

Memorandum 2006-4

**Statutory Clarification and Simplification of CID Law:
Association Governance**

In this study, the Commission is working on the reorganization and simplification of common interest development law. For the most part, the revision will be nonsubstantive. However, the proposed law will include minor substantive improvements, if they appear to be noncontroversial.

A staff draft of the proposed law is attached. It is cumulative, including material approved at prior meetings as well as material presented for the first time in this memorandum. Once the draft of the proposed law is complete, it will be circulated for public comment as a tentative recommendation.

This memorandum revisits some previously completed material to address a few minor issues and to make an adjustment to the overall organization of the proposed law.

The memorandum also includes new material relating to community association governance.

Decisions made in connection with this memorandum will be incorporated into the next version of the cumulative staff draft.

MATTERS RAISED EARLIER IN THE STUDY

The items described below relate to matters raised at prior Commission meetings:

Overall Organization

In an earlier version of the draft, material relating to the inspection of association records was grouped under "Chapter 2. Member Rights." While it is true that members have a right to inspect certain association records, the provisions relating to that right are largely procedural. After thinking more about the overall organization of the proposed law, the staff has relocated the record inspection provisions, placing them under "Chapter 3. Community Association Governance." That will allow the inspection provisions to be located

adjacent to related provisions on record retention and annual notice to the membership.

The record inspection provisions were initially assigned section numbers 4500-4555. With the change in location, those numbers were changed to 4700-4755. No other changes were made. **Is the organizational change described above acceptable?**

Document Delivery Time

There are many procedural rules in the Davis-Stirling Act and the Nonprofit Mutual Benefit Corporation Law that provide periods of notice or deadlines for action that are measured from the date that a document is delivered or received. For example, under Section 1365.2(j)(1), an association must provide member access to current fiscal year records “within 10 business days following the association’s receipt of the request.”

In general, the date of delivery of a document is more certain than the date of receipt. Delivery can be shown by a postmark, or the date stamp on an email or facsimile. A document may be received without any record being made of the date of receipt. Mail can be misdirected or delayed, affecting the receipt date in unexpected and unverifiable ways.

For the sake of consistency and certainty, the proposed law uses the date of delivery as the starting point for all time periods that are measured relative to the date that a document is sent.

Such a change can have a practical effect on the amount of time provided for a response. The amount of time that is actually taken to deliver a document subtracts from the time available to act. For example, under Section 1365.2(j)(1), an association has 10 days from the date that they actually receive a record inspection request to make the record available for inspection. If that provision is changed to require access within 10 days from the date that the request is sent, and the request takes five days to arrive, then the association only has five days to prepare the records for inspection (instead of the 10 provided under existing law).

At the September meeting, the Commission directed the staff to consider adding a general provision along the lines of Code of Civil Procedure Section 1013, which extends any deadline triggered by delivery of document by mail, in order to account for the time required for delivery.

The staff recommends that the following provision be added to the proposed law:

§ 4050. Time of delivery

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

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

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

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

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

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

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

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

Subdivision (c) continues part of the substance of former Section 1350.7(b)(3).

One concept that is expressed in Code of Civil Procedure Section 1013, but was not carried forward into proposed Section 4050, has to do with the extension of a “date certain.” Section 1013(a) provides, with emphasis added, that:

any period of notice and any right or duty to do any act or make any response within any period **or on a date certain** after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended...

The staff is not aware of any provision of CID law that requires action on a date certain following delivery of a document. Nor is it clear that such a requirement would ever make sense. A range of days in which a person must act is much more flexible than a requirement that action be taken on a specific day. Because the staff does not anticipate that the proposed law will employ any deadlines based on a “date certain,” there is no need to complicate proposed Section 4050 with language providing for the extension of such a date. If it turns out that a date certain deadline is advisable at any point in the proposed law, the timing provision can be revisited.

Pet Restriction

Existing Section 1360.5 overrides an association's governing documents in order to guarantee the right to own at least one dog, cat, bird, or aquarium animal. It also provides a grandparent clause that protects an existing pet from changes in the governing documents that would otherwise preclude the right to keep that pet.

As originally proposed, Section 4310 would restate that provision as follows:

4310. (a) The governing documents of an association may not prohibit a member from keeping at least one pet within the member's separate interest or exclusive use common area, subject to reasonable rules and regulations of the association. This section does not affect any other provision of law governing the right of a member to keep a pet.

(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.

(c) If the governing documents are amended to restrict the right to keep a pet in the common interest development, the new restriction shall not apply to an existing pet so long as the pet is kept in compliance with the governing documents as they existed before the addition of the new restriction.

(d) This section only applies to governing documents that are created or amended on or after January 1, 2001.

Comment. Subdivisions (a)-(b) of Section 4310 continue former Section 1360.5(a)-(b) without substantive change.

Subdivision (c) continues the substance of former Section 1360.5(c) except that it is expanded to apply to any new restriction on pet ownership and not just a restriction on the number of pets that can be kept.

Technical Revisions Requested by AARP

AARP (the sponsor of the bill that added Section 1360.5) is concerned that the language used in proposed Section 4310 might be construed as narrowing existing pet ownership rights. That was not the Commission's intention.

The staff met with AARP representatives. The following revisions were proposed:

4310. (a) The governing documents of an association may not prohibit a member from keeping at least one pet within the ~~member's separate interest or exclusive use common area~~ common interest development, subject to reasonable rules and regulations of the association. This section does not affect any other provision of law governing the right of a member to keep a pet.

(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.

(c) If the governing documents are amended to restrict ~~the right to keep a pet~~ ownership in the common interest development, the new restriction shall not apply to ~~an~~ any existing pet so long as the pet is kept in compliance with the governing documents as they existed before the addition of the new restriction.

(d) This section only applies to governing document that are created or amended on or after January 1, 2001.

The staff recommends that these changes be made. The change to subdivision (a) would restore the language used in existing law and would avoid any implication that the amendment is intended to favor restrictions on the right to bring a pet into the common area.

The changes to subdivision (c) are meant to avoid any implication that the revised grandparent clause would only protect a single pet. That is not existing law, nor was it the intention of the Commission.

Definition of “Pet”

Section 1360.5(b) defines “pet” as “any domesticated bird, cat, dog, aquatic animal kept within an aquarium, or other animal as agreed to between the association and the homeowner.” This definition excludes some common companion animals (e.g., rodents, reptiles, etc.).

At the September meeting, the Commission decided against broadening the definition of pet, but instructed the staff to research whether there is a standard statutory definition of “pet” that might be adopted for use in the Davis-Stirling Act. Minutes (September 2005), p. 11 (available at www.clrc.ca.gov).

