

3 **Comment.** With respect to a commercial or industrial common interest development, Section
4 6714 continues Section 1360 without change, except as indicated below.

5 The following substantive change was made:

- 6 • The scope of the provision is broadened to apply to any separate interest, and not just a
7 unit in a condominium project.

8 The following nonsubstantive changes were made:

- 9 • The phrase “his or her” is not continued in subdivision (a)(2)(D).
- 10 • The defined term “member” is used in place of “owner” throughout. See Section 6554
11 (“member” defined).

12 For further information, see Section 6500 Comment.

13 **Note.** Proposed Section 6714 would broaden the scope of Section 1360 to include all CIDs,
14 and not just condominiums. References to “units” are replaced with references to “separate
15 interests.” References to condominium associations are changed to refer to associations generally.

16 Article 3. Maintenance

17 § 6716 (REVISED). Maintenance responsibility generally

18 6716. (a) Unless otherwise provided in the declaration of a common interest
19 development, the association is responsible for repairing, replacing, or maintaining
20 the common area, other than exclusive use common area, and the owner of each
21 separate interest is responsible for maintaining that separate interest and any
22 exclusive use common area appurtenant to the separate interest.

23 (b) The costs of temporary relocation during the repair and maintenance of the
24 areas within the responsibility of the association shall be borne by the owner of the
25 separate interest affected.

26 **Comment.** With respect to a commercial or industrial common interest development,
27 subdivision (a) of Section 6716 continues Section 1364(a) without change, except as indicated
28 below.

29 The following nonsubstantive change was made:

- 30 • References to “common areas” are singularized.

31 With respect to a commercial or industrial common interest development, subdivision (b)
32 continues Section 1364(c) without change.

33 For further information, see Section 6500 Comment.

34 § 6718 (REVISED). Wood-destroying pests or organisms

35 6718. (a) In a community apartment project, condominium project, or stock
36 cooperative, unless otherwise provided in the declaration, the association is
37 responsible for the repair and maintenance of the common area occasioned by the
38 presence of wood-destroying pests or organisms.

39 (b) In a planned development, unless a different maintenance scheme is
40 provided in the declaration, each owner of a separate interest is responsible for the
41 repair and maintenance of that separate interest as may be occasioned by the

1 presence of wood-destroying pests or organisms. Upon approval of the majority of
2 all members of the association, pursuant to Section 6522, that responsibility may
3 be delegated to the association, which shall be entitled to recover the cost thereof
4 as a special assessment.

5 **Comment.** With respect to a commercial or industrial common interest development,
6 subdivision (a) of Section 6718 continues Section 1364(b)(1) without change, except as indicated
7 below.

8 The following nonsubstantive change was made:

- 9 • A superfluous cross-reference to governing definitions has not been continued.

10 With respect to a commercial or industrial common interest development, subdivision (b)
11 continues Section 1364(b)(2) without change, except as indicated below.

12 The following nonsubstantive changes were made:

- 13 • A superfluous cross-reference to a governing definition has not been continued.
- 14 • A cross-reference to Section 6522 is added.
- 15 • The last sentence is revised to avoid use of the word “such.”

16 For further information, see Section 6500 Comment.

17 **Note.** The last sentence of Section 1364(b)(2) has been restated, in proposed Section 6718(b),
18 to avoid use of the word “such.” Standard legislative drafting practice is to avoid the use of
19 “such” as a shorthand reference for a previously described thing.

20 **§ 6720 (REVISED). Temporary removal of occupant to perform treatment of wood-**
21 **destroying pests**

22 6720. (a) The association may cause the temporary, summary removal of any
23 occupant of a common interest development for such periods and at such times as
24 may be necessary for prompt, effective treatment of wood-destroying pests or
25 organisms.

26 (b) The association shall give notice of the need to temporarily vacate a separate
27 interest to the occupants and to the owners, not less than 15 days nor more than 30
28 days prior to the date of the temporary relocation. The notice shall state the reason
29 for the temporary relocation, the date and time of the beginning of treatment, the
30 anticipated date and time of termination of treatment, and that the occupants will
31 be responsible for their own accommodations during the temporary relocation.

32 (c) Notice by the association shall be deemed complete upon either:

33 (1) Personal delivery of a copy of the notice to the occupants, and if an occupant
34 is not the owner, individual delivery pursuant to Section 6514, of a copy of the
35 notice to the owner.

36 (2) Individual delivery pursuant to Section 6514 to the occupant at the address
37 of the separate interest, and if the occupant is not the owner, individual delivery
38 pursuant to Section 6514, of a copy of the notice to the owner.

39 (d) For purposes of this section, “occupant” means an owner, resident, guest,
40 invitee, tenant, lessee, sublessee, or other person in possession on the separate
41 interest.

42 **Comment.** With respect to a commercial or industrial common interest development, Section
43 6720 continues Section 1364(d)-(e) without change, except as indicated below.

44 The following substantive change was made:

- 1 • The provision is revised to incorporate the “individual delivery” notice procedure.
2 The following nonsubstantive change was made:
3 • Subdivision (c) is revised to improve its clarity.
4 For further information, see Section 6500 Comment.

5  **Note.** Proposed Section 6720(c) is revised to improve its clarity and to incorporate the
6 “individual delivery” notice procedure.

7 **§ 6722 (REVISED). Exclusive use communication wiring**

8 6722. (a) Notwithstanding the provisions of the declaration, a member is entitled
9 to reasonable access to the common area for the purpose of maintaining the
10 internal and external telephone wiring made part of the exclusive use common
11 area of the member’s separate interest pursuant to subdivision (c) of Section 6550.
12 The access shall be subject to the consent of the association, whose approval shall
13 not be unreasonably withheld, and which may include the association’s approval
14 of telephone wiring upon the exterior of the common area, and other conditions as
15 the association determines reasonable.

16 ~~(b) For the purposes of this section, “wiring” includes, without limitation,~~
17 ~~nonmetallic transmission lines.~~

18 **Comment.** With respect to a commercial or industrial common interest development,
19 subdivision (a) of Section 6722 continues Section 1364(f) without change, except as indicated
20 below.

21 The following nonsubstantive changes were made:

- 22 • A cross-reference is updated to reflect the new location of the referenced provision.
23 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
24 • References to “common areas” are singularized.

25 For further information, see Section 6500 Comment.

26 CHAPTER 5. ASSOCIATION GOVERNANCE

27 Article 1. Association Existence and Powers

28 **§ 6750 (REVISED). Association**

29 6750. A common interest development shall be managed by an association that
30 may be incorporated or unincorporated. The association may be referred to as an
31 owners’ association or a community association.

32 **Comment.** With respect to a commercial or industrial common interest development, Section
33 6750 continues Section 1363(a) without change, except as indicated below.

34 The following nonsubstantive changes were made:

- 35 • Use of the term “owners’ association” to describe the association is expressly authorized.

36 For further information, see Section 6500 Comment.

1 § 6752 (REVISED). Association powers

2 6752. (a) Unless the governing documents provide otherwise, and regardless of
3 whether the association is incorporated or unincorporated, the association may
4 exercise the powers granted to a nonprofit mutual benefit corporation, as
5 enumerated in Section 7140 of the Corporations Code, except that an
6 unincorporated association may not adopt or use a corporate seal or issue
7 membership certificates in accordance with Section 7313 of the Corporations
8 Code.

9 (b) The association, whether incorporated or unincorporated, may exercise the
10 powers granted to an association in this ~~part~~ act.

11 **Comment.** With respect to a commercial or industrial common interest development, Section
12 6752 continues former Section 1363(c) without change, except as indicated below.

13 The following nonsubstantive changes were made:

- 14 • Subdivisions are added.
- 15 • The term “title” is replaced with “act.”

16 For further information, see Section 6500 Comment.

17 Article 2. Record Keeping

18 § 6756 (NEW). Mailing-related requests

19 6756. To be effective, any of the following requests shall be delivered in writing
20 to the association, pursuant to Section 6512:

21 (a) A request to change the member’s information in the association
22 membership list.

23 (b) A request to add or remove a second address for delivery of documents to
24 the member pursuant to Section 6814.

25 (c) A request for individual delivery of general notices to the member, pursuant
26 to subdivision (b) of Section 6516, or a request to cancel a prior request for
27 individual delivery of general notices.

28 **Comment.** Section 6756 is new. It requires that the specified requests be written and delivered
29 to the association pursuant to Section 6512.

30 **Note.** Proposed Section 6756 would require that certain mailing-related requests be submitted
31 in writing, by the method specified for delivery of notices to the association..

32 Article 3. Conflict of Interest

33 § 6758 (REVISED). Interested director

34 6758. (a) Notwithstanding any other law, and regardless of whether an
35 association is incorporated or unincorporated, the provisions of Sections 7223 and
36 7224 of the Corporations Code shall apply to any contract or other transaction
37 authorized, approved, or ratified by the board or a committee of the board.

38 (b) A director or member of a committee shall not vote ~~or otherwise act on~~
39 ~~behalf of the association with respect to~~ on any of the following matters:

- 1 (1) Discipline of the director or committee member.
- 2 (2) An assessment against the director or committee member for damage to the
- 3 common area or facilities.
- 4 (3) A request, by the director or committee member, for a payment plan for
- 5 overdue assessments.
- 6 (4) A decision whether to foreclose on a lien on the separate interest of the
- 7 director or committee member.
- 8 (5) Review of a proposed physical change to the separate interest of the director
- 9 or committee member.
- 10 (6) A grant of exclusive use common area to the director or committee member.
- 11 (c) Nothing in this section limits any other provision of law or the governing
- 12 documents that governs a decision in which a director may have an interest.

13 **Comment.** With respect to a commercial or industrial common interest development,
14 subdivision (a) of Section 6758 continues the substance of Section 1365.6, except as indicated
15 below.

16 The following nonsubstantive change was made:

- 17 • The reference to Corporations Code Section 310, which governs the General Corporation
18 Law, has been replaced with a reference to Corporations Code Sections 7233 and 7234,
19 which state equivalent rules for nonprofit mutual benefit corporations.

20 Subdivisions (b) and (c) are new. The “discipline” referenced in subdivision (b)(1) may include
21 discipline for a violation of the governing documents, this act, or a fiduciary duty.

22 For further information, see Section 6500 Comment.

23 **Notes.** (1) Proposed Section 6758(a) would correct an apparently erroneous reference to
24 Corporations Code Section 310, which governs for-profit corporations. The reference would be
25 replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent
26 rules for nonprofit mutual benefit corporations.

27 (2) Subdivision (b) is added to provide simplified guidance to association board members on
28 impermissible conflicts.

29 (3) Subdivision (c) makes clear that the section is not intended as a complete codification of the
30 law governing director conflicts of interest.

31 Article 4. Government Assistance

32 § 6760 (REVISED). Director training course

33 6760. To the extent existing funds are available, the Department of Consumer
34 Affairs and the Department of Real Estate shall develop an online education
35 course for the board regarding the role, duties, laws, and responsibilities of
36 directors and prospective directors, and the nonjudicial foreclosure process.

37 **Comment.** With respect to a commercial or industrial common interest development, Section
38 6760 continues the substance of Section 1363.001, except as indicated below.

39 The following nonsubstantive changes were made:

- 40 • The term “board of directors” has been replaced with the defined term “board.” See
41 Section 4085 (“board”).
- 42 • The defined term “director” is used in place of “board member.” See Section 6548
43 (“director”).
- 44 • “On-line” was replaced with “online” to reflect modern usage.

1 For further information, see Section 6500 Comment.

2 **§ 6762 (REVISED). State registry**

3 6762. (a) To assist with the identification of common interest developments,
4 each association, whether incorporated or unincorporated, shall submit to the
5 Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that
6 the Secretary of State shall prescribe, the following information concerning the
7 association and the development that it manages:

8 (1) A statement that the association is formed to manage a common interest
9 development under the ~~Nonresidential~~ Commercial and Industrial Common
10 Interest Development Act.

11 (2) The name of the association.

12 (3) The street address of the association's onsite office, or, if none, of the
13 responsible officer or managing agent of the association.

14 (4) The name, address, and either the daytime telephone number or e-mail
15 address of the president of the association, other than the address, telephone
16 number, or e-mail address of the association's onsite office or managing agent.

17 (5) The name, street address, and daytime telephone number of the association's
18 managing agent, if any.

19 (6) The county, and if in an incorporated area, the city in which the development
20 is physically located. If the boundaries of the development are physically located
21 in more than one county, each of the counties in which it is located.

22 (7) If the development is in an unincorporated area, the city closest in proximity
23 to the development.

24 (8) The nine-digit ZIP Code, front street, and nearest cross street of the physical
25 location of the development.

26 (9) The type of common interest development, as defined in Section 6534,
27 managed by the association.

28 (10) The number of separate interests, as defined in Section 6564, in the
29 development.

30 (b) The association shall submit the information required by this section as
31 follows:

32 (1) By incorporated associations, within 90 days after the filing of its original
33 articles of incorporation, and thereafter at the time the association files its biennial
34 statement of principal business activity with the Secretary of State pursuant to
35 Section 8210 of the Corporations Code.

36 (2) By unincorporated associations, in July of 2003, and in that same month
37 biennially thereafter. Upon changing its status to that of a corporation, the
38 association shall comply with the filing deadlines in paragraph (1).

39 (c) The association shall notify the Secretary of State of any change in the street
40 address of the association's onsite office or of the responsible officer or managing
41 agent of the association in the form and for a fee prescribed by the Secretary of
42 State, within 60 days of the change.

1 (d) The penalty for an incorporated association’s noncompliance with the initial
2 or biennial filing requirements of this section shall be suspension of the
3 association’s rights, privileges, and powers as a corporation and monetary
4 penalties, to the same extent and in the same manner as suspension and monetary
5 penalties imposed pursuant to Section 8810 of the Corporations Code.

6 (e) The Secretary of State shall make the information submitted pursuant to
7 paragraph (4) of subdivision (a) available only for governmental purposes and
8 only to Members of the Legislature and the Business, Transportation and Housing
9 Agency, upon written request. All other information submitted pursuant to this
10 section shall be subject to public inspection pursuant to the California Public
11 Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title
12 1 of the Government Code. The information submitted pursuant to this section
13 shall be made available for governmental or public inspection.

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6762 continues Section 1363.6 without change, except as indicated below.

16 The following substantive change was made:

- 17 • A reference to this act is substituted for a reference to the Davis-Stirling Common
18 Interest Development Act.

19 The following nonsubstantive changes were made:

- 20 • Cross-references are updated to reflect the new location of the referenced provisions.
- 21 • The redundant phrase “of the association” is omitted in subdivision (a)(4).
- 22 • Superfluous references to definition sections are not continued.
- 23 • Obsolete transitional dates are omitted in subdivisions (d) and (e).

24 For further information, see Section 6500 Comment.

25 CHAPTER 6. ASSESSMENTS AND ASSESSMENT COLLECTION

26 Article 1. Establishment and Imposition of Assessments

27 § 6800 (REVISED). Levy of assessment

28 6800. The association shall levy regular and special assessments sufficient to
29 perform its obligations under the governing documents and this ~~title~~ act.

30 **Comment.** With respect to a commercial or industrial common interest development, Section
31 6800 continues the first sentence of Section 1366(a) without change, except as indicated below.

32 The following nonsubstantive changes were made:

- 33 • The term “title” is changed to “act.”
- 34 • A superfluous reference to the remainder of Section 1366 is deleted.

35 For further information, see Section 6500 Comment.

36 § 6804 (REVISED). Exemption from execution

37 6804. (a) Regular assessments imposed or collected to perform the obligations
38 of an association under the governing documents or this act shall be exempt from
39 execution by a judgment creditor of the association only to the extent necessary

1 for the association to perform essential services, such as paying for utilities and
2 insurance. In determining the appropriateness of an exemption, a court shall
3 ensure that only essential services are protected under this subdivision.

4 (b) This exemption shall not apply to any consensual pledges, liens, or
5 encumbrances that have been approved by a majority of a quorum of members,
6 pursuant to Section 6524, at a member meeting or election, or to any state tax lien,
7 or to any lien for labor or materials supplied to the common area.

8 **Comment.** With respect to a commercial or industrial common interest development, Section
9 6804 continues Section 1366(c) without change, except as indicated below.

10 The following nonsubstantive changes were made:

- 11 • Subdivisions are added.
- 12 • A reference to approval of a majority of members casting a vote at a meeting at which a
13 quorum is established has been replaced with a reference to the standard provision on
14 approval by a majority of a quorum of members (Section 4070).
- 15 • Quorum-related language from former Section 1366(b)-(c) is not continued.
- 16 • A reference to “title” is changed to “act.”

17 For further information, see Section 6500 Comment.

18 See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing
19 documents”), 6554 (“member”).

20 **Note.** Both Section 1366(a) and (b) contain the following sentence: “For the purposes of this
21 section, ‘quorum’ means more than 50 percent of the owners of an association.” Although those
22 provisions purport to apply to the “section” as a whole, the fact that the sentence is repeated in
23 subdivisions (a) and (b) suggests that the intention may have been to limit the application of the
24 sentence to just those subdivisions. If so, then the special quorum rule would not apply to the
25 reference in Section 1366(c) to “any consensual pledges, liens, or encumbrances that have been
26 approved by the owners of an association, *constituting a quorum*, casting a majority of the votes
27 at a meeting or election of the association...” (Emphasis added.) Proposed Section 6804 is
28 drafted on the basis of that interpretation, and does not include the special quorum rule.

29 Article 2. Assessment Payment and Delinquency

30 § 6808 (REVISED). Assessment debt and delinquency

31 6808. (a) A regular or special assessment and any late charges, reasonable fees
32 and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as
33 determined in accordance with subdivision (b), shall be a debt of the owner of the
34 separate interest at the time the assessment or other sums are levied.

35 (b) Associations are hereby exempted from interest-rate limitations imposed by
36 Article XV of the California Constitution, subject to the limitations of this section.

37 **Comment.** With respect to a commercial or industrial common interest development,
38 subdivision (a) of Section 6808 continues the first sentence of Section 1367.1(a) without change,
39 except as indicated below.

40 The following nonsubstantive change was made:

- 41 • A cross-reference is updated to reflect the new location of the referenced provision.

42 With respect to a commercial or industrial common interest development, subdivision (b)
43 continues Section 1366(f) without change.

44 For further information, see Section 6500 Comment.

1 § 6810 (REVISED). Payments

2 6810. (a) Any payments made by the owner of a separate interest toward
3 assessments shall first be applied to the assessments owed, and, only after the
4 assessments owed are paid in full shall the payments be applied to the fees and
5 costs of collection, attorney’s fees, late charges, or interest.

6 (b) When an owner makes a payment, the owner may request a receipt and the
7 association shall provide it. The receipt shall indicate the date of payment and the
8 person who received it.

9 (c) The association shall provide a mailing address for overnight payment of
10 assessments.

11 **Comment.** With respect to a commercial or industrial common interest development, Section
12 6810 continues the substance of Section 1367.1(b), except as indicated below.

13 The following nonsubstantive changes were made:

- 14 • A superfluous reference to assessment debt “set forth, as required in subdivision (a)” is
15 deleted to make the meaning of the provision clearer.
- 16 • Subdivisions are added.

17 For further information, see Section 6500 Comment.

18  **Note.** Existing Section 1367.1(b) refers to payments made toward “the debt set forth, as
19 required in subdivision (a)...” The purpose of that language is unclear and it is potentially
20 problematic. It could be understood as limiting the right established in Section 1367.1(b) to debts
21 that have been properly noticed, pursuant to Section 1367.1(a). In other words, if the association
22 makes a technical mistake in describing the debt, the member’s right to pay off the principal first
23 might not apply. The staff sees no policy reason for such a result. The limiting language would
24 not be continued in proposed Section 6810.

25 § 6812 (REVISED). Pre-lien notice

26 6812. At least 30 days prior to recording a lien upon the separate interest of the
27 owner of record to collect a debt that is past due under Section 6808, the
28 association shall notify the owner of record in writing by certified mail of the
29 following:

30 (a) A general description of the collection and lien enforcement procedures of
31 the association and the method of calculation of the amount, a statement that the
32 owner of the separate interest has the right to inspect the association records
33 pursuant to Section 8333 of the Corporations Code, and the following statement in
34 14-point boldface type, if printed, or in capital letters, if typed:

35 “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN
36 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS,
37 IT MAY BE SOLD WITHOUT COURT ACTION.”

38 (b) An itemized statement of the charges owed by the owner, including items on
39 the statement which indicate the amount of any delinquent assessments, the fees
40 and reasonable costs of collection, reasonable attorney’s fees, any late charges,
41 and interest, if any.

1 (c) A statement that the owner shall not be liable to pay the charges, interest, and
2 costs of collection, if it is determined the assessment was paid on time to the
3 association.

4 **Comment.** With respect to a commercial or industrial common interest development, Section
5 6812 continues the second sentence of Section 1367.1(a), and paragraphs (1) to (3) of that
6 provision, inclusive, without change, except as indicated below.

7 The following nonsubstantive change was made:

- 8 • A cross-reference is updated to reflect the new location of the referenced provision.

9 For further information, see Section 6500 Comment.

10 **§ 6814 (UNCHANGED). Notice of delinquent assessment**

11 6814. (a) The amount of the assessment, plus any costs of collection, late
12 charges, and interest assessed in accordance with subdivision (b) of Section 6808,
13 shall be a lien on the owner's separate interest in the common interest
14 development from and after the time the association causes to be recorded with the
15 county recorder of the county in which the separate interest is located, a notice of
16 delinquent assessment, which shall state the amount of the assessment and other
17 sums imposed in accordance with subdivision (b) of Section 6808, a legal
18 description of the owner's separate interest in the common interest development
19 against which the assessment and other sums are levied, and the name of the
20 record owner of the separate interest in the common interest development against
21 which the lien is imposed.

22 (b) The itemized statement of the charges owed by the owner described in
23 subdivision (b) of Section 6812 shall be recorded together with the notice of
24 delinquent assessment.

25 (c) In order for the lien to be enforced by nonjudicial foreclosure as provided in
26 Sections 6820 and 6822, the notice of delinquent assessment shall state the name
27 and address of the trustee authorized by the association to enforce the lien by sale.

28 (d) The notice of delinquent assessment shall be signed by the person designated
29 in the declaration or by the association for that purpose, or if no one is designated,
30 by the president of the association.

31 (e) A copy of the recorded notice of delinquent assessment shall be mailed by
32 certified mail to every person whose name is shown as an owner of the separate
33 interest in the association's records, and the notice shall be mailed no later than 10
34 calendar days after recordation.

35 (f) Upon receipt of a written request by an owner, delivered pursuant to Section
36 6512, identifying a secondary address for purposes of collection notices, the
37 association shall send additional copies of any notices required by this ~~section~~
38 article or by Section 6822 to the secondary address provided. The association shall
39 notify owners of their right to submit secondary addresses to the association. ~~The~~
40 ~~owner's request shall be in writing and shall be mailed to the association in a~~
41 ~~manner that shall indicate the association has received it.~~ The owner may identify
42 or change a secondary address at any time, ~~provided that, if a secondary address is~~

~~identified or changed during the collection process, the association shall only be required to send notices to the indicated secondary address from the point the association receives the request.~~

Comment. With respect to a commercial or industrial common interest development, subdivisions (a)-(e) of Section 6814 continue the first five sentences of Section 1367.1(d) without change, except as indicated below.

The following nonsubstantive change was made:

- Cross-references are updated to reflect the new location of the referenced provisions.

With respect to a commercial or industrial common interest development, subdivision (f) continues Section 1367.1(k) without change, except as indicated below.

The following substantive change was made:

- The provision is revised to incorporate a standardized procedure for delivery of a document to an association. See Section 6512.

The following nonsubstantive changes were made:

- A cross-reference is added to reflect the new location of a referenced provision.
- Superfluous language relating to the identifying or changing of a secondary address during the collection process is deleted. Under subdivision (f), the association's obligation to send notices to a secondary address as requested by a member in all cases turns on the receipt of the request by the association.
- A requirement that a specified notification to owners be included in the annual budget has been deleted.

For further information, see Section 6500 Comment.

§ 6816 (REVISED). Lien priority

6816. A lien created pursuant to Section 6814 shall be prior to all other liens recorded subsequent to the notice of delinquent assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

Comment. With respect to a commercial or industrial common interest development, Section 6816 continues Section 1367.1(f) without change, except as indicated below.

The following nonsubstantive changes were made:

- The phrase "notice of assessment" is replaced with the more specific "notice of delinquent assessment."
- A cross-reference is updated to reflect the new location of the referenced provision.

For further information, see Section 6500 Comment.

Note. Section 1367.1(f) refers to the "notice of assessment." It appears that the intention was to refer to the "notice of delinquent assessment" specified in Section 1367.1(d). In order to avoid any ambiguity, proposed Section 6816 uses the more specific term.

§ 6818 (UNCHANGED). Lien release

6818. (a) Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied.

1 (b) If it is determined that a lien previously recorded against the separate interest
2 was recorded in error, the party who recorded the lien shall, within 21 calendar
3 days, record or cause to be recorded in the office of the county recorder in which
4 the notice of delinquent assessment is recorded a lien release or notice of
5 rescission and provide the owner of the separate interest with a declaration that the
6 lien filing or recording was in error and a copy of the lien release or notice of
7 rescission.

8 **Comment.** With respect to a commercial or industrial common interest development,
9 subdivision (a) of Section 6818 continues the sixth sentence of Section 1367.1(d) without change.

10 With respect to a commercial or industrial common interest development, subdivision (b)
11 continues Section 1367.1(i) without change.

12 For further information, see Section 6500 Comment.

13 **§ 6819 (REVISED). Procedural noncompliance**

14 6819. An association that fails to comply with the procedures set forth in this
15 section shall, prior to recording a lien, recommence the required notice process.
16 Any costs associated with recommencing the notice process shall be borne by the
17 association and not by the owner of a separate interest.

18 **Comment.** With respect to a commercial or industrial common interest development, Section
19 6819 continues former Section 1367.1(l) without change, except as indicated below.

20 The following nonsubstantive change was made:

- 21 • A reference to “this section” is changed to “this article.”

22 For further information, see Section 6500 Comment.

23 **Article 3. Assessment Collection**

24 **§ 6820 (REVISED). Collection generally**

25 6820. (a) Except as otherwise provided in this article, after the expiration of 30
26 days following the recording of a lien created pursuant to Section 6814, the lien
27 may be enforced in any manner permitted by law, including sale by the court, sale
28 by the trustee designated in the notice of delinquent assessment, or sale by a
29 trustee substituted pursuant to Section 2934a.

30 (b) Nothing in Article 2 (commencing with Section 6808) or in subdivision (a)
31 of Section 726 of the Code of Civil Procedure prohibits actions against the owner
32 of a separate interest to recover sums for which a lien is created pursuant to Article
33 2 (commencing with Section 6808) or prohibits an association from taking a deed
34 in lieu of foreclosure.

35 **Comment.** With respect to a commercial or industrial common interest development,
36 subdivision (a) of Section 6820 continues the substance of the second sentence of Section
37 1367.1(g), except as indicated below.

38 The following nonsubstantive changes were made:

- 39 • The introductory clause has been broadened to recognize the application of all restrictions
40 on collection that are provided in this article. See, e.g., Section 6826 (limitation on
41 assignment).

- 1 • Cross-references are updated to reflect the new location of the referenced provisions.
- 2 With respect to a commercial or industrial common interest development, subdivision (b)
- 3 continues Section 1367.1(h) without change, except as indicated below.
- 4 The following nonsubstantive change was made:
- 5 • Cross-references are updated to reflect the new location of the referenced provisions.
- 6 For further information, see Section 6500 Comment.

7 **§ 6822 (REVISED). Foreclosure**

8 6822. (a) Any sale by the trustee shall be conducted in accordance with Sections
9 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages
10 and deeds of trust.

