

Memorandum 2001-63

Common Interest Development Law: Structure of Davis-Stirling Act

The Davis-Stirling Common Interest Development Act is found at Civil Code Sections 1350-1376. It is an undifferentiated mass of 44 sections, some of them many pages in length. While the sections tend to follow a roughly logical sequence, locating material within the body of the Davis-Stirling Act is a challenge.

This situation may contribute to complaints the Commission has received that the statute is confusing and hard to work with. It may also be a major cause of complaints that the statute fails to deal with a particular issue, when in fact the statute deals directly with that issue; people simply are unable to locate the provision in the body of the statute.

The staff thinks it would be helpful to provide a general organizational structure to the Davis-Stirling Act. This could be done simply by adding descriptive chapter and article headings to the statute without touching the body of the statute. No renumbering or rearranging of sections would be required. We would add a constructional provision to make clear that the headings that are added do not affect the interpretation or meaning of the sections.

A sample organizational structure is set out below. To see how the headings would fall within the body of the statute, please see the Exhibit to this memorandum.

Title 6. Common Interest Developments

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One consideration in the decision whether to proceed with something like this is that it is somewhat premature. We don't yet know, for example, whether we will recommend replacement of the Davis-Stirling Act with the Uniform Common Interest Ownership Act. And assuming we decide to recommend improvement rather than replacement of the Davis-Stirling Act, it is apparent that the existing organization will require substantial overhaul.

Nonetheless, the staff thinks that, in the interim, a general outline like this probably will not hurt and could help. If for no other reason, it will provide a logical structure in which to insert any priority proposals we may make relating to nonjudicial dispute resolution. Likewise, if there is a particularly long section of existing law that needs to be overhauled, an organizational structure such as this would facilitate converting the section into an article with short and logically organized provisions.

On the other hand, retrofitting the statute with an outline that gives the appearance of an orderly and logical progression of sections could be misleading. There may be an occasional odd-ball provision buried in a mass of generally unrelated material. Likewise, a person could look in a somewhat logical place for guidance on a particular subject and, not finding it, conclude there is no such provision, when in fact the provision is located in a place not signaled in the outline.

On balance, however, the staff concludes that an outline would do more good than harm.

We would not introduce a separate bill for this purpose. We would wait until we have a substantive proposal in the Legislature and add the organizational material to the bill. Or it could be added to other pending legislation, with the consent of the author.

If the Commission agrees with this concept, either as proposed or as revised, we would convert this memorandum into a tentative recommendation, and circulate it to interested persons and organizations for comment.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

STRUCTURE OF DAVIS-STIRLING ACT

Title 6. Common Interest Developments

☞ **Staff Note.** The following chapter and article headings, along with proposed Civil Code Section 1350.5 on the effect of headings, are set out in boldface and are proposed to be added to the Davis-Stirling Common Interest Development Act.

CHAPTER 1. GENERAL PROVISIONS

Article 1. Preliminary Provisions

1350. This title shall be known and may be cited as the Davis-Stirling Common Interest Development Act.

1350.5 (added). Effect of headings

1350.5. Division, part, title, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of this title.

Comment. Section 1350.5 is a standard provision found in many codes. See, e.g., Evid. Code § 5; Fam. Code § 5; Prob. Code § 4.

Article 2. Definitions

1351. As used in this title, the following terms have the following meanings:

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

(b) “Common area” means the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing. However, the common area for a planned development specified in paragraph (2) of subdivision (k) may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

(c) “Common interest development” means any of the following:

(1) A community apartment project.

(2) A condominium project.

(3) A planned development.

(4) A stock cooperative.

(d) "Community apartment project" means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

(e) "Condominium plan" means a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged by the following:

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

(ii) In the case of a condominium project which will terminate upon the termination of an estate for years, the certificate shall be signed and acknowledged by all lessors and lessees of the estate for years.

(iii) In the case of a condominium project subject to a life estate, the certificate shall be signed and acknowledged by all life tenants and remainder interests.

(iv) The certificate shall also be signed and acknowledged by either the trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the condominium plan. Further, 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.

A condominium plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by all the persons whose signatures would be required pursuant to this subdivision.

(f) A "condominium project" means a development consisting of condominiums. A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more

units, or (4) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

(g) "Declarant" means the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.

(h) "Declaration" means the document, however denominated, which contains the information required by Section 1353.

(i) "Exclusive use common area" means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

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

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

(j) "Governing documents" means the declaration and any other documents, such as bylaws, operating rules of the association, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.

(k) "Planned development" means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area is owned either by an the association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common

area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367.

(1) "Separate interest" has the following meanings:

(1) In a community apartment project, "separate interest" means the exclusive right to occupy an apartment, as specified in subdivision (d).

(2) In a condominium project, "separate interest" means an individual unit, as specified in subdivision (f).

(3) In a planned development, "separate interest" means a separately owned lot, parcel, area, or space.

(4) In a stock cooperative, "separate interest" means the exclusive right to occupy a portion of the real property, as specified in subdivision (m).

Unless the declaration or condominium plan, if any exists, otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the separate interest are part of the separate interest and any other portions of the walls, floors, or ceilings are part of the common areas.

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

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

A "stock cooperative" includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 33007.5 of the Health and Safety Code.

CHAPTER 2. GOVERNING DOCUMENTS

Article 1. Creation

1352. This title applies and a common interest development is created whenever a separate interest coupled with an interest in the common area or membership in the association is, or has been, conveyed, provided, all of the following are recorded:

(a) A declaration.

(b) A condominium plan, if any exists.

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

1352.5. (a) No declaration or other governing document shall include a restrictive covenant in violation of Section 12955 of the Government Code.

(b) Notwithstanding any other provision of law or provision of the governing documents, the board of directors of an association, without approval of the owners, shall amend any declaration or other governing document that includes a restrictive covenant prohibited by this section to delete the restrictive covenant, and shall restate the declaration or other governing document without the restrictive covenant but with no other change to the declaration or governing document.