The statutes provide two different approaches to defining “pet.” The first approach uses language that is substantively identical to the language used in the proposed law. That narrow definition is used in sections that guarantee, in specific circumstances, the right to keep a pet. See Civ. Code § 798.33 (pet ownership in mobilehome park); Health & Safety Code § 19901 (pet ownership in public housing for the elderly). It makes sense that these provisions would define “pet” narrowly, since the right of one person to own a pet, notwithstanding contrary rules in the governing documents, may be an imposition on neighbors who wish to live pet-free. In that circumstance, a cat, dog, or parakeet is probably more acceptable than a rat, snake, or miniature pig.

The other context in which “pet” is defined is in statutes that regulate pet food production and the sale of pets. These provisions define the term very broadly. See, e.g., Food & Agric. Code § 19211 (“any household animal”); Penal Code § 5971 (any animal “sold or retained for the purpose of being kept as a household pet.”). That too makes sense. If the concern is public health or cruelty to animals, then there is no reason to narrow the scope of the definition.

The definition that is currently used in the Davis-Stirling Act parallels the language used in other similar provisions. **No change needs to be made.**

Other Limitations on Association Authority to Restrict Property Use

The proposed law includes an article (commencing with Section 4300) that collects provisions that limit an association’s authority to regulate the use of a member’s separate interest property. For example, proposed Section 4305 guarantees a qualified right to display signs or flags on separate interest property.

The staff has identified two other provisions that should probably be included in that article. They are described below. **The staff recommends that they be included in the proposed law as drafted.**

Restriction on Marketing of Member’s Interest

Existing Section 1368.1 protects a member’s right to market the member’s interest in the CID. The association may not arbitrarily or unreasonably restrict that right. In particular, it cannot charge a fee for marketing-related costs that exceeds the association’s actual costs (this is a specific example of a general rule provided in Section 1366.1, that assessments and fees cannot exceed actual costs). Nor can an association require that a member use a real estate broker selected by the association.

The substance of that provision is restated in proposed Section 4325.

§ 4325. Marketing restriction

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

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

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

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

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

Subdivision (b) restates the substance of former Section 1368.1(b)(1). Subdivision (b) is a specific application of the general rule provided in [Section 1366.1].

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

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

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

Former Section 1368.1(e) is not continued. That subdivision made clear that the former section did not affect the regulation of the display of real estate marketing signs under Sections 712 and 713. That provision is unnecessary because nothing in Section 4325 conflicts with Sections 712 and 713.

Physical Access to Separate Interest Property

Existing Section 1361.5 provides as follows:

Except as otherwise provided in law, an order of the court, or an order pursuant to a final and binding arbitration decision, an association may not deny an owner or occupant physical access to his or her separate interest, either by restricting access through the common areas to the owner’s separate interest, or by restricting access solely to the owner’s separate interest.

That provision was added to address an issue brought to the Commission’s attention early in the study of CID law: a full time occupant of a snow country CID was prohibited from plowing snow leading up to the occupant’s home. The reported purpose of the prohibition was to preserve conditions for snowmobiles, but it had the effect of interfering with the occupant’s ability to reach her home.

The substance of Section 1361.5 would be continued in proposed Section 4330, with a few minor stylistic changes.

§ 4330. Access to separate interest property

4330. Except as otherwise provided in law, an order of the court, or an order pursuant to a final and binding arbitration decision, an

association may not deny a member or other occupant of a separate interest physical access to the separate interest, either by restricting access through the common area, or by restricting access solely to the separate interest.

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

ASSOCIATION EXISTENCE AND POWERS

Proposed Chapter 3 would include provisions relating to the governance of a homeowner association. The first article of that chapter includes sections establishing the existence of a governing association in every CID (proposed Section 4400) and its powers (proposed Section 4405).

Those provisions restate the substance of existing Civil Code Sections 1363(a) and 1363(c), respectively.

BOARD MEETINGS

Existing Section 1363.05 is the self-described “Common Interest Development Open Meeting Act.” Though much simpler than the state and local government open meeting laws (Gov’t Code §§ 11120-11132 (Bagley-Keene Open Meeting Act); 54950-54963 (Ralph M. Brown Act)), it borrows some language from those laws and has a similar thrust.

The main substantive effect of Section 1363.05 is as follows:

- (1) Require advance member notice of a meeting of the association’s board.
- (2) Guarantee a member’s right to appear and speak at a meeting of the board.
- (3) Establish an exception for matters to be considered in closed executive session.
- (4) Require the preparation and availability to the membership of board meeting minutes.

Section 1363.05 is continued in proposed “Article 2. Open Board Meetings” (commencing at proposed Section 4600), with the exception of the definition of “meeting”, which has been placed with the other general definition sections.

The proposed restatement of Section 1363.05 makes a number of minor improvements and includes a number of staff notes asking for public comment on substantive issues. The more noteworthy changes and issues are described below.

Note that Section 1363.05 covers some of the same ground as Corporations Code Section 7211. In order to avoid overlapping authority, the proposed law provides that Section 7211 does not apply to a CID. See proposed Section 4025. Instead, provisions of Section 7211 that are not addressed in Section 1363.05 have been added to the Davis-Stirling Act. See proposed Sections 4605-4615, 4620(d)-(e), which are discussed below.

Note too that the previously drafted provision establishing what is required when an action must be “approved by the board” has been revised to incorporate the added material on meeting procedure:

4055. Where a provision of this part requires that an action be approved by the board, the action shall be approved or ratified by the vote of the board or by the vote of a committee authorized to exercise the powers of the board, pursuant to Article 2 (commencing with Section 4600) of Chapter 3.

Definition of “Meeting”

Existing Section 1363.05(f) defines “meeting” as follows:

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.

The substance of that provision is continued in proposed Section 4090, which is located with the other general definition sections. That has the effect of generalizing the definition beyond the scope of the open meeting provisions. This should be a beneficial change, as it will simplify drafting in other provisions that reference board meetings. The staff has searched the proposed law and has not found any situation in which the new definition would be problematic. As new material is added to the proposed law, the staff will continue to check the appropriateness of the generalized definition.

Matters “Scheduled” To Be Heard

Proposed Section 4090 does not continue language that limits the definition of “meeting” to a gathering for the consideration of business “scheduled” to be heard by the board. Strictly read, that language could create an inappropriate loophole. A board could argue that the open meeting requirements do not apply to a gathering of the board to consider association business so long as the matters

to be considered are not scheduled in advance. That would be inconsistent with the transparency sought by open meeting laws.

Serial Meetings

The requirement that a meeting be a gathering of directors “at the same time and place” excludes business that is conducted by a series of separate conversations, electronic mail messages, and the like. This is a significant loophole that has been closed in the state open meeting law by Government Code Section 11122.5(b), which provides, with certain enumerated exceptions, that:

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

The proposed law includes a staff note asking for input on whether the loophole should be closed. It may well be that such a change would be too controversial for inclusion in the current “cleanup” phase of our CID study.