11 (b) In addition to the requirements of Section 2924, ~~a notice of default shall be~~
12 ~~served by the association on the owner's legal representative~~ the association shall
13 serve a notice of default on the person named as the owner of the separate interest
14 in the association's records or, if that person has designated a legal representative
15 pursuant to this subdivision, on that legal representative. Service shall be in
16 accordance with the manner of service of summons in Article 3 (commencing with
17 Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.
18 ~~The owner's legal representative shall be the person whose name is shown as the~~
19 ~~owner of a separate interest in the association's records, unless another person has~~
20 ~~been previously designated by the owner as his or her~~ An owner may designate a
21 legal representative in a writing and that is mailed to the association in a manner
22 that indicates that the association has received it.

23 (c) The fees of a trustee may not exceed the amounts prescribed in Sections
24 2924c and 2924d, plus the cost of service for the notice of default pursuant to
25 subdivision (b).

26 **Comment.** With respect to a commercial or industrial common interest development,
27 subdivision (a) Section 6822 continues the third sentence of Section 1367.1(g) without change.

28 With respect to a commercial or industrial common interest development, subdivision (b)
29 continues the substance of Section 1367.1(j).

30 With respect to a commercial or industrial common interest development, subdivision (c)
31 continues the fourth sentence and paragraph (1) of Section 1367.1(g), without change.

32 For further information, see Section 6500 Comment.

33 **§ 6824 (REVISED). Limitations on authority to foreclose liens for monetary penalties and**
34 **damage to the common area**

35 6824. (a) A monetary charge imposed by the association as a means of
36 reimbursing the association for costs incurred by the association in the repair of
37 damage to common area and facilities caused by a member, ~~an occupant of the~~
38 ~~member's separate interest,~~ or the member's guest, ~~invitee,~~ or tenant may become
39 a lien against the member's separate interest enforceable by the sale of the interest
40 under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is
41 set forth in the governing documents. It is the intent of the Legislature not to
42 contravene Section 2792.26 of Title 10 of the California Code of Regulations, as
43 that section appeared on January 1, 1996, for associations of subdivisions that are

1 being sold under authority of a subdivision public report, pursuant to Part 2
2 (commencing with Section 11000) of Division 4 of the Business and Professions
3 Code.

4 (b) A monetary penalty imposed by the association as a disciplinary measure for
5 failure of a member to comply with the governing documents, except for the late
6 payments, may not be characterized nor treated in the governing documents as an
7 assessment that may become a lien against the member's separate interest
8 enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

9 **Comment.** With respect to a commercial or industrial common interest development,
10 subdivision (a) of Section 6824 continues the seventh and eighth sentences of Section 1367.1(d)
11 without change, except as indicated below.

12 The following nonsubstantive change was made:

- 13 • A reference to "common areas" is singularized.

14 With respect to a commercial or industrial common interest development, subdivision (b)
15 continues Section 1367.1(e) without change, except as indicated below.

16 The following nonsubstantive changes were made:

- 17 • The introductory clause "except as indicated in subdivision (d)" is not continued.
- 18 • The undefined term "governing instruments" is replaced with the defined term
19 "governing documents."
- 20 • The undefined term "subdivision separate interest" is replaced with the defined term
21 "separate interest."

22 For further information, see Section 6500 Comment.

23 **Notes.** (1) Proposed Section 6824(b) would omit the introductory clause of Section
24 1367.1(e): "Except as indicated in subdivision (d)...." The staff sees nothing in Section 1367.1(d)
25 that would operate as an exception to the rule stated in Section 1367.1(e).

26 (2) Proposed Section 6824(b) would substitute the defined term "governing documents" for the
27 undefined term "governing instruments."

28 (3) Proposed Section 6824(b) would substitute the defined term "separate interest" for the
29 undefined term "subdivision separate interest."

30 **§ 6826 (REVISED). Assignment or pledge**

31 6826. (a) An association may not voluntarily assign or pledge the association's
32 right to collect payments or assessments, or to enforce or foreclose a lien to a third
33 party, except when the assignment or pledge is made to a financial institution or
34 lender chartered or licensed under federal or state law, when acting within the
35 scope of that charter or license, as security for a loan obtained by the association.

36 (b) Nothing in subdivision (a) restricts the right or ability of an association to
37 assign any unpaid obligations of a former member to a third party for purposes of
38 collection.

39 **Comment.** With respect to a commercial or industrial common interest development, Section
40 6826 continues the first sentence of Section 1367.1(g) without change, except as indicated below.

41 The following nonsubstantive changes were made:

- 42 • The provision is divided into subdivisions.
- 43 • An introductory clause is added in subdivision (b) to make the relationship between the
44 two provisions clearer.

45 For further information, see Section 6500 Comment.

1 **Note.** Proposed Section 6826 would break the first sentence of Section 1367.1(g) into two
2 subdivisions and add an introductory clause in the second provision, to better define their
3 relationship. (In existing law the two provisions are joined by a semi-colon and the ambiguous
4 conjunction “however.”).

5 **§ 6828 (NEW). Application of article**

6 6828. (a) Except as otherwise provided, this article applies to a lien created on or
7 after January 1, ~~2013~~ 2014.

8 (b) A lien created before January 1, ~~2013~~ 2014, is governed by the law in
9 existence at the time the lien was created.

10 **Comment.** Section 6828 is new. A lien created on or after January 1, 1986, and before January
11 1, 2003, is governed by Section 1367. A lien created on or after January 1, 2003 and before the
12 operative date of the act that added this section, is governed by Section 1367.1 and Section
13 1367.4.

14 **Note.** Under existing law, Section 1367 governs liens recorded on or after January 1, 1986,
15 but before January 1, 2003. Liens that are recorded on or after January 1, 2003, are governed by
16 Section 1367.1 (except that inconsistent provisions of Section 1367.4 govern debts for
17 assessments that arise on or after January 1, 2006). However, as this proposed legislation would
18 make a portion of Section 1367.1 and the entirety of Section 1367.4 inapplicable to an
19 exclusively commercial or industrial CID, for those CIDs the relevant date in this provision
20 would be the operative date of this legislation.

21 **CHAPTER 7. INSURANCE AND LIABILITY**

22 **§ 6840 (REVISED). Limitation of member liability**

23 6840. (a) It is the intent of the Legislature to offer civil liability protection to
24 owners of the separate interests in a common interest development that have
25 common area owned in tenancy-in-common if the association carries a certain
26 level of prescribed insurance that covers a cause of action in tort.

27 (b) Any cause of action in tort against any owner of a separate interest arising
28 solely by reason of an ownership interest as a tenant in common in the common
29 area of a common interest development shall be brought only against the
30 association and not against the individual owners of the separate interests, if both
31 of the insurance requirements in paragraphs (1) and (2) are met:

32 (1) The association maintained and has in effect for this cause of action, one or
33 more policies of insurance that include coverage for general liability of the
34 association.

35 (2) The coverage described in paragraph (1) is in the following minimum
36 amounts:

37 (A) At least two million dollars (\$2,000,000) if the common interest
38 development consists of 100 or fewer separate interests.

39 (B) At least three million dollars (\$3,000,000) if the common interest
40 development consists of more than 100 separate interests.

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6840 continues Section 1365.9 without change, except as indicated below.

3 The following nonsubstantive changes were made:

- 4 • A superfluous cross-reference to a governing definition is not continued.
- 5 • A reference to “common areas” is singularized.
- 6 • Subdivision (b)(1) is revised to replace “which” with “that.”

7 For further information, see Section 6500 Comment.

8 CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT

9 Article 1. Disciplinary Action

10 § 6850 (REVISED). Schedule of monetary penalties

11 6850. (a) If an association adopts or has adopted a policy imposing any
12 monetary penalty, including any fee, on any association member for a violation of
13 the governing documents, including any monetary penalty relating to the activities
14 of a guest or tenant of the member, the board shall adopt and distribute to each
15 member, by ~~personal delivery or first class mail~~ individual notice, a schedule of
16 the monetary penalties that may be assessed for those violations, which shall be in
17 accordance with authorization for member discipline contained in the governing
18 documents.

19 ~~(b) An association may not enforce a new or revised monetary penalty until the~~
20 ~~new or revised monetary penalty has been included in either (1) a schedule of~~
21 ~~monetary penalties that is distributed pursuant to subdivision (a), or (2) a~~
22 ~~supplement to the schedule of monetary penalties that is delivered to the members~~
23 ~~by personal delivery or first class mail. A monetary penalty assessed against a~~
24 member for a violation of the governing documents shall not exceed the monetary
25 penalty stated in the schedule of monetary penalties that was most recently
26 distributed to that member.

27 (c) An association shall provide a copy of the most recently distributed schedule
28 of monetary penalties, ~~along with any applicable supplements to that schedule,~~ to
29 any member on request.

30 **Comment.** With respect to a commercial or industrial common interest development,
31 subdivision (a) of Section 6850 continues the first sentence of Section 1363(g) without change,
32 except as indicated below.

33 The following substantive changes were made:

- 34 • A reference to delivery by personal delivery or first class mail has been changed to
35 incorporate the “individual notice” procedure.
- 36 • The term “invitee” was replaced with “tenant,” to make clear that the provision applies to
37 tenants.

38 The following nonsubstantive changes were made:

- 39 • A reference to the “rules of the association” is superfluous and is not continued. The term
40 “governing documents” encompasses rules. See Section 6552.

- 1 • The term “board of directors” has been replaced with the defined term “board.” See
2 Section 6530 (“board”).
3 Subdivision (b) and (c) are new.
4 For further information, see Section 6500 Comment.

5 **☞ Notes.** (1) Subdivision (b) of proposed Section 6850 would provide that a monetary penalty
6 assessed against a member for a violation of the governing documents may not exceed the penalty
7 stated in whatever schedule of penalties was most recently distributed to that member.
8 (2) Subdivision (c) would require an association to provide a copy of the most recently
9 distributed schedule of monetary penalties to any member that requested a copy.

10 **§ 6854 (REVISED). No effect on authority of board**

11 6854. Nothing in Section 6850 shall be construed to create, expand, or reduce
12 the authority of the board to impose monetary penalties on ~~an association~~ a
13 member for a violation of the governing documents.

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6854 continues the substance of Section 1363(j) without substantive change, except as indicated
16 below.

17 The following nonsubstantive changes were made:

- 18 • The term “board of directors of the association” has been replaced with the defined term
19 “board. See Section 6530 (“board”).
20 • The phrase “or rules of the association” has not been continued.
21 • The phrase “an association member” was replaced with the defined term “member.”
22 • The reference to Section 6850 is narrower than the reference to “this section” in Section
23 1363(j), which encompassed the entirety of former Section 1363.

24 For further information, see Section 6500 Comment..

25 **☞ Note.** Existing Section 1363(j) refers to the entirety of Section 1363. Proposed Section 6854
26 would only refer to the provision of Section 1363 relating to member discipline that is continued
27 in this act.

28 **Article 4. Civil Actions**

29 **§ 6856 (UNCHANGED). Enforcement of governing documents**

30 6856. (a) The covenants and restrictions in the declaration shall be enforceable
31 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind
32 all owners of separate interests in the development. Unless the declaration states
33 otherwise, these servitudes may be enforced by any owner of a separate interest or
34 by the association, or by both.

35 (b) A governing document other than the declaration may be enforced by the
36 association against an owner of a separate interest or by an owner of a separate
37 interest against the association.

38 (c) In an action to enforce the governing documents, the prevailing party shall be
39 awarded reasonable attorney’s fees and costs.

40 **Comment.** With respect to a commercial or industrial common interest development, Section
41 6856 continues Section 1354 without change.

42 For further information, see Section 6500 Comment.

1 § 6858 (REVISED). Standing

2 6858. An association ~~established to manage a common interest development~~ has
3 standing to institute, defend, settle, or intervene in litigation, arbitration,
4 mediation, or administrative proceedings in its own name as the real party in
5 interest and without joining with it the members, in matters pertaining to the
6 following:

7 (a) Enforcement of the governing documents.

8 (b) Damage to the common area.

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

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

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6858 continues Section 1368.3 without change, except as indicated below.

16 The following nonsubstantive changes were made:

- 17 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
- 18 • The superfluous phrase “established to manage a common interest development” is
19 omitted.

20 For further information, see Section 6500 Comment.

21 § 6860 (UNCHANGED). Comparative fault

22 6860. (a) In an action maintained by an association pursuant to subdivision (b),
23 (c), or (d) of Section 6858, the amount of damages recovered by the association
24 shall be reduced by the amount of damages allocated to the association or its
25 managing agents in direct proportion to their percentage of fault based upon
26 principles of comparative fault. The comparative fault of the association or its
27 managing agents may be raised by way of defense, but shall not be the basis for a
28 cross-action or separate action against the association or its managing agents for
29 contribution or implied indemnity, where the only damage was sustained by the
30 association or its members. It is the intent of the Legislature in enacting this
31 subdivision to require that comparative fault be pleaded as an affirmative defense,
32 rather than a separate cause of action, where the only damage was sustained by the
33 association or its members.

34 (b) In an action involving damages described in subdivision (b), (c), or (d) of
35 Section 6858, the defendant or cross-defendant may allege and prove the
36 comparative fault of the association or its managing agents as a setoff to the
37 liability of the defendant or cross-defendant even if the association is not a party to
38 the litigation or is no longer a party whether by reason of settlement, dismissal, or
39 otherwise.

40 (c) Subdivisions (a) and (b) apply to actions commenced on or after January 1,
41 1993.

1 (d) Nothing in this section affects a person’s liability under Section 1431, or the
2 liability of the association or its managing agent for an act or omission that causes
3 damages to another.

4 **Comment.** With respect to a commercial or industrial common interest development, Section
5 6860 continues Section 1368.4 without change.

6 For further information, see Section 6500 Comment.

7 CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

8 **§ 6870 (REVISED). Actions for damages**

9 6870. (a) Before an association files a complaint for damages against a builder,
10 developer, or general contractor (“respondent”) of a common interest development
11 based upon a claim for defects in the design or construction of the common
12 interest development, all of the requirements of this section shall be satisfied with
13 respect to the builder, developer, or general contractor.

14 (b) The association shall serve upon the respondent a “Notice of
15 Commencement of Legal Proceedings.” The notice shall be served by certified
16 mail to the registered agent of the respondent, or if there is no registered agent,
17 then to any officer of the respondent. If there are no current officers of the
18 respondent, service shall be upon the person or entity otherwise authorized by law
19 to receive service of process. Service upon the general contractor shall be
20 sufficient to initiate the process set forth in this section with regard to any builder
21 or developer, if the builder or developer is not amenable to service of process by
22 the foregoing methods. This notice shall toll all applicable statutes of limitation
23 and repose, whether contractual or statutory, by and against all potentially
24 responsible parties, regardless of whether they were named in the notice, including
25 claims for indemnity applicable to the claim for the period set forth in subdivision

26 (c). The notice shall include all of the following:

27 (1) The name and location of the project.

28 (2) An initial list of defects sufficient to apprise the respondent of the general
29 nature of the defects at issue.

30 (3) A description of the results of the defects, if known.

31 (4) A summary of the results of a survey or questionnaire distributed to owners
32 to determine the nature and extent of defects, if a survey has been conducted or a
33 questionnaire has been distributed.

34 (5) Either a summary of the results of testing conducted to determine the nature
35 and extent of defects or the actual test results, if that testing has been conducted.

36 (c) Service of the notice shall commence a period, not to exceed 180 days,
37 during which the association, the respondent, and all other participating parties
38 shall try to resolve the dispute through the processes set forth in this section. This
39 180-day period may be extended for one additional period, not to exceed 180 days,

1 only upon the mutual agreement of the association, the respondent, and any parties
2 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any
3 extensions beyond the first extension shall require the agreement of all
4 participating parties. Unless extended, the dispute resolution process prescribed by
5 this section shall be deemed completed. All extensions shall continue the tolling
6 period described in subdivision (b).

7 (d) Within 25 days of the date the association serves the Notice of
8 Commencement of Legal Proceedings, the respondent may request in writing to
9 meet and confer with the board. Unless the respondent and the association
10 otherwise agree, there shall be not more than one meeting, which shall take place
11 no later than 10 days from the date of the respondent's written request, at a
12 mutually agreeable time and place. The meeting may be conducted in executive
13 session, excluding the association's members. The discussions at the meeting are
14 privileged communications and are not admissible in evidence in any civil action,
15 unless the association and the respondent consent in writing to their admission.

16 (e) Upon receipt of the notice, the respondent shall, within 60 days, comply with
17 the following:

18 (1) The respondent shall provide the association with access to, for inspection
19 and copying of, all plans and specifications, subcontracts, and other construction
20 files for the project that are reasonably calculated to lead to the discovery of
21 admissible evidence regarding the defects claimed. The association shall provide
22 the respondent with access to, for inspection and copying of, all files reasonably
23 calculated to lead to the discovery of admissible evidence regarding the defects
24 claimed, including all reserve studies, maintenance records and any survey
25 questionnaires, or results of testing to determine the nature and extent of defects.
26 To the extent any of the above documents are withheld based on privilege, a
27 privilege log shall be prepared and submitted to all other parties. All other
28 potentially responsible parties shall have the same rights as the respondent
29 regarding the production of documents upon receipt of written notice of the claim,
30 and shall produce all relevant documents within 60 days of receipt of the notice of
31 the claim.

32 (2) The respondent shall provide written notice by certified mail to all
33 subcontractors, design professionals, their insurers, and the insurers of any
34 additional insured whose identities are known to the respondent or readily
35 ascertainable by review of the project files or other similar sources and whose
36 potential responsibility appears on the face of the notice. This notice to
37 subcontractors, design professionals, and insurers shall include a copy of the
38 Notice of Commencement of Legal Proceedings, and shall specify the date and
39 manner by which the parties shall meet and confer to select a dispute resolution
40 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its
41 obligation to participate in the meet and confer or serve a written acknowledgment
42 of receipt regarding this notice, ~~advise the recipient that it will waive any~~
43 ~~challenge to selection of the dispute resolution facilitator if it elects not to~~

1 ~~participate in the meet and confer, advise the recipient that it may be bound by any~~
2 ~~settlement reached pursuant to subdivision (d) of Section 6872, advise the~~
3 ~~recipient that it may be deemed to have waived rights to conduct inspection and~~
4 ~~testing pursuant to subdivision (c) of Section 6872, advise the recipient that it may~~
5 seek the assistance of an attorney, and advise the recipient that it should contact its
6 insurer, if any. Any subcontractor or design professional, or insurer for that
7 subcontractor, design professional, or additional insured, who receives written
8 notice from the respondent regarding the meet and confer shall, prior to the meet
9 and confer, serve on the respondent a written acknowledgment of receipt. That
10 subcontractor or design professional shall, within 10 days of service of the written
11 acknowledgment of receipt, provide to the association and the respondent a
12 Statement of Insurance that includes both of the following:

13 (A) The names, addresses, and contact persons, if known, of all insurance
14 carriers, whether primary or excess and regardless of whether a deductible or self-
15 insured retention applies, whose policies were in effect from the commencement
16 of construction of the subject project to the present and which potentially cover the
17 subject claims.

18 (B) The applicable policy numbers for each policy of insurance provided.

19 (3) Any subcontractor or design professional, or insurer for that subcontractor,
20 design professional, or additional insured, who so chooses, may, at any time, make
21 a written request to the dispute resolution facilitator for designation as a peripheral
22 party. That request shall be served contemporaneously on the association and the
23 respondent. If no objection to that designation is received within 15 days, or upon
24 rejection of that objection, the dispute resolution facilitator shall designate that
25 subcontractor or design professional as a peripheral party, and shall thereafter seek
26 to limit the attendance of that subcontractor or design professional only to those
27 dispute resolution sessions deemed peripheral party sessions or to those sessions
28 during which the dispute resolution facilitator believes settlement as to peripheral
29 parties may be finalized. Nothing in this subdivision shall preclude a party who
30 has been designated a peripheral party from being reclassified as a nonperipheral
31 party, nor shall this subdivision preclude a party designated as a nonperipheral
32 party from being reclassified as a peripheral party after notice to all parties and an
33 opportunity to object. For purposes of this subdivision, a peripheral party is a party
34 having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

35 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of
36 subdivision (e), the association, respondent, subcontractors, design professionals,
37 and their insurers who have been sent a notice as described in paragraph (2) of
38 subdivision (e) shall meet and confer in an effort to select a dispute resolution
39 facilitator to preside over the mandatory dispute resolution process prescribed by
40 this section. Any subcontractor or design professional who has been given timely
41 notice of this meeting but who does not participate, waives any challenge he or she
42 may have as to the selection of the dispute resolution facilitator. The role of the
43 dispute resolution facilitator is to attempt to resolve the conflict in a fair manner.

1 The dispute resolution facilitator shall be sufficiently knowledgeable in the subject
2 matter and be able to devote sufficient time to the case. The dispute resolution
3 facilitator shall not be required to reside in or have an office in the county in which
4 the project is located. The dispute resolution facilitator and the participating
5 parties shall agree to a date, time, and location to hold a case management meeting
6 of all parties and the dispute resolution facilitator, to discuss the claims being
7 asserted and the scheduling of events under this section. The case management
8 meeting with the dispute resolution facilitator shall be held within 100 days of
9 service of the Notice of Commencement of Legal Proceedings at a location in the
10 county where the project is located. Written notice of the case management
11 meeting with the dispute resolution facilitator shall be sent by the respondent to
12 the association, subcontractors and design professionals, and their insurers who are
13 known to the respondent to be on notice of the claim, no later than 10 days prior to
14 the case management meeting, and shall specify its date, time, and location. The
15 dispute resolution facilitator in consultation with the respondent shall maintain a
16 contact list of the participating parties.

17 (2) No later than 10 days prior to the case management meeting, the dispute
18 resolution facilitator shall disclose to the parties all matters that could cause a
19 person aware of the facts to reasonably entertain a doubt that the proposed dispute
20 resolution facilitator would be able to resolve the conflict in a fair manner. The
21 facilitator's disclosure shall include the existence of any ground specified in
22 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any
23 attorney-client relationship the facilitator has or had with any party or lawyer for a
24 party to the dispute resolution process, and any professional or significant personal
25 relationship the facilitator or his or her spouse or minor child living in the
26 household has or had with any party to the dispute resolution process. The
27 disclosure shall also be provided to any subsequently noticed subcontractor or
28 design professional within 10 days of the notice.

29 (3) A dispute resolution facilitator shall be disqualified by the court if he or she
30 fails to comply with this ~~paragraph~~ subdivision and any party to the dispute
31 resolution process serves a notice of disqualification prior to the case management
32 meeting. If the dispute resolution facilitator complies with this ~~paragraph~~
33 subdivision, he or she shall be disqualified by the court on the basis of the
34 disclosure if any party to the dispute resolution process serves a notice of
35 disqualification prior to the case management meeting.

36 (4) If the parties cannot mutually agree to a dispute resolution facilitator, then
37 each party shall submit a list of three dispute resolution facilitators. Each party
38 may then strike one nominee from the other parties' list, and petition the court,
39 pursuant to the procedure described in subdivisions (n) and (o), for final selection
40 of the dispute resolution facilitator. The court may issue an order for final
41 selection of the dispute resolution facilitator pursuant to this paragraph.

42 (5) Any subcontractor or design professional who receives notice of the
43 association's claim without having previously received timely notice of the meet

1 and confer to select the dispute resolution facilitator shall be notified by the
2 respondent regarding the name, address, and telephone number of the dispute
3 resolution facilitator. Any such subcontractor or design professional may serve
4 upon the parties and the dispute resolution facilitator a written objection to the
5 dispute resolution facilitator within 15 days of receiving notice of the claim.
6 Within seven days after service of this objection, the subcontractor or design
7 professional may petition the superior court to replace the dispute resolution
8 facilitator. The court may replace the dispute resolution facilitator only upon a
9 showing of good cause, liberally construed. Failure to satisfy the deadlines set
10 forth in this subdivision shall constitute a waiver of the right to challenge the
11 dispute resolution facilitator.

12 (6) The costs of the dispute resolution facilitator shall be apportioned in the
13 following manner: one-third to be paid by the association; one-third to be paid by
14 the respondent; and one-third to be paid by the subcontractors and design
15 professionals, as allocated among them by the dispute resolution facilitator. The
16 costs of the dispute resolution facilitator shall be recoverable by the prevailing
17 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil
18 Procedure, provided however that any nonsettling party may, prior to the filing of
19 the complaint, petition the facilitator to reallocate the costs of the dispute
20 resolution facilitator as they apply to any nonsettling party. The determination of
21 the dispute resolution facilitator with respect to the allocation of these costs shall
22 be binding in any subsequent litigation. The dispute resolution facilitator shall take
23 into account all relevant factors and equities between all parties in the dispute
24 resolution process when reallocating costs.

25 (7) In the event the dispute resolution facilitator is replaced at any time, the case
26 management statement created pursuant to subdivision (h) shall remain in full
27 force and effect.

28 (8) The dispute resolution facilitator shall be empowered to enforce all
29 provisions of this section.

30 (g) (1) No later than the case management meeting, the parties shall begin to
31 generate a data compilation showing the following information regarding the
32 alleged defects at issue:

33 (A) The scope of the work performed by each potentially responsible
34 subcontractor.

35 (B) The tract or phase number in which each subcontractor provided goods or
36 services, or both.

37 (C) The units, either by address, unit number, or lot number, at which each
38 subcontractor provided goods or services, or both.

39 (2) This data compilation shall be updated as needed to reflect additional
40 information. Each party attending the case management meeting, and any
41 subsequent meeting pursuant to this section, shall provide all information available
42 to that party relevant to this data compilation.

1 (h) At the case management meeting, the parties shall, with the assistance of the
2 dispute resolution facilitator, reach agreement on a case management statement,
3 which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive,
4 except that the parties may dispense with one or more of these elements if they
5 agree that it is appropriate to do so. The case management statement shall provide
6 that the following elements shall take place in the following order:

7 (1) Establishment of a document depository, located in the county where the
8 project is located, for deposit of documents, defect lists, demands, and other
9 information provided for under this section. All documents exchanged by the
10 parties and all documents created pursuant to this subdivision shall be deposited in
11 the document depository, which shall be available to all parties throughout the
12 prefiling dispute resolution process and in any subsequent litigation. When any
13 document is deposited in the document depository, the party depositing the
14 document shall provide written notice identifying the document to all other parties.
15 The costs of maintaining the document depository shall be apportioned among the
16 parties in the same manner as the costs of the dispute resolution facilitator.

17 (2) Provision of a more detailed list of defects by the association to the
18 respondent after the association completes a visual inspection of the project. This
19 list of defects shall provide sufficient detail for the respondent to ensure that all
20 potentially responsible subcontractors and design professionals are provided with
21 notice of the dispute resolution process. If not already completed prior to the case
22 management meeting, the Notice of Commencement of Legal Proceedings shall be
23 served by the respondent on all additional subcontractors and design professionals
24 whose potential responsibility appears on the face of the more detailed list of
25 defects within seven days of receipt of the more detailed list. The respondent shall
26 serve a copy of the case management statement, including the name, address, and
27 telephone number of the dispute resolution facilitator, to all the potentially
28 responsible subcontractors and design professionals at the same time.

29 (3) Nonintrusive visual inspection of the project by the respondent,
30 subcontractors, and design professionals.

31 (4) Invasive testing conducted by the association, if the association deems
32 appropriate. All parties may observe and photograph any testing conducted by the
33 association pursuant to this paragraph, but may not take samples or direct testing
34 unless, by mutual agreement, costs of testing are shared by the parties.

35 (5) Provision by the association of a comprehensive demand which provides
36 sufficient detail for the parties to engage in meaningful dispute resolution as
37 contemplated under this section.

38 (6) Invasive testing conducted by the respondent, subcontractors, and design
39 professionals, if they deem appropriate.

40 (7) Allowance for modification of the demand by the association if new issues
41 arise during the testing conducted by the respondent, subcontractor, or design
42 professionals.

1 (8) Facilitated dispute resolution of the claim, with all parties, including
2 peripheral parties, as appropriate, and insurers, if any, present and having
3 settlement authority. The dispute resolution facilitators shall endeavor to set
4 specific times for the attendance of specific parties at dispute resolution sessions.
5 If the dispute resolution facilitator does not set specific times for the attendance of
6 parties at dispute resolution sessions, the dispute resolution facilitator shall permit
7 those parties to participate in dispute resolution sessions by telephone.

