

Memorandum 2002-55

**Nonjudicial Dispute Resolution Under CID Law: Procedural Fairness
in Association Rulemaking and Decisionmaking
(Draft of Recommendation)**

INTRODUCTION

This memorandum presents a draft recommendation relating to architectural review and rulemaking in a common interest development. The draft incorporates decisions made by the Commission at its November meeting. If the Commission approves the attached draft as its final recommendation, with or without changes, it should be possible to introduce legislation next year to implement the recommendation.

Issues that arose in the course of preparing the draft recommendation are discussed below. This memorandum also provides background information on membership and voting power in a homeowners association, as requested by the Commission.

MEMBERSHIP AND VOTING POWER

This section of the memorandum provides background information on the law governing membership and voting in a homeowners association.

Who Is a Member?

The Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”) does not include a definition of “member.” However, it does provide that the transfer of an owner’s separate interest results in a transfer of the owner’s membership. Civ. Code § 1358. In other words, membership is appurtenant to ownership of a separate interest — as one would expect.

For the purposes of nonprofit corporation law, “member” is defined in Corporations Code Section 5056(a):

“Member” means any person who, pursuant to a specific provision of a corporation’s articles or bylaws, has the right to vote for the election of a director or directors or on a disposition of all or

substantially all of the assets of a corporation or on a merger or on a dissolution unless the provision granting such right to vote is only effective as a result of paragraph (2) of subdivision (a) of Section 7132. "Member" also means any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of a corporation's articles or bylaws, has the right to vote on changes to the articles or bylaws.

The governing documents of most CIDs probably include language providing that an owner of a separate interest is a member of the governing association. However, if that language is in the declaration, rather than in articles or bylaws, it isn't clear that Section 5056 would apply. This creates some uncertainty as to the meaning of "member" in the Corporations Code, as applied to such an association. Also, keep in mind that Corporations Code provisions do not govern interpretation of the Davis-Stirling Act and have very limited application to an *unincorporated* homeowners association (certain provisions of the Corporations Code are incorporated by reference in the Davis-Stirling Act).

The issue of shared and multiple memberships in a nonprofit corporation is addressed in Corporations Code Section 7312(a) & (d):

No person may hold more than one membership, and no fractional memberships may be held, provided, however, that:

(a) Two or more persons may have an indivisible interest in a single membership when authorized by, and in a manner or under the circumstances prescribed by, the articles or bylaws subject to Section 7612.

....

(d) In the case of membership in an owners association, (as defined in Section 11003.1 of the Business and Professions Code, and created in connection with any of the forms of development referred to in Section 11004.5 of the Business and Professions Code) the articles or bylaws may permit a person who owns an interest, or who has a right of exclusive occupancy, in more than one lot, parcel, area, apartment, or unit to hold a separate membership in the owners' association for each lot, parcel, area, apartment, or unit.

Subdivision (a) provides for joint membership by co-owners. The reference to Section 7612 relates to voting of jointly-held memberships, and is discussed below.

Although it contains an obsolete reference to a repealed section (Bus. & Prof. Code § 11003.1), subdivision (d) is clearly intended to apply to a homeowners association. It allows a person to hold one membership for each separate interest

owned. The reference to Business and Professions Code Section 11004.5 appears to limit application of the multiple membership rule to associations of five or more separate interests. The voting consequences of holding multiple memberships is discussed below.

Ultimately, the Commission could do some good by adding a definition of “member” to the Davis-Stirling Act and cleaning up some of the ambiguities in the Corporations Code. However, the staff recommends against doing so in the draft recommendation. Time is too short for a careful review of the matter if we intend to introduce legislation in the coming year.

Voting Under Davis-Stirling Act and Related Regulations

The Davis-Stirling Act does not include a general provision addressing how votes are to be counted. However, the Department of Real Estate’s regulations address voting in some detail. The basic rule is that a member of an association “shall be entitled to one vote for each subdivision interest owned.” See 10 Cal. Code Regs. § 2792.18. There are two exceptions:

- (1) During the early phases of development, the subdivider may have as many as three votes per separate interest owned.
- (2) “If a subdivision interest is owned by more than one person, each such person shall be a member of the Association, but there shall be no more than one vote for each subdivision interest.”

Voting Under Nonprofit Mutual Benefit Corporation Law

As a general rule, each member of a nonprofit mutual benefit corporation has a single vote:

Except as provided in a corporation’s articles or bylaws or Section 7615, each member shall be entitled to one vote on each matter submitted to a vote of the members. Single memberships in which two or more persons have an indivisible interest shall be voted as provided in Section 7612.

Corp. Code § 7610. This seems at odds with the provision recognizing that a member of an “owner’s association” may have one membership per separate interest owned. However, deference to a corporation’s articles and bylaws is probably intended to accommodate a system of one vote per separate interest owned.

Section 7615 governs a corporation which, in its articles or bylaws, authorizes cumulative voting for directors. It is irrelevant to our present concern.

Section 7612 governs voting of shared memberships:

If a membership stands of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, husband and wife as community property, tenants by the entirety, persons entitled to vote under a voting agreement or otherwise, or if two or more persons (including proxyholders) have the same fiduciary relationship respecting the same membership, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

- (a) If only one votes, such act binds all; or
- (b) If more than one vote, the act of the majority so voting binds all.

An apparent defect in Section 7612 is the lack of a contingency for a tie amongst those entitled to vote a single membership. However, because Section 7612 applies to all mutual benefit corporations, the staff recommends against trying to fix that defect as part of the attached draft recommendation. Instead, it should be considered when the Commission examines membership and voting issues generally.