Committees

A board of directors may form a committee to exercise powers delegated to it by the board. See Corp. Code §§ 7151(c)(4), 7212. It is not clear that the open meeting requirements would apply to such a committee.

The staff believes that the open meeting requirements should be extended to a meeting of a board-created committee. If openness is called for when a board meets to exercise one of its powers, then openness is also called for when the same power is exercised by a committee.

Proposed Section 4655 provides that the meeting provisions apply to a meeting of the board or of a committee that exercises any power of the board. It is drawn from Corporations Code Section 7211(c).

Meeting Notice

Proposed Section 4620 continues the existing meeting notice requirement, with a few minor changes. Noteworthy changes and issues are discussed below.

Inclusion of Meeting Agenda

Existing law only requires that the time and place of the meeting be included in the notice. That is consistent with the Corporations Code, which does not

require that a meeting notice state the purpose of the meeting (Corp. Code § 7211(a)(2)), but it is odds with state and local open meeting laws, which do require distribution of a meeting agenda (Gov't Code §§ 11125(b), 54954.1-54954.2).

If the point of advance notice is to inform the members of a meeting that they may want to attend, then it would make sense to include information about what matters will be discussed at the meeting.

Proposed Section 4620(a) would require that the notice include an agenda. A staff note following the section invites input on the merits of the proposed requirement. It also requests comment on whether the existing notice exemption for a meeting that is held pursuant to a schedule fixed in the governing documents should be continued. If the notice content is expanded to include the agenda for a meeting then there would be reason to circulate the notice, even if the time and place can be derived from a fixed schedule.

Waiver of Director Notice

Corporations Code Section 7211(a)(3) provides that notice of a board meeting need not be given to a director who provides a waiver of notice, consents to the meeting being held, or approves the minutes of the meeting, either before or after the meeting takes place. Presumably, this is a device to avoid a challenge to the validity of an action taken at a meeting when a director is not properly noticed.

Proposed Section 4620(e) would continue the waiver provision.

Adjournment to Another Time and Place

Corporations Code Section 7211(a)(4) provides for adjournment of a meeting to another time and place. That provision would be continued in proposed Section 4605(b).

If the meeting is adjourned for more than 24 hours, then notice of the time and place at which the meeting will resume must be given to a director who was not present at the time of adjournment. Corp. Code § 7211(a)(4).

It isn't clear that Section 1363.05 would require notice to **members** in the case of an adjournment for more than 24 hours. At least one CID practice treatise suggests that notice to members is not required, but probably should be:

Because the objective of the Common Interest Development Open Meeting Act ... is to afford members a reasonable opportunity to attend board meetings, there is no compelling reason why an association should not post a notice of the

adjourned meeting (stating the date, time, and location of the meeting to be reconvened) in a prominent location in the common area whenever the adjournment is for more than 24 hours. If absent directors are entitled to notice under the Corporations Code when a meeting is adjourned for more than 24 hours, community association members (who have a statutory right to attend most board meetings) should be accorded similar notification.

C. Sproul and K. Rosenberry, *Advising California Common Interest Communities* § 2.27, at 55 (Cal. Cont. Ed. Bar, 2005).

The staff agrees. Proposed Section 4620(d) would generalize the notice required when a meeting is adjourned for more than 24 hours to another time and place:

(d) If a meeting is adjourned to another time and place for more than 24 hours the association shall deliver general notice (Section 4045) of the time and place at which the meeting will reconvene. The notice shall be delivered before the meeting reconvenes.

Recording a Meeting

Proposed Section 4625 continues the existing provision that guarantees a member's right to attend a board meeting and speak (except with respect to any part of the meeting held in closed executive session).

State and local open meeting laws also guarantee the right to record a meeting that is open to the public, so long as it does not interfere with the conduct of the meeting. Gov't Code §§ 11124.1(a), 54953.5(a).

Should a similar rule apply to association meetings? The recording of meetings would make it easier for homeowners to document board activity and share information with other association members who were not present at a meeting. On the other hand, recording could have a chilling effect on free and candid discussion at meetings.

A note following proposed Section 4625 asks for input on whether the same rule should be extended to the Davis-Stirling Act.

Meeting Location

Existing statutory law is silent on where a homeowner association board meeting may be held. The Department of Real Estate's regulations include a requirement that a board meeting be held within the development, unless the available meeting space is too small, in which case the meeting must be held as close to the development as is practicable. 10 Cal. Code Regs. § 2792.20(b). DRE

regulations provide safe harbor rules for the drafting of new CC&Rs. They do not affect CC&Rs drafted before their enactment, or CC&Rs that are amended after the period of developer control. This means that some associations will not be subject to the DRE rule on meeting locations.

Proposed Section 4630 would codify the substance of the DRE regulation.

Teleconference

Corporations Code Section 7211(a)(6) specifically authorizes the use of teleconferencing in a nonprofit mutual benefit corporation board meeting. State and local open meeting laws also allow teleconferencing. See Gov't Code §§ 11123(b), 54953(b).

The Davis-Stirling Act does not specifically address teleconferencing, but the language used in Section 1363.05 is not well adapted to the use of teleconferencing.

Section 1363.05(f) defines a "meeting" as "any congregation of a majority of the members of the board **at the same time and place...**" (emphasis added). That could be read to exclude a teleconference, if a majority of the directors are not in a single physical location. That would raise questions about whether a meeting held by teleconference is (a) unlawful, or (b) exempt from statutory open meeting requirements (because no "meeting" is taking place).

The Commission knows from its own experience that teleconferencing can be necessary from time to time to include members who cannot reach the meeting location. That problem may be even more common in a CID that is comprised largely of second homes; some directors may not be able to reach a meeting that is held within the development.

Proposed Section 4635 adds language specifically authorizing the use of teleconferencing in board meetings. It expressly provides that a director who participates in a meeting by teleconference is deemed to be "present," thus avoiding any conflict with the definitional provision that requires that members be present in the same location. Finally, it states basic procedural requirements that are drawn from the teleconference provisions of mutual benefit corporation law and state and local open meeting laws. Thus:

4635. (a) If all of the following conditions are satisfied, a director who is not physically present at the noticed location of a board meeting may participate in the meeting by teleconference:

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

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

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

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

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

(b) A director participating in a meeting by teleconference pursuant to this section is deemed to be present at the meeting.

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

Comment. Section 4635 is comparable to Corporations Code Section 7211(a)(6) and Government Code Sections 11123(b) & 54953(b). See also Section 4090 (“board meeting” defined).

Executive Session

Proposed Section 4640 continues the provisions of existing law that allow a board to meet in closed executive session in certain specified circumstances.

Existing law allows the board to meet in executive session to consider member discipline, an assessment dispute, and to consider a member request for an assessment payment plan.