8 (i) In addition to the foregoing elements of the case management statement
9 described in subdivision (h), upon mutual agreement of the parties, the dispute
10 resolution facilitator may include any or all of the following elements in a case
11 management statement: the exchange of consultant or expert photographs; expert
12 presentations; expert meetings; or any other mechanism deemed appropriate by the
13 parties in the interest of resolving the dispute.

14 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the
15 time the case management statement is established, set deadlines for the
16 occurrence of each event set forth in the case management statement, taking into
17 account such factors as the size and complexity of the case, and the requirement of
18 this section that this dispute resolution process not exceed 180 days absent
19 agreement of the parties to an extension of time.

20 (k)(1)(A) At a time to be determined by the dispute resolution facilitator, the
21 respondent may submit to the association all of the following:

22 (i) A request to meet with the board to discuss a written settlement offer.

23 (ii) A written settlement offer, and a concise explanation of the reasons for the
24 terms of the offer.

25 (iii) A statement that the respondent has access to sufficient funds to satisfy the
26 conditions of the settlement offer.

27 (iv) A summary of the results of testing conducted for the purposes of
28 determining the nature and extent of defects, if this testing has been conducted,
29 unless the association provided the respondent with actual test results.

30 (B) If the respondent does not timely submit the items required by this
31 subdivision, the association shall be relieved of any further obligation to satisfy
32 the requirements of this subdivision only.

33 (C) No less than 10 days after the respondent submits the items required by this
34 paragraph, the respondent and the board shall meet and confer about the
35 respondent's settlement offer.

36 (D) If the board rejects a settlement offer presented at the meeting held pursuant
37 to this subdivision, the board shall hold a meeting open to each member of the
38 association. The meeting shall be held no less than 15 days before the association
39 commences an action for damages against the respondent.

40 (E) No less than 15 days before this meeting is held, a written notice shall be
41 sent to each member of the association specifying all of the following:

42 (i) That a meeting will take place to discuss problems that may lead to the filing
43 of a civil action, and the time and place of this meeting.

1 (ii) The options that are available to address the problems, including the filing of
2 a civil action and a statement of the various alternatives that are reasonably
3 foreseeable by the association to pay for those options and whether these payments
4 are expected to be made from the use of reserve account funds or the imposition of
5 regular or special assessments, or emergency assessment increases.

6 (iii) The complete text of any written settlement offer, and a concise explanation
7 of the specific reasons for the terms of the offer submitted to the board at the
8 meeting held pursuant to subdivision (d) that was received from the respondent.

9 (F) The respondent shall pay all expenses attributable to sending the settlement
10 offer to all members of the association. The respondent shall also pay the expense
11 of holding the meeting, not to exceed three dollars (\$3) per association member.

12 (G) The discussions at the meeting and the contents of the notice and the items
13 required to be specified in the notice pursuant to paragraph (E) are privileged
14 communications and are not admissible in evidence in any civil action, unless the
15 association consents to their admission.

16 (H) No more than one request to meet and discuss a written settlement offer may
17 be made by the respondent pursuant to this subdivision.

18 ~~(I) Except for the purpose of in-camera review as provided in subdivision (c) of~~
19 ~~Section 6872, all~~ All defect lists and demands, communications, negotiations, and
20 settlement offers made in the course of the prelitigation dispute resolution process
21 provided by this section shall be inadmissible pursuant to Sections 1119 to 1124,
22 inclusive, of the Evidence Code and all applicable decisional law. This
23 inadmissibility shall not be extended to any other documents or communications
24 which would not otherwise be deemed inadmissible.

25 (m) Any subcontractor or design professional may, at any time, petition the
26 dispute resolution facilitator to release that party from the dispute resolution
27 process upon a showing that the subcontractor or design professional is not
28 potentially responsible for the defect claims at issue. The petition shall be served
29 contemporaneously on all other parties, who shall have 15 days from the date of
30 service to object. If a subcontractor or design professional is released, and it later
31 appears to the dispute resolution facilitator that it may be a responsible party in
32 light of the current defect list or demand, the respondent shall renotify the party as
33 provided by paragraph (2) of subdivision (e), provide a copy of the current defect
34 list or demand, and direct the party to attend a dispute resolution session at a stated
35 time and location. A party who subsequently appears after having been released by
36 the dispute resolution facilitator shall not be prejudiced by its absence from the
37 dispute resolution process as the result of having been previously released by the
38 dispute resolution facilitator.

39 (n) Any party may, at any time, petition the superior court in the county where
40 the project is located, upon a showing of good cause, and the court may issue an
41 order, for any of the following, or for appointment of a referee to resolve a dispute
42 regarding any of the following:

1 (1) To take a deposition of any party to the process, or subpoena a third party for
2 deposition or production of documents, which is necessary to further prelitigation
3 resolution of the dispute.

4 (2) To resolve any disputes concerning inspection, testing, production of
5 documents, or exchange of information provided for under this section.

6 (3) To resolve any disagreements relative to the timing or contents of the case
7 management statement.

8 (4) To authorize internal extensions of timeframes set forth in the case
9 management statement.

10 (5) To seek a determination that a settlement is a good faith settlement pursuant
11 to Section 877.6 of the Code of Civil Procedure and all related authorities. The
12 page limitations and meet and confer requirements specified in this section shall
13 not apply to these motions, which may be made on shortened notice. Instead, these
14 motions shall be subject to other applicable state law, rules of court, and local
15 rules. A determination made by the court pursuant to this motion shall have the
16 same force and effect as the determination of a postfiling application or motion for
17 good faith settlement.

18 (6) To ensure compliance, on shortened notice, with the obligation to provide a
19 Statement of Insurance pursuant to paragraph (2) of subdivision (e).

20 (7) For any other relief appropriate to the enforcement of the provisions of this
21 section, including the ordering of parties, and insurers, if any, to the dispute
22 resolution process with settlement authority.

23 (o)(1) A petition filed pursuant to subdivision (n) shall be filed in the superior
24 court in the county in which the project is located. The court shall hear and decide
25 the petition within 10 days after filing. The petitioning party shall serve the
26 petition on all parties, including the date, time, and location of the hearing no later
27 than five business days prior to the hearing. Any responsive papers shall be filed
28 and served no later than three business days prior to the hearing. Any petition or
29 response filed under this section shall be no more than three pages in length.

30 (2) All parties shall meet with the dispute resolution facilitator, if one has been
31 appointed and confer in person or by the telephone prior to the filing of that
32 petition to attempt to resolve the matter without requiring court intervention.

33 (p) As used in this section:

34 (1) "Association" shall have the same meaning as defined in Section 6528.

35 (2) "Builder" means the declarant, as defined in Section 6544.

36 (3) "Common interest development" shall have the same meaning as in Section
37 6534, except that it shall not include developments or projects with less than 20
38 units.

39 (q) The alternative dispute resolution process and procedures described in this
40 section shall have no application or legal effect other than as described in this
41 section.

42 (r) This section shall become operative on July 1, 2002, however it shall not
43 apply to any pending suit or claim for which notice has previously been given.

1 (s) This section shall become inoperative on July 1, 2017, and, as of January 1,
2 2018, is repealed, unless a later added statute, that becomes operative on or before
3 January 1, 2018, deletes or extends the dates on which it becomes inoperative and
4 is repealed.

5 **Comment.** With respect to a commercial or industrial common interest development, Section
6 6870 continues Section 1375 without change, except as indicated below.

7 The following substantive change was made:

- 8 • A reference in Section 1375(d) to a meeting subject to Section 1363.05(b) has been
9 replaced with the relevant substance of Section 1363.05(b). Section 1363.05 is not
10 continued in this act.

11 The following nonsubstantive changes were made:

- 12 • Cross-references are updated to reflect the new location of the referenced provisions.
13 • A reference to “homeowner” in paragraph (4) of subdivision (b) has been changed to
14 “owner.”
15 • The terms “board of directors” and “board of directors of the association” have been
16 replaced throughout with the defined term “board.” See Section 6530 (“board”).
17 • Subdivision (e)(2) is revised to delete references to former Section 1375.05, which was
18 repealed by its own terms on January 1, 2011.
19 • Subdivision (f)(3) is revised to correct erroneous references to “this paragraph.” The
20 revised provision refers to “this subdivision.”
21 • Subdivision (l) is revised to delete a reference to former Section 1375.05, which was
22 repealed by its own terms on January 1, 2011.

23 For further information, see Section 6500 Comment.

24 **Note.** Proposed Section 6870(d) would replace a provision requiring that a referenced
25 meeting be “subject to subdivision (b) of Section 1363.05” with a provision substantively
26 describing the manner in which the referenced meeting is to be conducted. Section 1363.05(b) is
27 not continued in this act. The Commission invites comment on whether this change would
28 materially affect the operation of any provision of this section.

29 **§ 6874 (UNCHANGED). Notice of resolution**

30 6874. (a) As soon as is reasonably practicable after the association and the
31 builder have entered into a settlement agreement or the matter has otherwise been
32 resolved regarding alleged defects in the common areas, alleged defects in the
33 separate interests that the association is obligated to maintain or repair, or alleged
34 defects in the separate interests that arise out of, or are integrally related to, defects
35 in the common areas or separate interests that the association is obligated to
36 maintain or repair, where the defects giving rise to the dispute have not been
37 corrected, the association shall, in writing, inform only the members of the
38 association whose names appear on the records of the association that the matter
39 has been resolved, by settlement agreement or other means, and disclose all of the
40 following:

41 (1) A general description of the defects that the association reasonably believes,
42 as of the date of the disclosure, will be corrected or replaced.

43 (2) A good faith estimate, as of the date of the disclosure, of when the
44 association believes that the defects identified in paragraph (1) will be corrected or
45 replaced. The association may state that the estimate may be modified.

1 (3) The status of the claims for defects in the design or construction of the
2 common interest development that were not identified in paragraph (1) whether
3 expressed in a preliminary list of defects sent to each member of the association or
4 otherwise claimed and disclosed to the members of the association.

5 (b) Nothing in this section shall preclude an association from amending the
6 disclosures required pursuant to subdivision (a), and any amendments shall
7 supersede any prior conflicting information disclosed to the members of the
8 association and shall retain any privilege attached to the original disclosures.

9 (c) Disclosure of the information required pursuant to subdivision (a) or
10 authorized by subdivision (b) shall not waive any privilege attached to the
11 information.

12 (d) For the purposes of the disclosures required pursuant to this section, the term
13 “defects” shall be defined to include any damage resulting from defects.

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6874 continues Section 1375.1 without change.

16 For further information, see Section 6500 Comment.

17 **§ 6876 (REVISED). Notice of civil action**

18 6876. (a) Not later than 30 days prior to the filing of any civil action by the
19 association against the declarant or other developer of a common interest
20 development for alleged damage to the common areas, alleged damage to the
21 separate interests that the association is obligated to maintain or repair, or alleged
22 damage to the separate interests that arises out of, or is integrally related to,
23 damage to the common areas or separate interests that the association is obligated
24 to maintain or repair, the board shall provide a written notice to each member of
25 the association who appears on the records of the association when the notice is
26 provided. This notice shall specify all of the following:

27 (1) That a meeting will take place to discuss problems that may lead to the filing
28 of a civil action.

29 (2) The options, including civil actions, that are available to address the
30 problems.

31 (3) The time and place of this meeting.

32 (b) Notwithstanding subdivision (a), if the association has reason to believe that
33 the applicable statute of limitations will expire before the association files the civil
34 action, the association may give the notice, as described above, within 30 days
35 after the filing of the action.

36 **Comment.** With respect to a commercial or industrial common interest development, Section
37 6876 continues Section 1368.5 without change, except as indicated below.

38 The following nonsubstantive change was made:

- 39 • The term “board of directors of the association” has been replaced with the defined term
40 “board.” See Section 6530 (“board”).

41 For further information, see Section 6500 Comment.

- 1 **Uncodified (added). Operative date**
- 2 This act becomes operative on January 1, ~~2013~~2014.

CONFORMING REVISIONS

1  **Staff Note.** Strikeout and underscore used in this section of the proposed legislation are
2 intended to reflect proposed amendments to existing law. These annotations will remain in the
3 tentative recommendation circulated for comment.

BUSINESS AND PROFESSIONS CODE

4 **Bus. & Prof. Code § 10153.2 (amended). Course requirements for real estate broker license**
5 SEC. _____. Section 10153.2 of the Business and Professions Code is amended to
6 read:

7 10153.2. (a) An applicant to take the examination for an original real estate
8 broker license shall also submit evidence, satisfactory to the commissioner, of
9 successful completion, at an accredited institution, of:

10 (1) A three-semester unit course, or the quarter equivalent thereof, in each of the
11 following:

- 12 (A) Real estate practice.
- 13 (B) Legal aspects of real estate.
- 14 (C) Real estate appraisal.
- 15 (D) Real estate financing.
- 16 (E) Real estate economics or accounting.

17 (2) A three-semester unit course, or the quarter equivalent thereof, in three of the
18 following:

- 19 (A) Advanced legal aspects of real estate.
- 20 (B) Advanced real estate finance.
- 21 (C) Advanced real estate appraisal.
- 22 (D) Business law.
- 23 (E) Escrows.
- 24 (F) Real estate principles.
- 25 (G) Property management.
- 26 (H) Real estate office administration.
- 27 (I) Mortgage loan brokering and lending.
- 28 (J) Computer applications in real estate.

29 (K) On and after July 1, 2004, California law that relates to common interest
30 developments, including, but not limited to, topics addressed in the Davis-Stirling
31 Common Interest Development Act (Title 6 (commencing with Section 1350) of
32 Part 4 of Division 2 of the Civil Code) and in the Commercial and Industrial
33 Common Interest Development Act (Part 5.5 (commencing with Section 6500) of
34 Division 4 of the Civil Code.

35 (b) The commissioner shall waive the requirements of this section for an
36 applicant who is a member of the State Bar of California and shall waive the

1 requirements for which an applicant has successfully completed an equivalent
2 course of study as determined under Section 10153.5.

3 (c) The commissioner shall extend credit under this section for any course
4 completed to satisfy requirements of Section 10153.3 or 10153.4.

5 **Comment.** Section 10153.2 is amended to add a cross-reference to Part 5.5 (commencing with
6 Section 6500) of Division 4 of the Civil Code, reflecting the enactment of the Commercial and
7 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

8 **Bus. & Prof. Code § 11003 (amended). “Planned development”**

9 SEC. _____. Section 11003 of the Business and Professions Code is amended to
10 read:

11 11003. “Planned development” has the same meaning as specified in
12 subdivision (k) of Section 1351 or in Section 6562 of the Civil Code.

13 **Comment.** Section 11003 is amended to add a cross-reference to Civil Code Section 6562,
14 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
15 (Civ. Code §§ 6500-6876).

16 **Bus. & Prof. Code § 11003.2 (amended). “Stock cooperative”**

17 SEC. _____. Section 11003.2 of the Business and Professions Code is amended to
18 read:

19 11003.2. “Stock cooperative” has the same meaning as specified in subdivision
20 (m) of Section 1351 or in Section 6566 of the Civil Code, except that, as used in
21 this chapter, a “stock cooperative” does not include a limited-equity housing
22 cooperative.

23 **Comment.** Section 11003.2 is amended to add a cross-reference to Civil Code Section 6566,
24 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
25 (Civ. Code §§ 6500-6876).

26 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
27 common interest development may be organized as a stock cooperative, arguably making this
28 conforming revision unnecessary.

29 **Bus. & Prof. Code § 11004 (amended). “Community apartment project”**

30 SEC. _____. Section 11004 of the Business and Professions Code is amended to
31 read:

32 11004. “Community apartment project” has the same meaning as specified in
33 subdivision (d) of Section 1351 or in Section 6536 of the Civil Code.

34 **Comment.** Section 11004 is amended to add a cross-reference to Civil Code Section 6536,
35 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
36 (Civ. Code §§ 6500-6876).

37 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
38 common interest development may be organized as a community apartment project, arguably
39 making this conforming revision unnecessary.

1 **Bus. & Prof. Code § 11004.5 (amended). Further definition of “subdivided lands” and**
2 **“subdivision”**

3 SEC. _____. Section 11004.5 of the Business and Professions Code is amended to
4 read:

5 11004.5. In addition to any provisions of Section 11000, the reference in this
6 code to “subdivided lands” and “subdivision” shall include all of the following:

7 (a) Any planned development, as defined in Section 11003, containing five or
8 more lots.

9 (b) Any community apartment project, as defined by Section 11004, containing
10 five or more apartments.

11 (c) Any condominium project containing five or more condominiums, as defined
12 in Section 783 of the Civil Code.

13 (d) Any stock cooperative as defined in Section 11003.2, including any legal or
14 beneficial interests therein, having or intended to have five or more shareholders.

15 (e) Any limited-equity housing cooperative, as defined in Section 11003.4.

16 (f) In addition, the following interests shall be subject to this chapter and the
17 regulations of the commissioner adopted pursuant thereto:

18 (1) Any accompanying memberships or other rights or privileges created in, or
19 in connection with, any of the forms of development referred to in subdivision (a),
20 (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments,
21 declarations of restrictions, articles of incorporation, bylaws, or contracts
22 applicable thereto.

23 (2) Any interests or memberships in any owners’ association as defined in
24 Section 1351 or 6528 of the Civil Code, created in connection with any of the
25 forms of the development referred to in subdivision (a), (b), (c), (d), or (e).

26 (g) Notwithstanding this section, time-share plans, exchange programs,
27 incidental benefits, and short-term product subject to Chapter 2 (commencing with
28 Section 11210) are not “subdivisions” or “subdivided lands” subject to this
29 chapter.

30 **Comment.** Section 11004.5 is amended to add a cross-reference to Civil Code Section 6528,
31 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
32 (Civ. Code §§ 6500-6876).

33 **Bus. & Prof. Code § 23426.5 (amended). Tennis club**

34 SEC. _____. Section 23426.5 of the Business and Professions Code is amended to
35 read:

36 23426.5. (a) For purposes of this article, “club” also means any tennis club that
37 maintains not less than four regulation tennis courts, together with the necessary
38 facilities and clubhouse, has members paying regular monthly dues, has been in
39 existence for not less than 45 years, and is not associated with a common interest
40 development as defined in Section 1351 or 6534 of the Civil Code, a community
41 apartment project as defined in Section 11004 of this code, a project consisting of

1 condominiums as defined in Section 783 of the Civil Code, or a mobilehome park
2 as defined in Section 18214 of the Health and Safety Code.

3 (b) It shall be unlawful for any club licensed pursuant to this section to make
4 any discrimination, distinction, or restriction against any person on account of age
5 or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the
6 Civil Code.

7 **Comment.** Section 23426.5 is amended to add a cross-reference to Civil Code Section 6534,
8 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
9 (Civ. Code §§ 6500-6876).

10 **Bus. & Prof. Code § 23428.20 (amended). Further definition of “club”**

11 SEC. _____. Section 23428.20 of the Business and Professions Code is amended
12 to read:

13 23428.20. (a) For the purposes of this article, “club” also means any bona fide
14 nonprofit corporation that has been in existence for not less than nine years, has
15 more than 8,500 memberships issued and outstanding to owners of condominiums
16 and owners of memberships in stock cooperatives, and owns, leases, operates, or
17 maintains recreational facilities for its members.

18 (b) For the purposes of this article, “club” also means any bona fide nonprofit
19 corporation that was formed as a condominium homeowners’ association, has at
20 least 250 members, has served daily meals to its members and guests for a period
21 of not less than 12 years, owns or leases, operates, and maintains a clubroom or
22 rooms for its membership, has an annual fee of not less than nine hundred dollars
23 (\$900) per year per member, and has as a condition of membership that one
24 member of each household be at least 54 years old.

25 (c) Section 23399 and the numerical limitation of Section 23430 shall not apply
26 to a club defined in this section.

27 (d) No license shall be issued pursuant to this section to any club that withholds
28 membership or denies facilities or services to any person on account of any basis
29 listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those
30 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
31 of subdivision (p) of Section 12955, and Section 12955.2 of the Government
32 Code.

33 (e) Notwithstanding subdivision (d), with respect to familial status, subdivision
34 (d) shall not be construed to apply to housing for older persons, as defined in
35 Section 12955.9 of the Government Code. With respect to familial status, nothing
36 in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
37 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
38 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
39 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
40 shall apply to subdivision (d).

41 **Comment.** Section 23428.20 is amended to add a cross-reference to Civil Code Section 6714,
42 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
43 (Civ. Code §§ 6500-6876).

CIVIL CODE

1 **Civ. Code § 714 (amended). Unenforceability of restrictions on use of solar energy system**

2 SEC. _____. Section 714 of the Civil Code is amended to read:

3 714. (a) Any covenant, restriction, or condition contained in any deed, contract,
4 security instrument, or other instrument affecting the transfer or sale of, or any
5 interest in, real property, and any provision of a governing document, as defined in
6 subdivision (j) of Section 1351 or in Section 6552, that effectively prohibits or
7 restricts the installation or use of a solar energy system is void and unenforceable.

8 (b) This section does not apply to provisions that impose reasonable restrictions
9 on solar energy systems. However, it is the policy of the state to promote and
10 encourage the use of solar energy systems and to remove obstacles thereto.
11 Accordingly, reasonable restrictions on a solar energy system are those restrictions
12 that do not significantly increase the cost of the system or significantly decrease its
13 efficiency or specified performance, or that allow for an alternative system of
14 comparable cost, efficiency, and energy conservation benefits.

15 (c)(1) A solar energy system shall meet applicable health and safety standards
16 and requirements imposed by state and local permitting authorities.

17 (2) A solar energy system for heating water shall be certified by the Solar Rating
18 Certification Corporation (SRCC) or other nationally recognized certification
19 agencies. SRCC is a nonprofit third party supported by the United States
20 Department of Energy. The certification shall be for the entire solar energy system
21 and installation.

22 (3) A solar energy system for producing electricity shall also meet all applicable
23 safety and performance standards established by the National Electrical Code, the
24 Institute of Electrical and Electronics Engineers, and accredited testing
25 laboratories such as Underwriters Laboratories and, where applicable, rules of the
26 Public Utilities Commission regarding safety and reliability.

27 (d) For the purposes of this section:

28 (1)(A) For solar domestic water heating systems or solar swimming pool heating
29 systems that comply with state and federal law, “significantly” means an amount
30 exceeding 20 percent of the cost of the system or decreasing the efficiency of the
31 solar energy system by an amount exceeding 20 percent, as originally specified
32 and proposed.

33 (B) For photovoltaic systems that comply with state and federal law,
34 “significantly” means an amount not to exceed two thousand dollars (\$2,000) over
35 the system cost as originally specified and proposed, or a decrease in system
36 efficiency of an amount exceeding 20 percent as originally specified and proposed.

37 (2) “Solar energy system” has the same meaning as defined in paragraphs (1)
38 and (2) of subdivision (a) of Section 801.5.

39 (e)(1) Whenever approval is required for the installation or use of a solar energy
40 system, the application for approval shall be processed and approved by the

1 appropriate approving entity in the same manner as an application for approval of
2 an architectural modification to the property, and shall not be willfully avoided or
3 delayed.

4 (2) For an approving entity that is a ~~homeowners'~~ an association, as defined in
5 subdivision (a) of Section 1351 or in Section 6528, and that is not a public entity,
6 both of the following shall apply:

7 (A) The approval or denial of an application shall be in writing.

8 (B) If an application is not denied in writing within 60 days from the date of
9 receipt of the application, the application shall be deemed approved, unless that
10 delay is the result of a reasonable request for additional information.

11 (f) Any entity, other than a public entity, that willfully violates this section shall
12 be liable to the applicant or other party for actual damages occasioned thereby, and
13 shall pay a civil penalty to the applicant or other party in an amount not to exceed
14 one thousand dollars (\$1,000).

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

17 (h)(1) A public entity that fails to comply with this section may not receive
18 funds from a state-sponsored grant or loan program for solar energy. A public
19 entity shall certify its compliance with the requirements of this section when
20 applying for funds from a state-sponsored grant or loan program.

21 (2) A local public entity may not exempt residents in its jurisdiction from the
22 requirements of this section.

23 **Comment.** Subdivision (a) of Section 714 is amended to add a cross-reference to Section 6552,
24 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
25 (Civ. Code §§ 6500-6876).

26 Paragraph (2) of subdivision (e) is amended to add a cross-reference to Section 6528, and to
27 make a conforming terminological change, for the same reason.

28 **Note.** The Commission invites comment on whether Section 714 applies to an exclusively
29 commercial or industrial common interest development, notwithstanding the use in Section
30 714(e)(2) of the undefined term "homeowners' association."

31 **Civ. Code § 714.1 (amended). Permissible restrictions by common interest development**
32 **association**

33 SEC. ____. Section 714.1 of the Civil Code is amended to read:

34 714.1. Notwithstanding Section 714, any association, as defined in Section 1351
35 or 6528, may impose reasonable provisions which:

36 (a) Restrict the installation of solar energy systems installed in common areas, as
37 defined in Section 1351 or 6532, to those systems approved by the association.

38 (b) Require the owner of a separate interest, as defined in Section 1351 or 6564,
39 to obtain the approval of the association for the installation of a solar energy
40 system in a separate interest owned by another.

41 (c) Provide for the maintenance, repair, or replacement of roofs or other building
42 components.

1 (d) Require installers of solar energy systems to indemnify or reimburse the
2 association or its members for loss or damage caused by the installation,
3 maintenance, or use of the solar energy system.

4 **Comment.** Section 714.1 is amended to add cross-references to Sections 6528, 6532, and
5 6534, reflecting the enactment of the Commercial and Industrial Common Interest Development
6 Act (Civ. Code §§ 6500-6876).

7 **Civ. Code § 782 (amended). Discriminatory provision in deed of real property**

8 SEC. _____. Section 782 of the Civil Code is amended to read:

9 782. (a) Any provision in any deed of real property in California, whether
10 executed before or after the effective date of this section, that purports to restrict
11 the right of any persons to sell, lease, rent, use or occupy the property to persons
12 having any characteristic listed in subdivision (a) or (d) of Section 12955 of the
13 Government Code, as those bases are defined in Sections 12926, 12926.1,
14 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section
15 12955.2 of the Government Code, by providing for payment of a penalty,
16 forfeiture, reverter, or otherwise, is void.

17 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
18 (a) shall not be construed to apply to housing for older persons, as defined in
19 Section 12955.9 of the Government Code. With respect to familial status, nothing
20 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
21 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
22 51, ~~and Section~~ Sections 1351 and 6714 of this code, and subdivisions (n), (o), and
23 (p) of Section 12955 of the Government Code shall apply to subdivision (a).

24 **Comment.** Section 782 is amended to add a cross-reference to Section 6714, reflecting the
25 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
26 6500-6876).

27 **Civ. Code § 782.5 (amended). Revision of instrument to omit provision that restricts rights**
28 **based on race or color**

29 SEC. _____. Section 782.5 of the Civil Code is amended to read:

30 782.5. (a) Any deed or other written instrument that relates to title to real
31 property, or any written covenant, condition, or restriction annexed or made a part
32 of, by reference or otherwise, any ~~such~~ deed or instrument that relates to title to
33 real property, ~~that which~~ contains any provision that purports to forbid, restrict, or
34 condition the right of any person or persons to sell, buy, lease, rent, use, or occupy
35 the property on account of any basis listed in subdivision (a) or (d) of Section
36 12955 of the Government Code, as those bases are defined in Sections 12926,
37 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
38 and Section 12955.2 of the Government Code, with respect to any person or
39 persons, shall be deemed to be revised to omit that provision.

40 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
41 (a) shall not be construed to apply to housing for older persons, as defined in
42 Section 12955.9 of the Government Code. With respect to familial status, nothing

1 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
2 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
3 51, ~~and Section~~ Sections 1351 and 6714 of this code, and subdivisions (n), (o), and
4 (p) of Section 12955 of the Government Code shall apply to subdivision (a).

5 (c) This section shall not be construed to limit or expand the powers of a court to
6 reform a deed or other written instrument.

7 **Comment.** Subdivision (a) of Section 782.5 is amended to make stylistic revisions, reflecting
8 the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code
9 §§ 6500-6876).