Oddly, Section 7612 is not incorporated in any of the provisions of Davis-Stirling that expressly incorporate other parts of the Corporations Code voting provisions. The staff is not sure why, given its usefulness. The draft recommendation incorporates Section 7612.

Voting Thresholds Under Nonprofit Mutual Benefit Corporation Law

There are two general provisions that set thresholds for decisions by the membership of a nonprofit corporation. Corporations Code Section 5033 provides for “approval by ... a majority of all members.” Section 5034 provides for approval by a majority vote at a meeting at which a quorum is established. Each section refers to a majority of the “votes entitled to be cast.” That language is sufficiently broad to encompass either a rule of one vote per member or a rule of one vote per separate interest owned.

Conclusion

There is no clear definition of “member” applicable to a homeowners association as such, but the most reasonable interpretation is that a person who

owns a separate interest in a CID is a member of its governing association, with joint owners sharing a single membership.

The Corporations Code provides for one vote per member (rather than one vote per separate interest owned), but this can be overridden by the association's governing documents. Department of Real Estate regulations provide for one vote per interest owned. Where a separate interest is jointly owned, only one vote is cast. The staff expects that the governing documents of most associations conform to the regulations.

The draft recommendation avoids any uncertainty as to voting rules by using express language to provide for a rule of one vote per interest owned, and approval by a majority of the votes cast:

1357.170. (a)

(c) The rule change may be reversed by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by written ballot in conformity with Section 7513 of the Corporations Code, or by the affirmative vote or written ballot of such greater proportion as may be provided in the declaration or bylaws.

(d) Unless otherwise provided in the declaration or bylaws, for the purposes of this section, a member shall cast one vote per separate interest owned.

The language in subdivision (c) is drawn from Corporations Code Section 5034.

Note that these rules can be superseded by an association's declaration or bylaws. For example, the declaration might provide for three votes per separate interest owned by the subdivider (as in the Department of Real Estate's regulation).

SCOPE OF SAFE HARBOR PROCEDURES

The Commission decided to revise the proposed mandatory decisionmaking procedures to recast them as optional safe harbor procedures. In doing so, the staff made certain decisions that the Commission should review for ratification. They are discussed below.

Rulemaking Referendum

The staff chose to move the provision for member reversal of a problematic rule change out of the optional procedure and into the general provisions. That

would make the reversal provision applicable to all associations, regardless of whether they use the safe harbor procedure to make rule changes. If the reversal provision were left in the safe harbor, many associations might opt against using the safe harbor procedure in order to avoid the member referendum power.

Inspection of Rules

A provision requiring that operating rules be available for inspection by members was moved out of the optional safe harbor procedure and added as a generally applicable provision.

Application of ADR Provision to Architectural Review Disputes

Proposed Civil Code Section 1378.030 provides that the ADR requirements of the Davis-Stirling Act apply when a person seeks a writ of mandate regarding an architectural review decision. Because a party might seek a writ regardless of whether an association follows the safe harbor procedure, Section 1378.030 was moved from the optional procedure to the general provisions, where it would apply to any association.

Judicial Review of Architectural Review Decision

The Commission had decided that judicial review of an architectural review decision should proceed under the procedure for administrative mandate (Code Civ. Proc. § 1094.5). This made sense when the proposed decisionmaking procedure was mandatory and all decisions would necessarily have been made after a formal hearing and with a written decision explaining the basis of decision. Now that the decisionmaking procedure is optional, a requirement that all judicial review be by administrative mandate could be problematic. For example, an association might use a procedure that is adequately fair and reasonable under the circumstances but that does not require a formal hearing or a statement of the basis of decision. In such a case, the person bringing the action might prefer to bring an action for declaratory or injunctive relief, where review would not be limited to the administrative record.

The provision requiring review by administrative mandate was retained as part of the optional procedure.

CONCLUSION

After considering the issues discussed in this memorandum, the Commission should decide whether to adopt the attached draft as its final recommendation.

Respectfully submitted,

Brian Hebert
Staff Counsel

#H-851

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

RECOMMENDATION

Common Interest Development Law: Procedural
Fairness in Association Rulemaking
and Decisionmaking

November 2002

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

SUMMARY OF RECOMMENDATION

The Law Revision Commission is engaged in a general study of the law relating to common interest developments. The objective of the study is to set a clear, consistent, and unified policy with regard to their formation and management and the transaction of real property interests located within them. The study will seek to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, and determine to what extent common interest housing developments should be subject to regulation.

In this recommendation, the Commission recommends that fair and reasonable procedures be required when a community association board adopts operating rules or reviews a member's request to make changes to the member's separate interest property.

This recommendation was prepared pursuant to Resolution Chapter 166 of the Statutes of 2002.

COMMON INTEREST DEVELOPMENT LAW

1

BACKGROUND

2

The main body of law governing common interest developments is the Davis-Stirling Common Interest Development Act.¹ Other key statutes include the Subdivision Map Act, the Subdivided Lands Act, the Local Planning Law, and the Nonprofit Mutual Benefit Corporation Law, as well as various environmental and land use statutes. In addition, statutes based on separate, rather than common, ownership models still control many aspects of the governing law.² The complexities and inconsistencies of this statutory arrangement have been criticized by homeowners and practitioners, among others.³

10

The Law Revision Commission is reviewing the statutes affecting common interest developments with the goal of setting a clear, consistent, and unified policy with regard to their formation and management and the transfer of real property interests located within them. The objective of the review is to clarify the law and eliminate unnecessary or obsolete provisions, to consolidate existing statutes in one place in the codes, and to determine to what extent common interest housing developments should be subject to regulation.

17

The Commission will make a series of recommendations proposing revision of the laws governing common interest developments. A previous recommendation addressed the organization of the Davis-Stirling Common Interest Development Act.⁴ The organization of this recommendation is premised on enactment of that prior recommendation.