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

1353. (a) A declaration, recorded on or after January 1, 1986, shall contain a legal description of the common interest development, and a statement that the common interest development is a community apartment project, condominium project, planned development, stock cooperative, or combination thereof. The declaration shall additionally set forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.

(b) The declaration may contain any other matters the original signator of the declaration or the owners consider appropriate.

Article 2. Enforcement

1354. (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of

five thousand dollars (\$5,000), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a Request for Resolution shall have 30 days following service of the Request for Resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(c) At the time of filing a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000), related to the enforcement of the governing documents, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with subdivision (b). The failure to file a certificate as required by subdivision (b) shall be grounds for a demurrer pursuant to Section 430.10 of the Code of Civil Procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing party certifies in writing that one of the other parties to the dispute refused alternative dispute resolution prior to the filing of the complaint, that preliminary or temporary injunctive relief is necessary, or that alternative dispute resolution is not required by subdivision (b), because the limitation period for bringing the action would have run within the 120-day period next following the filing of the action, or the court finds that dismissal of the action for failure to comply with subdivision (b) would result in substantial prejudice to one of the parties.

(d) Once a civil action specified in subdivision (a) to enforce the governing documents has been filed by either an association or an owner or member of a common interest development, upon written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed. The costs of the alternative dispute resolution shall be borne by the parties. During this referral, the

action shall not be subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(e) The requirements of subdivisions (b) and (c) shall not apply to the filing of a cross-complaint.

(f) In any action specified in subdivision (a) to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by any party for attorney's fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(g) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), evidence of anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence, and testimony or disclosure of such a statement or admission may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(h) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), documents prepared for the purpose or in the course of, or pursuant to, the alternative dispute resolution shall not be admissible in evidence, and disclosure of these documents may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(i) Members of the association shall annually be provided a summary of the provisions of this section, which specifically references this section. The summary shall include the following language:

"Failure by any member of the association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents."

The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner specified in Section 5016 of the Corporations Code.

(j) Any Request for Resolution sent to the owner of a separate interest pursuant to subdivision (b) shall include a copy of this section.

Article 3. Amendment

1355. (a) The declaration may be amended pursuant to the governing documents or this title. Except as provided in Section 1356, an amendment is effective after (1) the approval of the percentage of owners required by the governing documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the officer designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and (3)

that writing has been recorded in each county in which a portion of the common interest development is located.

(b) Except to the extent that a declaration provides by its express terms that it is not amendable, in whole or in part, a declaration which fails to include provisions permitting its amendment at all times during its existence may be amended at any time. For purposes of this subdivision, an amendment is only effective after (1) the proposed amendment has been distributed to all of the owners of separate interests in the common interest development by first-class mail postage prepaid or personal delivery not less than 15 days and not more than 60 days prior to any approval being solicited; (2) the approval of owners representing more than 50 percent, or any higher percentage required by the declaration for the approval of an amendment to the declaration, of the separate interests in the common interest development has been given, and that fact has been certified in a writing, executed and acknowledged by an officer of the association; and (3) the amendment has been recorded in each county in which a portion of the common interest development is located. A copy of any amendment adopted pursuant to this subdivision shall be distributed by first-class mail postage prepaid or personal delivery to all of the owners of separate interest immediately upon its recordation.

1355.5. (a) Notwithstanding any provision of the governing documents of a common interest development to the contrary, the board of directors of the association may, after the developer of the common interest development has completed construction of the development, has terminated construction activities, and has terminated his or her marketing activities for the sale, lease, or other disposition of separate interests within the development, adopt an amendment deleting from any of the governing documents any provision which is unequivocally designed and intended, or which by its nature can only have been designed or intended, to facilitate the developer in completing the construction or marketing of the development. However, provisions of the governing documents relative to a particular construction or marketing phase of the development may not be deleted under the authorization of this subdivision until that construction or marketing phase has been completed.

(b) The provisions which may be deleted by action of the board shall be limited to those which provide for access by the developer over or across the common area for the purposes of (a) completion of construction of the development, and (b) the erection, construction, or maintenance of structures or other facilities designed to facilitate the completion of construction or marketing of separate interests.

(c) At least 30 days prior to taking action pursuant to subdivision (a), the board of directors of the association shall mail to all owners of the separate interests, by first-class mail, (1) a copy of all amendments to the governing documents proposed to be adopted under subdivision (a) and (2) a notice of the time, date, and place the board of directors will consider adoption of the amendments. The board of directors of an association may consider adoption of amendments to the

governing documents pursuant to subdivision (a) only at a meeting which is open to all owners of the separate interests in the common interest development, who shall be given opportunity to make comments thereon. All deliberations of the board of directors on any action proposed under subdivision (a) shall only be conducted in such an open meeting.

(d) The board of directors of the association may not amend the governing documents pursuant to this section without the approval of the owners, casting a majority of the votes at a meeting or election of the association constituting a quorum and conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of, and Section 7613 of, the Corporations Code. For the purposes of this section, "quorum" means more than 50 percent of the owners who own no more than two separate interests in the development.

1356. (a) If in order to amend a declaration, the declaration requires owners having more than 50 percent of the votes in the association, in a single class voting structure, or owners having more than 50 percent of the votes in more than one class in a voting structure with more than one class, to vote in favor of the amendment, the association, or any owner of a separate interest, may petition the superior court of the county in which the common interest development is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the association members in the manner provided in the declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing declaration, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

- (1) The governing documents.
- (2) A complete text of the amendment.
- (3) Copies of any notice and solicitation materials utilized in the solicitation of owner approvals.
- (4) A short explanation of the reason for the amendment.
- (5) Any other documentation relevant to the court's determination.

(b) Upon filing the petition, the court shall set the matter for hearing and issue an ex parte order setting forth the manner in which notice shall be given.

(c) The court may, but shall not be required to, grant the petition if it finds all of the following:

- (1) The petitioner has given not less than 15 days written notice of the court hearing to all members of the association, to any mortgagee of a mortgage or beneficiary of a deed of trust who is entitled to notice under the terms of the declaration, and to the city, county, or city and county in which the common interest development is located that is entitled to notice under the terms of the declaration.