In addition, a member who is the subject of disciplinary action may require the board to consider the matter in executive session and is guaranteed the right to attend that session. These rights apparently do not apply when the board is considering an assessment dispute or payment plan request. They probably should. As with disciplinary action, an assessment dispute or payment plan request exposes a member to potential embarrassment within the community.

Proposed Section 4640(b)-(c) would give any member who is the subject of discipline, an assessment dispute, or an assessment payment plan request the right to have that matter considered in executive session and to address the board.

Board Actions by Written Assent

Corporations Code Section 7211(b) allows the board of a mutual benefit corporation to act without holding a meeting, if all members of the board assent to the action in writing.

Section 1363.05 does not specifically address board action by unanimous written assent. However, the circulation of a written proposal to the directors for

their assent would not constitute a “meeting” under Section 1363.05 and would therefore not trigger the various open meeting requirements.

This is an example of the sort of serial communication that is prohibited under the state and local open meeting laws. Gov’t Code §§ 11122.5(b), 54952.2(b). If an association board were to use the written assent procedure aggressively it could do much of its business without advance notice to members or an opportunity for members to observe and comment. That seems contrary to the purpose of the open meeting requirements.

However, it may be that the written assent procedure is necessary to facilitate efficient handling of routine noncontroversial business.

Proposed Section 4645 would continue the written assent procedure. A note following that section asks for comment on whether the written assent procedure should be discontinued for homeowner association boards.

WHAT’S NEXT?

The next installment of the staff draft should wrap up the material on community association governance, with one significant exception. The material on elections may need to be set aside for a bit. The election rules were significantly revised in a bill last year (SB 61 (Battin)), and the staff has been informed that additional legislation may be introduced this year. Rather than work on a moving target, it would be better to wait and see how things seem to be shaping up in that area.

If time permits, the next installment may also include material relating to financial issues.

Respectfully submitted,

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PROPOSED LEGISLATION

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

5 **Civ. Code §§ 4000-____ (added). Common Interest Developments**

6 SEC. ____ Part 5 (commencing with Section 4000) is added to Division 4 of the
7 Civil Code, to read:

8 PART 5. COMMON INTEREST DEVELOPMENTS

9 CHAPTER 1. PRELIMINARY PROVISIONS

10 Article 1. General Provisions

11 § 4000. Short title

12 4000. This title shall be known and may be cited as the Davis-Stirling Common
13 Interest Development Act.

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

15 § 4005. Effect of headings

16 4005. Division, part, title, chapter, and article headings do not in any manner
17 affect the scope, meaning, or intent of this part.

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

21 § 4010. Continuation of prior law

22 4010. A provision of this part, insofar as it is substantially the same as a
23 previously existing provision relating to the same subject matter, shall be
24 considered as a restatement and continuation thereof and not as a new enactment,
25 and a reference in a statute to the provision of this part shall be deemed to include
26 a reference to the previously existing provision unless a contrary intent appears.

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

34 A number of terms and phrases are used in the Comments to the sections of this part to indicate
35 the sources of the sections and to describe how they compare with prior law. The following

1 discussion is intended to provide guidance in interpreting the terminology most commonly used
2 in the Comments.

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

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

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

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

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

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

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

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

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

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

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

42 **§ 4015. Application of part**

43 4015. (a) This part applies to a common interest development.

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

46 **Comment.** Subdivision (a) of Section 4015 continues part of the substance of former Section
47 1352. The part of former Section 1352 that is not continued in this section is continued in Section
48 6000 (creation of common interest development).

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

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

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

3 **§ 4020. Nonresidential development**

4 4020. (a) The following provisions do not apply to a common interest
5 development that is limited to industrial or commercial uses by zoning or by a
6 declaration of covenants, conditions, and restrictions that is recorded in the official
7 records of each county in which the common interest development is located:

8 (1) [Section 1356.]

9 (2) Article 5 (commencing with Section 6100) of Chapter 5.

10 (3) [Subdivision (b) of Section 1363.]

11 (4) [Section 1365.]

12 (5) [Section 1365.5.]

13 (6) [Subdivision (b) of Section 1366.]

14 (7) [Section 1366.1.]

15 (8) [Section 1368.]

16 (9) [Section 1378.]

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

22 **Comment.** Section 4020 continues former Section 1373 without substantive change.
23 See also Section 4100 (“common interest development”).

24 **§ 4025. Application of Corporations Code**

25 4025. (a) An association that is incorporated is governed by this part and by the
26 Corporations Code, except that the following provisions of the Corporations Code
27 do not apply to an association:

28 (1) Section 7211 of the Corporations Code.

29 (2) Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of
30 Division 2 of the Corporations Code does not apply to a common interest
31 development.

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

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

36 **Comment.** Section 4025 is new.

37 The provisions referenced in subdivision (a)(1) are superseded by Sections 4605-4615,
38 4620(d)-(e).

39 Subdivision (a)(2) continues former Section 1356.2(m) without substantive change, except that
40 Corporations Code Section 8332, 8334-8338 are also superseded.

41 Subdivision (b) makes clear that this part may apply specified provisions of the Corporations
42 Code to an association that is unincorporated. See, e.g., Sections 4405(a)(2), [6120(d) & (f)].

43 See also Section 4080 (“association”).

1 **§ 4030. Construction of zoning ordinance**

2 4030. Unless a contrary intent is clearly expressed, a local zoning ordinance
3 shall be construed to treat like structures, lots, parcels, areas, or spaces in like
4 manner regardless of whether the common interest development is a community
5 apartment project, condominium project, planned development, or stock
6 cooperative.

7 **Comment.** Section 4030 continues former Section 1372 without substantive change.

8 See also Sections 4100 (“common interest development”), 4120 (“condominium project”),
9 4170 (“planned development”), 4185 (“stock cooperative”).

10 **§ 4035. “Delivered to the board”**

11 4035. If a provision of this part requires that a document be “delivered to the
12 board” the document shall be delivered by first-class mail, postage prepaid, to the
13 person designated in the annual statement to the membership (Section ___) to
14 receive documents on behalf of the association. If no person has been designated
15 to receive documents, the document shall be delivered to the president of the
16 association.

17 **Comment.** Section 4035 is new. It provides a standard rule for delivery of a document to the
18 board.

19 See also Sections 4080 (“association”), 4085 (“board”), 4165 (“person”).

20 ☞ **Staff Note.** The staff intends, in a future installment of the proposed law, to add a
21 provision consolidating all of the various annual reporting requirements. See, e.g., existing
22 Sections 1365 (financial statement), 1369.590 (ADR requirements), 1378(c) (architectural review
23 requirements). The incomplete reference in Section 4035 will be completed at that time.

24 **§ 4040. “Individual notice”**

25 4040. (a) If a provision of this part requires “individual notice,” the notice shall
26 be delivered by one of the following methods:

27 (1) Personal delivery.

28 (2) First-class mail, postage prepaid, addressed to a member at the address last
29 shown on the books of the association or otherwise provided by the member.