22

PROCEDURAL FAIRNESS IN ASSOCIATION

23

RULEMAKING AND DECISIONMAKING

24

The Commission is examining ways in which to minimize reliance on the courts to resolve disputes between a community association⁵ and its members. One approach is to reduce the number of disputes that arise by insuring that decisionmaking procedures used by a community association are fair and reasonable. A decision made under a fair and reasonable procedure is more likely

1. Civ. Code § 1350 *et seq.*

2. See, e.g., Civ. Code §§ 1102 *et seq.*, 2079 *et seq.* (real estate disclosure).

3. See, e.g., SR 10 (Lee & Sher) (Apr. 10, 1997); California Research Bureau, *Residential Common Interest Developments: An Overview* (Mar. 1998) <<http://www.library.ca.gov>>.

4. See *Organization of Davis-Stirling Common Interest Development Act*, 32 Cal. L. Revision Comm'n Reports ___ (2002).

5. A “community association” is the body that governs a common interest development. See Civ. Code § 1363(a).

1 to be a just decision, and is more likely to be accepted by a homeowner who would
2 dispute a decision reached under a procedure that is perceived to be unfair.

3 Fair and reasonable procedures are already required by case law⁶ and reflect
4 good public policy. The Commission recommends that fair and reasonable
5 procedures be required when a community association adopts operating rules or
6 reviews a member's request to make changes to the member's separate interest
7 property.⁷ Other types of association decisionmaking are already the subject of
8 statutory or regulatory procedures.⁸

9 SAFE HARBOR APPROACH

10 Common interest developments come in a variety of types and sizes. Some are
11 large, professionally managed communities, resembling small cities. Others
12 include fewer than ten units and are managed entirely by owner-volunteers.

13 Because common interest developments vary so much in size and character, it is
14 not possible to craft a single procedure that is appropriate for every association in
15 every circumstance. For that reason, the proposed law would add general
16 provisions requiring fairness and member participation, without mandating the
17 specific procedure to be followed. Instead, the proposed law would add optional
18 statutory procedures that are deemed to satisfy the general requirements. A
19 community association that follows these "safe harbor" procedures would be sure
20 that its decision could not be challenged on procedural grounds.

21 A safe harbor approach is efficient and preserves flexibility. It also avoids
22 disputes over purely procedural matters that might arise if strict statutory
23 procedures were imposed.

6. See *Ironwood Owners Ass'n IX v. Solomon*, 178 Cal. App. 3d 766, 772, 224 Cal. Rptr. 18 (1986) ("When a homeowners' association seeks to enforce the provisions of its CCRs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious."); *Cohen v. Kite Hill Community Ass'n*, 142 Cal. App. 3d 642, 651, 191 Cal. Rptr. 209 (1983) ("The business and governmental aspects of the association and the association's relationship to its members clearly give rise to a special sense of responsibility upon the officers and directors.... This special responsibility is manifested in the requirements of fiduciary duties and the requirements of due process, equal protection, and fair dealing.") (citation omitted). There may also be circumstances where decisionmaking by a private community association is subject to the due process requirements of the United States or California Constitutions. See Siegel, *The Constitution and Private Government: Toward the Recognition of Constitutional Rights in Private Residential Communities Fifty Years After Marsh v. Alabama*, 6 Wm. & Mary Bill Rts. J. 461, 493-94 (1998); Rosenberry, *The Application of the Federal and State Constitutions to Condominiums, Cooperatives, and Planned Developments*, 19 Real Prop., Prob. & Tr. J. 1 (1984).

7. See Civ. Code § 1351(l) ("separate interest" defined).

8. These include procedures for member discipline (see Civ. Code § 1363(g)-(h); Corp. Code § 7341; 10 Cal. Code Regs. § 2792.26(b)), amendment of governing documents (see Civ. Code §§ 1355, 1355.5, 1356; 10 Cal. Code Regs. § 2792.24), and levying and collection of assessments (see Civ. Code §§ 1366-1367).

1 OPERATING RULES

2 Existing law recognizes that the board of directors of a community association
3 may adopt “operating rules” to govern the operation of a common interest
4 development.⁹ However, there is no procedure for doing so.

5 An association’s declaration or bylaws can only be changed with member
6 approval,¹⁰ but an operating rule can be adopted without advance notice to
7 members or member involvement. This is problematic because operating rules can
8 have a significant effect on member interests (e.g., an operating rule could restrict
9 use of common facilities or regulate the appearance of one’s home).

10 The proposed law would require that the board of directors provide advance
11 notice and an opportunity to comment before adopting or changing an operating
12 rule. The power to adopt and change rules would remain exclusively in the board
13 of directors, but members would have a chance to express their views before a
14 decision is made and would not be surprised by enforcement of a rule that was
15 never announced. An optional “safe harbor” procedure would satisfy the general
16 requirements of notice and an opportunity to comment.

17 In addition, the proposed law would add a procedure for member reversal of a
18 problematic rule change. Reversal could only be initiated within the first 30 days
19 after a rule change is announced and would only occur if approved by a majority
20 vote at a member meeting at which a quorum is established. This would provide a
21 limited member veto, similar to the power to remove boardmembers that members
22 of an incorporated association enjoy under existing law.¹¹

23 The proposed law would also make clear that an operating rule is invalid if it
24 contradicts or is unauthorized by law or the association’s governing documents.¹²

25 REVIEW OF PROPOSED ALTERATION OF
26 SEPARATE INTEREST PROPERTY

27 The governing documents of many common interest developments require
28 approval of the community association before a member can alter separate interest
29 property. For example, a homeowner might be required to obtain association
30 approval before adding a room, choosing a color of exterior paint, or planting
31 flowers in a front yard. Existing case law requires that such a decision be made in

9. See Civ. Code §§ 1351(j) (“governing documents” includes “operating rules”), 1360.5 (restriction on rules governing pets), 1363(g) (monetary penalty for violation of “governing documents or rules”); 10 Cal. Code Regs. § 2792.21(a) (association may formulate “rules of operation of the common areas and facilities owned or controlled by the Association”).