(2) Balloting on the proposed amendment was conducted in accordance with all applicable provisions of the governing documents.

(3) A reasonably diligent effort was made to permit all eligible members to vote on the proposed amendment.

(4) Owners having more than 50 percent of the votes, in a single class voting structure, voted in favor of the amendment. In a voting structure with more than one class, where the declaration requires a majority of more than one class to vote in favor of the amendment, owners having more than 50 percent of the votes of each class required by the declaration to vote in favor of the amendment voted in favor of the amendment.

(5) The amendment is reasonable.

(6) Granting the petition is not improper for any reason stated in subdivision (e).

(d) If the court makes the findings required by subdivision (c), any order issued pursuant to this section may confirm the amendment as being validly approved on the basis of the affirmative votes actually received during the balloting period or the order may dispense with any requirement relating to quorums or to the number or percentage of votes needed for approval of the amendment that would otherwise exist under the governing documents.

(e) Subdivisions (a) to (d), inclusive, notwithstanding, the court shall not be empowered by this section to approve any amendment to the declaration that:

(1) Would change provisions in the declaration requiring the approval of owners having more than 50 percent of the votes in more than one class to vote in favor of an amendment, unless owners having more than 50 percent of the votes in each affected class approved the amendment.

(2) Would eliminate any special rights, preferences, or privileges designated in the declaration as belonging to the declarant, without the consent of the declarant.

(3) Would impair the security interest of a mortgagee of a mortgage or the beneficiary of a deed of trust without the approval of the percentage of the mortgagees and beneficiaries specified in the declaration, if the declaration requires the approval of a specified percentage of the mortgagees and beneficiaries.

(f) An amendment is not effective pursuant to this section until the court order and amendment have been recorded in every county in which a portion of the common interest development is located. The amendment may be acknowledged by, and the court order and amendment may be recorded by, any person designated in the declaration or by the association for that purpose, or if no one is designated for that purpose, by the president of the association. Upon recordation of the amendment and court order, the declaration, as amended in accordance with this section, shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by the governing documents.

(g) Within a reasonable time after the amendment is recorded the association shall mail a copy of the amendment to each member of the association, together with a statement that the amendment has been recorded.

1357. (a) The Legislature finds that there are common interest developments that have been created with deed restrictions which do not provide a means for the property owners to extend the term of the declaration. The Legislature further finds that covenants and restrictions, contained in the declaration, are an appropriate method for protecting the common plan of developments and to provide for a mechanism for financial support for the upkeep of common areas including, but not limited to, roofs, roads, heating systems, and recreational facilities. If declarations terminate prematurely, common interest developments may deteriorate and the housing supply of affordable units could be impacted adversely.

The Legislature further finds and declares that it is in the public interest to provide a vehicle for extending the term of the declaration if owners having more than 50 percent of the votes in the association choose to do so.

(b) A declaration which specifies a termination date, but which contains no provision for extension of the termination date, may be extended by the approval of owners having more than 50 percent of the votes in the association or any greater percentage specified in the declaration for an amendment thereto. If the approval of owners having more than 50 percent of the votes in the association is required to amend the declaration, the term of the declaration may be extended in accordance with Section 1356.

(c) Any amendment to a declaration made in accordance with subdivision (b) shall become effective upon recordation in accordance with Section 1355.

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

CHAPTER 3. OWNERSHIP RIGHTS AND INTERESTS

1358. (a) 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.

(b) In a condominium project the common areas are not subject to partition, except as provided in Section 1359. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common areas. 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.

(c) 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 areas, if any exist. 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.

(d) In a stock cooperative, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the ownership interest in the corporation, however evidenced. 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.

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

Any restrictions upon the severability of the component interests in real property which are contained in the declaration shall not be deemed conditions repugnant to the interest created within the meaning of Section 711 of the Civil Code. However, these restrictions shall not extend beyond the period in which the right to partition a project is suspended under Section 1359.

1359. (a) Except as provided in this section, the common areas in a condominium project shall remain undivided, and there shall be no judicial partition thereof. Nothing in this section shall be deemed to prohibit partition of a cotenancy in a condominium.

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

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

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

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

(4) The conditions for such a sale, set forth in the declaration, have been met.

1360. (a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the owner of the separate interest may do the following:

(1) Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

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

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

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

(D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

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

1360.5. (a) No governing documents shall prohibit the owner of a separate interest within a common interest development from keeping at least one pet within the common interest development, subject to reasonable rules and regulations of the association. This section may not be construed to affect any other rights provided by law to an owner of a separate interest to keep a pet within the development.

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

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

(e) For the purposes of this section, "governing documents" shall include, but are not limited to, the conditions, covenants, and restrictions of the common interest development, and the bylaws, rules, and regulations of the association.

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

1361. Unless the declaration otherwise provides:

(a) In a community apartment project and condominium project, and in those planned developments with common areas 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 areas. The common areas are subject to these rights.

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

1362. Unless the declaration otherwise provides, in a condominium project, or in a planned development in which the common areas are owned by the owners of the separate interests, the common areas are owned as tenants in common, in equal shares, one for each unit or lot.

CHAPTER 4. GOVERNANCE

Article 1. Association

1363. (a) A common interest development shall be managed by an association which may be incorporated or unincorporated. The association may be referred to as a community association.

(b) An association, whether incorporated or unincorporated, shall prepare a budget pursuant to Section 1365 and disclose information, if requested, in accordance with Section 1368.

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

The association, whether incorporated or unincorporated, may exercise the powers granted to an association by Section 383 of the Code of Civil Procedure and the powers granted to the association in this title.

(d) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.

(e) Notwithstanding any other provision of law, notice of meetings of the members shall specify those matters the board intends to present for action by the members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action.

(f) Members of the association shall have access to association records in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code.

(g) If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents or rules of the association, including any monetary penalty relating to the activities of a guest or invitee of a member, the board of directors shall adopt and distribute to each member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the governing documents. The board of directors shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members pursuant to this subdivision.