10 Subdivision (b) is amended to add a cross-reference to Section 6714, for the same reason.

11 **Civ. Code § 783 (amended). “Condominium”**

12 SEC. _____. Section 783 of the Civil Code is amended to read:

13 783. A condominium is an estate in real property described in subdivision (f) of
14 Section 1351 or in Section 6542. A condominium may, with respect to the
15 duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate,
16 (2) an estate for life, (3) an estate for years, such as a leasehold or a subleasehold,
17 or (4) any combination of the foregoing.

18 **Comment.** Section 783 is amended to add a cross-reference to Section 6542, reflecting the
19 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
20 6500-6876).

21 **Civ. Code § 783.1 (amended). Separate and correlative interests as interests in real property**

22 SEC. _____. Section 783.1 of the Civil Code is amended to read:

23 783.1. In a stock cooperative, as defined in subdivision (m) of Section 1351 or
24 in Section 6566, both the separate interest, as defined in paragraph (4) of
25 subdivision (l) of Section 1351 or in paragraph (4) of subdivision (a) of Section
26 6564, and the correlative interest in the stock cooperative corporation, however
27 designated, are interests in real property.

28 **Comment.** Section 783.1 is amended to add cross-references to Sections 6564(a)(4) and 6566,
29 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
30 (Civ. Code §§ 6500-6876).

31 **Civ. Code § 1098 (amended). Transfer fee defined**

32 SEC. _____. Section 1098 of the Civil Code is amended to read:

33 1098. A “transfer fee” is any fee payment requirement imposed within a
34 covenant, restriction, or condition contained in any deed, contract, security
35 instrument, or other document affecting the transfer or sale of, or any interest in,
36 real property that requires a fee be paid upon transfer of the real property. A
37 transfer fee does not include any of the following:

38 (a) Fees or taxes imposed by a governmental entity.

39 (b) Fees pursuant to mechanics’ liens.

40 (c) Fees pursuant to court-ordered transfers, payments, or judgments.

1 (d) Fees pursuant to property agreements in connection with a legal separation
2 or dissolution of marriage.

3 (e) Fees, charges, or payments in connection with the administration of estates
4 or trusts pursuant to Division 7 (commencing with Section 7000), Division 8
5 (commencing with Section 13000), or Division 9 (commencing with Section
6 15000) of the Probate Code.

7 (f) Fees, charges, or payments imposed by lenders or purchasers of loans, as
8 these entities are described in subdivision (c) of Section 10232 of the Business and
9 Professions Code.

10 (g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling
11 Common Interest Development Act (Title 6 (commencing with Section 1350) of
12 Part 4 of Division 2) or by the Commercial and Industrial Common Interest
13 Development Act (Part 5.5 (commencing with Section 6500) of Division 4).

14 (h) Fees, charges, or payments for failing to comply with, or for transferring the
15 real property prior to satisfying, an obligation to construct residential
16 improvements on the real property.

17 (i) Any fee reflected in a document recorded against the property on or before
18 December 31, 2007, that is separate from any covenants, conditions, and
19 restrictions, and that substantially complies with subdivision (a) of Section 1098.5
20 by providing a prospective transferee notice of the following:

21 (1) Payment of a transfer fee is required.

22 (2) The amount or method of calculation of the fee.

23 (3) The date or circumstances under which the transfer fee payment requirement
24 expires, if any.

25 (4) The entity to which the fee will be paid.

26 (5) The general purposes for which the fee will be used.

27 **Comment.** Subdivision (g) of Section 1098 is amended to add a cross-reference to Part 5.5
28 (commencing with Section 6500) of Division 4, reflecting the enactment of the Commercial and
29 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

30 **Civ. Code § 1133 (amended). Sale or lease of subdivision lot subject to blanket encumbrance**

31 SEC. _____. Section 1133 of the Civil Code is amended to read:

32 1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket
33 encumbrance, as defined in Section 11013 of the Business and Professions Code,
34 but is exempt from a requirement of compliance with Section 11013.2 of the
35 Business and Professions Code, the subdivider, his or her agent, or representative,
36 shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor
37 cause it to be sold, or leased for a term exceeding five years, until the prospective
38 purchaser or lessee of the lot, parcel, or unit has been furnished with and has
39 signed a true copy of the following notice:

40 (b) "Subdivision," as used in subdivision (a), means improved or unimproved
41 land that is divided or proposed to be divided for the purpose of sale, lease, or
42 financing, whether immediate or future, into two or more lots, parcels, or units and

1 includes a condominium project, as defined in subdivision (f) of Section 1351 or
2 in Section 6542, a community apartment project, as defined in subdivision (d) of
3 Section 1351 or in Section 6536, a stock cooperative, as defined in subdivision
4 (m) of Section 1351 or in Section 6566, and a limited equity housing cooperative,
5 as defined in subdivision (m) of Section 1351.

6 (c) The failure of the buyer or lessee to sign the notice shall not invalidate any
7 grant, conveyance, lease, or encumbrance.

8 (d) Any person or entity who willfully violates the provisions of this section
9 shall be liable to the purchaser of a lot or unit which is subject to the provisions of
10 this section, for actual damages, and in addition thereto, shall be guilty of a public
11 offense punishable by a fine in an amount not to exceed five hundred dollars
12 (\$500). In an action to enforce ~~such~~ the liability or fine, the prevailing party shall
13 be awarded reasonable attorney's fees.

14 **Comment.** Subdivision (b) of Section 1133 is amended to add cross-references to Sections
15 6536, 6542, and 6566, reflecting the enactment of the Commercial and Industrial Common
16 Interest Development Act (Civ. Code §§ 6500-6876).

17 Subdivision (d) is amended to make a stylistic revision.

18 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
19 common interest development may be organized as a community apartment project or a stock
20 cooperative, arguably making a portion of this conforming revision unnecessary.

21 **Civ. Code § 1633.3 (amended). Transactions governed by title**

22 SEC. _____. Section 1633.3 of the Civil Code is amended to read:

23 1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title
24 applies to electronic records and electronic signatures relating to a transaction.

25 (b) This title does not apply to transactions subject to the following laws:

26 (1) A law governing the creation and execution of wills, codicils, or
27 testamentary trusts.

28 (2) Division 1 (commencing with Section 1101) of the Uniform Commercial
29 Code, except Sections 1107 and 1206.

30 (3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section
31 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9
32 (commencing with Section 9101), and 11 (commencing with Section 11101) of the
33 Uniform Commercial Code.

34 (4) A law that requires that specifically identifiable text or disclosures in a
35 record or a portion of a record be separately signed, including initialed, from the
36 record. However, this paragraph does not apply to Section 1677 or 1678 of this
37 code or Section 1298 of the Code of Civil Procedure.

38 (c) This title does not apply to any specific transaction described in Section
39 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14,
40 1133, or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or
41 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of
42 Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of,

1 Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of,
2 Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b,
3 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with
4 Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or
5 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with
6 Section 2985.7) of Title 14 of Part 4 of Division 3 of, ~~or~~ Section 3071.5 of, or Part
7 5.5 (commencing with Section 6500) of Division 4 of, the Civil Code, subdivision
8 (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15,
9 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section
10 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7,
11 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4,
12 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or
13 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code.
14 An electronic record may not be substituted for any notice that is required to be
15 sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this
16 subdivision shall be construed to prohibit the recordation of any document with a
17 county recorder by electronic means.

18 (d) This title applies to an electronic record or electronic signature otherwise
19 excluded from the application of this title under subdivision (b) when used for a
20 transaction subject to a law other than those specified in subdivision (b).

21 (e) A transaction subject to this title is also subject to other applicable
22 substantive law.

23 (f) The exclusion of a transaction from the application of this title under
24 subdivision (b) or (c) shall be construed only to exclude the transaction from the
25 application of this title, but shall not be construed to prohibit the transaction from
26 being conducted by electronic means if the transaction may be conducted by
27 electronic means under any other applicable law.

28 **Comment.** Subdivision (c) of Section 1633.3 is amended to add a cross-reference to Part 5.5
29 (commencing with Section 6500) of Division 4, reflecting the enactment of the Commercial and
30 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

31 **Civ. Code § 2924b (amended). Request for copy of notice of default or sale**

32 SEC. ____ . Section 2924b of the Civil Code is amended to read:

33 2924b. (a) Any person desiring a copy of any notice of default and of any notice
34 of sale under any deed of trust or mortgage with power of sale upon real property
35 or an estate for years therein, as to which deed of trust or mortgage the power of
36 sale cannot be exercised until these notices are given for the time and in the
37 manner provided in Section 2924 may, at any time subsequent to recordation of
38 the deed of trust or mortgage and prior to recordation of notice of default
39 thereunder, cause to be filed for record in the office of the recorder of any county
40 in which any part or parcel of the real property is situated, a duly acknowledged
41 request for a copy of the notice of default and of sale. This request shall be signed
42 and acknowledged by the person making the request, specifying the name and

1 address of the person to whom the notice is to be mailed, shall identify the deed of
2 trust or mortgage by stating the names of the parties thereto, the date of
3 recordation thereof, and the book and page where the deed of trust or mortgage is
4 recorded or the recorder's number, and shall be in substantially the following
5 form:
6

7 **Note.** A table has been omitted to conserve resources.

8
9 Upon the filing for record of the request, the recorder shall index in the general
10 index of grantors the names of the trustors (or mortgagor) recited therein and the
11 names of persons requesting copies.

12 (b) The mortgagee, trustee, or other person authorized to record the notice of
13 default or the notice of sale shall do each of the following:

14 (1) Within 10 business days following recordation of the notice of default,
15 deposit or cause to be deposited in the United States mail an envelope, sent by
16 registered or certified mail with postage prepaid, containing a copy of the notice
17 with the recording date shown thereon, addressed to each person whose name and
18 address are set forth in a duly recorded request therefor, directed to the address
19 designated in the request and to each trustor or mortgagor at his or her last known
20 address if different than the address specified in the deed of trust or mortgage with
21 power of sale.

22 (2) At least 20 days before the date of sale, deposit or cause to be deposited in
23 the United States mail an envelope, sent by registered or certified mail with
24 postage prepaid, containing a copy of the notice of the time and place of sale,
25 addressed to each person whose name and address are set forth in a duly recorded
26 request therefor, directed to the address designated in the request and to each
27 trustor or mortgagor at his or her last known address if different than the address
28 specified in the deed of trust or mortgage with power of sale.

29 (3) As used in paragraphs (1) and (2), the "last known address" of each trustor or
30 mortgagor means the last business or residence physical address actually known
31 by the mortgagee, beneficiary, trustee, or other person authorized to record the
32 notice of default. For the purposes of this subdivision, an address is "actually
33 known" if it is contained in the original deed of trust or mortgage, or in any
34 subsequent written notification of a change of physical address from the trustor or
35 mortgagor pursuant to the deed of trust or mortgage. For the purposes of this
36 subdivision, "physical address" does not include an e-mail or any form of
37 electronic address for a trustor or mortgagor. The beneficiary shall inform the
38 trustee of the trustor's last address actually known by the beneficiary. However,
39 the trustee shall incur no liability for failing to send any notice to the last address
40 unless the trustee has actual knowledge of it.

41 (4) A "person authorized to record the notice of default or the notice of sale"
42 shall include an agent for the mortgagee or beneficiary, an agent of the named

1 trustee, any person designated in an executed substitution of trustee, or an agent of
2 that substituted trustee.

3 (c) The mortgagee, trustee, or other person authorized to record the notice of
4 default or the notice of sale shall do the following:

5 (1) Within one month following recordation of the notice of default, deposit or
6 cause to be deposited in the United States mail an envelope, sent by registered or
7 certified mail with postage prepaid, containing a copy of the notice with the
8 recording date shown thereon, addressed to each person set forth in paragraph (2),
9 provided that the estate or interest of any person entitled to receive notice under
10 this subdivision is acquired by an instrument sufficient to impart constructive
11 notice of the estate or interest in the land or portion thereof that is subject to the
12 deed of trust or mortgage being foreclosed, and provided the instrument is
13 recorded in the office of the county recorder so as to impart that constructive
14 notice prior to the recording date of the notice of default and provided the
15 instrument as so recorded sets forth a mailing address that the county recorder
16 shall use, as instructed within the instrument, for the return of the instrument after
17 recording, and which address shall be the address used for the purposes of mailing
18 notices herein.

19 (2) The persons to whom notice shall be mailed under this subdivision are:

20 (A) The successor in interest, as of the recording date of the notice of default, of
21 the estate or interest or any portion thereof of the trustor or mortgagor of the deed
22 of trust or mortgage being foreclosed.

23 (B) The beneficiary or mortgagee of any deed of trust or mortgage recorded
24 subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to
25 or concurrently with the deed of trust or mortgage being foreclosed but subject to a
26 recorded agreement or a recorded statement of subordination to the deed of trust or
27 mortgage being foreclosed.

28 (C) The assignee of any interest of the beneficiary or mortgagee described in
29 subparagraph (B), as of the recording date of the notice of default.

30 (D) The vendee of any contract of sale, or the lessee of any lease, of the estate or
31 interest being foreclosed that is recorded subsequent to the deed of trust or
32 mortgage being foreclosed, or recorded prior to or concurrently with the deed of
33 trust or mortgage being foreclosed but subject to a recorded agreement or
34 statement of subordination to the deed of trust or mortgage being foreclosed.

35 (E) The successor in interest to the vendee or lessee described in subparagraph
36 (D), as of the recording date of the notice of default.

37 (F) The office of the Controller, Sacramento, California, where, as of the
38 recording date of the notice of default, a "Notice of Lien for Postponed Property
39 Taxes" has been recorded against the real property to which the notice of default
40 applies.

41 (3) At least 20 days before the date of sale, deposit or cause to be deposited in
42 the United States mail an envelope, sent by registered or certified mail with
43 postage prepaid, containing a copy of the notice of the time and place of sale

1 addressed to each person to whom a copy of the notice of default is to be mailed as
2 provided in paragraphs (1) and (2), and addressed to the office of any state taxing
3 agency, Sacramento, California, that has recorded, subsequent to the deed of trust
4 or mortgage being foreclosed, a notice of tax lien prior to the recording date of the
5 notice of default against the real property to which the notice of default applies.

6 (4) Provide a copy of the notice of sale to the Internal Revenue Service, in
7 accordance with Section 7425 of the Internal Revenue Code and any applicable
8 federal regulation, if a “Notice of Federal Tax Lien under Internal Revenue Laws”
9 has been recorded, subsequent to the deed of trust or mortgage being foreclosed,
10 against the real property to which the notice of sale applies. The failure to provide
11 the Internal Revenue Service with a copy of the notice of sale pursuant to this
12 paragraph shall be sufficient cause to rescind the trustee’s sale and invalidate the
13 trustee’s deed, at the option of either the successful bidder at the trustee’s sale or
14 the trustee, and in either case with the consent of the beneficiary. Any option to
15 rescind the trustee’s sale pursuant to this paragraph shall be exercised prior to any
16 transfer of the property by the successful bidder to a bona fide purchaser for value.
17 A rescision of the trustee’s sale pursuant to this paragraph may be recorded in a
18 notice of rescision pursuant to Section 1058.5.

19 (5) The mailing of notices in the manner set forth in paragraph (1) shall not
20 impose upon any licensed attorney, agent, or employee of any person entitled to
21 receive notices as herein set forth any duty to communicate the notice to the
22 entitled person from the fact that the mailing address used by the county recorder
23 is the address of the attorney, agent, or employee.

24 (d) Any deed of trust or mortgage with power of sale hereafter executed upon
25 real property or an estate for years therein may contain a request that a copy of any
26 notice of default and a copy of any notice of sale thereunder shall be mailed to any
27 person or party thereto at the address of the person given therein, and a copy of
28 any notice of default and of any notice of sale shall be mailed to each of these at
29 the same time and in the same manner required as though a separate request
30 therefor had been filed by each of these persons as herein authorized. If any deed
31 of trust or mortgage with power of sale executed after September 19, 1939, except
32 a deed of trust or mortgage of any of the classes excepted from the provisions of
33 Section 2924, does not contain a mailing address of the trustor or mortgagor
34 therein named, and if no request for special notice by the trustor or mortgagor in
35 substantially the form set forth in this section has subsequently been recorded, a
36 copy of the notice of default shall be published once a week for at least four weeks
37 in a newspaper of general circulation in the county in which the property is
38 situated, the publication to commence within 10 business days after the filing of
39 the notice of default. In lieu of publication, a copy of the notice of default may be
40 delivered personally to the trustor or mortgagor within the 10 business days or at
41 any time before publication is completed, or by posting the notice of default in a
42 conspicuous place on the property and mailing the notice to the last known address
43 of the trustor or mortgagor.

1 (e) Any person required to mail a copy of a notice of default or notice of sale to
2 each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or
3 certified mail shall simultaneously cause to be deposited in the United States mail,
4 with postage prepaid and mailed by first-class mail, an envelope containing an
5 additional copy of the required notice addressed to each trustor or mortgagor at the
6 same address to which the notice is sent by registered or certified mail pursuant to
7 subdivision (b) or (c). The person shall execute and retain an affidavit identifying
8 the notice mailed, showing the name and residence or business address of that
9 person, that he or she is over the age of 18 years, the date of deposit in the mail,
10 the name and address of the trustor or mortgagor to whom sent, and that the
11 envelope was sealed and deposited in the mail with postage fully prepaid. In the
12 absence of fraud, the affidavit required by this subdivision shall establish a
13 conclusive presumption of mailing.

14 (f)(1) Notwithstanding subdivision (a), with respect to separate interests
15 governed by an association, as defined in subdivision (a) of Section 1351 or in
16 Section 6528, the association may cause to be filed in the office of the recorder in
17 the county in which the separate interests are situated a request that a mortgagee,
18 trustee, or other person authorized to record a notice of default regarding any of
19 those separate interests mail to the association a copy of any trustee's deed upon
20 sale concerning a separate interest. The request shall include a legal description or
21 the assessor's parcel number of all the separate interests. A request recorded
22 pursuant to this subdivision shall include the name and address of the association
23 and a statement that it is ~~a homeowners'~~ an association as defined in subdivision
24 (a) of Section 1351 or in Section 6528. Subsequent requests of an association shall
25 supersede prior requests. A request pursuant to this subdivision shall be recorded
26 before the filing of a notice of default. The mortgagee, trustee, or other authorized
27 person shall mail the requested information to the association within 15 business
28 days following the date the trustee's deed is recorded. Failure to mail the request,
29 pursuant to this subdivision, shall not affect the title to real property.

30 (g) No request for a copy of any notice filed for record pursuant to this section,
31 no statement or allegation in the request, and no record thereof shall affect the title
32 to real property or be deemed notice to any person that any person requesting
33 copies of notice has or claims any right, title, or interest in, or lien or charge upon
34 the property described in the deed of trust or mortgage referred to therein.

35 (h) "Business day," as used in this section, has the meaning specified in Section
36 9.

37 **Comment.** Subdivision (f) of Section 2924b is amended to add a cross-reference to Section
38 6528, and to make a conforming terminological change, reflecting the enactment of the
39 Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

40  **Note.** The Commission invites comment on whether Section 2924b applies to a commercial
41 or industrial common interest development, notwithstanding the use in Section 2924b(f) of the
42 undefined term "homeowners' association."

1 **Civ. Code § 2955.1 (amended). Disclosures regarding earthquake insurance requirements**

2 SEC. _____. Section 2955.1 of the Civil Code is amended to read:

3 2955.1. (a) Any lender originating a loan secured by the borrower’s separate
4 interest in a condominium project, as defined in subdivision (f) of Section 1351 or
5 in Section 6542, which requires earthquake insurance or imposes a fee or any
6 other condition in lieu thereof pursuant to an underwriting requirement imposed
7 by an institutional third-party purchaser shall disclose all of the following to the
8 potential borrower:

9 (1) That the lender or the institutional third party in question requires earthquake
10 insurance or imposes a fee or any other condition in lieu thereof pursuant to an
11 underwriting requirement imposed by an institutional third party purchaser.

12 (2) That not all lenders or institutional third parties require earthquake insurance
13 or impose a fee or any other condition in lieu thereof pursuant to an underwriting
14 requirement imposed by an institutional third party purchaser.

15 (3) Earthquake insurance may be required on the entire condominium project.

16 (4) That lenders or institutional third parties may also require that a
17 condominium project maintain, or demonstrate an ability to maintain, financial
18 reserves in the amount of the earthquake insurance deductible.

19 (b) For the purposes of this section, “institutional third party” means the Federal
20 Home Loan Mortgage Corporation, the Federal National Mortgage Association,
21 the Government National Mortgage Association, and other substantially similar
22 institutions, whether public or private.

23 (c) The disclosure required by this section shall be made in writing by the lender
24 as soon as reasonably practicable.

25 **Comment.** Section 2955.1 is amended to add a cross-reference to Section 6542, reflecting the
26 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
27 6500-6876).

CODE OF CIVIL PROCEDURE

28 **Code Civ. Proc. § 86, as it reads in 2010 Cal. Stat. ch. 697, § 21 (amended). Specific cases**
29 **and proceedings that are limited civil cases**

30 SEC. _____. Section 86 of the Code of Civil Procedure, as it reads in Section 21 of
31 Chapter 697 of the Statutes of 2010, is amended to read:

32 86. (a) The following civil cases and proceedings are limited civil cases:

33 (1) A case at law in which the demand, exclusive of interest, or the value of the
34 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less.
35 This paragraph does not apply to a case that involves the legality of any tax,
36 impost, assessment, toll, or municipal fine, except an action to enforce payment of
37 delinquent unsecured personal property taxes if the legality of the tax is not
38 contested by the defendant.

1 (2) An action for dissolution of partnership where the total assets of the
2 partnership do not exceed twenty-five thousand dollars (\$25,000); an action of
3 interpleader where the amount of money or the value of the property involved
4 does not exceed twenty-five thousand dollars (\$25,000).

5 (3) An action to cancel or rescind a contract when the relief is sought in
6 connection with an action to recover money not exceeding twenty-five thousand
7 dollars (\$25,000) or property of a value not exceeding twenty-five thousand
8 dollars (\$25,000), paid or delivered under, or in consideration of, the contract; an
9 action to revise a contract where the relief is sought in an action upon the contract
10 if the action otherwise is a limited civil case.

11 (4) A proceeding in forcible entry or forcible or unlawful detainer where the
12 whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or
13 less.

14 (5) An action to enforce and foreclose a lien on personal property where the
15 amount of the lien is twenty-five thousand dollars (\$25,000) or less.

16 (6) An action to enforce and foreclose, or a petition to release, a lien arising
17 under the provisions of Chapter 4 (commencing with Section 8400) of Title 2 of
18 Part 6 of Division 4 of the Civil Code, or to enforce and foreclose an assessment
19 lien on a common interest development as defined in Section 1351 or 6534 of the
20 Civil Code, where the amount of the liens is twenty-five thousand dollars
21 (\$25,000) or less. However, if an action to enforce the lien affects property that is
22 also affected by a similar pending action that is not a limited civil case, or if the
23 total amount of liens sought to be foreclosed against the same property aggregates
24 an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a
25 limited civil case.

26 (7) An action for declaratory relief when brought pursuant to either of the
27 following:

28 (A) By way of cross-complaint as to a right of indemnity with respect to the
29 relief demanded in the complaint or a cross-complaint in an action or proceeding
30 that is otherwise a limited civil case.

31 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
32 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
33 Division 3 of the Business and Professions Code, where the amount in controversy
34 is twenty-five thousand dollars (\$25,000) or less.

35 (8) An action to issue a temporary restraining order or preliminary injunction; to
36 take an account, where necessary to preserve the property or rights of any party to
37 a limited civil case; to make any order or perform any act, pursuant to Title 9
38 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a
39 limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil
40 case; to determine title to personal property seized in a limited civil case.

41 (9) An action under Article 3 (commencing with Section 708.210) of Chapter 6
42 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal
43 property or to enforce the liability of the debtor of a judgment debtor where the

1 interest claimed adversely is of a value not exceeding twenty-five thousand dollars
2 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars
3 (\$25,000).

4 (10) An arbitration-related petition filed pursuant to either of the following:

5 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
6 except for uninsured motorist arbitration proceedings in accordance with Section
7 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
8 becomes final and the matter to be resolved by arbitration is a limited civil case
9 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
10 after the arbitration award becomes final and the amount of the award and all other
11 rulings, pronouncements, and decisions made in the award are within paragraphs
12 (1) to (9), inclusive, of subdivision (a).

13 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
14 and client that is binding or has become binding, pursuant to Article 13
15 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
16 Professions Code, where the arbitration award is twenty-five thousand dollars
17 (\$25,000) or less.

18 (b) The following cases in equity are limited civil cases:

19 (1) A case to try title to personal property when the amount involved is not more
20 than twenty-five thousand dollars (\$25,000).

21 (2) A case when equity is pleaded as a defensive matter in any case that is
22 otherwise a limited civil case.

23 (3) A case to vacate a judgment or order of the court obtained in a limited civil
24 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

25 **Comment.** Paragraph (6) of subdivision (a) of Section 86 is amended to add a cross-reference
26 to Civil Code Section 6534, reflecting the enactment of the Commercial and Industrial Common
27 Interest Development Act (Civ. Code §§ 6500-6876).

28 **Code Civ. Proc. § 116.540 (amended). Participation by individuals other than plaintiff and**
29 **defendant**

30 SEC. _____. Section 116.540 of the Code of Civil Procedure is amended to read:

31 116.540. (a) Except as permitted by this section, no individual other than the
32 plaintiff and the defendant may take part in the conduct or defense of a small
33 claims action.

34 (b) Except as additionally provided in subdivision (i), a corporation may appear
35 and participate in a small claims action only through a regular employee, or a duly
36 appointed or elected officer or director, who is employed, appointed, or elected for
37 purposes other than solely representing the corporation in small claims court.

38 (c) A party who is not a corporation or a natural person may appear and
39 participate in a small claims action only through a regular employee, or a duly
40 appointed or elected officer or director, or in the case of a partnership, a partner,
41 engaged for purposes other than solely representing the party in small claims
42 court.

1 (d) If a party is an individual doing business as a sole proprietorship, the party
2 may appear and participate in a small claims action by a representative and
3 without personally appearing if both of the following conditions are met:

4 (1) The claim can be proved or disputed by evidence of an account that
5 constitutes a business record as defined in Section 1271 of the Evidence Code, and
6 there is no other issue of fact in the case.

7 (2) The representative is a regular employee of the party for purposes other than
8 solely representing the party in small claims actions and is qualified to testify to
9 the identity and mode of preparation of the business record.

10 (e) A plaintiff is not required to personally appear, and may submit declarations
11 to serve as evidence supporting his or her claim or allow another individual to
12 appear and participate on his or her behalf, if (1) the plaintiff is serving on active
13 duty in the United States Armed Forces outside this state, (2) the plaintiff was
14 assigned to his or her duty station after his or her claim arose, (3) the assignment is
15 for more than six months, (4) the representative is serving without compensation,
16 and (5) the representative has appeared in small claims actions on behalf of others
17 no more than four times during the calendar year. The defendant may file a claim
18 in the same action in an amount not to exceed the jurisdictional limits stated in
19 Sections 116.220, 116.221, and 116.231.

20 (f) A party incarcerated in a county jail, a Department of Corrections and
21 Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to
22 personally appear, and may submit declarations to serve as evidence supporting
23 his or her claim, or may authorize another individual to appear and participate on
24 his or her behalf if that individual is serving without compensation and has
25 appeared in small claims actions on behalf of others no more than four times
26 during the calendar year.

27 (g) A defendant who is a nonresident owner of real property may defend against
28 a claim relating to that property without personally appearing by (1) submitting
29 written declarations to serve as evidence supporting his or her defense, (2)
30 allowing another individual to appear and participate on his or her behalf if that
31 individual is serving without compensation and has appeared in small claims
32 actions on behalf of others no more than four times during the calendar year, or (3)
33 taking the action described in both (1) and (2).

34 (h) A party who is an owner of rental real property may appear and participate in
35 a small claims action through a property agent under contract with the owner to
36 manage the rental of that property, if (1) the owner has retained the property agent
37 principally to manage the rental of that property and not principally to represent
38 the owner in small claims court, and (2) the claim relates to the rental property.