30 (3) E-mail, facsimile, or other electronic means, if the recipient has agreed to
31 that method of delivery.

32 (4) Any other method of delivery that is reasonably calculated to provide actual
33 notice to the recipient.

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

38 **Comment.** Section 4040 is new. See also Sections 4080 (“association”), 4145 (“governing
39 documents”), 4155 (“member”).

1 **§ 4045. “General notice”**

2 4045. (a) If a provision of this part requires “general notice,” the notice shall be
3 provided to all members by one or more of the following methods:

4 (1) Personal delivery.

5 (2) First-class mail, postage prepaid, addressed to a member at the address last
6 shown on the books of the association or otherwise provided by the member.

7 (3) E-mail, facsimile, or other electronic means, if the recipient has agreed to
8 that method of delivery.

9 (4) By publication in a periodical that is circulated primarily to members of the
10 association.

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

14 (6) Any other method of delivery, provided that the recipient has agreed to that
15 method of delivery.

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

18 (b) For the purposes of this section, a provision of the operating rules, articles,
19 or bylaws that provides for a particular method of delivery does not constitute
20 agreement by a member of the association to that method of delivery.

21 **Comment.** Section 4045 restates former Section 1350.7.

22 See also Sections 4080 (“association”), 4145 (“governing documents”), 4155 (“member”).

23 **Staff Note.** Existing Section 1350.7(d) provides that an agreement to a particular method of
24 notice delivery cannot be inferred from an unrecorded provision of the governing documents.
25 That provision has been recast in Section 4040(b) and 4045(b) to eliminate the reference to
26 recordation. Instead, the restated provision makes clear that agreement to a particular method of
27 notice shall not be inferred from a provision of the governing documents other than the
28 declaration. This eliminates any implication that a less formal governing document (e.g., an
29 operating rule) could be used to mandate use of a particular method of notice if the document
30 were recorded. The Commission invites comment on whether this change would create any
31 problems.

32 **§ 4050. Time of delivery**

33 4050. (a) This section governs the delivery of a document pursuant to this part.

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

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

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

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

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

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

5 The second clause of subdivision (b) and paragraphs (b)(1)-(3) are drawn from Code Civ. Proc.
6 § 1013(a).

7 Subdivision (c) continues part of the substance of former Section 1350.7(b)(3).

8 **§ 4055. Approved by the board**

9 4055. If a provision of this part requires that an action be approved by the board,
10 the action shall be approved or ratified by the vote of the board or by the vote of a
11 committee authorized to exercise the powers of the board, pursuant to Article 2
12 (commencing with Section 4600) of Chapter 3.

13 **Comment.** Section 4055 is comparable to Corporations Code Section 5032. It is added for
14 drafting convenience.

15 See also Sections 4085 (“board”), 4155 (“member”).

16 **§ 4060. Approved by a majority of all members**

17 4060. If a provision of this part requires that an action be approved by a majority
18 of all members, the action shall be approved or ratified by an affirmative vote of
19 members representing more than 50 percent of the total voting power of the
20 association, or if the governing documents of an association divide the members
21 into two or more classes for the purposes of voting, by an affirmative vote of
22 members representing more than 50 percent of the voting power in each class that
23 is required to approve the action.

24 **Comment.** Section 4060 is comparable to Corporations Code Section 5033. It is added for
25 drafting convenience.

26 See also Sections 4080 (“association”), 4145 (“governing documents”), 4155 (“member”).

27 **§ 4065. Approved by a majority of a quorum of the members**

28 4065. If a provision of this part requires that an action be approved by a majority
29 of a quorum of the members, the action shall be approved or ratified by an
30 affirmative vote of members representing more than 50 percent of the votes cast in
31 an election at which a quorum is achieved, or if the governing documents of an
32 association divide the members into two or more classes for the purposes of
33 voting, by an affirmative vote of members representing more than 50 percent of
34 the votes cast in an election at which a quorum is achieved, in each class that is
35 required to approve the action.

36 **Comment.** Section 4065 is comparable to Corporations Code Section 5034. It is added for
37 drafting convenience.

38 See also Sections 4080 (“association”), 4145 (“governing documents”), 4155 (“member”).

1 Article 2. Definitions

2 § 4075. Application of definitions

3 4075. Unless the provision or context otherwise requires, the definitions in this
4 article govern the construction of this part.

5 **Comment.** Section 4075 continues the introductory clause of former Section 1351 without
6 substantive change.

7 § 4080. “Association”

8 4080. “Association” means a nonprofit corporation or unincorporated
9 association created for the purpose of managing a common interest development.

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

11 See also Sections 4100 (“common interest development”), 4600 (existence of association).

12 § 4085. “Board”

13 4085. “Board” means the board of directors of an association.

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

15 See also Section 4080 (“association”).

16 § 4090. “Board meeting”

17 4090. “Board meeting” means a congregation of a majority of the directors at
18 the same time and place to hear, discuss, or deliberate upon any item that is within
19 the authority of the board.

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

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

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

27 Nothing in this section precludes a director from participating in a board meeting by
28 teleconference. See Section 5020 (teleconference).

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

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

37 That provision ensures that business that should be conducted in the open is not discussed
38 privately, through informal contacts. However, such a restriction does impose a procedural
39 burden, which may be too onerous for volunteer directors conducting board business in their
40 spare time. The Commission invites comment on this issue.

41 The Commission also invites comment on whether the policies served by open meeting
42 requirements would be better served if the existing procedure for the conduct of board business

1 without a meeting (on the unanimous written consent of the directors) were modified or
2 eliminated. See Corp. Code § 7211(b).

3 **§ 4095. “Common area”**

4 4095. (a) “Common area” means the entire common interest development
5 except the separate interests therein.

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

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

12 See also Sections 4100 (“common interest development”), 4180 (“separate interest”).

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

17 **§ 4100. “Common interest development”**

18 4100. (a) “Common Interest development” means a real property development
19 in which a separate interest is coupled with either of the following:

20 (1) An undivided interest in all or part of the common area.

21 (2) Membership in an association that owns all or part of the common area.

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

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

31 (1) A community apartment project.

32 (2) A condominium project.

33 (3) A planned development.

34 (4) A stock cooperative.

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

37 See also Sections 4080 (“association”), 4095 (“common area”), 4120 (“condominium
38 project”), 4170 (“planned development”), 4180 (“separate interest”), 4185 (“stock cooperative”).

39 **§ 4105. “Community apartment project”**

40 4105. “Community apartment project” means a real property development in
41 which a right of exclusive occupancy of a specified part of the development is
42 coupled with an undivided interest in the development as a whole.

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

2 **§ 4110. “Condominium”**

3 4110. “Condominium” means a separate interest in a condominium project,
4 coupled with an undivided interest in all or part of the common area of the
5 condominium project.