(h) When the board of directors is to meet to consider or impose discipline upon a member, the board shall notify the member in writing, by either personal delivery or first-class mail, at least 10 days prior to the meeting. The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which a member may be disciplined, and a statement that the member has a right to attend and may address the board at the meeting. The board of directors of the association shall meet in executive session if requested by the member being disciplined.

If the board imposes discipline on a member, the board shall provide the member a written notification of the disciplinary action, by either personal delivery or first-class mail, within 15 days following the action. A disciplinary action shall not be effective against a member unless the board fulfills the requirements of this subdivision.

(i) Whenever two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, members of each participating association shall be entitled to attend all meetings of the joint association other than executive sessions, (1) shall be given reasonable opportunity for participation in those meetings and (2) shall be entitled to the same access to the joint association's records as they are to the participating association's records.

(j) Nothing in this section shall be construed to create, expand, or reduce the authority of the board of directors of an association to impose monetary penalties on an association member for a violation of the governing documents or rules of the association.

Article 2. Common Interest Development Open Meeting Act

1363.05. (a) This section shall be known and may be cited as the Common Interest Development Open Meeting Act.

(b) Any member of the association may attend meetings of the board of directors of the association, except when the board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, or personnel matters. The board of directors of the association shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session.

(c) Any matter discussed in executive session shall be generally noted in the minutes of the board of directors.

(d) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the board of directors of an association, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member of the association upon request and upon reimbursement of the association's costs for making that distribution.

(e) Members of the association shall be notified in writing at the time that the pro forma budget required in Section 1365 is distributed, or at the time of any general mailing to the entire membership of the association, of their right to have copies of the minutes of meetings of the board of directors, and how and where those minutes may be obtained.

(f) As used in this section, "meeting" includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.

(g) Unless the time and place of meeting is fixed by the bylaws, or unless by bylaws provide for a longer period of notice, members shall be given notice of the time and place of a meeting as defined in subdivision (f), except for an emergency meeting, at least four days prior to the meeting. Notice may be given by posting the notice in a prominent place or places within the common area, by mail or delivery of the notice to each unit in the development, or by newsletter or similar means of communication.

(h) An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by this section.

(i) The board of directors of the association shall permit any member of the association to speak at any meeting of the association or the board of directors, except for meetings of the board held in executive session. A reasonable time limit

for all members of the association to speak to the board of directors or before a meeting of the association shall be established by the board of directors.

Article 3. Managing Agents

1363.1. (a) A prospective managing agent of a common interest development shall provide a written statement to the board of directors of the association of a common interest development as soon as practicable, but in no event more than 90 days, before entering into a management agreement which shall contain all of the following information concerning the managing agent:

(1) The names and business addresses of the owners or general partners of the managing agent. If the managing agent is a corporation, the written statement shall include the names and business addresses of the directors and officers and shareholders holding greater than 10 percent of the shares of the corporation.

(2) Whether or not any relevant licenses such as architectural design, construction, engineering, real estate, or accounting have been issued by this state and are currently held by the persons specified in paragraph (1). If a license is currently held by any of those persons, the statement shall contain the following information:

(A) What license is held.

(B) The dates the license is valid.

(C) The name of the licensee appearing on that license.

(3) Whether or not any relevant professional certifications or designations such as architectural design, construction, engineering, real property management, or accounting are currently held by any of the persons specified in paragraph (1), including, but not limited to, a professional common interest development manager. If any certification or designation is held, the statement shall include the following information:

(A) What the certification or designation is and what entity issued it.

(B) The dates the certification or designation is valid.

(C) The names in which the certification or designation is held.

(b) As used in this section, a “managing agent” is a person or entity who, for compensation or in expectation of compensation, exercises control over the assets of a common interest development. A “managing agent” does not include either of the following:

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

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

1363.2. (a) A managing agent of a common interest development who accepts or receives funds belonging to the association shall deposit all such funds that are not placed into an escrow account with a bank, savings association, or credit union or into an account under the control of the association, into a trust fund account

maintained by the managing agent in a bank, savings association, or credit union in this state. All funds deposited by the managing agent in the trust fund account shall be kept in this state in a financial institution, as defined in Section 31041 of the Financial Code, which is insured by the federal government, and shall be maintained there until disbursed in accordance with written instructions from the association entitled to the funds.

(b) At the written request of the board of directors of the association, the funds the managing agent accepts or receives on behalf of the association shall be deposited into an interest-bearing account in a bank, savings association, or credit union in this state, provided all of the following requirements are met:

(1) The account is in the name of the managing agent as trustee for the association or in the name of the association.

(2) All of the funds in the account are covered by insurance provided by an agency of the federal government.

(3) The funds in the account are kept separate, distinct, and apart from the funds belonging to the managing agent or to any other person or entity for whom the managing agent holds funds in trust except that the funds of various associations may be commingled as permitted pursuant to subdivision (d).

(4) The managing agent discloses to the board of directors of the association the nature of the account, how interest will be calculated and paid, whether service charges will be paid to the depository and by whom, and any notice requirements or penalties for withdrawal of funds from the account.

(5) No interest earned on funds in the account shall inure directly or indirectly to the benefit of the managing agent or his or her employees.

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

(d) The managing agent shall not commingle the funds of the association with his or her own money or with the money of others that he or she receives or accepts, unless all of the following requirements are met:

(1) The managing agent commingled the funds of various associations on or before February 26, 1990, and has obtained a written agreement with the board of directors of each association that he or she will maintain a fidelity and surety bond in an amount that provides adequate protection to the associations as agreed upon by the managing agent and the board of directors of each association.

(2) The managing agent discloses in the written agreement whether he or she is deriving benefits from the commingled account or the bank, credit union, or savings institution where the moneys will be on deposit.

(3) The written agreement provided pursuant to this subdivision includes, but is not limited to, the name and address of the bonding companies, the amount of the bonds, and the expiration dates of the bonds.