10. Civ. Code § 1355 (amendment of declaration); 10 Cal. Code Regs. § 2792.24 (amendment of bylaws).

11. See Corp. Code §§ 7222(a) (director may be removed by members, without cause), 7510(e) (members may call special meeting for any lawful purpose).

12. See *Major v. Miraverde Homeowners Ass’n, Inc.*, 7 Cal. App. 4th 618, 628, 9 Cal. Rptr. 2d 237, 243 (1992) (“Where the association exceeds its scope of authority, any rule or decision resulting from such an ultra vires act is invalid whether or not it is a ‘reasonable’ response to a particular circumstance.”).

1 good faith and in a fair and reasonable manner.¹³ The proposed law would codify
2 that general requirement and add an optional “safe harbor” procedure.

3 The optional procedure would provide a two-tiered process. The first level
4 begins with submission of a written application. All members would receive notice
5 of the application and could comment on the proposed alteration. The “reviewing
6 body” then makes its decision.¹⁴ If the reviewing body fails to act, the proposal is
7 deemed disapproved.

8 A decision by the reviewing body (including a deemed disapproval) could be
9 appealed to the board of directors. Appeals would be heard de novo by the board,
10 and any member would be free to testify. The board’s written decision would state
11 the basis for decision, including reference to facts, standards, or provisions of the
12 association’s governing documents that support the decision.

13 The two-tiered process would conserve association resources by providing a
14 relatively streamlined procedure for noncontroversial proposals. Only applications
15 that are actually in dispute would proceed to the more formal level of a hearing
16 before the board of directors. A member who wishes to seek judicial review of the
17 association’s decision would be required to exhaust the internal appeal process
18 first.

19 The proposed law would also make clear that judicial review of a decision on a
20 proposed alteration of a member’s separate interest is subject to existing ADR
21 requirements, even if the relief sought is a writ of mandate.¹⁵ Administrative
22 mandate is the required form of relief in the proposed safe harbor decisionmaking
23 procedure.

13. See *supra* note 6.

14. The “reviewing body” is the person or group authorized by an association’s governing documents to approve or disapprove a proposed alteration of a separate interest. See proposed Civ. Code § 1378.060(c).

15. Civil Code Section 1354 requires that before filing a civil action to enforce an association’s governing documents, a party must endeavor to submit the dispute to a form of alternative dispute resolution. However, Section 1354 appears not to apply to an action for writ of mandate.

Contents

Civ. Code § 1350.7 (added). Document delivery	7
Article 4. Operating Rules	7
§ 1357.100. “Rule change” defined	7
§ 1357.110. Types of operating rules affected	8
§ 1357.120. Exempt actions	8
§ 1357.130. Validity of operating rule	8
§ 1357.140. Required procedure	9
§ 1357.150. Optional rulemaking procedure	9
§ 1357.160. Optional emergency rulemaking procedure	10
§ 1357.170. Rule change reversal	10
§ 1357.180. Prospective application	11
Civ. Code § 1363 (amended). Management by association.....	11
Civ. Code § 1368 (amended). Owner’s disclosure	13
Heading of Article 1 (commencing with Section 1376) (added).....	14
Article 1. Video or Television Antenna	14
Article 2. Review of Proposed Alteration of Separate Interest	14
§ 1378.010. Application of article	14
§ 1378.020. Good faith, fair and reasonable procedure required	15
§ 1378.030. Alternative dispute resolution	15
Article 3. Optional Procedure	15
§ 1378.050. Nature of procedure	15
§ 1378.060. Definitions.....	16
§ 1378.070. Approval process.....	16
§ 1378.080. Commencement of approved alteration	16
§ 1378.090. Appeal to board	17
§ 1378.100. Judicial review	17
§ 1378.110. Scope of inquiry	18
§ 1378.120. Delivery of document.....	18

PROPOSED LEGISLATION

☞ **Note.** The placement of article headings in the following provisions is premised on enactment of the Commission’s recommendation on *Organization of Davis-Stirling Common Interest Development Act*, 32 Cal. L. Revision Comm’n Reports ___ (2002).

1 **Civ. Code § 1350.7 (added). Document delivery**

2 SEC. _____. Section 1350.7 is added to the Civil Code, to read:

3 1350.7. (a) This section applies to delivery of a document to the extent the
4 section is made applicable by another provision of this title.

5 (b) A document shall be delivered by one of the following methods:

6 (1) Personal delivery.

7 (2) Mail, pursuant to the procedure provided in subdivision (a) of Section 1013
8 of the Code of Civil Procedure for service by mail.

9 (3) E-mail, facsimile, or other electronic means, if the sender and recipient have
10 agreed to that method of delivery. A provision of the governing documents
11 providing for electronic delivery does not constitute agreement by a member of an
12 association to that form of delivery. If a document is delivered by electronic
13 means, delivery is complete at the time of transmission.

14 (c) A document may be included in or delivered with a billing statement,
15 newsletter, or other document that is delivered by one of the methods provided in
16 subdivision (b).