39 (i) A party that is an association created to manage a common interest
40 development, as defined in Section 1351, or in Sections 6528 and 6534, of the
41 Civil Code, may appear and participate in a small claims action through an agent,
42 a management company representative, or bookkeeper who appears on behalf of
43 that association.

1 (j) At the hearing of a small claims action, the court shall require any individual
2 who is appearing as a representative of a party under subdivisions (b) to (i),
3 inclusive, to file a declaration stating (1) that the individual is authorized to appear
4 for the party, and (2) the basis for that authorization. If the representative is
5 appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state
6 that the individual is not employed solely to represent the party in small claims
7 court. If the representative is appearing under subdivision (e), (f), or (g), the
8 declaration also shall state that the representative is serving without compensation,
9 and has appeared in small claims actions on behalf of others no more than four
10 times during the calendar year.

11 (k) A husband or wife who sues or who is sued with his or her spouse may
12 appear and participate on behalf of his or her spouse if (1) the claim is a joint
13 claim, (2) the represented spouse has given his or her consent, and (3) the court
14 determines that the interests of justice would be served.

15 (l) If the court determines that a party cannot properly present his or her claim or
16 defense and needs assistance, the court may in its discretion allow another
17 individual to assist that party.

18 (m) Nothing in this section shall operate or be construed to authorize an attorney
19 to participate in a small claims action except as expressly provided in Section
20 116.530.

21 **Comment.** Subdivision (i) of Section 116.540 is amended to add cross-references to Civil
22 Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial
23 Common Interest Development Act (Civ. Code §§ 6500-6876).

GOVERNMENT CODE

24 **Gov't Code § 12191 (amended). Miscellaneous business entity filing fees**

25 SEC. ____. Section 12191 of the Government Code is amended to read:

26 12191. The miscellaneous business entity filing fees are the following:

27 (a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations
28 Code:

29 (1) Filing the statement and designation upon the qualification of a foreign
30 association pursuant to Section 2105 of the Corporations Code: One hundred
31 dollars (\$100).

32 (2) Filing an amended statement and designation by a foreign association
33 pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

34 (3) Filing a certificate showing the surrender of the right of a foreign association
35 to transact intrastate business pursuant to Section 2112 of the Corporations Code:
36 No fee.

37 (b) Unincorporated Associations:

1 (1) Filing a statement in accordance with Section 24003 of the Corporations
2 Code as to principal place of office or place for sending notices or designating
3 agent for service: Twenty-five dollars (\$25).

4 (2) Insignia Registrations: Ten dollars (\$10).

5 (c) Community Associations and Common Interest Developments:

6 (1) Filing a statement by a community association in accordance with Section
7 1363.6 or 6762 of the Civil Code to register the common interest development that
8 it manages: An amount not to exceed thirty dollars (\$30).

9 (2) Filing an amended statement by a community association in accordance with
10 Section 1363.6 or 6762 of the Civil Code: No fee.

11 **Comment.** Section 12191 is amended to add cross-references to Civil Code Section 6762,
12 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
13 (Civ. Code §§ 6500-6876).

14 **Gov't Code § 12956.1 (amended). Restrictive covenant based on discriminatory grounds**

15 SEC. ____ . Section 12956.1 of the Government Code is amended to read:

16 12956.1. (a) As used in this section, “association,” “governing documents,” and
17 “declaration” have the same meanings as set forth in Section 1351, or in Sections
18 6528, 6546, and 6552, of the Civil Code.

19 (b)(1) A county recorder, title insurance company, escrow company, real estate
20 broker, real estate agent, or association that provides a copy of a declaration,
21 governing document, or deed to any person shall place a cover page or stamp on
22 the first page of the previously recorded document or documents stating, in at least
23 14-point boldface type, the following:

24 “If this document contains any restriction based on race, color, religion, sex,
25 sexual orientation, familial status, marital status, disability, national origin, source
26 of income as defined in subdivision (p) of Section 12955, or ancestry, that
27 restriction violates state and federal fair housing laws and is void, and may be
28 removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions
29 under state and federal law on the age of occupants in senior housing or housing
30 for older persons shall not be construed as restrictions based on familial status.”

31 (2) The requirements set forth in paragraph (1) shall not apply to documents
32 being submitted for recordation to a county recorder.

33 (c) Any person who records a document for the express purpose of adding a
34 racially restrictive covenant is guilty of a misdemeanor. The county recorder shall
35 not incur any liability for recording the document. Notwithstanding any other
36 provision of law, a prosecution for a violation of this subdivision shall commence
37 within three years after the discovery of the recording of the document.

38 **Comment.** Section 12956.1 is amended to add cross-references to Civil Code Sections 6528,
39 6546, and 6552, reflecting the enactment of the Commercial and Industrial Common Interest
40 Development Act (Civ. Code §§ 6500-6876).

41 **Gov't Code § 12956.2 (amended). Restrictive Covenant Modification**

42 SEC. ____ . Section 12956.2 of the Government Code is amended to read:

1 12956.2. (a) A person who holds an ownership interest of record in property that
2 he or she believes is the subject of an unlawfully restrictive covenant in violation
3 of subdivision (l) of Section 12955 may record a document titled Restrictive
4 Covenant Modification. The county recorder may choose to waive the fee
5 prescribed for recording and indexing instruments pursuant to Section 27361 in
6 the case of the modification document provided for in this section. The
7 modification document shall include a complete copy of the original document
8 containing the unlawfully restrictive language with the unlawfully restrictive
9 language stricken.

10 (b) Before recording the modification document, the county recorder shall
11 submit the modification document and the original document to the county
12 counsel who shall determine whether the original document contains an unlawful
13 restriction based on race, color, religion, sex, sexual orientation, familial status,
14 marital status, disability, national origin, source of income as defined in
15 subdivision (p) of Section 12955, or ancestry. The county counsel shall return the
16 documents and inform the county recorder of its determination. The county
17 recorder shall refuse to record the modification document if the county counsel
18 finds that the original document does not contain an unlawful restriction as
19 specified in this paragraph.

20 (c) The modification document shall be indexed in the same manner as the
21 original document being modified. It shall contain a recording reference to the
22 original document in the form of a book and page or instrument number, and date
23 of the recording.

24 (d) Subject to covenants, conditions, and restrictions that were recorded after the
25 recording of the original document that contains the unlawfully restrictive
26 language and subject to covenants, conditions, and restrictions that will be
27 recorded after the Restrictive Covenant Modification, the restrictions in the
28 Restrictive Covenant Modification, once recorded, are the only restrictions having
29 effect on the property. The effective date of the terms and conditions of the
30 modification document shall be the same as the effective date of the original
31 document.

32 (e) The county recorder shall make available to the public Restrictive Covenant
33 Modification forms.

34 (f) If the holder of an ownership interest of record in property causes to be
35 recorded a modified document pursuant to this section that contains modifications
36 not authorized by this section, the county recorder shall not incur liability for
37 recording the document. The liability that may result from the unauthorized
38 recordation is the sole responsibility of the holder of the ownership interest of
39 record who caused the modified recordation.

40 (g) This section does not apply to persons holding an ownership interest in
41 property that is part of a common interest development as defined in subdivision
42 (c) of Section 1351 or in Section 6534 of the Civil Code if the board of directors

1 of that common interest development is subject to the requirements of subdivision
2 (b) of Section 1352.5 or of Section 6606 of the Civil Code.

3 **Comment.** Subdivision (g) of Section 12956.2 is amended to add cross-references to Civil
4 Code Sections 6534 and 6606, reflecting the enactment of the Commercial and Industrial
5 Common Interest Development Act (Civ. Code §§ 6500-6876).

6 **Gov't Code § 53341.5 (amended). Lot, parcel, or unit of subdivision subject to special tax**

7 SEC. _____. Section 53341.5 of the Government Code is amended to read:

8 53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax
9 levied pursuant to this chapter, the subdivider, his or her agent, or representative,
10 shall not sell, or lease for a term exceeding five years, or permit a prospective
11 purchaser or lessor to sign a contract of purchase or a deposit receipt or any
12 substantially equivalent document in the event of a lease with respect to the lot,
13 parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until
14 the prospective purchaser or lessee of the lot, parcel, or unit has been furnished
15 with and has signed a written notice as provided in this section. The notice shall
16 contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-
17 point type, and shall be in substantially the following form. The form may be
18 modified as needed to clearly and accurately describe the tax structure and other
19 characteristics of districts created before January 1, 1993, or to clearly and
20 accurately consolidate information about the tax structure and other characteristics
21 of two or more districts that levy or are authorized to levy special taxes with
22 respect to the lot, parcel, or unit:

23 (b) "Subdivision," as used in subdivision (a), means improved or unimproved
24 land that is divided or proposed to be divided for the purpose of sale, lease, or
25 financing, whether immediate or future, into two or more lots, parcels, or units and
26 includes a condominium project, as defined by ~~Section 1350~~ subdivision (f) of
27 Section 1351 or by Section 6542 of the Civil Code, a community apartment
28 project, a stock cooperative, and a limited-equity housing cooperative, as defined
29 in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and
30 Professions Code.

31 (c) The buyer shall have three days after delivery in person or five days after
32 delivery by deposit in the mail of any notice required by this section, to terminate
33 his or her agreement by delivery of written notice of that termination to the owner,
34 subdivider, or agent.

35 (d) The failure to furnish the notice to the buyer or lessee, and failure of the
36 buyer or lessee to sign the notice of a special tax, shall not invalidate any grant,
37 conveyance, lease, or encumbrance.

38 (e) Any person or entity who willfully violates the provisions of this section
39 shall be liable to the purchaser of a lot or unit that is subject to the provisions of
40 this section, for actual damages, and in addition thereto, shall be guilty of a public
41 offense punishable by a fine in an amount not to exceed five hundred dollars

1 (\$500). In an action to enforce a liability or fine, the prevailing party shall be
2 awarded reasonable attorney's fees.

3 **Comment.** Subdivision (b) of Section 53341.5 is amended to add a cross-reference to Civil
4 Code Section 6542, reflecting the enactment of the Commercial and Industrial Common Interest
5 Development Act (Civ. Code §§ 6500-6876), and to correct a technical error.

6 **Note.** The existing cross-reference in Section 53341.5(b) to Civil Code Section 1350 appears
7 to be in error. Section 53341.5 refers to the definition of "condominium project," which is defined
8 in Section 1351(f), not Section 1350. The proposed amendment would correct that error.

9 **Gov't Code § 65008 (amended). Invalidity of discriminatory act**

10 SEC. _____. Section 65008 of the Government Code is amended to read:

11 65008. (a) Any action pursuant to this title by any city, county, city and county,
12 or other local governmental agency in this state is null and void if it denies to any
13 individual or group of individuals the enjoyment of residence, landownership,
14 tenancy, or any other land use in this state because of any of the following reasons:

15 (1)(A) The lawful occupation, age, or any characteristic of the individual or
16 group of individuals listed in subdivision (a) or (d) of Section 12955, as those
17 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
18 of subdivision (p) of Section 12955 and Section 12955.2.

19 (B) Notwithstanding subparagraph (A), with respect to familial status,
20 subparagraph (A) shall not be construed to apply to housing for older persons, as
21 defined in Section 12955.9. With respect to familial status, nothing in
22 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
23 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
24 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
25 Code, and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply
26 to subparagraph (A).

27 (2) The method of financing of any residential development of the individual or
28 group of individuals.

29 (3) The intended occupancy of any residential development by persons or
30 families of very low, low, moderate, or middle income.

31 (b)(1) No city, county, city and county, or other local governmental agency
32 shall, in the enactment or administration of ordinances pursuant to any law,
33 including this title, prohibit or discriminate against any residential development or
34 emergency shelter for any of the following reasons:

35 (A) Because of the method of financing.

36 (B)(i) Because of the lawful occupation, age, or any characteristic listed in
37 subdivision (a) or (d) of Section 12955, as those characteristics are defined in
38 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
39 Section 12955, and Section 12955.2 of the owners or intended occupants of the
40 residential development or emergency shelter.

41 (ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not
42 be construed to apply to housing for older persons, as defined in Section 12955.9.

1 With respect to familial status, nothing in clause (i) shall be construed to affect
2 Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to
3 housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections
4 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section
5 12955 of this code shall apply to clause (i).

6 (C) Because the development or shelter is intended for occupancy by persons
7 and families of very low, low, or moderate income, as defined in Section 50093 of
8 the Health and Safety Code, or persons and families of middle income.

9 (D) Because the development consists of a multifamily residential project that is
10 consistent with both the jurisdiction's zoning ordinance and general plan as they
11 existed on the date the application was deemed complete, except that a project
12 shall not be deemed to be inconsistent with the zoning designation for the site if
13 that zoning designation is inconsistent with the general plan only because the
14 project site has not been rezoned to conform with a more recently adopted general
15 plan.

16 (2) The discrimination prohibited by this subdivision includes the denial or
17 conditioning of a residential development or shelter because of, in whole or in
18 part, either of the following:

19 (A) The method of financing.

20 (B) The occupancy of the development by persons protected by this subdivision,
21 including, but not limited to, persons and families of very low, low, or moderate
22 income.

23 (3) A city, county, city and county, or other local government agency may not,
24 pursuant to subdivision (d) of Section 65589.5, disapprove a housing development
25 project or condition approval of a housing development project in a manner that
26 renders the project infeasible if the basis for the disapproval or conditional
27 approval includes any of the reasons prohibited in paragraph (1) or (2).

28 (c) For the purposes of this section, "persons and families of middle income"
29 means persons and families whose income does not exceed 150 percent of the
30 median income for the county in which the persons or families reside.

31 (d)(1) No city, county, city and county, or other local governmental agency may
32 impose different requirements on a residential development or emergency shelter
33 that is subsidized, financed, insured, or otherwise assisted by the federal or state
34 government or by a local public entity, as defined in Section 50079 of the Health
35 and Safety Code, than those imposed on nonassisted developments, except as
36 provided in subdivision (e). The discrimination prohibited by this subdivision
37 includes the denial or conditioning of a residential development or emergency
38 shelter based in whole or in part on the fact that the development is subsidized,
39 financed, insured, or otherwise assisted as described in this paragraph.

40 (2)(A) No city, county, city and county, or other local governmental agency
41 may, because of the lawful occupation age, or any characteristic of the intended
42 occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics
43 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of

1 subdivision (p) of Section 12955, and Section 12955.2 or because the development
2 is intended for occupancy by persons and families of very low, low, moderate, or
3 middle income, impose different requirements on these residential developments
4 than those imposed on developments generally, except as provided in subdivision
5 (e).

6 (B) Notwithstanding subparagraph (A), with respect to familial status,
7 subparagraph (A) shall not be construed to apply to housing for older persons, as
8 defined in Section 12955.9. With respect to familial status, nothing in
9 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
10 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
11 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
12 Code, and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply
13 to subparagraph (A).

14 (e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title
15 do not prohibit either of the following:

16 (1) The County of Riverside from enacting and enforcing zoning to provide
17 housing for older persons, in accordance with state or federal law, if that zoning
18 was enacted prior to January 1, 1995.

19 (2) Any city, county, or city and county from extending preferential treatment to
20 residential developments or emergency shelters assisted by the federal or state
21 government or by a local public entity, as defined in Section 50079 of the Health
22 and Safety Code, or other residential developments or emergency shelters intended
23 for occupancy by persons and families of low and moderate income, as defined in
24 Section 50093 of the Health and Safety Code, or persons and families of middle
25 income, or agricultural employees, as defined in subdivision (b) of Section 1140.4
26 of the Labor Code, and their families. This preferential treatment may include, but
27 need not be limited to, reduction or waiver of fees or changes in architectural
28 requirements, site development and property line requirements, building setback
29 requirements, or vehicle parking requirements that reduce development costs of
30 these developments.

31 (f) “Residential development,” as used in this section, means a single-family
32 residence or a multifamily residence, including manufactured homes, as defined in
33 Section 18007 of the Health and Safety Code.

34 (g) This section shall apply to chartered cities.

35 (h) The Legislature finds and declares that discriminatory practices that inhibit
36 the development of housing for persons and families of very low, low, moderate,
37 and middle income, or emergency shelters for the homeless, are a matter of
38 statewide concern.

39 **Comment.** Section 65008 is amended to add cross-references to Civil Code Section 6714,
40 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
41 (Civ. Code §§ 6500-6876).

1 **Gov't Code § 66411 (amended). Local control of common interest developments and**
2 **subdivision design and improvement**

3 SEC. _____. Section 66411 of the Government Code is amended to read:

4 66411. Regulation and control of the design and improvement of subdivisions
5 are vested in the legislative bodies of local agencies. Each local agency shall, by
6 ordinance, regulate and control the initial design and improvement of common
7 interest developments as defined in Section 1351 ~~or 6534~~ of the Civil Code and
8 subdivisions for which this division requires a tentative and final or parcel map. In
9 the development, adoption, revision, and application of ~~such~~ this type of
10 ordinance, the local agency shall comply with the provisions of Section 65913.2.
11 The ordinance shall specifically provide for proper grading and erosion control,
12 including the prevention of sedimentation or damage to offsite property. Each
13 local agency may by ordinance regulate and control other subdivisions, provided
14 that the regulations are not more restrictive than the regulations for those
15 subdivisions for which a tentative and final or parcel map are required by this
16 division, and provided further that the regulations shall not be applied to short-
17 term leases (terminable by either party on not more than 30 days' notice in
18 writing) of a portion of the operating right-of-way of a railroad corporation as
19 defined by Section 230 of the Public Utilities Code unless a showing is made in
20 individual cases, under substantial evidence, that public policy necessitates the
21 application of the regulations to those short-term leases in individual cases.

22 **Comment.** Section 66411 is amended to add a cross-reference to Civil Code Section 6534,
23 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
24 (Civ. Code §§ 6500-6876), and to make a stylistic revision.

25 **Gov't Code § 66412 (amended). Application of Subdivision Map Act**

26 66412. This division shall be inapplicable to any of the following:

27 (a) The financing or leasing of apartments, offices, stores, or similar space
28 within apartment buildings, industrial buildings, commercial buildings,
29 mobilehome parks, or trailer parks.

30 (b) Mineral, oil, or gas leases.

31 (c) Land dedicated for cemetery purposes under the Health and Safety Code.

32 (d) A lot line adjustment between four or fewer existing adjoining parcels,
33 where the land taken from one parcel is added to an adjoining parcel, and where a
34 greater number of parcels than originally existed is not thereby created, if the lot
35 line adjustment is approved by the local agency, or advisory agency. A local
36 agency or advisory agency shall limit its review and approval to a determination of
37 whether or not the parcels resulting from the lot line adjustment will conform to
38 the local general plan, any applicable specific plan, any applicable coastal plan,
39 and zoning and building ordinances. An advisory agency or local agency shall not
40 impose conditions or exactions on its approval of a lot line adjustment except to
41 conform to the local general plan, any applicable specific plan, any applicable
42 coastal plan, and zoning and building ordinances, to require the prepayment of real

1 property taxes prior to the approval of the lot line adjustment, or to facilitate the
2 relocation of existing utilities, infrastructure, or easements. No tentative map,
3 parcel map, or final map shall be required as a condition to the approval of a lot
4 line adjustment. The lot line adjustment shall be reflected in a deed, which shall be
5 recorded. No record of survey shall be required for a lot line adjustment unless
6 required by Section 8762 of the Business and Professions Code. A local agency
7 shall approve or disapprove a lot line adjustment pursuant to the Permit
8 Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

9 (e) Boundary line or exchange agreements to which the State Lands
10 Commission or a local agency holding a trust grant of tide and submerged lands is
11 a party.

12 (f) Any separate assessment under Section 2188.7 of the Revenue and Taxation
13 Code.

14 (g) The conversion of a community apartment project, as defined in Section
15 1351 or 6536 of the Civil Code, to a condominium, as defined in Section 783 of
16 the Civil Code, but only if all of the following requirements are met:

17 (1) The property was subdivided before January 1, 1982, as evidenced by a
18 recorded deed creating the community apartment project.

19 (2) Subject to compliance with subdivision (e) of Section 1351, or with Sections
20 6626 and 6628, of the Civil Code, all conveyances and other documents necessary
21 to effectuate the conversion shall be executed by the required number of owners in
22 the project as specified in the bylaws or other organizational documents. If the
23 bylaws or other organizational documents do not expressly specify the number of
24 owners necessary to execute the conveyances and other documents, a majority of
25 owners in the project shall be required to execute the conveyances or other
26 documents. Conveyances and other documents executed under the foregoing
27 provisions shall be binding upon and affect the interests of all parties in the
28 project.

29 (3) If subdivision, as defined in Section 66424, of the property occurred after
30 January 1, 1964, both of the following requirements are met:

31 (A) A final or parcel map of that subdivision was approved by the local agency
32 and recorded, with all of the conditions of that map remaining in effect after the
33 conversion.

34 (B) No more than 49 percent of the units in the project were owned by any one
35 person as defined in Section 17, including an incorporator or director of the
36 community apartment project, on January 1, 1982.

37 (4) The local agency certifies that the above requirements were satisfied if the
38 local agency, by ordinance, provides for that certification.

39 (h) The conversion of a stock cooperative, as defined in Section 1351 or 6566 of
40 the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but
41 only if all of the following requirements are met:

1 (1) The property was subdivided before January 1, 1982, as evidenced by a
2 recorded deed creating the stock cooperative, an assignment of lease, or issuance
3 of shares to a stockholder.

4 (2) A person renting a unit in a cooperative shall be entitled at the time of
5 conversion to all tenant rights in state or local law, including, but not limited to,
6 rights respecting first refusal, notice, and displacement and relocation benefits.

7 (3) Subject to compliance with subdivision (e) of Section 1351, or with Sections
8 6626 and 6628, of the Civil Code, all conveyances and other documents necessary
9 to effectuate the conversion shall be executed by the required number of owners in
10 the cooperative as specified in the bylaws or other organizational documents. If
11 the bylaws or other organizational documents do not expressly specify the number
12 of owners necessary to execute the conveyances and other documents, a majority
13 of owners in the cooperative shall be required to execute the conveyances or other
14 documents. Conveyances and other documents executed under the foregoing
15 provisions shall be binding upon and affect the interests of all parties in the
16 cooperative.

17 (4) If subdivision, as defined in Section 66424, of the property occurred after
18 January 1, 1980, both of the following requirements are met:

19 (A) A final or parcel map of that subdivision was approved by the local agency
20 and recorded, with all of the conditions of that map remaining in effect after the
21 conversion.

22 (B) No more than 49 percent of the shares in the project were owned by any one
23 person as defined in Section 17, including an incorporator or director of the
24 cooperative, on January 1, 1982.

25 (5) The local agency certifies that the above requirements were satisfied if the
26 local agency, by ordinance, provides for that certification.

27 (i) The leasing of, or the granting of an easement to, a parcel of land, or any
28 portion or portions thereof, in conjunction with the financing, erection, and sale or
29 lease of a windpowered electrical generation device on the land, if the project is
30 subject to discretionary action by the advisory agency or legislative body.

31 (j) The leasing or licensing of a portion of a parcel, or the granting of an
32 easement, use permit, or similar right on a portion of a parcel, to a telephone
33 corporation as defined in Section 234 of the Public Utilities Code, exclusively for
34 the placement and operation of cellular radio transmission facilities, including, but
35 not limited to, antennae support structures, microwave dishes, structures to house
36 cellular communications transmission equipment, power sources, and other
37 equipment incidental to the transmission of cellular communications, if the project
38 is subject to discretionary action by the advisory agency or legislative body.

39 (k) Leases of agricultural land for agricultural purposes. As used in this
40 subdivision, “agricultural purposes” means the cultivation of food or fiber, or the
41 grazing or pasturing of livestock.

42 (l) The leasing of, or the granting of an easement to, a parcel of land, or any
43 portion or portions thereof, in conjunction with the financing, erection, and sale or

1 lease of a solar electrical generation device on the land, if the project is subject to
2 review under other local agency ordinances regulating design and improvement or,
3 if the project is subject to other discretionary action by the advisory agency or
4 legislative body.

5 (m) The leasing of, or the granting of an easement to, a parcel of land or any
6 portion or portions of the land in conjunction with a biogas project that uses, as
7 part of its operation, agricultural waste or byproducts from the land where the
8 project is located and reduces overall emissions of greenhouse gases from
9 agricultural operations on the land if the project is subject to review under other
10 local agency ordinances regulating design and improvement or if the project is
11 subject to discretionary action by the advisory agency or legislative body.

12 **Comment.** Subdivisions (g) and (h) of Section 66412 are amended to add cross-references to
13 Civil Code Sections 6536, 6566, 6626, and 6628, reflecting the enactment of the Commercial and
14 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

15 **Notes.** (1) Section 66412 refers to compliance with Civil Code Section 1351(e). That
16 provision includes both a definition of “condominium plan” and substantive provisions governing
17 the creation, amendment, or repeal of a condominium plan. In the proposed law, the definition is
18 separated from the substantive provisions (consistent with general statutory drafting practice). In
19 the proposed amendments to Section 66412(g)(2) and (h)(3), the added cross-references refer
20 only to the provisions of the proposed law that would continue the substantive provisions of
21 Section 1351(e) (i.e., to proposed Sections 6626 and 6628).

22 (2) The Commission invites comment on whether an exclusively commercial or industrial
23 common interest development may be organized as either a community apartment project or a
24 stock cooperative, arguably making a portion of this conforming revision unnecessary.

25 **Gov’t Code § 66424 (amended). Subdivision**

26 SEC. ____ . Section 66424 of the Government Code is amended to read:

27 66424. “Subdivision” means the division, by any subdivider, of any unit or units
28 of improved or unimproved land, or any portion thereof, shown on the latest
29 equalized county assessment roll as a unit or as contiguous units, for the purpose
30 of sale, lease or financing, whether immediate or future. Property shall be
31 considered as contiguous units, even if it is separated by roads, streets, utility
32 easement or railroad rights-of-way. “Subdivision” includes a condominium
33 project, as defined in subdivision (f) of Section 1351 or in Section 6542 of the
34 Civil Code, a community apartment project, as defined in subdivision (d) of
35 Section 1351 or in Section 6536 of the Civil Code, or the conversion of five or
36 more existing dwelling units to a stock cooperative, as defined in subdivision (m)
37 of Section 1351 or in Section 6566 of the Civil Code.

38 **Comment.** Section 66424 is amended to add cross-references to Civil Code Sections 6536,
39 6542, and 6566, reflecting the enactment of the Commercial and Industrial Common Interest
40 Development Act (Civ. Code §§ 6500-6876).

41 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
42 common interest development may be organized as either a community apartment project or a
43 stock cooperative, arguably making a portion of this conforming revision unnecessary.

1 **Gov't Code § 66427 (amended). Map of condominium, community apartment project, or**
2 **stock cooperative project**

3 SEC. ____ . Section 66427 of the Government Code is amended to read:

4 66427. (a) A map of a condominium project, a community apartment project, or
5 of the conversion of five or more existing dwelling units to a stock cooperative
6 project need not show the buildings or the manner in which the buildings or the
7 airspace above the property shown on the map are to be divided, nor shall the
8 governing body have the right to refuse approval of a parcel, tentative, or final
9 map of the project on account of the design or the location of buildings on the
10 property shown on the map that are not violative of local ordinances or on account
11 of the manner in which airspace is to be divided in conveying the condominium.

12 (b) A map need not include a condominium plan or plans, as defined in
13 subdivision (e) of Section 1351 or in Section 6540 of the Civil Code, and the
14 governing body may not refuse approval of a parcel, tentative, or final map of the
15 project on account of the absence of a condominium plan.

16 (c) Fees and lot design requirements shall be computed and imposed with
17 respect to those maps on the basis of parcels or lots of the surface of the land
18 shown thereon as included in the project.

19 (d) Nothing herein shall be deemed to limit the power of the legislative body to
20 regulate the design or location of buildings in a project by or pursuant to local
21 ordinances.

22 (e) If the governing body has approved a parcel map or final map for the
23 establishment of condominiums on property pursuant to the requirements of this
24 division, the separation of a three-dimensional portion or portions of the property
25 from the remainder of the property or the division of that three-dimensional
26 portion or portions into condominiums shall not constitute a further subdivision as
27 defined in Section 66424, provided each of the following conditions has been
28 satisfied:

29 (1) The total number of condominiums established is not increased above the
30 number authorized by the local agency in approving the parcel map or final map.