(4) If there are any changes in the bond coverage or the companies providing the coverage, the managing agent discloses that fact to the board of directors of each

affected association as soon as practical, but in no event more than 10 days after the change.

(5) The bonds assure the protection of the association and provide the association at least 10 days' notice prior to cancellation.

(6) Completed payments on the behalf of the association are deposited within 24 hours or the next business day and do not remain commingled for more than 10 calendar days.

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

(f) As used in this section, a "managing agent" is a person or entity, who for compensation or, in expectation of compensation, exercises control over the assets of the association. However, a "managing agent" does not include a full-time employee of the association or a regulated financial institution operating within the normal course of business, or an attorney at law acting within the scope of his or her license.

(g) As used in this section, "completed payment" means funds received which clearly identify the account to which the funds are to be credited.

Article 4. Public Information

1363.5. (a) The articles of incorporation of any common interest development association filed with the Secretary of State on or after January 1, 1995, shall include a statement that shall be in addition to the statement of purposes of the corporation, and that (1) identifies the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, (2) states the business or corporate office of the association, if any, and, if the office is not on the site of the common interest development, states the nine-digit ZIP Code, front street, and nearest cross street for the physical location of the common interest development, and (3) states the name and address of the association's managing agent, as defined in Section 1363.1, if any.

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

1363.6. (a) In order to facilitate the collection of regular assessments, special assessments, transfer fees, and similar charges, the board of directors of any association is authorized to record a statement or amended statement identifying relevant information for the association. This statement may include any or all of the following information:

(1) The name of the association as shown in the conditions, covenants, and restrictions or the current name of the association, if different.

(2) The name and address of a managing agent or treasurer of the association or other individual or entity authorized to receive assessments and fees imposed by the association.

(3) A daytime telephone number of the authorized party identified in paragraph (2) if a telephone number is available.

(4) A list of separate interests subject to assessment by the association, showing the assessor's parcel number or legal description, or both, of the separate interests.

(5) The recording information identifying the declaration or declarations of covenants, conditions, and restrictions governing the association.

(6) If an amended statement is being recorded, the recording information identifying the prior statement or statements which the amendment is superseding.

(b) The county recorder is authorized to charge a fee for recording the document described in subdivision (a), which fee shall be based upon the number of pages in the document and the recorder's per-page recording fee.

CHAPTER 5. OPERATIONS

Article 1. Common Areas

1364. (a) Unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, or maintaining the common areas, other than exclusive use common areas, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest.

(b) (1) In a community apartment project, condominium project, or stock cooperative, as defined in Section 1351, unless otherwise provided in the declaration, the association is responsible for the repair and maintenance of the common area occasioned by the presence of wood-destroying pests or organisms.

(2) In a planned development as defined in Section 1351, unless a different maintenance scheme is provided in the declaration, each owner of a separate interest is responsible for the repair and maintenance of that separate interest as may be occasioned by the presence of wood-destroying pests or organisms. Upon approval of the majority of all members of the association, the responsibility for such repair and maintenance may be delegated to the association, which shall be entitled to recover the cost thereof as a special assessment.

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

(d) (1) The association may cause the temporary, summary removal of any occupant of a common interest development for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms.

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

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

(A) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the owners, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the association.

(B) By sending a copy of the notice to the occupants at the separate interest address and a copy of the notice to the owners, if different than the occupants, by first-class mail, postage prepaid, at the most current address shown on the books of the association.

(e) For purposes of this section, "occupant" means an owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession on the separate interest.

(f) Notwithstanding the provisions of the declaration, the owner of a separate interest is entitled to reasonable access to the common areas for the purpose of maintaining the internal and external telephone wiring made part of the exclusive use common areas of a separate interest pursuant to paragraph (2) of subdivision (i) of Section 1351. The access shall be subject to the consent of the association, whose approval shall not be unreasonably withheld, and which may include the association's approval of telephone wiring upon the exterior of the common areas, and other conditions as the association determines reasonable.

Article 2. Fiscal Matters

1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). In lieu of complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.

(C) The percentage that the amount determined for purposes of clause (ii) subparagraph (B) equals the amount determined for purposes of clause (i) of subparagraph (B).

(3) A statement as to whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members

shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

(e) (1) A summary of the association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within 60 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

- (A) The name of the insurer.
- (B) The type of insurance.
- (C) The policy limits of the insurance.
- (D) The amount of deductibles, if any.

(2) The association shall, as soon as reasonably practicable, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in paragraph (1), the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: "This summary of the association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

1365.5. (a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:

(1) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.

(2) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.

(3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(4) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.

(5) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

(b) The signatures of at least two persons, who shall be members of the association's board of directors, or one officer who is not a member of the board of directors and a member of the board of directors, shall be required for the withdrawal of moneys from the association's reserve accounts.

(c) (1) The board of directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

(2) However, the board may authorize the temporary transfer of money from a reserve fund to the association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the board has made a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

(d) When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting of

expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.

(e) At least once every three years the board of directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association which excludes the association's reserve account for that period. The board shall review this study annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.

The study required by this subdivision shall at a minimum include:

(1) Identification of the major components which the association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1) during and at the end of their useful life.

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(f) As used in this section, "reserve accounts" means both of the following:

(1) Moneys that the association's board of directors has identified for use to defray the future repair or replacement of, or additions to, those major components which the association is obligated to maintain.

(2) The funds received and not yet expended or disposed from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising from any construction or design defects. These funds shall be separately itemized from funds described in paragraph (1).

(g) As used in this section, "reserve account requirements" means the estimated funds which the association's board of directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the association is obligated to maintain.

(h) This section does not apply to an association that does not have a "common area" as defined in Section 1351.

Article 3. Insurance

1365.7. (a) A volunteer officer or volunteer director of an association, as defined in subdivision (a) of Section 1351, which manages a common interest development that is exclusively residential, shall not be personally liable in excess of the coverage of insurance specified in paragraph (4) to any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of the tortious act or omission of the volunteer officer or volunteer director if all of the following criteria are met:

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

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

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

(4) The association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance which shall include coverage for (A) general liability of the association and (B) individual liability of officers and directors of the association for negligent acts or omissions in that capacity; provided, that both types of coverage are in the following minimum amount:

(A) At least five hundred thousand dollars (\$500,000) if the common interest development consists of 100 or fewer separate interests.