17 **Comment.** Section 1350.7 is new. It provides general document delivery rules that apply where
18 this section is incorporated by reference in this title. For provisions incorporating this section by
19 reference, see Sections 1357.150 (rulemaking), 1357.160 (emergency rulemaking), 1378.120
20 (review of proposed alteration of separate interest).

21 Subdivision (b)(2) provides that delivery by mail is subject to the procedure for service of
22 notice by mail. See Code Civ. Proc. § 1013(a). Under that procedure, delivery is complete on
23 deposit in the mail, except that any period of notice and any right or duty to do an act or make any
24 response within any period or on a date certain after the service of the document that is prescribed
25 by statute or rule of court is extended by five calendar days (if the delivery address is within
26 California).

27 See also Sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined).

28 **Civ. Code §§ 1357.100-1357.180 (added). Operating rules**

29 SEC. _____. Article 4 (commencing with Section 1357.100) is added to Chapter 2
30 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

31 **Article 4. Operating Rules**

32 **§ 1357.100. “Rule change” defined**

33 1357.100. As used in this article, “rule change” means the adoption, amendment,
34 or repeal of an operating rule by the board of directors of the association.

35 **Comment.** Section 1357.100 is new. See also Section 1351(a) (“association” defined).

1 **§ 1357.110. Types of operating rules affected**

2 1357.110. This article applies to an operating rule relating to any of the
3 following subjects:

4 (a) Use of the common area or of an exclusive use common area.

5 (b) Use of a separate interest, including any aesthetic or architectural standards
6 that govern alteration of a separate interest.

7 (c) Member discipline, including any schedule of monetary penalties for
8 violation of the governing documents and any procedure for the imposition of
9 penalties.

10 (d) Assessment collection procedures.

11 **Comment.** Section 1357.110 specifies which types of operating rules are governed by this
12 article.

13 See also Sections 1351(b) (“common area” defined), 1351(i) (“exclusive use common area”
14 defined), 1351(j) (“governing documents” defined), 1351(l) (“separate interest” defined).

15 **§ 1357.120. Exempt actions**

16 1357.120. This article does not apply to the following actions by the board of
17 directors of an association:

18 (a) A decision in a specific case that is not intended to apply generally.

19 (b) A decision setting the amount of a regular or special assessment.

20 (c) A rule change that is required by law, if the board of directors has no
21 discretion as to the substantive effect of the rule change.

22 (d) Issuance of a document that merely repeats existing law or the governing
23 documents.

24 **Comment.** Section 1357.120 exempts certain actions from application of this article.
25 Subdivision (a) excludes decisions that are adjudicative or executive in nature. Subdivision (b)
26 excludes the setting of generally applicable assessments. Budgeting and the setting of assessments
27 are governed by other law. See Sections 1365-1365.5, 1366. Subdivision (c) reflects the fact that
28 a board of directors may be legally required to make a specific rule change. Subdivision (d)
29 recognizes that mere repetition of an existing rule is not the making of a new rule.

30 See also Sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined),
31 1357.100 (“rule change” defined).

32 **§ 1357.130. Validity of operating rule**

33 1357.130. An operating rule is valid and enforceable only if all of the following
34 requirements are satisfied:

35 (a) The rule is in writing.

36 (b) The rule is within the authority of the board of directors of the association
37 conferred by law or by the declaration, articles of incorporation or association, or
38 bylaws of the association.

39 (c) The rule is consistent with governing law and the declaration, articles of
40 incorporation or association, and bylaws of the association.

41 (d) The rule is adopted, amended, or repealed in good faith and in substantial
42 compliance with the requirements of this article.

1 **Comment.** Section 1357.130 is new. Subdivisions (b) and (c) provide that an ultra vires
2 operating rule is invalid. See *MaJor v. Miraverde Homeowners Ass’n, Inc.*, 7 Cal. App. 4th 618,
3 628, 9 Cal. Rptr. 2d 237, 243 (1992) (“Where the association exceeds its scope of authority, any
4 rule or decision resulting from such an ultra vires act is invalid whether or not it is a ‘reasonable’
5 response to a particular circumstance.”).

6 See also Sections 1351(a) (“association” defined), 1351(h) (“declaration” defined).

7 **§ 1357.140. Required procedure**

8 1357.140. The board of directors of an association shall provide members with
9 notice and an opportunity to comment before making a rule change.

10 **Comment.** Section 1357.140 is new. See also Sections 1351(a) (“association” defined),
11 1357.100 (“rule change” defined).

12 **§ 1357.150. Optional rulemaking procedure**

13 1357.150. (a) Use of this procedure satisfies the requirements of Section
14 1357.140. An association is not required to use this procedure.

15 (b) The board of directors of the association shall deliver notice of a proposed
16 rule change to every association member. The notice shall include all of the
17 following information:

18 (1) The text of the proposed rule change.

19 (2) A description of the purpose and effect of the proposed rule change.

20 (3) The deadline for submission of a comment on the proposed rule change.

21 (c) For a period of not less than 15 days following delivery of a notice of a
22 proposed rule change, the board of directors shall accept written comments from
23 association members on the proposed rule change.

24 (d) The board of directors shall consider any comments it receives and shall
25 make a decision on a proposed rule change at a board meeting. A decision shall
26 not be made until after the comment submission deadline.

27 (e) The board of directors shall deliver notice of a rule change to every
28 association member. The notice shall set out the text of the rule change and state
29 the date the rule change takes effect. The date the rule change takes effect shall be
30 not less than 15 days after notice of the rule change is delivered.

31 (f) A document that is required to be delivered pursuant to this section is subject
32 to Section 1350.7.

33 **Comment.** Section 1357.150 provides an optional procedure for adoption, amendment, or
34 repeal of an operating rule. Subdivision (a) provides that use of the procedure satisfies the
35 requirements of Section 1357.140. Other procedures may also satisfy the requirements of that
36 section.