31 (2) A perpetual estate or an estate for years in the remainder of the property is
32 held by the condominium owners in undivided interests in common, or by an
33 association as defined in subdivision (a) of Section 1351 or in Section 6528 of the
34 Civil Code, and the duration of the estate in the remainder of the property is the
35 same as the duration of the estate in the condominiums.

36 (3) The three-dimensional portion or portions of property are described on a
37 condominium plan or plans, as defined in subdivision (e) of Section 1351 or in
38 Section 6540 of the Civil Code.

39 **Comment.** Section 66427 is amended to add cross-references to Civil Code Sections 6528 and
40 6540, reflecting the enactment of the Commercial and Industrial Common Interest Development
41 Act (Civ. Code §§ 6500-6876).

1 **Gov't Code § 66452.10 (amended). Stock cooperative or community apartment project**

2 SEC. _____. Section 66452.10 of the Government Code is amended to read:

3 66452.10. A stock cooperative, as defined in Section 11003.2 of the Business
4 and Professions Code, or a community apartment project, as defined in Section
5 11004 of the Business and Professions Code, shall not be converted to a
6 condominium, as defined in Section 783 of the Civil Code, unless the required
7 number of (1) owners and (2) trustees or beneficiaries of each recorded deed of
8 trust and mortgagees of each recorded mortgage in the cooperative or project, as
9 specified in the bylaws, or other organizational documents, have voted in favor of
10 the conversion. If the bylaws or other organizational documents do not expressly
11 specify the number of votes required to approve the conversion, a majority vote of
12 the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and
13 mortgagees of each recorded mortgage in the cooperative or project shall be
14 required. Upon approval of the conversion as set forth above and in compliance
15 with subdivision (e) of Section 1351, or with Sections 6626 and 6628, of the Civil
16 Code, all conveyances and other documents necessary to effectuate the conversion
17 shall be executed by the required number of owners in the cooperative or project
18 as specified in the bylaws or other organizational documents. If the bylaws or
19 other organizational documents do not expressly specify the number of owners
20 necessary to execute the conveyances or other documents, a majority of owners in
21 the cooperative or project shall be required to execute the conveyances and other
22 documents. Conveyances and other documents executed under the foregoing
23 provisions shall be binding upon and affect the interests of all parties in the
24 cooperative or project. The provisions of Section 66499.31 shall not apply to a
25 violation of this section.

26 **Comment.** Section 66452.10 is amended to add cross-references to Civil Code Sections 6626
27 and 6628, reflecting the enactment of the Commercial and Industrial Common Interest
28 Development Act (Civ. Code §§ 6500-6876).

29 **Notes.** (1) Section 66452.10 refers to compliance with Civil Code Section 1351(e). That
30 provision includes both a definition of “condominium plan” and substantive provisions governing
31 the creation, amendment, or repeal of a condominium plan. In the proposed law, the definition is
32 separated from the substantive provisions (consistent with general statutory drafting practice). In
33 the proposed amendment to Section 66452.10, the added cross-references refer only to the
34 provisions of the proposed law that would continue the substantive provisions of Section 1351(e)
35 (i.e., to proposed Sections 6626 and 6628).

36 (2) The Commission invites comment on whether an exclusively commercial or industrial
37 common interest development may be organized as either a stock cooperative or a community
38 apartment project, arguably making a portion of this conforming revision unnecessary.

39 **Gov't Code § 66475.2 (amended). Local transit facilities**

40 SEC. _____. Section 66475.2 of the Government Code is amended to read:

41 66475.2. (a) There may be imposed by local ordinance a requirement of a
42 dedication or an irrevocable offer of dedication of land within the subdivision for
43 local transit facilities such as bus turnouts, benches, shelters, landing pads and
44 similar items that directly benefit the residents of a subdivision. The irrevocable

1 offers may be terminated as provided in subdivisions (c) and (d) of Section
2 66477.2.

3 (b) Only the payment of fees in lieu of the dedication of land may be required in
4 subdivisions that consist of the subdivision of airspace in existing buildings into
5 condominium projects, stock cooperatives, or community apartment projects, as
6 those terms are defined in Section 1351, or in Sections 6536, 6542, and 6566, of
7 the Civil Code.

8 **Comment.** Section 66475.2 is amended to add cross-references to Civil Code Sections 6536,
9 6542, and 6566, reflecting the enactment of the Commercial and Industrial Common Interest
10 Development Act (Civ. Code §§ 6500-6876).

11 **Note.** The Commission invites comment on whether Section 66475.2 applies to an
12 exclusively commercial or industrial common interest development, notwithstanding the
13 reference to “residents” in Section 66475.2(a).

HEALTH AND SAFETY CODE

14 **Health & Safety Code § 13132.7 (amended). Fire retardant roof covering that meets** 15 **building standards**

16 SEC. ____. Section 13132.7 of the Health and Safety Code is amended to read:

17 13132.7. (a) Within a very high fire hazard severity zone designated by the
18 Director of Forestry and Fire Protection pursuant to Article 9 (commencing with
19 Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code
20 and within a very high hazard severity zone designated by a local agency pursuant
21 to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5
22 of the Government Code, the entire roof covering of every existing structure
23 where more than 50 percent of the total roof area is replaced within any one-year
24 period, every new structure, and any roof covering applied in the alteration, repair,
25 or replacement of the roof of every existing structure, shall be a fire retardant roof
26 covering that is at least class B as defined in the Uniform Building Code, as
27 adopted and amended by the State Building Standards Commission.

28 (b) In all other areas, the entire roof covering of every existing structure where
29 more than 50 percent of the total roof area is replaced within any one-year period,
30 every new structure, and any roof covering applied in the alteration, repair, or
31 replacement of the roof of every existing structure, shall be a fire retardant roof
32 covering that is at least class C as defined in the Uniform Building Code, as
33 adopted and amended by the State Building Standards Commission.

34 (c) Notwithstanding subdivision (b), within state responsibility areas classified
35 by the State Board of Forestry and Fire Protection pursuant to Article 3
36 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public
37 Resources Code, except for those state responsibility areas designated as moderate
38 fire hazard responsibility zones, the entire roof covering of every existing structure
39 where more than 50 percent of the total roof area is replaced within any one-year

1 period, every new structure, and any roof covering applied in the alteration, repair,
2 or replacement of the roof of every existing structure, shall be a fire retardant roof
3 covering that is at least class B as defined in the Uniform Building Code, as
4 adopted and amended by the State Building Standards Commission.

5 (d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard
6 severity zones designated by the Director of Forestry and Fire Protection pursuant
7 to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4
8 of the Public Resources Code or by a local agency pursuant to Chapter 6.8
9 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the
10 Government Code, the entire roof covering of every existing structure where more
11 than 50 percent of the total roof area is replaced within any one-year period, every
12 new structure, and any roof covering applied in the alteration, repair, or
13 replacement of the roof of every existing structure, shall be a fire retardant roof
14 covering that is at least class A as defined in the Uniform Building Code, as
15 adopted and amended by the State Building Standards Commission.

16 (2) Paragraph (1) does not apply to any jurisdiction containing a very high fire
17 hazard severity zone if the jurisdiction fulfills both of the following requirements:

18 (A) Adopts the model ordinance approved by the State Fire Marshal pursuant to
19 Section 51189 of the Government Code or an ordinance that substantially
20 conforms to the model ordinance of the State Fire Marshal.

21 (B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

22 (e) The State Building Standards Commission shall incorporate the requirements
23 set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to
24 the California Building Standards Code in accordance with Chapter 4
25 (commencing with Section 18935) of Part 2.5 of Division 13.

26 (f) Nothing in this section shall limit the authority of a city, county, city and
27 county, or fire protection district in establishing more restrictive requirements, in
28 accordance with current law, than those specified in this section.

29 (g) This section shall not affect the validity of an ordinance, adopted prior to the
30 effective date for the relevant roofing standard specified in subdivisions (a) and
31 (b), by a city, county, city and county, or fire protection district, unless the
32 ordinance mandates a standard that is less stringent than the standards set forth in
33 subdivision (a), in which case the ordinance shall not be valid on or after the
34 effective date for the relevant roofing standard specified in subdivisions (a) and
35 (b).

36 (h) Any qualified historical building or structure as defined in Section 18955
37 may, on a case-by-case basis, utilize alternative roof constructions as provided by
38 the State Historical Building Code.

39 (i) The installer of the roof covering shall provide certification of the roof
40 covering classification, as provided by the manufacturer or supplier, to the
41 building owner and, when requested, to the agency responsible for enforcement of
42 this part. The installer shall also install the roof covering in accordance with the
43 manufacturer's listing.

1 (j) No wood roof covering materials shall be sold or applied in this state unless
2 both of the following conditions are met:

3 (1) The materials have been approved and listed by the State Fire Marshal as
4 complying with the requirements of this section.

5 (2) The materials have passed at least five years of the 10-year natural
6 weathering test. The 10-year natural weathering test required by this subdivision
7 shall be conducted in accordance with standard 15-2 of the 1994 edition of the
8 Uniform Building Code at a testing facility recognized by the State Fire Marshal.

9 (k) The Insurance Commissioner shall accept the use of fire retardant wood roof
10 covering material that complies with the requirements of this section, used in the
11 partial repair or replacement of nonfire retardant wood roof covering material, as
12 complying with the requirement in Section 2695.9 of Title 10 of the California
13 Code of Regulations relative to matching replacement items in quality, color, and
14 size.

15 (l) No common interest development, as defined in Section 1351 or 6534 of the
16 Civil Code, may require a ~~homeowner~~ an owner to install or repair a roof in a
17 manner that is in violation of this section. The governing documents, as defined in
18 Section 1351 or 6552 of the Civil Code, of a common interest development within
19 a very high fire severity zone shall allow for at least one type of fire retardant roof
20 covering material that meets the requirements of this section.

21 **Comment.** Subdivision (l) of Section 13132.7 is amended to add cross-references to Civil
22 Code Sections 6534 and 6552, and to make a conforming terminological change, reflecting the
23 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
24 6500-6876).

25 **Note.** The Commission invites comment on whether Section 13132.7 applies to an
26 exclusively commercial or industrial common interest development, notwithstanding the use in
27 Section 13132.7(l) of the undefined term “homeowner.”

28 **Health & Safety Code § 19850 (amended). Filing of building plans**

29 SEC. ____ . Section 19850 of the Health and Safety Code is amended to read:

30 19850. The building department of every city or county shall maintain an
31 official copy, which may be on microfilm or other type of photographic copy, of
32 the plans of every building, during the life of the building, for which the
33 department issued a building permit.

34 “Building department” means the department, bureau, or officer charged with
35 the enforcement of laws or ordinances regulating the erection, construction, or
36 alteration of buildings.

37 Except for plans of a common interest development as defined in Section 1351
38 or 6534 of the Civil Code, plans need not be filed for:

39 (a) Single or multiple dwellings not more than two stories and basement in
40 height.

41 (b) Garages and other structures appurtenant to buildings described under
42 subdivision (a).

1 (c) Farm or ranch buildings.

2 (d) Any one-story building where the span between bearing walls does not
3 exceed 25 feet. The exemption in this subdivision does not, however, apply to a
4 steel frame or concrete building.

5 **Comment.** Section 19850 is amended to add a cross-reference to Civil Code Section 6534,
6 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
7 (Civ. Code §§ 6500-6876).

8 **Health & Safety Code § 25400.22 (amended). Lien placed on contaminated property**

9 SEC. _____. Section 25400.22 of the Health and Safety Code is amended to read:

10 25400.22. (a) No later than 10 working days after the date when a local health
11 officer determines that property is contaminated pursuant to subdivision (b) of
12 Section 25400.20, the local health officer shall do all of the following:

13 (1) Except as provided in paragraph (2), if the property is real property, record
14 with the county recorder a lien on the property. The lien shall specify all of the
15 following:

16 (A) The name of the agency on whose behalf the lien is imposed.

17 (B) The date on which the property is determined to be contaminated.

18 (C) The legal description of the real property and the assessor's parcel number.

19 (D) The record owner of the property.

20 (E) The amount of the lien, which shall be the greater of two hundred dollars
21 (\$200) or the costs incurred by the local health officer in compliance with this
22 chapter, including, but not limited to, the cost of inspection performed pursuant to
23 Section 25400.19 and the county recorder's fee.

24 (2)(A) If the property is a mobilehome or manufactured home specified in
25 paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record
26 with a restraint on the mobilehome, or manufactured home with the Department of
27 Housing and Community Development, in the form prescribed by that department,
28 providing notice of the determination that the property is contaminated.

29 (B) If the property is a recreational vehicle specified in paragraph (2) of
30 subdivision (t) of Section 25400.11, perfect by filing with the Department of
31 Motor Vehicles a vehicle license stop on the recreational vehicle in the form
32 prescribed by that department, providing notice of the determination that the
33 property is contaminated.

34 (C) If the property is a mobilehome or manufactured home, not subject to
35 paragraph (2) of subdivision (t) of Section 25400.11, is located on real property,
36 and is not attached to that real property, the local health officer shall record a lien
37 for the real property with the county recorder, and the Department of Housing and
38 Community Development shall amend the permanent record with a restraint for
39 the mobilehome or manufactured home, in the form and with the contents
40 prescribed by that department.

41 (3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall
42 specify all of the following:

1 (A) The name of the agency on whose behalf the lien, restraint, or vehicle
2 license stop is imposed.

3 (B) The date on which the property is determined to be contaminated.

4 (C) The legal description of the real property and the assessor's parcel number,
5 and the mailing and street address or space number of the manufactured home,
6 mobilehome, or recreational vehicle or the vehicle identification number of the
7 recreational vehicle, if applicable.

8 (D) The registered owner of the mobilehome, manufactured home, or
9 recreational vehicle, if applicable, or the name of the owner of the real property as
10 indicated in the official county records.

11 (E) The amount of the lien, if applicable, which shall be the greater of two
12 hundred dollars (\$200) or the costs incurred by the local health officer in
13 compliance with this chapter, including, but not limited to, the cost of inspection
14 performed pursuant to Section 25400.19 and the fee charged by the Department of
15 Housing and Community Development and the Department of Motor Vehicles
16 pursuant to paragraph (2) of subdivision (b).

17 (F) Other information required by the county recorder for the lien, the
18 Department of Housing and Community Development for the restraint, or the
19 Department of Motor Vehicles for the vehicle license stop.

20 (4) Issue to persons specified in subdivisions (d), (e), and (f) an order
21 prohibiting the use or occupancy of the contaminated portions of the property.

22 (b)(1) The county recorder's fees for recording and indexing documents
23 provided for in this section shall be in the amount specified in Article 5
24 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the
25 Government Code.

26 (2) The Department of Housing and Community Development and the
27 Department of Motor Vehicles may charge a fee to cover its administrative costs
28 for recording and indexing documents provided for in paragraph (2) of subdivision
29 (a).

30 (c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect,
31 and priority of a judgment lien. The restraint amending the permanent record
32 pursuant to subdivision (a) shall be displayed on any manufactured home or
33 mobilehome title search until the restraint is released. The vehicle license stop
34 shall remain in effect until it is released.

35 (2) The local health officer shall not authorize the release of a lien, restraint, or
36 vehicle license stop made pursuant to subdivision (a), until one of the following
37 occurs:

38 (A) The property owner satisfies the real property lien, or the contamination in
39 the mobilehome, manufactured home, or recreational vehicle is abated to the
40 satisfaction of the local health officer consistent with the notice in the restraint, or
41 vehicle license stop and the local health officer issues a release pursuant to Section
42 25400.27.

1 (B) For a manufactured home or mobilehome, the local health officer determines
2 that the unit will be destroyed or permanently salvaged. For the purposes of this
3 paragraph, the unit shall not be reregistered after this determination is made unless
4 the local health officer issues a release pursuant to Section 25400.27.

5 (C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in
6 a foreclosure sale.

7 (d) Except as otherwise specified in this section, an order issued pursuant to this
8 section shall be served, either personally or by certified mail, return receipt
9 requested in the following manner:

10 (1) For real property, to all known occupants of the property and to all persons
11 who have an interest in the property, as contained in the records of the recorder's
12 office of the county in which the property is located.

13 (2) In the case of a mobilehome or manufactured home, the order shall be served
14 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
15 defined in Section 18005.3, and the registered owner, as defined in Section
16 18009.5.

17 (3) In the case of a recreational vehicle, the order shall be served on the legal
18 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
19 defined in Section 505 of the Vehicle Code.

20 (e) If the whereabouts of the person described in subdivision (d) are unknown
21 and cannot be ascertained by the local health officer, in the exercise of reasonable
22 diligence, and the local health officer makes an affidavit to that effect, the local
23 health officer shall serve the order by personal service or by mailing a copy of the
24 order by certified mail, postage prepaid, return receipt requested, as follows:

25 (1) The order related to real property shall be served to each person at the
26 address appearing on the last equalized tax assessment roll of the county where the
27 property is located, and to all occupants of the affected unit.

28 (2) In the case of a mobilehome or manufactured home, the order shall be served
29 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
30 defined in Section 18005.3, and the registered owner, as defined in Section
31 18009.5, at the address appearing on the permanent record and all occupants of the
32 affected unit at the mobilehome park space.

33 (3) In the case of a recreational vehicle, the order shall be served on the legal
34 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
35 defined in Section 505 of the Vehicle Code, at the address appearing on the
36 permanent record and all occupants of the affected vehicle at the mobilehome park
37 or special occupancy park space.

38 (f)(1) The local health officer shall also mail a copy of the order required by this
39 section to the address of each person or party having a recorded right, title, estate,
40 lien, or interest in the property and to the association of a common interest
41 development, as defined in Section 1351, or in Sections 6528 and 6534, of the
42 Civil Code.

1 (2) In addition to the requirements of paragraph (1), if the affected property is a
2 mobilehome, manufactured home, or recreational vehicle, specified in paragraph
3 (2) of subdivision (t) of Section 25400.11, the order issued by the local health
4 officer shall also be served, either personally or by certified mail, return receipt
5 requested, to the owner of the mobilehome park or special occupancy park.

6 (g) The order issued pursuant to this section shall include all of the following
7 information:

8 (1) A description of the property.

9 (2) The parcel identification number, address, or space number, if applicable.

10 (3) The vehicle identification number, if applicable.

11 (4) A description of the local health officer's intended course of action.

12 (5) A specification of the penalties for noncompliance with the order.

13 (6) A prohibition on the use of all or portions of the property that are
14 contaminated.

15 (7) A description of the measures the property owner is required to take to
16 decontaminate the property.

17 (8) An indication of the potential health hazards involved.

18 (9) A statement that a property owner who fails to provide a notice or disclosure
19 that is required by this chapter is subject to a civil penalty of up to five thousand
20 dollars (\$5,000).

21 (h) The local health officer shall provide a copy of the order to the local building
22 or code enforcement agency or other appropriate agency responsible for the
23 enforcement of the State Housing Law (Part 1.5 (commencing with Section
24 17910) of Division 13).

25 (i) The local health officer shall post the order in a conspicuous place on the
26 property within one working day of the date that the order is issued.

27 **Comment.** Subdivision (f) of Section 25400.22 is amended to add cross-references to Civil
28 Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial
29 Common Interest Development Act (Civ. Code §§ 6500-6876).

30 **Health & Safety Code § 25915.2 (amended). Publication and mailing of notice**

31 SEC. _____. Section 25915.2 of the Health and Safety Code is amended to read:

32 25915.2. (a) Notice provided pursuant to this chapter shall be provided in
33 writing to each individual employee, and shall be mailed to other owners
34 designated to receive the notice pursuant to subdivision (a) of Section 25915.5,
35 within 15 days of the first receipt by the owner of information identifying the
36 presence or location of asbestos-containing construction materials in the building.
37 This notice shall be provided annually thereafter. In addition, if new information
38 regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision
39 (a) of Section 25915 has been obtained within 90 days after the notice required by
40 this subdivision is provided or any subsequent 90-day period, then a supplemental
41 notice shall be provided within 15 days of the close of that 90-day period.

1 (b) Notice provided pursuant to this chapter shall be provided to new employees
2 within 15 days of commencement of work in the building.

3 (c) Notice provided pursuant to this chapter shall be mailed to any new owner
4 designated to receive the notice pursuant to subdivision (a) of Section 25915.5
5 within 15 days of the effective date of the agreement under which a person
6 becomes a new owner.

7 (d) Subdivisions (a) and (c) shall not be construed to require owners of a
8 building or part of a building within a residential common interest development to
9 mail written notification to other owners of a building or part of a building within
10 the residential common interest development, if all the following conditions are
11 met:

12 (1) The association conspicuously posts, in each building or part of a building
13 known to contain asbestos-containing materials, a large sign in a prominent
14 location that fully informs persons entering each building or part of a building
15 within the common interest development that the association knows the building
16 contains asbestos-containing materials.

17 The sign shall also inform persons of the location where further information, as
18 required by this chapter, is available about the asbestos-containing materials
19 known to be located in the building.

20 (2) The owners or association disclose, as soon as practicable before the transfer
21 of title of a separate interest in the common interest development, to a transferee
22 the existence of asbestos-containing material in a building or part of a building
23 within the common interest development.

24 Failure to comply with this section shall not invalidate the transfer of title of real
25 property. This paragraph shall only apply to transfers of title of separate interests
26 in the common interest development of which the owners have knowledge. As
27 used in this section, “association” and “common interest development” are defined
28 in Section 1351, or Sections 6528 and 6534, of the Civil Code.

29 (e) If a person contracting with an owner receives notice pursuant to this
30 chapter, that contractor shall provide a copy of the notice to his or her employees
31 or contractors working within the building.

32 (f) If the asbestos-containing construction material in the building is limited to
33 an area or areas within the building that meet all the following criteria:

34 (1) Are unique and physically defined.

35 (2) Contain asbestos-containing construction materials in structural, mechanical,
36 or building materials which are not replicated throughout the building.

37 (3) Are not connected to other areas through a common ventilation system; then,
38 an owner required to give notice to his or her employees pursuant to subdivision
39 (a) of Section 25915 or 25915.1 may provide that notice only to the employees
40 working within or entering that area or those areas of the building meeting the
41 conditions above.

42 (g) If the asbestos-containing construction material in the building is limited to
43 an area or areas within the building that meet all the following criteria:

1 (1) Are accessed only by building maintenance employees or contractors and are
2 not accessed by tenants or employees in the building, other than on an incidental
3 basis.

4 (2) Contain asbestos-containing construction materials in structural, mechanical,
5 or building materials which are not replicated in areas of the building which are
6 accessed by tenants and employees.

7 (3) The owner knows that no asbestos fibers are being released or have the
8 reasonable possibility to be released from the material; then, as to that asbestos-
9 containing construction material, an owner required to give notice to his or her
10 employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may
11 provide that notice only to its building maintenance employees and contractors
12 who have access to that area or those areas of the building meeting the conditions
13 above.

14 (h) In those areas of a building where the asbestos-containing construction
15 material is composed only of asbestos fibers which are completely encapsulated, if
16 the owner knows that no asbestos fibers are being released or have the reasonable
17 possibility to be released from that material in its present condition and has no
18 knowledge that other asbestos-containing material is present, then an owner
19 required to give notice pursuant to subdivision (a) of Section 25915 shall provide
20 the information required in paragraph (2) of subdivision (a) of Section 25915 and
21 may substitute the following notice for the requirements of paragraphs (1), (3), (4),
22 and (5) of subdivision (a) of Section 25915:

23 (1) The existence of, conclusions from, and a description or list of the contents
24 of, that portion of any survey conducted to determine the existence and location of
25 asbestos-containing construction materials within the building that refers to the
26 asbestos materials described in this subdivision, and information describing when
27 and where the results of the survey are available pursuant to Section 25917.

28 (2) Information to convey that moving, drilling, boring, or otherwise disturbing
29 the asbestos-containing construction material identified may present a health risk
30 and, consequently, should not be attempted by an unqualified employee. The
31 notice shall identify the appropriate person the employee is required to contact if
32 the condition of the asbestos-containing construction material deteriorates.

33 **Comment.** Paragraph (2) of subdivision (d) of Section 25915.2 is amended to add cross-
34 references to Civil Code Sections 6528 and 6534, reflecting the enactment of the Commercial and
35 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

36 **Health & Safety Code § 33050 (amended). Legislative declaration of policy in undertaking**
37 **community redevelopment projects**

38 SEC. _____. Section 33050 of the Health and Safety Code is amended to read:

39 33050. (a) It is hereby declared to be the policy of the state that in undertaking
40 community redevelopment projects under this part there shall be no discrimination
41 because of any basis listed in subdivision (a) or (d) of Section 12955 of the
42 Government Code, as those bases are defined in Sections 12926, 12926.1,

1 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
2 Section 12955.2 of the Government Code.

3 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
4 (a) shall not be construed to apply to housing for older persons, as defined in
5 Section 12955.9 of the Government Code. With respect to familial status, nothing
6 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
7 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
8 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
9 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
10 shall apply to subdivision (a).

11 **Comment.** Section 33050 is amended to add a cross-reference to Civil Code Section 6714,
12 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
13 (Civ. Code §§ 6500-6876).

14 **Health & Safety Code § 33435 (amended). Obligation of lessees and purchasers to refrain**
15 **from discrimination**

16 SEC. _____. Section 33435 of the Health and Safety Code is amended to read:

17 33435. (a) Agencies shall obligate lessees and purchasers of real property
18 acquired in redevelopment projects and owners of property improved as a part of a
19 redevelopment project to refrain from restricting the rental, sale, or lease of the
20 property on any basis listed in subdivision (a) or (d) of Section 12955 of the
21 Government Code, as those bases are defined in Sections 12926, 12926.1,
22 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
23 Section 12955.2 of the Government Code. All deeds, leases, or contracts for the
24 sale, lease, sublease, or other transfer of any land in a redevelopment project shall
25 contain or be subject to the nondiscrimination or nonsegregation clauses hereafter
26 prescribed.

27 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
28 (a) shall not be construed to apply to housing for older persons, as defined in
29 Section 12955.9 of the Government Code. With respect to familial status, nothing
30 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
31 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
32 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
33 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
34 shall apply to subdivision (a).

35 **Comment.** Section 33435 is amended to add a cross-reference to Civil Code Section 6714,
36 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
37 (Civ. Code §§ 6500-6876).

38 **Health & Safety Code § 33436 (amended). Nondiscrimination and nonsegregation clauses**

39 SEC. _____. Section 33436 of the Health and Safety Code is amended to read:

40 33436. Express provisions shall be included in all deeds, leases, and contracts
41 that the agency proposes to enter into with respect to the sale, lease, sublease,

1 transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment
2 project in substantially the following form:

3 (a)(1) In deeds the following language shall appear-- “The grantee herein
4 covenants by and for himself or herself, his or her heirs, executors, administrators,
5 and assigns, and all persons claiming under or through them, that there shall be no
6 discrimination against or segregation of, any person or group of persons on
7 account of any basis listed in subdivision (a) or (d) of Section 12955 of the
8 Government Code, as those bases are defined in Sections 12926, 12926.1,
9 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
10 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer,
11 use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall
12 the grantee or any person claiming under or through him or her, establish or permit
13 any practice or practices of discrimination or segregation with reference to the
14 selection, location, number, use or occupancy of tenants, lessees, subtenants,
15 sublessees, or vendees in the premises herein conveyed. The foregoing covenants
16 shall run with the land.”

17 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
18 shall not be construed to apply to housing for older persons, as defined in Section
19 12955.9 of the Government Code. With respect to familial status, nothing in
20 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
21 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
22 of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and
23 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
24 apply to paragraph (1).

25 (b)(1) In leases the following language shall appear-- “The lessee herein
26 covenants by and for himself or herself, his or her heirs, executors, administrators,
27 and assigns, and all persons claiming under or through him or her, and this lease is
28 made and accepted upon and subject to the following conditions:

29 That there shall be no discrimination against or segregation of any person or
30 group of persons, on account of any basis listed in subdivision (a) or (d) of Section
31 12955 of the Government Code, as those bases are defined in Sections 12926,
32 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
33 and Section 12955.2 of the Government Code, in the leasing, subleasing,
34 transferring, use, occupancy, tenure, or enjoyment of the premises herein leased
35 nor shall the lessee himself or herself, or any person claiming under or through
36 him or her, establish or permit any such practice or practices of discrimination or
37 segregation with reference to the selection, location, number, use, or occupancy, of
38 tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

39 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
40 shall not be construed to apply to housing for older persons, as defined in Section
41 12955.9 of the Government Code. With respect to familial status, nothing in
42 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
43 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)

1 of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and
2 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
3 apply to paragraph (1).