6 **Comment.** Section 4110 restates the definition of “condominium” in former Section 1351(f),
7 without substantive change.

8 See also Sections 4095 (“common area”), 4120 (“condominium project”), 4180 (“separate
9 interest”).

10 **§ 4115. “Condominium plan”**

11 4115. “Condominium plan” means a plan of the type described in Section 6075.

12 **Comment.** Section 4115 is new. It is added for drafting convenience.

13 **§ 4120. “Condominium project”**

14 4120. (a) “Condominium project” means a real property development in which
15 separate ownership of a specified part of the development is coupled with an
16 undivided interest in all or part of the common area.

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

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

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

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

32 **Comment.** Section 4120 restates former Section 1351(f), without substantive change, except
33 that the definition of “condominium” has been relocated to Section 4110.

34 See also Sections 4095 (“common area”), 4110 (“condominium”), 4115 (“condominium
35 plan”), 4180 (“separate interest”).

36 ☞ **Staff Notes.** (1) Proposed Section 4120 restates existing Section 1351(f) in order to parallel
37 the language and construction used in proposed Sections 4105 (“community apartment project”),
38 4170 (“planned development”), and 4185 (“stock cooperative”). The section also eliminates
39 duplicative language and makes fuller use of defined terms. These changes are intended to
40 improve clarity and are not intended to affect the substance of the existing definition of
41 “condominium project.” The Commission requests public input on whether any of the drafting
42 changes would have a substantive effect.

1 (2) The content of subdivision (d) has been left unchanged because its purpose is unclear. Does
2 the provision merely reflect the fact that a separate interest may include noncontiguous parcels of
3 land (e.g., a residential unit and a boat slip)? If so, is it necessary? Does its presence in this
4 section imply that a separate interest in one of the other types of CIDs must be a single
5 contiguous parcel?

6 **§ 4125. “Declarant”**

7 4125. “Declarant” means the person or group of persons designated in the
8 declaration as declarant, or if no declarant is designated, the person or group of
9 persons who sign the original declaration or who succeed to special rights,
10 preferences, or privileges designated in the declaration as belonging to the person
11 who signed the original declaration.

12 **Comment.** Section 4125 continues former Section 1351(g) without substantive change.
13 See also Section 4130 (“declaration”), 4165 (“person”).

14 **§ 4130. “Declaration”**

15 4130. “Declaration” means the document, however denominated, that contains
16 information that is substantially equivalent to the information required by Section
17 6025.

18 **Comment.** Section 4130 continues former Section 1351(h) without substantive change except
19 that exact equivalence with the requirements of Section 6025 is not required. A declaration
20 recorded prior to January 1, 1986 may not contain all of the information required by Section
21 6025.

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

24 **§ 4135. “Director”**

25 4135. “Director” means a natural person elected, designated, or selected to serve
26 on the board.

27 **Comment.** Section 4135 is new. It is added for drafting convenience. See Corp. Code §§ 7220,
28 7224-7225, 7520-7527 (election or selection of director).
29 See also Section 4085 (“board”).

30 **§ 4140. “Exclusive use common area”**

31 4140. (a) “Exclusive use common area” means a part of the common area
32 designated by the declaration to be used exclusively by one or more, but fewer
33 than all, of the members. The right of exclusive use is appurtenant to the separate
34 interests of those members.

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

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

5 **Comment.** Section 4140 restates former Section 1351(i) without substantive change, except
6 that the reference in subdivision (c) to “telephone” wiring is generalized.

7 See also Sections 4095 (“common area”), 4130 (“declaration”), 4155 (“member”), 4180
8 (“separate interest”).

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

14 **§ 4145. “Governing documents”**

15 4145. “Governing documents” means the declaration, bylaws, articles of
16 incorporation or association, and any other document that governs the operation of
17 the common interest development or its association.

18 **Comment.** Section 4145 continues former Section 1351(j) without substantive change.

19 See also Sections 4080 (“association”), 4100 (“common interest development”), 4130
20 (“declaration”).

21 **§ 4150. “Managing agent”**

22 4150. (a) “Managing agent” means a person who, for compensation or in
23 expectation of compensation, exercises control over the assets of a common
24 interest development.

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

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

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

29 **Comment.** Section 4150 generalizes former Section 1363.1(b).

30 See also Sections 4080 (“association”), 4100 (“common interest development”), 4165
31 (“person”).

32 **§ 4155. “Member”**

33 4155. “Member” means an owner of a separate interest in a common interest
34 development.

35 **Comment.** Section 4155 is new. It is added for drafting convenience.

36 See also Section 4100 (“common interest development”), 4180 (“separate interest”).

37 **§ 4160. “Operating rule”**

38 4160. “Operating rule” means a regulation adopted by the board that applies
39 generally to the management and operation of the common interest development
40 or the conduct of the business and affairs of the association.

41 **Comment.** Section 4160 generalizes former Section 1357.100(a) without substantive change.

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

3 **§ 4165. “Person”**

4 4165. “Person” means an individual, corporation, government or governmental
5 subdivision or agency, business trust, estate, trust, partnership, limited liability
6 company, association, or other entity.

7 **Comment.** Section 4165 is new. It is added for drafting convenience.

8 **§ 4170. “Planned development”**

9 4170. “Planned development” means a real property development of any of the
10 following types:

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

14 (b) A development in which separate ownership of a specified part of the
15 development is coupled with: (1) membership in an association that owns the
16 common area, and (2) an appurtenant right to the beneficial use and enjoyment of
17 the common area.

18 (c) If the common area consists entirely of mutual or reciprocal easement rights
19 appurtenant to the separate interests, a development in which separate ownership
20 of a specified part of the development is coupled with membership in an
21 association that has the power to enforce an obligation of an owner of a separate
22 interest with respect to the beneficial use and enjoyment of the common area by
23 means of an assessment that may become a lien upon the separate interests in
24 accordance with [Section 1367 or 1367.1].

25 **Comment.** Section 4170 continues former Section 1351(k) without substantive change.
26 Subdivision (b) incorporates a related provision from former Section 1351(b).

27 See also Sections 4080 (“association”), 4095 (“common area”), 4120 (“condominium
28 project”), 4180 (“separate interest”).

29 **§ 4175. “Rule change”**

30 4175. “Rule change” means the adoption, amendment, or repeal of an operating
31 rule by the board.

32 **Comment.** Section 4175 generalizes former Section 1357.100(b).

33 See also Sections 4085 (“board”), 4160 (“operating rule”).

34 **§ 4180. “Separate interest”**

35 4180. (a) In a community apartment project or stock cooperative, “separate
36 interest” means the exclusive right to occupy an apartment or unit.

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

39 (c) Unless the declaration or a condominium plan otherwise provides, if walls,
40 floors, or ceilings are designated as boundaries of a separate interest, the interior

1 surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets
2 located within the separate interest are part of the separate interest and any other
3 portions of the walls, floors, or ceilings are part of the common area.