37 Subdivisions (b) and (e) require that notice be provided to every member. Failure to provide
38 notice to every member will not invalidate a rule change if the failure is inadvertent. See Section
39 1357.130(d) (validity of operating rule).

40 Subdivision (d) provides that a decision on a proposed rule change shall be made at a meeting
41 of the board of directors. See Section 1363.05 (“Common Interest Development Open Meeting
42 Act”).

43 See also Sections 1351(a) (“association” defined), 1357.100 (“rule change” defined).

1 **§ 1357.160. Optional emergency rulemaking procedure**

2 1357.160. (a) Use of this procedure satisfies the requirements of Section
3 1357.140. An association is not required to use this procedure.

4 (b) If the board of directors of an association determines that an immediate rule
5 change is necessary to address an imminent threat to public health or safety, or an
6 imminent risk of substantial economic loss to the association, it may make the rule
7 change immediately.

8 (c) As soon as possible after making a rule change under this section, but not
9 more than 15 days after making the rule change, the board of directors shall
10 deliver notice of the rule change to every association member. The notice shall
11 include the text of the rule change and an explanation of why an immediate rule
12 change is required to address an imminent threat to public health or safety, or an
13 imminent risk of substantial economic loss to the association.

14 (d) A rule change made under this section is effective for 120 days, unless the
15 rule change provides for a shorter effective period.

16 (e) A rule change made under this section may not be readopted under this
17 section.

18 (f) A document that is required to be delivered pursuant to this section is subject
19 to Section 1350.7.

20 **Comment.** Section 1357.160 provides an optional procedure for emergency adoption,
21 amendment, or repeal of an operating rule. Subdivision (a) provides that use of the procedure
22 satisfies the requirements of Section 1357.140. Other procedures may also satisfy the
23 requirements of that section.

24 Subdivision (d) provides that an emergency rule change is temporary.

25 Subdivision (e) makes clear that the effective period of an emergency rule change may not be
26 extended by readopting the rule change under the emergency rulemaking procedure. To readopt a
27 rule change made under this section an association must follow the procedure provided in Section
28 1357.150, or some other procedure that provides for advance notice to members and an
29 opportunity to comment before the rule change is made.

30 See also Sections 1351(a) (“association” defined), 1357.100 (“rule change” defined).

31 **§ 1357.170. Rule change reversal**

32 1357.170. (a) Members of an association owning 10 percent or more of the
33 separate interests may call a special meeting to reverse a rule change.

34 (b) A special meeting may be called by delivering a written request on the chair
35 or secretary of the board of directors. The written request may not be delivered
36 more than 30 days after the members of the association are notified of the rule
37 change. Members are deemed to have been notified of a rule change on delivery of
38 notice of the rule change, or on enforcement of the resulting rule.

39 (c) The rule change may be reversed by the affirmative vote of a majority of the
40 votes represented and voting at a duly held meeting at which a quorum is present
41 (which affirmative votes also constitute a majority of the required quorum) or by
42 written ballot in conformity with Section 7513 of the Corporations Code, or by the
43 affirmative vote or written ballot of such greater proportion as may be provided in
44 the declaration or bylaws.

1 (d) Unless otherwise provided in the declaration or bylaws, for the purposes of
2 this section, a member may cast one vote per separate interest owned.

3 (e) A meeting called under this section is governed by Chapter 5 (commencing
4 with Section 7510) of Part 3 of Division 2 of Title 1 of, and Sections 7612 and
5 7613 of, the Corporations Code.

6 (f) A rule change reversed under this section may not be readopted for one year
7 after the date of the meeting reversing the rule change.

8 **Comment.** Section 1357.170 provides for member reversal of a recent rule change. For the
9 purposes of a meeting called under this section, the 10 percent threshold in subdivision (a)
10 supersedes the five percent threshold in Corporations Code Section 7510(e).

11 Subdivision (c) is drawn from Corporations Code Section 5034.

12 See also Sections 1351(a) (“association” defined), 1357.100 (“rule change” defined).

13 **§ 1357.180. Prospective application**

14 1357.180. (a) This article applies to a rule change made on or after January 1,
15 2004.

16 (b) Nothing in this article affects the validity of a rule change made before
17 January 1, 2004.

18 **Comment.** Section 1357.180 governs the application of this article.

19 See also Section 1357.100 (“rule change” defined).

20 **Civ. Code § 1363 (amended). Management by association**

21 SEC. _____. Section 1363 of the Civil Code is amended to read:

22 1363. (a) A common interest development shall be managed by an association
23 which may be incorporated or unincorporated. The association may be referred to
24 as a community association.

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

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

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

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

41 (e) Notwithstanding any other provision of law, notice of meetings of the
42 members shall specify those matters the board intends to present for action by the

1 members, but, except as otherwise provided by law, any proper matter may be
2 presented at the meeting for action.

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

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

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

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

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

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

40 **Comment.** Subdivision (f) of Section 1363 is amended to make clear that an association's
41 operating rules are subject to inspection by members.

42 See also Sections 1351(a) ("association" defined), 1351(c) ("common interest development"
43 defined), 1351(j) ("governing documents" defined).

1 **Civ. Code § 1368 (amended). Owner's disclosure**

2 SEC. _____. Section 1368 of the Civil Code is amended to read:

3 1368. (a) The owner of a separate interest, other than an owner subject to the
4 requirements of Section 11018.6 of the Business and Professions Code, shall, as
5 soon as practicable before transfer of title to the separate interest or execution of a
6 real property sales contract therefor, as defined in Section 2985, provide the
7 following to the prospective purchaser:

8 (1) A copy of the governing documents of the common interest development,
9 including any operating rules.