4 (c) In contracts entered into by the agency relating to the sale, transfer, or
5 leasing of land or any interest therein acquired by the agency within any survey
6 area or redevelopment project the foregoing provisions in substantially the forms
7 set forth shall be included and the contracts shall further provide that the foregoing
8 provisions shall be binding upon and shall obligate the contracting party or parties
9 and any subcontracting party or parties, or other transferees under the instrument.

10 **Comment.** Section 33436 is amended to add cross-references to Civil Code Section 6714,
11 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
12 (Civ. Code §§ 6500-6876).

13 **Health & Safety Code § 35811 (amended). Consideration of ethnicity, religion, sex, marital**
14 **status, or national origin**

15 SEC. ____ . Section 35811 of the Health and Safety Code is amended to read:

16 35811. (a) No financial institution shall discriminate in the availability of, or in
17 the provision of, financial assistance for the purpose of purchasing, constructing,
18 rehabilitating, improving, or refinancing housing accommodations due, in whole
19 or in part, to the consideration of any basis listed in subdivision (a) or (d) of
20 Section 12955 of the Government Code, as those bases are defined in Sections
21 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
22 12955, and Section 12955.2 of the Government Code.

23 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
24 (a) shall not be construed to apply to housing for older persons, as defined in
25 Section 12955.9 of the Government Code. With respect to familial status, nothing
26 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
27 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
28 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
29 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
30 shall apply to subdivision (a).

31 **Comment.** Section 35811 is amended to add a cross-reference to Civil Code Section 6714,
32 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
33 (Civ. Code §§ 6500-6876).

34 **Health & Safety Code § 37630 (amended). Equal opportunity**

35 SEC. ____ . Section 37630 of the Health and Safety Code is amended to read:

36 37630. (a) The local agency shall require that any property that is rehabilitated
37 with financing obtained under this part shall be open, upon sale or rental of any
38 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of
39 Section 12955 of the Government Code, as those bases are defined in Sections
40 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
41 12955, and Section 12955.2 of the Government Code. The local agency shall also
42 require that contractors and subcontractors engaged in historical rehabilitation

1 financed under this part provide equal opportunity for employment, without
2 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
3 Government Code, as those bases are defined in Sections 12926 and 12926.1 of
4 the Government Code, and except as otherwise provided in Section 12940 of the
5 Government Code. All contracts and subcontracts for historical rehabilitation
6 financed under this part shall be let without discrimination as to any basis listed in
7 subdivision (a) of Section 12940 of the Government Code, as those bases are
8 defined in Sections 12926 and 12926.1 of the Government Code, and except as
9 otherwise provided in Section 12940 of the Government Code.

10 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
11 (a) shall not be construed to apply to housing for older persons, as defined in
12 Section 12955.9 of the Government Code. With respect to familial status, nothing
13 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
14 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
15 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
16 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
17 shall apply to subdivision (a).

18 **Comment.** Section 37630 is amended to add a cross-reference to Civil Code Section 6714,
19 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
20 (Civ. Code §§ 6500-6876).

21 **Health & Safety Code § 50955 (amended). Civil rights and equal employment opportunity**

22 SEC. ____ . Section 50955 of the Health and Safety Code is amended to read:

23 50955. (a) The agency and every housing sponsor shall require that occupancy
24 of housing developments assisted under this part shall be open to all regardless of
25 any basis listed in subdivision (a) or (d) of Section 12955 of the Government
26 Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and
27 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
28 Government Code, that contractors and subcontractors engaged in the construction
29 of housing developments shall provide an equal opportunity for employment,
30 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
31 the Government Code, as those bases are defined in Sections 12926 and 12926.1
32 of the Government Code, and except as otherwise provided in Section 12940 of
33 the Government Code, and that contractors and subcontractors shall submit and
34 receive approval of an affirmative action program prior to the commencement of
35 construction or rehabilitation. Affirmative action requirements respecting
36 apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070)
37 of Division 3 of the Labor Code.

38 All contracts for the management, construction, or rehabilitation of housing
39 developments, and contracts let by housing sponsors, contractors, and
40 subcontractors in the performance of management, construction or rehabilitation,
41 shall be let without discrimination as to any basis listed in subdivision (a) of
42 Section 12940 of the Government Code, as those bases are defined in Sections

1 12926 and 12926.1 of the Government Code, except as otherwise provided in
2 Section 12940 of the Government Code, and pursuant to an affirmative action
3 program, which shall be at not less than the Federal Housing Administration
4 affirmative action standards unless the board makes a specific finding that the
5 particular requirement would be unworkable. The agency shall periodically review
6 implementation of affirmative action programs required by this section.

7 It shall be the policy of the agency and housing sponsors to encourage
8 participation with respect to all projects by minority developers, builders, and
9 entrepreneurs in all levels of construction, planning, financing, and management
10 of housing developments. In areas of minority concentration the agency shall
11 require significant participation of minorities in the sponsorship, construction,
12 planning, financing, and management of housing developments. The agency shall
13 (1) require that, to the greatest extent feasible, opportunities for training and
14 employment arising in connection with the planning, construction, rehabilitation,
15 and operation of housing developments financed pursuant to this part be given to
16 persons of low income residing in the area of that housing, and (2) determine and
17 implement means to secure the participation of small businesses in the
18 performance of contracts for work on housing developments and to develop the
19 capabilities of these small businesses to more efficiently and competently
20 participate in the economic mainstream. In order to achieve this participation by
21 small businesses, the agency may, among other things, waive retention
22 requirements otherwise imposed on contractors or subcontractors by regulation of
23 the agency and may authorize or make advance payments for work to be
24 performed. The agency shall develop relevant selection criteria for the
25 participation of small businesses to ensure that, to the greatest extent feasible, the
26 participants possess the necessary nonfinancial capabilities. The agency may, with
27 respect to these small businesses, waive bond requirements otherwise imposed
28 upon contractors or subcontractors by regulation of the agency, but the agency
29 shall in that case substantially reduce the risk through (1) a pooled-risk bonding
30 program, (2) a bond program in cooperation with other federal or state agencies, or
31 (3) development of a self-insured bonding program with adequate reserves.

32 The agency shall adopt rules and regulations to implement this section.

33 Prior to commitment of a mortgage loan, the agency shall require each housing
34 sponsor, except with respect to mutual self-help housing, to submit an affirmative
35 marketing program that meets standards set forth in regulations of the agency. The
36 agency shall require ~~such a~~ each housing sponsor to conduct the affirmative
37 marketing program so approved. Additionally, the agency shall supplement the
38 efforts of individual housing sponsors by conducting affirmative marketing
39 programs with respect to housing at the state level.

40 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
41 (a) shall not be construed to apply to housing for older persons, as defined in
42 Section 12955.9 of the Government Code. With respect to familial status, nothing
43 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,

1 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
2 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
3 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
4 shall apply to subdivision (a).

5 **Comment.** Subdivision (a) of Section 50955 is amended to make a stylistic revision.

6 Subdivision (b) is amended to add a cross-reference to Civil Code Section 6714, reflecting the
7 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
8 6500-6876).

9 **Health & Safety Code § 51602 (amended). Nondiscrimination in occupancy of housing**

10 SEC. _____. Section 51602 of the Health and Safety Code is amended to read:

11 51602. (a) The agency shall require that occupancy of housing for which a loan
12 is insured pursuant to this part shall be open to all regardless of any basis listed in
13 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
14 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
15 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,
16 and that contractors and subcontractors engaged in the construction or
17 rehabilitation of housing funded by a loan insured pursuant to this part shall
18 provide an equal opportunity for employment without discrimination as to any
19 basis listed in subdivision (a) of Section 12940 of the Government Code, as those
20 bases are defined in Sections 12926 and 12926.1 of the Government Code, and
21 except as otherwise provided in Section 12940 of the Government Code.

22 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
23 (a) shall not be construed to apply to housing for older persons, as defined in
24 Section 12955.9 of the Government Code. With respect to familial status, nothing
25 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
26 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
27 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
28 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
29 shall apply to subdivision (a).

30 (c) A qualified developer shall certify compliance with this section and Section
31 50955 according to requirements specified by the pertinent criteria of the agency.

32 **Comment.** Section 51602 is amended to add a cross-reference to Civil Code Section 6714,
33 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
34 (Civ. Code §§ 6500-6876).

35 **Health & Safety Code § 116048 (amended). Public swimming pool in common interest**
36 **development**

37 SEC. _____. Section 116048 of the Health and Safety Code is amended to read:

38 116048. (a) On or after January 1, 1987, for public swimming pools in any
39 common interest development, as defined in Section 1351 or 6534 of the Civil
40 Code, that consists of fewer than 25 separate interests, as defined in subdivision (l)
41 of Section 1351 or in Section 6564 of the Civil Code, the person operating each
42 ~~such~~ pool open for use shall be required to keep a record of the information

1 required by subdivision (a) of Section 65523 of Title 22 of the California
2 Administrative Code, except that the information shall be recorded at least two
3 times per week and at intervals no greater than four days apart.

4 (b) On or after January 1, 1987, any rule or regulation of the department that is
5 in conflict with subdivision (a) is invalid.

6 **Comment.** Section 116048 is amended to add cross-references to Civil Code Sections 6534
7 and 6564, reflecting the enactment of the Commercial and Industrial Common Interest
8 Development Act (Civ. Code §§ 6500-6876).

9 The section is also amended to make a stylistic revision.

INSURANCE CODE

10 **Ins. Code § 790.031 (amended). Application of Sections 790.034, 2071.1 and 10082.3**

11 SEC. _____. Section 790.031 of the Insurance Code is amended to read:

12 790.031. The requirements of subdivision (b) of Section 790.034, and Sections
13 2071.1 and 10082.3 shall apply only to policies of residential property insurance
14 as defined in Section 10087, policies and endorsements containing those
15 coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1
16 of Division 2, policies issued by the California Earthquake Authority pursuant to
17 Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies
18 and endorsements that insure against property damage and are issued to common
19 interest developments or to associations managing common interest developments,
20 as those terms are defined in Section 1351, or in Sections 6528 and 6534, of the
21 Civil Code, and to policies issued pursuant to Section 120 that insure against
22 property damage to residential units or contents thereof owned by one or more
23 persons located in this state.

24 **Comment.** Section 790.031 is amended to add cross-references to Civil Code Sections 6528
25 and 6534, reflecting the enactment of the Commercial and Industrial Common Interest
26 Development Act (Civ. Code §§ 6500-6876).

27  **Note.** The Commission invites comment on whether Section 790.031 applies to an
28 exclusively commercial or industrial common interest development.

REVENUE AND TAXATION CODE

29 **Rev. & Tax. Code § 2188.6 (amended). Separate assessment of property divided into** 30 **condominiums**

31 SEC. _____. Section 2188.6 of the Revenue and Taxation Code is amended to
32 read:

33 2188.6. (a) Unless a request for exemption has been recorded pursuant to
34 subdivision (d), prior to the creation of a condominium as defined in Section 783
35 of the Civil Code, the county assessor may separately assess each individual unit

1 which is shown on the condominium plan of a proposed condominium project
2 when all of the following documents have been recorded as required by law:

3 (1) A subdivision final map or parcel map, as described in Sections 66434 and
4 66445, respectively, of the Government Code.

5 (2) A condominium plan, as defined in subdivision (e) of Section 1351 or in
6 Section 6540 of the Civil Code.

7 (3) A declaration, as defined in subdivision (h) of Section 1351 or in Section
8 6546 of the Civil Code.

9 (b) The tax due on each individual unit shall constitute a lien solely on that unit.

10 (c) The lien created pursuant to this section shall be a lien on an undivided
11 interest in a portion of real property coupled with a separate interest in space
12 called a unit as described in subdivision (f) of Section 1351 or in subdivision (b)
13 of Section 6542 of the Civil Code.

14 (d) The record owner of the real property may record with the condominium
15 plan a request that the real property be exempt from separate assessment pursuant
16 to this section. If a request for exemption is recorded, separate assessment of a
17 condominium unit shall be made only in accordance with Section 2188.3.

18 (e) This section shall become operative on January 1, 1990, and shall apply to
19 condominium projects for which a condominium plan is recorded after that date.

20 **Comment.** Section 2188.6 is amended to add cross-references to Civil Code Sections 6540,
21 6542, and 6546, reflecting the enactment of the Commercial and Industrial Common Interest
22 Development Act (Civ. Code §§ 6500-6876).

VEHICLE CODE

23 **Veh. Code § 21107.7 (amended). Private road not open to public use**

24 SEC. _____. Section 21107.7 of the Vehicle Code is amended to read:

25 21107.7. (a) Any city or county may, by ordinance or resolution, find and
26 declare that there are privately owned and maintained roads as described in the
27 ordinance or resolution within the city or county that are not generally held open
28 for use of the public for purposes of vehicular travel but, by reason of their
29 proximity to or connection with highways, the interests of any residents residing
30 along the roads and the motoring public will best be served by application of the
31 provisions of this code to those roads. No ordinance or resolution shall be enacted
32 unless there is first filed with the city or county a petition requesting it by a
33 majority of the owners of any privately owned and maintained road, or by at least
34 a majority of the board of directors of a common interest development, as defined
35 by Section 1351 or 6534 of the Civil Code, that is responsible for maintaining the
36 road, and without a public hearing thereon and 10 days' prior written notice to all
37 owners of the road or all of the owners in the development. Upon enactment of the
38 ordinance or resolution, the provisions of this code shall apply to the privately
39 owned and maintained road if appropriate signs are erected at the entrance to the

1 road of the size, shape, and color as to be readily legible during daylight hours
2 from a distance of 100 feet, to the effect that the road is subject to the provisions
3 of this code. The city or county may impose reasonable conditions and may
4 authorize the owners, or board of directors of the common interest development, to
5 erect traffic signs, signals, markings, and devices which conform to the uniform
6 standards and specifications adopted by the Department of Transportation.

7 (b) The department shall not be required to provide patrol or enforce any
8 provisions of this code on any privately owned and maintained road subjected to
9 the provisions of this code under this section, except those provisions applicable to
10 private property other than by action under this section.

11 (c) As used in this section, “privately owned and maintained roads” includes
12 roads owned and maintained by a city, county or district that are not dedicated to
13 use by the public or are not generally held open for use of the public for purposes
14 of vehicular travel.

15 **Comment.** Section 21107.7 is amended to add a cross-reference to Civil Code Section 6534,
16 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
17 (Civ. Code §§ 6500-6876).

18 **Veh. Code § 22651 (amended). Circumstances in which removal of vehicle is permitted**

19 SEC. _____. Section 22651 of the Vehicle Code is amended to read:

20 22651. A peace officer, as defined in Chapter 4.5 (commencing with Section
21 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried
22 employee, who is engaged in directing traffic or enforcing parking laws and
23 regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is
24 located, may remove a vehicle located within the territorial limits in which the
25 officer or employee may act, under the following circumstances:

26 (a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a
27 tube or tunnel where the vehicle constitutes an obstruction to traffic.

28 (b) When a vehicle is parked or left standing upon a highway in a position so as
29 to obstruct the normal movement of traffic or in a condition so as to create a
30 hazard to other traffic upon the highway.

31 (c) When a vehicle is found upon a highway or public land and a report has
32 previously been made that the vehicle is stolen or a complaint has been filed and a
33 warrant thereon is issued charging that the vehicle was embezzled.

34 (d) When a vehicle is illegally parked so as to block the entrance to a private
35 driveway and it is impractical to move the vehicle from in front of the driveway to
36 another point on the highway.

37 (e) When a vehicle is illegally parked so as to prevent access by firefighting
38 equipment to a fire hydrant and it is impracticable to move the vehicle from in
39 front of the fire hydrant to another point on the highway.

40 (f) When a vehicle, except highway maintenance or construction equipment, is
41 stopped, parked, or left standing for more than four hours upon the right-of-way of

1 a freeway that has full control of access and no crossings at grade and the driver, if
2 present, cannot move the vehicle under its own power.

3 (g) When the person in charge of a vehicle upon a highway or public land is, by
4 reason of physical injuries or illness, incapacitated to an extent so as to be unable
5 to provide for its custody or removal.

6 (h)(1) When an officer arrests a person driving or in control of a vehicle for an
7 alleged offense and the officer is, by this code or other law, required or permitted
8 to take, and does take, the person into custody.

9 (2) When an officer serves a notice of an order of suspension or revocation
10 pursuant to Section 13388 or 13389.

11 (i)(1) When a vehicle, other than a rented vehicle, is found upon a highway or
12 public land, or is removed pursuant to this code, and it is known that the vehicle
13 has been issued five or more notices of parking violations to which the owner or
14 person in control of the vehicle has not responded within 21 calendar days of
15 notice of citation issuance or citation issuance or 14 calendar days of the mailing
16 of a notice of delinquent parking violation to the agency responsible for processing
17 notices of parking violations, or the registered owner of the vehicle is known to
18 have been issued five or more notices for failure to pay or failure to appear in
19 court for traffic violations for which a certificate has not been issued by the
20 magistrate or clerk of the court hearing the case showing that the case has been
21 adjudicated or concerning which the registered owner's record has not been
22 cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17,
23 the vehicle may be impounded until that person furnishes to the impounding law
24 enforcement agency all of the following:

25 (A) Evidence of his or her identity.

26 (B) An address within this state at which he or she can be located.

27 (C) Satisfactory evidence that all parking penalties due for the vehicle and all
28 other vehicles registered to the registered owner of the impounded vehicle, and all
29 traffic violations of the registered owner, have been cleared.

30 (2) The requirements in subparagraph (C) of paragraph (1) shall be fully
31 enforced by the impounding law enforcement agency on and after the time that the
32 Department of Motor Vehicles is able to provide access to the necessary records.

33 (3) A notice of parking violation issued for an unlawfully parked vehicle shall
34 be accompanied by a warning that repeated violations may result in the
35 impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full
36 amount of parking penalties or bail has been deposited, that person may demand to
37 be taken without unnecessary delay before a magistrate, for traffic offenses, or a
38 hearing examiner, for parking offenses, within the county in which the offenses
39 charged are alleged to have been committed and who has jurisdiction of the
40 offenses and is nearest or most accessible with reference to the place where the
41 vehicle is impounded. Evidence of current registration shall be produced after a
42 vehicle has been impounded, or, at the discretion of the impounding law

1 enforcement agency, a notice to appear for violation of subdivision (a) of Section
2 4000 shall be issued to that person.

3 (4) A vehicle shall be released to the legal owner, as defined in Section 370, if
4 the legal owner does all of the following:

5 (A) Pays the cost of towing and storing the vehicle.

6 (B) Submits evidence of payment of fees as provided in Section 9561.

7 (C) Completes an affidavit in a form acceptable to the impounding law
8 enforcement agency stating that the vehicle was not in possession of the legal
9 owner at the time of occurrence of the offenses relating to standing or parking. A
10 vehicle released to a legal owner under this subdivision is a repossessed vehicle
11 for purposes of disposition or sale. The impounding agency shall have a lien on
12 any surplus that remains upon sale of the vehicle to which the registered owner is
13 or may be entitled, as security for the full amount of the parking penalties for all
14 notices of parking violations issued for the vehicle and for all local administrative
15 charges imposed pursuant to Section 22850.5. The legal owner shall promptly
16 remit to, and deposit with, the agency responsible for processing notices of
17 parking violations from that surplus, on receipt of that surplus, the full amount of
18 the parking penalties for all notices of parking violations issued for the vehicle and
19 for all local administrative charges imposed pursuant to Section 22850.5.

20 (5) The impounding agency that has a lien on the surplus that remains upon the
21 sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4)
22 has a deficiency claim against the registered owner for the full amount of the
23 parking penalties for all notices of parking violations issued for the vehicle and for
24 all local administrative charges imposed pursuant to Section 22850.5, less the
25 amount received from the sale of the vehicle.

26 (j) When a vehicle is found illegally parked and there are no license plates or
27 other evidence of registration displayed, the vehicle may be impounded until the
28 owner or person in control of the vehicle furnishes the impounding law
29 enforcement agency evidence of his or her identity and an address within this state
30 at which he or she can be located.

31 (k) When a vehicle is parked or left standing upon a highway for 72 or more
32 consecutive hours in violation of a local ordinance authorizing removal.

33 (l) When a vehicle is illegally parked on a highway in violation of a local
34 ordinance forbidding standing or parking and the use of a highway, or a portion
35 thereof, is necessary for the cleaning, repair, or construction of the highway, or for
36 the installation of underground utilities, and signs giving notice that the vehicle
37 may be removed are erected or placed at least 24 hours prior to the removal by a
38 local authority pursuant to the ordinance.

39 (m) When the use of the highway, or a portion of the highway, is authorized by a
40 local authority for a purpose other than the normal flow of traffic or for the
41 movement of equipment, articles, or structures of unusual size, and the parking of
42 a vehicle would prohibit or interfere with that use or movement, and signs giving

1 notice that the vehicle may be removed are erected or placed at least 24 hours
2 prior to the removal by a local authority pursuant to the ordinance.

3 (n) Whenever a vehicle is parked or left standing where local authorities, by
4 resolution or ordinance, have prohibited parking and have authorized the removal
5 of vehicles. Except as provided in subdivision (v), a vehicle shall not be removed
6 unless signs are posted giving notice of the removal.

7 (o)(1) When a vehicle is found or operated upon a highway, public land, or an
8 offstreet parking facility under the following circumstances:

9 (A) With a registration expiration date in excess of six months before the date it
10 is found or operated on the highway, public lands, or the offstreet parking facility.

11 (B) Displaying in, or upon, the vehicle, a registration card, identification card,
12 temporary receipt, license plate, special plate, registration sticker, device issued
13 pursuant to Section 4853, or permit that was not issued for that vehicle, or is not
14 otherwise lawfully used on that vehicle under this code.

15 (C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or
16 falsified registration card, identification card, temporary receipt, license plate,
17 special plate, registration sticker, device issued pursuant to Section 4853, or
18 permit.

19 (2) When a vehicle described in paragraph (1) is occupied, only a peace officer,
20 as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of
21 the Penal Code, may remove the vehicle.

22 (3) For the purposes of this subdivision, the vehicle shall be released to the
23 owner or person in control of the vehicle only after the owner or person furnishes
24 the storing law enforcement agency with proof of current registration and a
25 currently valid driver's license to operate the vehicle.

26 (4) As used in this subdivision, "offstreet parking facility" means an offstreet
27 facility held open for use by the public for parking vehicles and includes a publicly
28 owned facility for offstreet parking, and a privately owned facility for offstreet
29 parking if a fee is not charged for the privilege to park and it is held open for the
30 common public use of retail customers.

31 (p) When the peace officer issues the driver of a vehicle a notice to appear for a
32 violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5,
33 or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle
34 so removed from the highway or public land, or from private property after having
35 been on a highway or public land, shall not be released to the registered owner or
36 his or her agent, except upon presentation of the registered owner's or his or her
37 agent's currently valid driver's license to operate the vehicle and proof of current
38 vehicle registration, or upon order of a court.

39 (q) When a vehicle is parked for more than 24 hours on a portion of highway
40 that is located within the boundaries of a common interest development, as defined
41 in subdivision (c) of Section 1351 or in Section 6534 of the Civil Code, and signs,
42 as required by paragraph (1) of subdivision (a) of Section 22658 of this code, have
43 been posted on that portion of highway providing notice to drivers that vehicles

1 parked thereon for more than 24 hours will be removed at the owner's expense,
2 pursuant to a resolution or ordinance adopted by the local authority.

3 (r) When a vehicle is illegally parked and blocks the movement of a legally
4 parked vehicle.

5 (s)(1) When a vehicle, except highway maintenance or construction equipment,
6 an authorized emergency vehicle, or a vehicle that is properly permitted or
7 otherwise authorized by the Department of Transportation, is stopped, parked, or
8 left standing for more than eight hours within a roadside rest area or viewpoint.

9 (2) Notwithstanding paragraph (1), when a commercial motor vehicle, as
10 defined in paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or
11 left standing for more than 10 hours within a roadside rest area or viewpoint.

12 (3) For purposes of this subdivision, a roadside rest area or viewpoint is a
13 publicly maintained vehicle parking area, adjacent to a highway, utilized for the
14 convenient, safe stopping of a vehicle to enable motorists to rest or to view the
15 scenery. If two or more roadside rest areas are located on opposite sides of the
16 highway, or upon the center divider, within seven miles of each other, then that
17 combination of rest areas is considered to be the same rest area.

18 (t) When a peace officer issues a notice to appear for a violation of Section
19 25279.

20 (u) When a peace officer issues a citation for a violation of Section 11700 and
21 the vehicle is being offered for sale.

22 (v)(1) When a vehicle is a mobile billboard advertising display, as defined in
23 Section 395.5, and is parked or left standing in violation of a local resolution or
24 ordinance adopted pursuant to subdivision (m) of Section 21100, if the registered
25 owner of the vehicle was previously issued a warning citation for the same
26 offense, pursuant to paragraph (2).

27 (2) Notwithstanding subdivision (a) of Section 22507, a city or county, in lieu of
28 posting signs noticing a local ordinance prohibiting mobile billboard advertising
29 displays adopted pursuant to subdivision (m) of Section 21100, may provide
30 notice by issuing a warning citation advising the registered owner of the vehicle
31 that he or she may be subject to penalties upon a subsequent violation of the
32 ordinance, that may include the removal of the vehicle as provided in paragraph
33 (1). A city or county is not required to provide further notice for a subsequent
34 violation prior to the enforcement of penalties for a violation of the ordinance.

35 **Comment.** Subdivision (q) of Section 22651 is amended to add a cross-reference to Civil Code
36 Section 6534, reflecting the enactment of the Commercial and Industrial Common Interest
37 Development Act (Civ. Code §§ 6500-6876).

38 **Veh. Code § 22651.05 (amended). Removal of vehicle by trained volunteer in specified**
39 **circumstances**

40 SEC. ____ . Section 22651.05 of the Vehicle Code is amended to read:

41 22651.05. (a) A trained volunteer of a state or local law enforcement agency,
42 who is engaged in directing traffic or enforcing parking laws and regulations, of a

1 city, county, or jurisdiction of a state agency in which a vehicle is located, may
2 remove or authorize the removal of a vehicle located within the territorial limits in
3 which an officer or employee of that agency may act, under any of the following
4 circumstances:

5 (1) When a vehicle is parked or left standing upon a highway for 72 or more
6 consecutive hours in violation of a local ordinance authorizing the removal.

7 (2) When a vehicle is illegally parked or left standing on a highway in violation
8 of a local ordinance forbidding standing or parking and the use of a highway, or a
9 portion thereof, is necessary for the cleaning, repair, or construction of the
10 highway, or for the installation of underground utilities, and signs giving notice
11 that the vehicle may be removed are erected or placed at least 24 hours prior to the
12 removal by local authorities pursuant to the ordinance.

13 (3) Wherever the use of the highway, or a portion thereof, is authorized by local
14 authorities for a purpose other than the normal flow of traffic or for the movement
15 of equipment, articles, or structures of unusual size, and the parking of a vehicle
16 would prohibit or interfere with that use or movement, and signs giving notice that
17 the vehicle may be removed are erected or placed at least 24 hours prior to the
18 removal by local authorities pursuant to the ordinance.

19 (4) Whenever a vehicle is parked or left standing where local authorities, by
20 resolution or ordinance, have prohibited parking and have authorized the removal
21 of vehicles. A vehicle may not be removed unless signs are posted giving notice of
22 the removal.

23 (5) Whenever a vehicle is parked for more than 24 hours on a portion of
24 highway that is located within the boundaries of a common interest development,
25 as defined in subdivision (c) of Section 1351 or in Section 6534 of the Civil Code,
26 and signs, as required by Section 22658.2, have been posted on that portion of
27 highway providing notice to drivers that vehicles parked thereon for more than 24
28 hours will be removed at the owner's expense, pursuant to a resolution or
29 ordinance adopted by the local authority.