4 **Comment.** Section 4180 restates former Section 1351(l) without substantive change, except
5 that language providing that “[the] estate in a separate interest may be a fee, a life estate, an estate
6 for years, or any combination of the foregoing” is continued in Section ____.

7 See also Sections 4095 (“common area”), 4115 (“condominium plan”), 4120 (“condominium
8 project”), 4130 (“declaration”), 4170 (“planned development”), 4185 (“stock cooperative”).

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

13 § 4185. “Stock cooperative”

14 4185. (a) “Stock cooperative” means a real property development in which a
15 right of exclusive occupancy of a specified part of the development is coupled
16 with an ownership interest in a corporation that is formed or availed of primarily
17 for the purpose of holding title to the development as a whole.

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

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

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

26 **Comment.** Section 4185 continues former Section 1351(m) without substantive change, except
27 that language providing that the corporation’s ownership of the development may be “either in
28 fee simple or for a term of years” is continued in Section ____.

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

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

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CHAPTER 2. MEMBER RIGHTS

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Article 1. Bill of Rights [Reserved]

Article 2. Limitation of Association Authority
to Regulate Property Use

§ 4300. Application of article

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

- (a) Sections 712 and 713, relating to the display of signs.
- (b) Sections 714 and 714.1, relating to solar energy systems.
- (c) Section 714.5, relating to structures that are constructed offsite and moved to the property in sections or modules.
- (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the Government Code, relating to racial restrictions.
- (e) Section 12927 of the Government Code, relating to the modification of property to accommodate a disability.
- (f) Section 1597.40 of the Health and Safety Code, relating to the operation of a family day care home.

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

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

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

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

§ 4305. Noncommercial display

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

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

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

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

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

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

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

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

11 **Comment.** Section 4305 continues former Sections 1355.5 and 1353.6 without substantive
12 change, except that Section 4305(b)(2) now applies to a flag of the United States.

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

19 **§ 4310. Pets**

20 4310. (a) The governing documents of an association may not prohibit a
21 member from keeping at least one pet within the member's separate interest or
22 exclusive use common area, subject to reasonable rules and regulations of the
23 association. This section does not affect any other provision of law governing the
24 right of a member to keep a pet.

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

28 (c) If the governing documents are amended to restrict the right to keep a pet in
29 the common interest development, the new restriction shall not apply to an
30 existing pet so long as the pet is kept in compliance with the governing documents
31 as they existed before the addition of the new restriction.

32 (d) This section only applies to governing documents that are created or
33 amended on or after January 1, 2001.

34 **Comment.** Subdivisions (a)-(b) of Section 4310 continue former Section 1360.5(a)-(b) without
35 substantive change.

36 Subdivision (c) continues the substance of former Section 1360.5(c) except that it is expanded
37 to apply to any new restriction on pet ownership and not just a restriction on the number of pets
38 that can be kept.

39 **§ 4315. Roofing materials**

40 4315. (a) An association may not require that a homeowner install or repair a
41 roof in a manner that is in violation of Section 13132.7 of the Health and Safety
42 Code.

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

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

15 **Staff Note.** The Comment to proposed Section 4315 quotes Section 1378(a)(3). The quoted
16 text reflects the 2005 amendment of that section. See 2005 Cal. Stat. ch. 37, § 4.

17 **§ 4320. Television antenna or satellite dish**

18 4320. (a) Except as otherwise provided in this section, a provision of the
19 governing documents is void to the extent that it would prohibit or restrict the use
20 or installation of an antenna.

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

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

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

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

30 (4) A requirement that the association approve the installation before installation
31 takes place.

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

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

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

40 (c) Whenever approval is required for the installation or use of an antenna, the
41 application for approval shall be processed by the appropriate approving entity for
42 the common interest development in the same manner as an application for

1 approval of an architectural modification to the property, and the issuance of a
2 decision on the application shall not be willfully delayed.

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

5 (e) For the purposes of this section “antenna” means a video or television
6 antenna, including a satellite dish, of less than 36 inches in diameter or diagonal
7 measurement.

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

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

12 (2) Proposed subdivision (a) replaces the phrase “a covenant, condition, or restriction contained
13 in a deed, contract, security instrument, or other instrument affecting the transfer or sale of, or an
14 interest in, a common interest development” with the more general term “a provision of the
15 governing documents.” The Commission requests comment on whether that simplification in
16 phrasing would cause a substantive change in the law.

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

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

23 (5) Under existing law, the right to install and use an antenna is limited to “video or
24 television.” A federal regulation preempting CC&Rs that restrict the installation of antennas
25 seems to have a broader scope. See 47 C.F.R. § 1.4000 (protecting, among other things the use of
26 an antenna to receive “direct broadcast satellite service, including direct-to-home satellite
27 service,” which might include satellite radio reception). The Commission requests comment on
28 whether the right to install an antenna or dish should be generalized to include any device within
29 the specified size limitations.

30 **§ 4325. Marketing restriction**

31 4325. (a) A provision of the governing documents that arbitrarily or
32 unreasonably restricts a member’s ability to market the member’s interest in a
33 common interest development is void.

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

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

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

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

44 Subdivision (b) restates the substance of former Section 1368.1(b)(1). Subdivision (b) is a
45 specific application of the general rule provided in [Section 1366.1].

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

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

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

6 Former Section 1368.1(e) is not continued. That subdivision made clear that the former section
7 did not affect the regulation of the display of real estate marketing signs under Sections 712 and
8 713. That provision is unnecessary because nothing in Section 4325 conflicts with Sections 712
9 and 713.

10 **§ 4330. Access to separate interest property**

11 4330. Except as otherwise provided in law, an order of the court, or an order
12 pursuant to a final and binding arbitration decision, an association may not deny a
13 member or other occupant of a separate interest physical access to the separate
14 interest, either by restricting access through the common area, or by restricting
15 access solely to the separate interest.

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

17 **CHAPTER 3. COMMUNITY ASSOCIATION GOVERNANCE**

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

19 **§ 4400. Association**

20 4400. A common interest development shall be governed by an association,
21 which may be incorporated or unincorporated.

22 **Comment.** Section 4400 continues the first sentence of former Section 1363(a). The substance
23 of the second sentence of former Section 1363(a) is continued in Section 4080 (“association”
24 defined).

25 **§ 4405. Association powers**

26 4405. (a) Whether incorporated or unincorporated, an association may exercise
27 the following powers:

28 (1) The powers granted in this part.

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

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

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

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Article 2. Board Meetings

§ 4600. Short title

4600. This article shall be known and may be cited as the Common Interest Development Open Meeting Act.

Comment. Section 4600 continues the substance of former Section 1363.05(a).

§ 4605. Convening or adjourning a meeting

4605. (a) A board meeting may be called by the board chair, the president, the vice president, the secretary, or any two directors.