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

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

16 (4) A true statement in writing obtained from an authorized representative of the
17 association as to the amount of the association's current regular and special
18 assessments and fees, any assessments levied upon the owner's interest in the
19 common interest development that are unpaid on the date of the statement, and any
20 monetary fines or penalties levied upon the owner's interest and unpaid on the date
21 of the statement. The statement obtained from an authorized representative shall
22 also include true information on late charges, interest, and costs of collection
23 which, as of the date of the statement, are or may be made a lien upon the owner's
24 interest in a common interest development pursuant to Section 1367.

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

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

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

41 (8) Any change in the association's current regular and special assessments and
42 fees which have been approved by the association's board of directors, but have

1 not become due and payable as of the date disclosure is provided pursuant to this
2 subdivision.

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

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

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

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

18 (f) In addition to the requirements of this section, an owner transferring title to a
19 separate interest shall comply with applicable requirements of Sections 1133 and
20 1134.

21 **Comment.** Subdivision (a) of Section 1368 is amended to make clear that the required
22 disclosure of the governing documents of a common interest development includes disclosure of
23 any operating rules.

24 See also Sections 1351(a) ("association" defined), 1351(c) ("common interest development"
25 defined), 1351(j) ("governing documents" defined), 1351(l) ("separate interest" defined).

26 **Heading of Article 1 (commencing with Section 1376) (added)**

27 SEC. _____. An article heading is added immediately preceding Section 1376 of
28 the Civil Code, to read:

29 Article 1. Video or Television Antenna

30 **Civ. Code §§ 1378.010-1378.030 (added). Review of proposed alteration of separate interest**

31 SEC. _____. Article 2 (commencing with Section 1378.010) is added to Chapter 10
32 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

33 Article 2. Review of Proposed Alteration of Separate Interest

34 **§ 1378.010. Application of article**

35 1378.010. If an association's governing documents require that an owner of a
36 separate interest obtain association approval before altering a separate interest, this
37 article governs the association's decisionmaking process.

38 **Comment.** Section 1378.010 is new. See also Sections 1351(a) ("association" defined), 1351(j)
39 ("governing documents" defined), 1351(l) ("separate interest" defined).

1 **§ 1378.020. Good faith, fair and reasonable procedure required**

2 1378.020. (a) A decision to approve or disapprove a proposed alteration of a
3 member's separate interest shall be made in good faith and in a fair and reasonable
4 manner.

5 (b) The procedure provided in Article 3 (commencing with Section 1378.050) is
6 fair and reasonable. Other procedures may also be fair and reasonable under the
7 circumstances.

8 **Comment.** Subdivision (a) of Section 1378.020 is consistent with case law requiring that an
9 association enforce its governing documents in good faith and in a fair and reasonable manner.
10 See *Ironwood Owners Ass'n IX v. Solomon*, 178 Cal. App. 3d 766, 772, 224 Cal. Rptr. 18 (1986)
11 ("When a homeowners' association seeks to enforce the provisions of its CCRs to compel an act
12 by one of its member owners, it is incumbent upon it to show that it has followed its own
13 standards and procedures prior to pursuing such a remedy, that those procedures were fair and
14 reasonable and that its substantive decision was made in good faith, and is reasonable, not
15 arbitrary or capricious."); *Cohen v. Kite Hill Community Ass'n*, 142 Cal. App. 3d 642, 651, 191
16 Cal. Rptr. 209 (1983) ("The business and governmental aspects of the association and the
17 association's relationship to its members clearly give rise to a special sense of responsibility upon
18 the officers and directors.... This special responsibility is manifested in the requirements of
19 fiduciary duties and the requirements of due process, equal protection, and fair dealing.")
20 (citation omitted).

21 Subdivision (b) establishes the procedure provided in Article 3 as a safe harbor. An association
22 is not required to use the statutory procedure. It may use any procedure that is fair and reasonable
23 under the circumstances. For example, an association might decide to use the statutory procedure
24 to review structural changes, while adopting a simpler procedure for review of minor landscaping
25 improvements.

26 See also Section 1351(l) ("separate interest" defined).

27 **§ 1378.030. Alternative dispute resolution**

28 1378.030. A writ proceeding for review of a decision to approve or disapprove a
29 proposed alteration of a member's separate interest is subject to Section 1354.

30 **Comment.** Section 1378.030 is new. This section supersedes language in Section 1354(b)
31 limiting the alternative dispute resolution provisions to civil actions for declaratory or injunctive
32 relief.

33 See also Section 1351(l) ("separate interest" defined).

34 **Civ. Code §§ 1378.050-1378.120 (added). Review of proposed alteration of separate interest**

35 SEC. _____. Article 3 (commencing with Section 1378.050) is added to Chapter 10
36 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

37 Article 3. Optional Procedure

38 **§ 1378.050. Nature of procedure**

39 1378.050. This article provides a fair and reasonable procedure that an
40 association may use in reviewing a member's proposed alteration of a separate
41 interest. Use of the procedure is not mandatory.

1 **Comment.** Section 1378.050 makes clear that the procedure provided in this article is optional.
2 However, a decision made in good faith, under the procedure provided in this article, satisfies the
3 requirements of Section 1378.020. See Section 1378.020(b).

4 See also Sections 1351(a) (“association” defined), 1351(l) (“separate interest” defined).

5 **§ 1378.060. Definitions**

6 1378.060. (a) The definitions in this section govern the construction of this
7 article.

8 (b) “Participating member” means an association member who, before the
9 reviewing body makes its decision on the proposed alteration, submits to the
10 reviewing body a comment opposed to a proposed alteration of a separate interest.