(B) At least one million dollars (\$1,000,000) if the common interest development consists of more than 100 separate interests.

(b) The payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the director's or officer's status as a volunteer within the meaning of this section.

(c) An officer or director who at the time of the act or omission was a declarant, as defined in subdivision (g) of Section 1351, or who received either direct or indirect compensation as an employee from the declarant, or from a financial institution that purchased a separate interest, as defined in subdivision (l) of Section 1351, at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property, is not a volunteer for the purposes of this section.

(d) Nothing in this section shall be construed to limit the liability of the association for its negligent act or omission or for any negligent act or omission of an officer or director of the association.

(e) This section shall only apply to a volunteer officer or director who is a tenant of a separate interest in the common interest development or is an owner of no more than two separate interests in the common interest development.

(f) (1) For purposes of paragraph (1) of subdivision (a), the scope of the officer's or director's association duties shall include, but shall not be limited to, both of the following decisions:

(A) Whether to conduct an investigation of the common interest development for latent deficiencies prior to the expiration of the applicable statute of limitations.

(B) Whether to commence a civil action against the builder for defects in design or construction.

(2) It is the intent of the Legislature that this section clarify the scope of association duties to which the protections against personal liability in this section apply. It is not the intent of the Legislature that these clarifications be construed to expand, or limit, the fiduciary duties owed by the directors or officers.

1365.9. (a) It is the intent of the Legislature to offer civil liability protection to owners of the separate interests in a common interest development that have common areas owned in tenancy-in-common if the association carries a certain level of prescribed insurance that covers a cause of action in tort.

(b) Any cause of action in tort against any owner of a separate interest arising solely by reason of an ownership interest as a tenant in common in the common area of a common interest development shall be brought only against the association and not against the individual owners of the separate interests, as defined in subdivision (1) of Section 1351, if both of the insurance requirements in paragraphs (1) and (2) are met:

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

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

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

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

Article 4. Assessments

1366. (a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, "quorum" means more than 50 percent of the owners of an association.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the

association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum means more than 50 percent of the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

(1) An extraordinary expense required by an order of a court.

(2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.

(3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(c) Regular assessments imposed or collected to perform the obligations of an association under the governing documents or this title shall be exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this subdivision.

This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by the owners of an association, constituting a quorum, casting a majority of the votes at a meeting or election of the association, or to any state tax lien, or to any lien for labor or materials supplied to the common area.

(d) The association shall provide notice by first-class mail to the owners of the separate interests of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due.

(e) Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due. If an assessment is delinquent the association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.

(2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed 12 percent interest, commencing 30 days after the assessment becomes due.

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

1366.1. An association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

1366.3. (a) The exception for disputes related to association assessments in subdivision (b) of Section 1354 shall not apply if, in a dispute between the owner of a separate interest and the association regarding the assessments imposed by the association, the owner of the separate interest chooses to pay in full to the association all of the charges listed in paragraphs (1) to (4), inclusive, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than 30 days from the recording of a notice of delinquent assessment in accordance with Section 1367; and in those instances, the association shall inform the owner that the owner may resolve the dispute through alternative dispute resolution as set forth in Section 1354, civil action, and any other procedures to resolve the dispute that may be available through the association.

(1) The amount of the assessment in dispute.

(2) Late charges.

(3) Interest.

(4) All fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including attorney's fees not to exceed four hundred twenty-five dollars (\$425).

(b) The right of any owner of a separate interest to utilize alternative dispute resolution under this section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any owner of a separate interest and the association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this section. The owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the association on the total amount paid under paragraphs (1) to (4), inclusive, of subdivision (a), if it is determined through alternative dispute resolution that the assessment levied by the association was not correctly levied.

1367. (a) A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. Before an association may place a lien upon the separate interest of an owner to collect a debt which is past due under this subdivision, the association shall notify the owner in writing by certified mail of the fee and penalty procedures of the association, provide an itemized statement of the charges owed by the owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the association, including the right of the association to the reasonable costs of collection. In addition, any payments toward such a debt shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses.

(b) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (d) the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Upon payment of the sums specified in the notice of delinquent assessment, the association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. A monetary penalty imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report,

pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(c) Except as indicated in subdivision (b), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(d) A lien created pursuant to subdivision (b) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(e) After the expiration of 30 days following the recording of a lien created pursuant to subdivision (b), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts.

(f) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(g) This section only applies to liens recorded on or after January 1, 1986.

CHAPTER 6. TRANSFER OF OWNERSHIP INTERESTS

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365.

(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date

of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367.

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

CHAPTER 7. CIVIL ACTIONS AND LIENS

1368.4. (a) Not later than 30 days prior to the filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board of directors of the association shall provide written notice to each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.

(2) The options, including civil actions, that are available to address the problems.

(3) The time and place of this meeting.

(b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.

1369. In a condominium project, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the condominium project or his or her agent or his or her contractor shall be the basis for the filing of a lien against any other property of any other owner in the condominium project unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the common areas, if duly authorized by the association, shall be deemed to be performed or furnished with the express consent of each condominium owner. The owner of any condominium may remove his or her condominium from a lien against two or more condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien which is attributable to his or her condominium.

CHAPTER 8. CONSTRUCTION OF INSTRUMENTS AND ZONING

1370. Any deed, declaration, or condominium plan for a common interest development shall be liberally construed to facilitate the operation of the common interest development, and its provisions shall be presumed to be independent and severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of

Title 2 of Part 1 of this division shall operate to invalidate any provisions of the governing documents of a common interest development.

1371. In interpreting deeds and condominium plans, the existing physical boundaries of a unit in a condominium project, when the boundaries of the unit are contained within a building, or of a unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or condominium plan, if any exists, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.