30 (b) The provisions of this chapter that apply to a vehicle removed pursuant to
31 Section 22651 apply to a vehicle removed pursuant to subdivision (a).

32 (c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his
33 or her own free will, provides services, without any financial gain, to a local or
34 state law enforcement agency, and who is duly trained and certified to remove a
35 vehicle by a local or state law enforcement agency.

36 **Comment.** Section 22651.05 is amended to add a cross-reference to Civil Code Section 6534,
37 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
38 (Civ. Code §§ 6500-6876).

39 **Veh. Code § 22658 (amended). Removal of vehicle from private property by property owner**

40 SEC. ____ . Section 22658 of the Vehicle Code is amended to read:

41 22658. (a) The owner or person in lawful possession of private property,
42 including an association of a common interest development as defined in Section

1 1351, or in Sections 6528 and 6534, of the Civil Code, may cause the removal of a
2 vehicle parked on the property to a storage facility that meets the requirements of
3 subdivision (n) under any of the following circumstances:

4 (1) There is displayed, in plain view at all entrances to the property, a sign not
5 less than 17 inches by 22 inches in size, with lettering not less than one inch in
6 height, prohibiting public parking and indicating that vehicles will be removed at
7 the owner's expense, and containing the telephone number of the local traffic law
8 enforcement agency and the name and telephone number of each towing company
9 that is a party to a written general towing authorization agreement with the owner
10 or person in lawful possession of the property. The sign may also indicate that a
11 citation may also be issued for the violation.

12 (2) The vehicle has been issued a notice of parking violation, and 96 hours have
13 elapsed since the issuance of that notice.

14 (3) The vehicle is on private property and lacks an engine, transmission, wheels,
15 tires, doors, windshield, or any other major part or equipment necessary to operate
16 safely on the highways, the owner or person in lawful possession of the private
17 property has notified the local traffic law enforcement agency, and 24 hours have
18 elapsed since that notification.

19 (4) The lot or parcel upon which the vehicle is parked is improved with a single-
20 family dwelling.

21 (b) The tow truck operator removing the vehicle, if the operator knows or is able
22 to ascertain from the property owner, person in lawful possession of the property,
23 or the registration records of the Department of Motor Vehicles the name and
24 address of the registered and legal owner of the vehicle, shall immediately give, or
25 cause to be given, notice in writing to the registered and legal owner of the fact of
26 the removal, the grounds for the removal, and indicate the place to which the
27 vehicle has been removed. If the vehicle is stored in a storage facility, a copy of
28 the notice shall be given to the proprietor of the storage facility. The notice
29 provided for in this section shall include the amount of mileage on the vehicle at
30 the time of removal and the time of the removal from the property. If the tow truck
31 operator does not know and is not able to ascertain the name of the owner or for
32 any other reason is unable to give the notice to the owner as provided in this
33 section, the tow truck operator shall comply with the requirements of subdivision
34 (c) of Section 22853 relating to notice in the same manner as applicable to an
35 officer removing a vehicle from private property.

36 (c) This section does not limit or affect any right or remedy that the owner or
37 person in lawful possession of private property may have by virtue of other
38 provisions of law authorizing the removal of a vehicle parked upon private
39 property.

40 (d) The owner of a vehicle removed from private property pursuant to
41 subdivision (a) may recover for any damage to the vehicle resulting from any
42 intentional or negligent act of a person causing the removal of, or removing, the
43 vehicle.

1 (e)(1) An owner or person in lawful possession of private property, or an
2 association of a common interest development, causing the removal of a vehicle
3 parked on that property is liable for double the storage or towing charges
4 whenever there has been a failure to comply with paragraph (1), (2), or (3) of
5 subdivision (a) or to state the grounds for the removal of the vehicle if requested
6 by the legal or registered owner of the vehicle as required by subdivision (f).

7 (2) A property owner or owner's agent or lessee who causes the removal of a
8 vehicle parked on that property pursuant to the exemption set forth in
9 subparagraph (A) of paragraph (1) of subdivision (l) and fails to comply with that
10 subdivision is guilty of an infraction, punishable by a fine of one thousand dollars
11 (\$1,000).

12 (f) An owner or person in lawful possession of private property, or an
13 association of a common interest development, causing the removal of a vehicle
14 parked on that property shall notify by telephone or, if impractical, by the most
15 expeditious means available, the local traffic law enforcement agency within one
16 hour after authorizing the tow. An owner or person in lawful possession of private
17 property, an association of a common interest development, causing the removal
18 of a vehicle parked on that property, or the tow truck operator who removes the
19 vehicle, shall state the grounds for the removal of the vehicle if requested by the
20 legal or registered owner of that vehicle. A towing company that removes a
21 vehicle from private property in compliance with subdivision (l) is not responsible
22 in a situation relating to the validity of the removal. A towing company that
23 removes the vehicle under this section shall be responsible for the following:

24 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

25 (2) The removal of a vehicle other than the vehicle specified by the owner or
26 other person in lawful possession of the private property.

27 (g)(1)(A) Possession of a vehicle under this section shall be deemed to arise
28 when a vehicle is removed from private property and is in transit.

29 (B) Upon the request of the owner of the vehicle or that owner's agent, the
30 towing company or its driver shall immediately and unconditionally release a
31 vehicle that is not yet removed from the private property and in transit.

32 (C) A person failing to comply with subparagraph (B) is guilty of a
33 misdemeanor.

34 (2) If a vehicle is released to a person in compliance with subparagraph (B) of
35 paragraph (1), the vehicle owner or authorized agent shall immediately move that
36 vehicle to a lawful location.

37 (h) A towing company may impose a charge of not more than one-half of the
38 regular towing charge for the towing of a vehicle at the request of the owner, the
39 owner's agent, or the person in lawful possession of the private property pursuant
40 to this section if the owner of the vehicle or the vehicle owner's agent returns to
41 the vehicle after the vehicle is coupled to the tow truck by means of a regular
42 hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by
43 means of a conventional trailer, and before it is removed from the private property.

1 The regular towing charge may only be imposed after the vehicle has been
2 removed from the property and is in transit.

3 (i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section
4 is excessive if the charge exceeds the greater of the following:

5 (i) That which would have been charged for that towing or storage, or both,
6 made at the request of a law enforcement agency under an agreement between a
7 towing company and the law enforcement agency that exercises primary
8 jurisdiction in the city in which is located the private property from which the
9 vehicle was, or was attempted to be, removed, or if the private property is not
10 located within a city, then the law enforcement agency that exercises primary
11 jurisdiction in the county in which the private property is located.

12 (ii) That which would have been charged for that towing or storage, or both,
13 under the rate approved for that towing operator by the California Highway Patrol
14 for the jurisdiction in which the private property is located and from which the
15 vehicle was, or was attempted to be, removed.

16 (B) A towing operator shall make available for inspection and copying his or her
17 rate approved by the California Highway Patrol, if any, within 24 hours of a
18 request without a warrant to law enforcement, the Attorney General, district
19 attorney, or city attorney.

20 (2) If a vehicle is released within 24 hours from the time the vehicle is brought
21 into the storage facility, regardless of the calendar date, the storage charge shall be
22 for only one day. Not more than one day's storage charge may be required for a
23 vehicle released the same day that it is stored.

24 (3) If a request to release a vehicle is made and the appropriate fees are tendered
25 and documentation establishing that the person requesting release is entitled to
26 possession of the vehicle, or is the owner's insurance representative, is presented
27 within the initial 24 hours of storage, and the storage facility fails to comply with
28 the request to release the vehicle or is not open for business during normal
29 business hours, then only one day's storage charge may be required to be paid
30 until after the first business day. A business day is any day in which the lienholder
31 is open for business to the public for at least eight hours. If a request is made more
32 than 24 hours after the vehicle is placed in storage, charges may be imposed on a
33 full calendar day basis for each day, or part thereof, that the vehicle is in storage.

34 (j)(1) A person who charges a vehicle owner a towing, service, or storage charge
35 at an excessive rate, as described in subdivision (h) or (i), is civilly liable to the
36 vehicle owner for four times the amount charged.

37 (2) A person who knowingly charges a vehicle owner a towing, service, or
38 storage charge at an excessive rate, as described in subdivision (h) or (i), or who
39 fails to make available his or her rate as required in subparagraph (B) of paragraph
40 (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more
41 than two thousand five hundred dollars (\$2,500), or by imprisonment in the county
42 jail for not more than three months, or by both that fine and imprisonment.

1 (k)(1) A person operating or in charge of a storage facility where vehicles are
2 stored pursuant to this section shall accept a valid bank credit card or cash for
3 payment of towing and storage by a registered owner, the legal owner, or the
4 owner's agent claiming the vehicle. A credit card shall be in the name of the
5 person presenting the card. "Credit card" means "credit card" as defined in
6 subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of
7 this section, credit card does not include a credit card issued by a retail seller.

8 (2) A person described in paragraph (1) shall conspicuously display, in that
9 portion of the storage facility office where business is conducted with the public, a
10 notice advising that all valid credit cards and cash are acceptable means of
11 payment.

12 (3) A person operating or in charge of a storage facility who refuses to accept a
13 valid credit card or who fails to post the required notice under paragraph (2) is
14 guilty of a misdemeanor, punishable by a fine of not more than two thousand five
15 hundred dollars (\$2,500), or by imprisonment in the county jail for not more than
16 three months, or by both that fine and imprisonment.

17 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is
18 civilly liable to the registered owner of the vehicle or the person who tendered the
19 fees for four times the amount of the towing and storage charges.

20 (5) A person operating or in charge of the storage facility shall have sufficient
21 moneys on the premises of the primary storage facility during normal business
22 hours to accommodate, and make change in, a reasonable monetary transaction.

23 (6) Credit charges for towing and storage services shall comply with Section
24 1748.1 of the Civil Code. Law enforcement agencies may include the costs of
25 providing for payment by credit when making agreements with towing companies
26 as described in subdivision (i).

27 (l)(1)(A) A towing company shall not remove or commence the removal of a
28 vehicle from private property without first obtaining the written authorization from
29 the property owner or lessee, including an association of a common interest
30 development, or an employee or agent thereof, who shall be present at the time of
31 removal and verify the alleged violation, except that presence and verification is
32 not required if the person authorizing the tow is the property owner, or the owner's
33 agent who is not a tow operator, of a residential rental property of 15 or fewer
34 units that does not have an onsite owner, owner's agent or employee, and the
35 tenant has verified the violation, requested the tow from that tenant's assigned
36 parking space, and provided a signed request or electronic mail, or has called and
37 provides a signed request or electronic mail within 24 hours, to the property owner
38 or owner's agent, which the owner or agent shall provide to the towing company
39 within 48 hours of authorizing the tow. The signed request or electronic mail shall
40 contain the name and address of the tenant, and the date and time the tenant
41 requested the tow. A towing company shall obtain, within 48 hours of receiving
42 the written authorization to tow, a copy of a tenant request required pursuant to
43 this subparagraph. For the purpose of this subparagraph, a person providing the

1 written authorization who is required to be present on the private property at the
2 time of the tow does not have to be physically present at the specified location of
3 where the vehicle to be removed is located on the private property.

4 (B) The written authorization under subparagraph (A) shall include all of the
5 following:

6 (i) The make, model, vehicle identification number, and license plate number of
7 the removed vehicle.

8 (ii) The name, signature, job title, residential or business address and working
9 telephone number of the person, described in subparagraph (A), authorizing the
10 removal of the vehicle.

11 (iii) The grounds for the removal of the vehicle.

12 (iv) The time when the vehicle was first observed parked at the private property.

13 (v) The time that authorization to tow the vehicle was given.

14 (C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing
15 company prior to payment of a towing or storage charge shall provide a photocopy
16 of the written authorization to the vehicle owner or the agent.

17 (ii) If the vehicle was towed from a residential property, the towing company
18 shall redact the information specified in clause (ii) of subparagraph (B) in the
19 photocopy of the written authorization provided to the vehicle owner or the agent
20 pursuant to clause (i).

21 (iii) The towing company shall also provide to the vehicle owner or the agent a
22 separate notice that provides the telephone number of the appropriate local law
23 enforcement or prosecuting agency by stating “If you believe that you have been
24 wrongfully towed, please contact the local law enforcement or prosecuting agency
25 at [insert appropriate telephone number].” The notice shall be in English and in the
26 most populous language, other than English, that is spoken in the jurisdiction.

27 (D) A towing company shall not remove or commence the removal of a vehicle
28 from private property described in subdivision (a) of Section 22953 unless the
29 towing company has made a good faith inquiry to determine that the owner or the
30 property owner’s agent complied with Section 22953.

31 (E)(i) General authorization to remove or commence removal of a vehicle at the
32 towing company’s discretion shall not be delegated to a towing company or its
33 affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire
34 hydrant or in a fire lane, or in a manner which interferes with an entrance to, or
35 exit from, the private property.

36 (ii) In those cases in which general authorization is granted to a towing company
37 or its affiliate to undertake the removal or commence the removal of a vehicle that
38 is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that
39 interferes with an entrance to, or exit from, private property, the towing company
40 and the property owner, or owner’s agent, or person in lawful possession of the
41 private property shall have a written agreement granting that general authorization.

42 (2) If a towing company removes a vehicle under a general authorization
43 described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully

1 parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that
2 interferes with an entrance to, or exit from, the private property, the towing
3 company shall take, prior to the removal of that vehicle, a photograph of the
4 vehicle that clearly indicates that parking violation. Prior to accepting payment,
5 the towing company shall keep one copy of the photograph taken pursuant to this
6 paragraph, and shall present that photograph and provide, without charge, a
7 photocopy to the owner or an agent of the owner, when that person claims the
8 vehicle.

9 (3) A towing company shall maintain the original written authorization, or the
10 general authorization described in subparagraph (E) of paragraph (1) and the
11 photograph of the violation, required pursuant to this section, and any written
12 requests from a tenant to the property owner or owner's agent required by
13 subparagraph (A) of paragraph (1), for a period of three years and shall make them
14 available for inspection and copying within 24 hours of a request without a
15 warrant to law enforcement, the Attorney General, district attorney, or city
16 attorney.

17 (4) A person who violates this subdivision is guilty of a misdemeanor,
18 punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
19 or by imprisonment in the county jail for not more than three months, or by both
20 that fine and imprisonment.

21 (5) A person who violates this subdivision is civilly liable to the owner of the
22 vehicle or his or her agent for four times the amount of the towing and storage
23 charges.

24 (m)(1) A towing company that removes a vehicle from private property under
25 this section shall notify the local law enforcement agency of that tow after the
26 vehicle is removed from the private property and is in transit.

27 (2) A towing company is guilty of a misdemeanor if the towing company fails to
28 provide the notification required under paragraph (1) within 60 minutes after the
29 vehicle is removed from the private property and is in transit or 15 minutes after
30 arriving at the storage facility, whichever time is less.

31 (3) A towing company that does not provide the notification under paragraph (1)
32 within 30 minutes after the vehicle is removed from the private property and is in
33 transit is civilly liable to the registered owner of the vehicle, or the person who
34 tenders the fees, for three times the amount of the towing and storage charges.

35 (4) If notification is impracticable, the times for notification, as required
36 pursuant to paragraphs (2) and (3), shall be tolled for the time period that
37 notification is impracticable. This paragraph is an affirmative defense.

38 (n) A vehicle removed from private property pursuant to this section shall be
39 stored in a facility that meets all of the following requirements:

40 (1)(A) Is located within a 10-mile radius of the property from where the vehicle
41 was removed.

42 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a
43 towing company has prior general written approval from the law enforcement

1 agency that exercises primary jurisdiction in the city in which is located the
2 private property from which the vehicle was removed, or if the private property is
3 not located within a city, then the law enforcement agency that exercises primary
4 jurisdiction in the county in which is located the private property.

5 (2)(A) Remains open during normal business hours and releases vehicles after
6 normal business hours.

7 (B) A gate fee may be charged for releasing a vehicle after normal business
8 hours, weekends, and state holidays. However, the maximum hourly charge for
9 releasing a vehicle after normal business hours shall be one-half of the hourly tow
10 rate charged for initially towing the vehicle, or less.

11 (C) Notwithstanding any other provision of law and for purposes of this
12 paragraph, “normal business hours” are Monday to Friday, inclusive, from 8 a.m.
13 to 5 p.m., inclusive, except state holidays.

14 (3) Has a public pay telephone in the office area that is open and accessible to
15 the public.

16 (o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to
17 assist vehicle owners or their agents by, among other things, allowing payment by
18 credit cards for towing and storage services, thereby expediting the recovery of
19 towed vehicles and concurrently promoting the safety and welfare of the public.

20 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further
21 the safety of the general public by ensuring that a private property owner or lessee
22 has provided his or her authorization for the removal of a vehicle from his or her
23 property, thereby promoting the safety of those persons involved in ordering the
24 removal of the vehicle as well as those persons removing, towing, and storing the
25 vehicle.

26 (3) It is the intent of the Legislature in the adoption of subdivision (g) to
27 promote the safety of the general public by requiring towing companies to
28 unconditionally release a vehicle that is not lawfully in their possession, thereby
29 avoiding the likelihood of dangerous and violent confrontation and physical injury
30 to vehicle owners and towing operators, the stranding of vehicle owners and their
31 passengers at a dangerous time and location, and impeding expedited vehicle
32 recovery, without wasting law enforcement’s limited resources.

33 (p) The remedies, sanctions, restrictions, and procedures provided in this section
34 are not exclusive and are in addition to other remedies, sanctions, restrictions, or
35 procedures that may be provided in other provisions of law, including, but not
36 limited to, those that are provided in Sections 12110 and 34660.

37 (q) A vehicle removed and stored pursuant to this section shall be released by
38 the law enforcement agency, impounding agency, or person in possession of the
39 vehicle, or any person acting on behalf of them, to the legal owner or the legal
40 owner’s agent upon presentation of the assignment, as defined in subdivision (b)
41 of Section 7500.1 of the Business and Professions Code; a release from the one
42 responsible governmental agency, only if required by the agency; a government-
43 issued photographic identification card; and any one of the following as

1 determined by the legal owner or the legal owner’s agent: a certificate of
2 repossession for the vehicle, a security agreement for the vehicle, or title, whether
3 paper or electronic, showing proof of legal ownership for the vehicle. Any
4 documents presented may be originals, photocopies, or facsimile copies, or may be
5 transmitted electronically. The storage facility shall not require any documents to
6 be notarized. The storage facility may require the agent of the legal owner to
7 produce a photocopy or facsimile copy of its repossession agency license or
8 registration issued pursuant to Chapter 11 (commencing with Section 7500) of
9 Division 3 of the Business and Professions Code, or to demonstrate, to the
10 satisfaction of the storage facility, that the agent is exempt from licensure pursuant
11 to Section 7500.2 or 7500.3 of the Business and Professions Code.

12 **Comment.** Subdivision (a) of Section 22658 is amended to add cross-references to Civil Code
13 Section 6528 and 6534, reflecting the enactment of the Commercial and Industrial Common
14 Interest Development Act (Civ. Code §§ 6500-6876).

15 **Water Code § 13553 (amended). Recycled water**

16 SEC. ____ . Section 13553 of the Water Code is amended to read:

17 13553. (a) The Legislature hereby finds and declares that the use of potable
18 domestic water for toilet and urinal flushing in structures is a waste or an
19 unreasonable use of water within the meaning of Section 2 of Article X of the
20 California Constitution if recycled water, for these uses, is available to the user
21 and meets the requirements set forth in Section 13550, as determined by the state
22 board after notice and a hearing.

23 (b) The state board may require a public agency or person subject to this section
24 to furnish any information that may be relevant to making the determination
25 required in subdivision (a).

26 (c) For purposes of this section and Section 13554, “structure” or “structures”
27 means commercial, retail, and office buildings, theaters, auditoriums,
28 condominium projects, schools, hotels, apartments, barracks, dormitories, jails,
29 prisons, and reformatories, and other structures as determined by the State
30 Department of Public Health.

31 (d) Recycled water may be used in condominium projects, as defined in Section
32 1351 or 6542 of the Civil Code, subject to all of the following conditions:

33 (1) Prior to the indoor use of recycled water in any condominium project, the
34 agency delivering the recycled water to the condominium project shall file a report
35 with, and receive written approval of the report from, the State Department of
36 Public Health. The report shall be consistent with the provisions of Title 22 of the
37 California Code of Regulations generally applicable to dual-plumbed structures
38 and shall include all the following:

39 (A) That potable water service to each condominium project will be provided
40 with a backflow protection device approved by the State Department of Public
41 Health to protect the agency’s public water system, as defined in Section 116275
42 of the Health and Safety Code. The backflow protection device approved by the

1 State Department of Public Health shall be inspected and tested annually by a
2 person certified in the inspection of backflow prevention devices.

3 (B) That any plumbing modifications in the condominium unit or any physical
4 alteration of the structure will be done in compliance with state and local
5 plumbing codes.

6 (C) That each condominium project will be tested by the recycled water agency
7 or the responsible local agency at least once every four years to ensure that there
8 are no indications of a possible cross connection between the condominium's
9 potable and nonpotable systems.

10 (D) That recycled water lines will be color coded consistent with current statutes
11 and regulations.

12 (2) The recycled water agency or the responsible local agency shall maintain
13 records of all tests and annual inspections conducted.

14 (3) The condominium's declaration, as defined in Section 1351 or 6546 of the
15 Civil Code, shall provide that the laws and regulations governing recycled water
16 apply, shall not permit any exceptions to those laws and regulations, shall
17 incorporate the report described in paragraph (1), and shall contain the following
18 statement:

19 "NOTICE OF USE OF RECYCLED WATER

20 This property is approved by the State Department of Public Health for the use
21 of recycled water for toilet and urinal flushing. This water is not potable, is not
22 suitable for indoor purposes other than toilet and urinal flushing purposes, and
23 requires dual plumbing. Alterations and modifications to the plumbing system
24 require a permit and are prohibited without first consulting with the appropriate
25 local building code enforcement agency and your property management company
26 or ~~homeowners'~~ owners' association to ensure that the recycled water is not mixed
27 with the drinking water."

28 (e) The State Department of Public Health may adopt regulations as necessary to
29 assist in the implementation of this section.

30 (f) This section shall only apply to condominium projects that are created,
31 within the meaning of Section 1352 or 6580 of the Civil Code, on or after January
32 1, 2008.

33 (g) This section and Section 13554 do not apply to a pilot program adopted
34 pursuant to Section 13553.1.

35 **Comment.** Subdivision (d) of Section 13553 is amended to add cross-references to Civil Code
36 Sections 6542 and 6546, and to make a terminological change, reflecting the enactment of the
37 Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

38 Subdivision (f) is amended to add a cross-reference to Civil Code Section 6580, for the same
39 reason.

40  **Note.** The Commission invites comment on whether Section 13553 applies to an exclusively
41 commercial or industrial common interest development, notwithstanding the use in Section
42 13553(d) of the undefined term "homeowners' association."

DISPOSITION OF EXISTING LAW

The table below shows the disposition of each provision of the existing Davis-Stirling Common Interest Development Act in the proposed law.

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1350.....	not continued	1357.100.....	not continued
1350.5.....	6502	1357.110.....	not continued
1350.7.....	not continued	1357.120.....	not continued
1351 (intro.).....	6526	1357.130.....	not continued
1351(a).....	6528	1357.140.....	not continued
1351(b).....	6532	1357.150.....	not continued
1351(c).....	6534	1358(a).....	6660
1351(d).....	6536	1358(b).....	6662
1351(e)(1)-•.....	6624	1358(c).....	6664
1351(e)(3).....	6624, 6626(a)	1358(d).....	6666
1351(e) (next to last ¶).....	6626(b)-(c)	1358 (last ¶).....	6670
1351(e) (last ¶).....	6628	1358 (next to last ¶).....	6668
1351(f).....	6542	1359.....	6656
1351(g).....	6544	1360.....	6714
1351(h).....	6546	1360.5.....	6706
1351(i).....	6550	1361.....	6652
1351(j).....	6552	1361.5.....	6654
1351(k).....	6562	1362.....	6650
1351(l).....	6564	1363(a).....	6750
1351(m).....	6566	1363(b).....	not continued
1352.....	6580	1363(c).....	6752
1352.5.....	6606(a)-(b), (d)	1363(d).....	not continued
1353(a)(1) (1st & 2d sent.).....	6614(a)	1363(e).....	not continued
1353(a)(1)-(4) (except 1st & 2d sent.).....	1363(f).....	not continued
.....	not continued	1363(g) (1st sent.).....	6850
1353(b).....	6614(b)	1363(g) (2d sent.).....	not continued
1353.5.....	6702	1363(h).....	not continued
1353.6.....	6704	1363(i).....	not continued
1353.7.....	not continued (but see 6612)	1363(j).....	6854
1353.8.....	6712	1363.001.....	6760
1354.....	6856	1363.005.....	not continued
1355(a) (1st sent.).....	6620(a) (1st sent.)	1363.03.....	not continued
1355(a)(1).....	6620(a)(2)	1363.04.....	not continued
1355(a)(2).....	6620(a)(3)	1363.05.....	not continued
1355(a)(3).....	6620(a)(4)	1363.07.....	not continued
1355(b) (1st sent.).....	6616	1363.09.....	not continued
1355(b)(1).....	6620(a)(1)	1363.1.....	not continued
1355(b)(2).....	6620(a)(2), 6620(b)	1363.2.....	not continued
1355(b)(3).....	6620(a)(3)	1363.5.....	6622
1355.5.....	6608	1363.6.....	6762
1356.....	not continued	1363.810.....	not continued
1357(a).....	6618(a)	1363.820.....	not continued
1357(b) (1st sent.).....	6618(b), 6620	1363.830.....	not continued
1357(c).....	not continued	1363.840.....	not continued
1357(d).....	6618(c)	1363.850.....	not continued

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1364(a)	6716(a)	1367.1(g) (3d sent.)	6822(a)
1364(b)	6718	1367.1(g) (4th sent.)	6822(c) (intro.)
1364(c)	6716(b)	1367.1(g)(1)-(2)	6822(c)(1)-(2)
1364(d)-(e)	6720	1367.1(h)	6820(b)
1364(f)	6722	1367.1(i)	6818(b)
1365	not continued	1367.1(j)	6822(b)
1365.1	not continued	1367.1(k)	6814(f)
1365.2	not continued	1367.1(l)	6819
1365.2.5	not continued	1367.1(m)	not continued (but see 6828)
1365.3	not continued	1367.1(n)	not continued
1365.5	not continued	1367.4	not continued
1365.6	6758(a)	1367.5	not continued
1365.7	not continued	1367.6	not continued
1365.9	6840	1368	not continued
1366(a) (1st sent. only)	6800	1368.1	6710
1366(a) (except 1st sent.)	not continued	1368.3	6858
1366(b)	not continued	1368.4	6860
1366(c)	6804	1368.5	6150
1366(d)	not continued	1369	6658
1366(e)	not continued	1369.510	not continued
1366(f)	6808(c)	1369.520	not continued
1366.1	not continued	1369.530	not continued
1366.2	not continued	1369.540	not continued
1366.4	not continued	1369.550	not continued
1367	not continued (but see 6828)	1369.560	not continued
1367.1(a) (1st sent.)	6808(a)	1369.570	not continued
1367.1(a) (2d sent.)	6812 (intro.)	1369.580	not continued
1367.1(a)(1)-(3)	6812(a)-(c)	1369.590	not continued
1367.1(a)(4)-(6)	not continued	1370	6602
1367.1(b)	6810	1371	6604
1367.1(c)	not continued	1372	6510
1367.1(d) (1st - 5th sent.)	6814(a)-(e)	1373	6580(a), 6531
1367.1(d) (6th sent.)	6818(a)	1374	6580(b)
1367.1(d) (7th & 8th sent.)	6824(a)	1375	6000
1367.1(e)	6824(b)	1375.05	6050
1367.1(f)	6816	1375.1	6100
1367.1(g) (1st sent.)	6826	1376	6708
1367.1(g) (2d sent.)	6820(a)	1378	not continued