11 (c) “Reviewing body” means the person or group authorized by an association’s
12 governing documents to approve or disapprove the alteration of a separate interest.

13 **Comment.** Section 1378.060 is new. In some associations the reviewing body is the board of
14 directors. In that situation, an appeal to the board of directors would result in reconsideration of
15 the board’s decision as the reviewing body and issuance of a written decision to serve as a record
16 in any judicial review of the decision on appeal. See Sections 1378.090 (appeal to board),
17 1378.100 (judicial review).

18 See also Sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined),
19 1351(l) (“separate interest” defined).

20 **§ 1378.070. Approval process**

21 1378.070. (a) An association member who proposes to alter a separate interest
22 shall submit a written application to the reviewing body.

23 (b) Within 30 days after receipt of the application, the reviewing body shall
24 deliver notice of the application to all members of the association. The notice shall
25 include the address of the separate interest that is the subject of the application, a
26 description of the proposed alteration adequate to inform other members of its
27 nature, and the date after which the reviewing body may make its decision.

28 (c) Not less than 20 days nor more than 45 days after delivery of the notice of
29 the application, the reviewing body shall deliver a written decision to the applicant
30 and to any participating member. If the reviewing body does not deliver a written
31 decision to the applicant within 45 days after delivery of the notice of application,
32 the application is deemed disapproved on the 45th day.

33 (d) A written decision approving a proposed alteration of a separate interest shall
34 state whether the reviewing body received any comments opposing the alteration.

35 **Comment.** Section 1378.070 is new. See also Sections 1351(a) (“association” defined), 1351(j)
36 (“governing documents” defined), 1351(l) (“separate interest” defined), 1378.060(b)
37 (“participating member” defined), 1378.060(c) (“reviewing body” defined), 1378.120 (delivery of
38 document).

39 **§ 1378.080. Commencement of approved alteration**

40 1378.080. (a) Except as provided in subdivision (b), an applicant shall not
41 commence work on an approved alteration of a separate interest until either the

1 period for appeal passes without an appeal being filed or the approval is upheld on
2 appeal.

3 (b) If a written decision approving alteration of a separate interest states that no
4 member comments opposing the alteration were received by the reviewing body
5 before it made its decision, the applicant may commence work on the approved
6 alteration immediately.

7 **Comment.** Section 1378.080 is new. See also Sections 1351(*l*) (“separate interest” defined),
8 1378.090 (appeal to board).

9 **§ 1378.090. Appeal to board**

10 1378.090. (a) An applicant or participating member may appeal the approval or
11 disapproval of a proposed alteration of a separate interest to the board of directors
12 of the association. The appeal shall be in writing and shall be delivered to the
13 board of directors within 30 days after the reviewing body’s decision is delivered
14 or the proposed alteration is deemed disapproved.

15 (b) Within 30 days after receipt of a timely request for appeal, the board of
16 directors shall deliver notice of the appeal to all members of the association. The
17 notice shall state the time and place where the appeal will be heard.

18 (c) Within 45 days after notice of the appeal is delivered, the board of directors
19 shall meet and review de novo the proposed alteration that is the subject of the
20 appeal. Any association member may testify at the appeal and may submit written
21 materials in support of or in opposition to the proposed alteration.

22 (d) Within 15 days after hearing the appeal, the board of directors shall deliver
23 its decision to the applicant and, if the appeal is by a person other than the
24 applicant, to that person. The decision shall be in writing and shall include a
25 statement explaining the basis for the decision, including reference to facts,
26 standards, or provisions of the governing documents that support the decision.

27 **Comment.** Section 1378.090 is new. See also sections 1351(a) (“association” defined), 1351(j)
28 (“governing documents” defined), 1351(*l*) (“separate interest” defined), 1378.060(b)
29 (“participating member” defined), 1378.060(c) (“reviewing body” defined), 1378.120 (delivery of
30 document).

31 ☞ **Staff Note.** In general, the Commission decided that deadlines for delivery of documents
32 should be at least 30 days, to facilitate combining delivery with a regular monthly mailing (e.g.,
33 monthly dues invoice). The 15-day deadline in subdivision (d) was retained because the notice is
34 delivered to specific individuals rather than to the entire membership. The cost of such a small
35 mailing should not be a problem.

36 **§ 1378.100. Judicial review**

37 1378.100. (a) A decision of the reviewing body made under Section 1378.070 is
38 not subject to judicial review.

39 (b) Any member may seek judicial review of a decision of the board of directors
40 of the association made under Section 1378.090. Judicial review shall be governed
41 by Section 1094.5 of the Code of Civil Procedure.

1 **Comment.** Section 1378.100 is new. Judicial review is only available to review a decision of
2 the board of directors on appeal. Thus, the internal appeal process must be exhausted before a
3 member may seek judicial review of a decision on a proposed alteration.

4 Subdivision (b) provides that a decision on a proposed alteration of a separate interest shall be
5 reviewed under the procedure for administrative mandamus.

6 See also Sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined),
7 1351(l) (“separate interest” defined), 1378.060(c) (“reviewing body” defined).

8 **§ 1378.110. Scope of inquiry**

9 1378.110. In making a decision to approve or disapprove a proposed alteration
10 of a member’s separate interest, the decisionmaker may consider any relevant
11 information. The decisionmaker is not required to consider information other than
12 that provided to the decisionmaker.

13 **Comment.** Section 1378.110 is new. See also Section 1351(l) (“separate interest” defined).

14 **§ 1378.120. Delivery of document**

15 1378.120. A document that is required to be delivered pursuant to this article is
16 subject to Section 1350.7.

17 **Comment.** Section 1378.120 is new.