1372. Unless a contrary intent is clearly expressed, local zoning ordinances shall be construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless of whether the common interest development is a community apartment project, condominium project, planned development, or stock cooperative.

1373. Sections 1356, 1365, 1365.5, 1366.1, and 1368, and subdivision (b) of Section 1363, and subdivision (b) of Section 1366 are not applicable to common interest developments that are expressly zoned as industrial developments and limited in use to industrial purposes or expressly zoned as commercial developments and limited in use to commercial purposes.

The Legislature finds that those aforementioned provisions may be appropriate to protect purchasers in residential common interest developments, however, the provisions are not necessary to protect purchasers in commercial or industrial developments since the application of those provisions results in unnecessary burdens and costs for these types of developments.

1374. Nothing in this title may be construed to apply to a development wherein there does not exist a common area as defined in subdivision (b) of Section 1351, nor may this title be construed to confer standing pursuant to Section 383 of the Code of Civil Procedure to an association created for the purpose of managing a development wherein there does not exist a common area.

This section is declaratory of existing law.

CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

1375. (a) Before an association commences an action for damages against a builder of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of subdivisions (b) to (g), inclusive, shall be met, except as otherwise provided in this section.

(b) (1) The association shall give written notice to the builder against whom the claim is made. This notice shall include all of the following:

(A) A preliminary list of defects.

(B) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if this survey has been conducted or a questionnaire has been distributed.

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

(2) The association's notice shall, upon delivery of the notice to the builder, commence a period of time not to exceed 90 days, unless the association and builder agree to a longer period, during which the association and builder shall either, in accordance with the requirements of this section, attempt to settle the dispute or attempt to agree to submit it to alternative dispute resolution.

(3) (A) Except as provided in this section and notwithstanding any other provision of law, the notice by the association shall, upon mailing, toll all statutory and contractual limitations on actions against all parties who may be responsible for the defects claimed, whether named in the notice or not, including claims for indemnity applicable to the claim, for a period of 150 days or a longer period agreed to in writing by the association and the builder.

(B) At any time, the builder may give written notice to cancel the tolling of the statute of limitations provided in this section. Upon delivery of this written cancellation notice, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision and subdivisions (c) to (e), inclusive. The tolling of all applicable statutes of limitations shall cease 60 days after the written notice of cancellation by the builder is delivered to the association.

(c) (1) Within 25 days of the date the association delivers the notice required by subdivision (b), the builder may request in writing to meet and confer with the board of directors of the association, and to inspect the project and conduct testing, including testing that may cause physical damage to any property in the development, in order to evaluate the claim. If the builder does not make a timely request to meet and confer with the board of directors of the association, or to conduct inspection and testing, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision and subdivisions (d) and (e). Unless the builder and association otherwise agree, the meeting shall take place no later than 10 days from the date of the builder's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (g) of Section 1363. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and builder consent to their admission. The meeting shall be for the purpose of discussing all of the following:

(A) The nature and extent of the claimed defects.

(B) Proposed methods of correction, to the extent there is sufficient information.

(C) Proposals for submitting the dispute to alternative dispute resolution.

(D) Requests from the builder to inspect the project and conduct testing.

(2) If the builder requests in writing to meet and confer with the board of directors of the association pursuant to paragraph (1) of this subdivision, the builder shall deliver the notice provided by the association to the builder pursuant to subdivision (b) to any insurer that has issued a policy to the builder which imposes upon the insurer a duty to defend the insured or indemnify the insured for losses resulting from the defects identified in the notice required by subdivision (b). The notice by the builder shall, upon receipt, impose upon that insurer any obligation which would be imposed under the terms of the policy if the insured had been served with a summons and complaint for damages. The builder shall inform the association when the builder delivers the notice to each insurer pursuant to this paragraph.

(d) (1) If the association conducted inspection and testing prior to the date it sent the written notice pursuant to subdivision (b), the association shall, at the earliest practicable date after the meeting held pursuant to subdivision (c), make available for inspection and testing at least those areas inspected or tested by the association. The inspection and testing shall be completed within 15 days from the date the association makes these areas available for inspection and testing, unless the association and builder agree to a longer period. If the builder does not timely complete the inspection and testing, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision and subdivision (e). The manner in which the inspection and testing shall be conducted, and the extent of any inspection and testing to be conducted beyond that which was conducted by the association prior to sending the notice, shall be set by agreement of the association and builder.

(2) The builder shall pay all costs of inspection and testing that is requested by the builder, shall restore the property to the condition which existed immediately prior to the testing, and shall indemnify the association and owner of the separate interest for any damages resulting from the testing.

(3) Interior inspections of occupied separate interests and destructive testing of any interior of a separate interest shall be conducted in accordance with the governing documents of the association, unless otherwise agreed to by the owner of the separate interest. If the governing documents of the association do not provide for inspection or testing of separate interests, this inspection or testing shall be conducted in a manner and at a time agreed to by the owner of the separate interest.

(4) The results of the inspection and testing shall not be inadmissible in evidence in any civil action solely because the inspection and testing was conducted pursuant to this section.

(e) (1) Within 30 days of the completion of inspection and testing or within 30 days of a meeting held pursuant to subdivision (c) if no inspection and testing is conducted pursuant to subdivision (d), the builder shall submit to the association all of the following:

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

(B) A written settlement offer, and a concise explanation of the specific reasons for the terms of the offer. This offer may include an offer to submit the dispute to alternative dispute resolution.

(C) A statement that the builder has access to sufficient funds to satisfy the conditions of the settlement offer.

(D) A summary of the results of testing conducted for the purpose of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the builder with actual test results pursuant to subdivision (b), in which case the builder shall provide the association with actual test results.

(2) If the builder does not timely submit the items required by this subdivision, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision only.

(3) No less than 10 days after the builder submits the items required by this paragraph, the builder and the board of directors of the association shall meet and confer about the builder's settlement offer, including any offer to submit the dispute to alternative dispute resolution.

(f) (1) At any time after the notice required by subdivision (b) is delivered to the builder, the association and builder may agree in writing to modify or excuse any of the time periods or other obligations imposed by this section.

(2) Except for the notice required pursuant to subdivision (g), all notices, requests, statements, or other communications required pursuant to this section shall be delivered by one of the following:

(A) By first-class registered or certified mail, return receipt requested.

(B) In any manner in which it is permissible to serve a summons pursuant to Section 415.10 or 415.20 of the Code of Civil Procedure.

(g) If the board of directors of the association rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall comply with the requirements of paragraph (1) of this subdivision. If the association is relieved of its obligation to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements are satisfied, the association shall comply with the requirements of paragraph (2) of this subdivision. Under no circumstances shall the association be required to comply with both paragraph (1) and paragraph (2) of this subdivision.

(1) (A) If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days before the association commences an action for damages against the builder.

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

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

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

(iii) The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the board pursuant to paragraph (1) of subdivision (e), received from the builder and of any offer by the builder to submit the dispute to alternative dispute resolution.

(iv) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b) and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

(C) The builder shall pay all expenses attributable to sending the settlement offer and any offer for alternative dispute resolution to all members of the association. The builder shall also pay the expense of holding the meeting, not to exceed three dollars (\$3) per association member.

(D) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to subparagraph (B), are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(E) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(2) If the association is relieved of its obligation to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements have been satisfied, the association may commence an action for damages against the builder 30 days after sending a written notice to each member specifying all of the following:

(A) The preliminary list of defects provided by the association to the builder pursuant to subdivision (b), and a list of any other documents provided by the association to the builder pursuant to subdivision (b), and information about where and when members of the association may inspect those documents.

(B) The options, including civil actions, that are available to address the problems.

(C) A statement that if 5 percent of the members of the association request a special meeting of the members to discuss the matter within 15 days of the date the notice is mailed or delivered to the members of the association, a meeting of the members shall be held, unless governing documents of the association provide for a different procedure for calling a special meeting of the members, in which case, the statement shall inform the members of that procedure.

(D) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.

(h) (1) The only method of seeking judicial relief for the failure of the association to comply with this section shall be the assertion, as provided for in

this subdivision, of a procedural deficiency to an action for damages by the association against the builder after such an action has been filed. A verified application asserting such a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the builder alleging substantial noncompliance with this section, the court shall schedule a hearing within 21 days of the application to determine whether the association or builder has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3) (A) If the court finds that the association did not substantially comply with this section, the court shall stay the action for up to 90 days to allow the association to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance by the association. At any time, the court may, for good cause shown, extend the period of the stay upon application of the association.

(B) If, within the time set by the court pursuant to this section, the association has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the builder has complied with this section.

(C) If the alleged noncompliance of either the builder or the association resulted from the unreasonable withholding of consent for inspection or testing by an owner of a separate interest, it shall not be considered substantial noncompliance, provided that the party alleged to be out of compliance did not encourage the withholding of consent.

(4) If the court finds that the builder did not pay all of the costs of inspection and testing pursuant to paragraph (3) of subdivision (a), or that the builder did not pay its required share of the costs of holding the meeting and of all expenses attributable to sending the settlement offer pursuant to subparagraph (C) of paragraph (1) of subdivision (g) of this section, the court shall order the builder to pay any deficiencies within 30 days, with interest, and any additional remedy which the court determines, in the interest of justice, should be fashioned.

(i) As used in this section:

(1) "Association" shall have the same meaning as defined in subdivision (a) of Section 1351.

(2) "Builder" means the declarant, as defined in subdivision (g) of Section 1351.

(D) "Common interest development" shall have the same meaning as in subdivision (c) of Section 1351, except that it shall not include developments or projects with less than 20 units.

1375.1. (a) As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been resolved regarding alleged defects in the common areas, alleged defects in the separate interests that the association is obligated to maintain or repair, or alleged defects in the separate interests that arise out of, or are integrally related to, defects in the common areas or separate interests that the association is obligated to maintain or repair, where the defects giving rise to the dispute have not been corrected, the association shall, in writing, inform only the members of the association whose names appear on the records of the association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(1) A general description of the defects that the association reasonably believes, as of the date of the disclosure, will be corrected or replaced.

(2) A good faith estimate, as of the date of the disclosure, of when the association believes that the defects identified in paragraph (1) will be corrected or replaced. The association may state that the estimate may be modified.

(3) The status of the claims for defects in the design or construction of the common interest development that were not identified in paragraph (1) whether expressed in a preliminary list of defects sent to each member of the association or otherwise claimed and disclosed to the members of the association.

(b) Nothing in this section shall preclude an association from amending the disclosures required pursuant to subdivision (a), and any amendments shall supersede any prior conflicting information disclosed to the members of the association and shall retain any privilege attached to the original disclosures.

(c) Disclosure of the information required pursuant to subdivision (a) or authorized by subdivision (b) shall not waive any privilege attached to the information.

(d) For the purposes of the disclosures required pursuant to this section, the term "defects" shall be defined to include any damage resulting from defects.

CHAPTER 10. IMPROVEMENTS

1376. (a) Any covenant, condition, or restriction contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, a common interest development that effectively prohibits or restricts the installation or use of a video or television antenna, including a satellite dish, or that effectively prohibits or restricts the attachment of that antenna to a structure within that development where the antenna is not visible from any street or common area, except as otherwise prohibited or restricted by law, is void and unenforceable as to its application to the installation or use of a video or television antenna that has a diameter or diagonal measurement of 36 inches or less.

(b) This section shall not apply to any covenant, condition, or restriction, as described in subdivision (a), that imposes reasonable restrictions on the installation

or use of a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of 36 inches or less. For purposes of this section, “reasonable restrictions” means those restrictions that do not significantly increase the cost of the video or television antenna system, including all related equipment, or significantly decrease its efficiency or performance and include all of the following:

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

(2) Requirement of the owner of a separate interest, as defined in Section 1351, to obtain the approval of the association for the installation of a video or television antenna that has a diameter or diagonal measurement of 36 inches or less on a separate interest owned by another.

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

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

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

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