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

Comment. Subdivision (a) of Section 4605 is comparable to Corporations Code Section 7211(a)(1), which does not apply to a common interest development. See Section 4025.

Subdivision (b) is comparable to the first sentence of Corporations Code Section 7211(a)(4), which does not apply to a common interest development. See Section 4025. See also Section 4620(d) (notice of meeting adjourned for more than 24 hours).

§ 4610. Quorum

4610. Unless the governing documents provide otherwise, a majority of the total number of directors authorized by the governing documents constitutes a quorum. The governing documents may not provide for a quorum that is less than one-fifth of the number of directors authorized, or less than two, whichever is larger.

Comment. Section 4610 is comparable to Corporations Code Section 7211(a)(7), which does not apply to a common interest development. See Section 4025. Note that in an association with only one director, one director is a majority of the total number of directors and would therefore constitute a quorum.

§ 4615. Board action

4615. (a) Except as otherwise provided by law, an action approved by a majority of directors present at a meeting at which a quorum is present is the action of the board. The governing documents may not provide a lower threshold for approval of a board action.

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

Comment. Section 4615 is comparable to Corporations Code Section 7211(a)(8), which does not apply to a common interest development. See Section 4025.

§ 4620. Notice of board meeting

4620 (a) Unless the time and place of a meeting is fixed by the governing documents, the association shall provide general notice (Section 4045) of a board meeting, and shall provide individual notice (Section 4040) of the board meeting

1 to directors and to any association member who has requested individual notice of
2 meetings. The notice shall state the time and place of the board meeting and shall
3 include an agenda for the board meeting.

4 (b) Unless the governing documents provide for a longer period of notice, the
5 association shall deliver notice of the time and place of a board meeting at least
6 four days prior to the meeting.

7 (c) The president of the association, or two directors other than the president,
8 may call an emergency board meeting if there are circumstances that could not
9 have been reasonably foreseen, that require immediate attention and possible
10 action by the board, so that it would be impracticable to comply with this section.
11 Advance notice of an emergency board meeting is not required.

12 (d) If a meeting is adjourned to another time and place for more than 24 hours,
13 the association shall deliver general notice (Section 4045) of the time and place at
14 which the meeting will reconvene. The notice shall be delivered before the
15 meeting reconvenes.

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

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

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

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

25 **Comment.** Subdivisions (a) to (c) of Section 4620 restate the substance of former Section
26 1363.05(g), with three changes:

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

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

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

32 Subdivision (b) requires that notice be delivered at least four days prior to the meeting. That
33 period of notice is lengthened if the notice is delivered by mail. See Section 4050.

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

35 Subdivision (d) is comparable to the second sentence of Corporations Code Section 7211(a)(4),
36 which does not apply to a common interest development. See Section 4025.

37 Subdivision (e) is comparable to Corporations Code Section 7211(a)(3), which does not apply
38 to a common interest development. See Section 4025.

39 **Staff Notes.** (1) Proposed Section 4620(a) would require that the notice of a meeting include
40 an agenda for the meeting. That would increase the value of advance notice of a meeting, by
41 letting a member know whether the meeting will include discussion of matters of interest to the
42 member. The Commission invites comments on this minor substantive change.

43 (2) As in existing law, proposed Section 4620(a) would not require notice of a meeting if “the
44 time and place of a meeting is fixed by the governing documents.” That exemption makes sense if
45 the only purpose of the notice is to inform as to the time and place of the meeting. If, however,
46 the notice is expanded to include the agenda for a meeting, notice would be useful even if the

1 time and place of the meeting could be determined from the governing documents. The
2 Commission invites comments on whether the specified exception should be discontinued.

3 **§ 4625. Board meetings open**

4 4625. (a) Any member may attend a board meetings, except for any part of the
5 meeting held in executive session.

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

9 **Comment.** Subdivision (a) of Section 4625 continues part of the substance of former Section
10 1363.05(b). The part of former Section 1363.05(b) that described the basis for meeting in
11 executive session is continued in Section 4640(a)-(b).

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

14 **Staff Note.** State and local open meeting laws guarantee the right to record a meeting that is
15 open to the public, so long as it does not interfere with the conduct of the meeting. Gov't Code §§
16 11124.1(a), 54953.5(a). The Commission invites comment on whether a similar rule should be
17 applied to homeowner association board meetings.

18 **§ 4630. Board meeting location**

19 4630. A board meeting shall be held within the common interest development
20 unless the board determines that a larger meeting room is required than is
21 available within the common interest development. A board meeting held outside
22 of the common interest development shall be held as close as is practicable to the
23 common interest development.

24 **Comment.** Section 4630 is comparable to a Department of Real Estate regulation requiring
25 reasonable arrangements for board meetings. See 10 Cal. Code Regs. § 2792.20(b).

26 **§ 4635. Teleconference**

27 4635. (a) If all of the following conditions are satisfied, a director who is not
28 physically present at the noticed location of a board meeting may participate in the
29 meeting by teleconference:

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

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

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

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

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

40 (b) A member participating in a meeting by teleconference pursuant to this
41 section is deemed to be present at the meeting.

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

4 **Comment.** Section 4635 is comparable to Corporations Code Section 7211(a)(6) and
5 Government Code Sections 11123(b) & 54953(b). See also Section 4090 (“board meeting”
6 defined).

7 **§ 4640. Executive session**

8 4640. (a) The board may adjourn to executive session to consider litigation,
9 matters relating to the formation of contracts with third parties, member discipline,
10 an assessment dispute, or personnel matters.

11 (b) The board shall adjourn to executive session to consider member discipline,
12 an assessment dispute, or a request for a payment plan for overdue assessment
13 debt, if requested to do so by the member who is the subject of the matter to be
14 considered.

15 (c) Notwithstanding Section 4625, if the board meets in executive session to
16 consider member discipline, an assessment dispute, or a request for a payment
17 plan for overdue assessment debt, the member who is the subject of that matter
18 may attend and speak during consideration of the matter.

19 **Comment.** Subdivisions (a)-(b) of Section 4640 continue part of the substance of former
20 Section 1363.05(b). The remainder of former Section 1363.05(b) is continued in Section 4625(a).

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

24 **§ 4645. Action without a meeting**

25 4645. (a) An action required or permitted to be taken by the board may be taken
26 without a meeting, if all directors individually or collectively consent in writing to
27 that action. The written consent shall be filed with the minutes of the proceedings
28 of the board.

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

33 **Comment.** Section 4645 generalizes Corporations Code Section 7211(b), which does not apply
34 to a common interest development. See Section 4025.

35 **§ 4650. Minutes**

36 4650. (a) Within 30 days after a board meeting, including a meeting held in
37 executive session, the board shall prepare minutes of the board meeting.

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

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

4 (d) The annual statement to the membership (Section ___) shall inform the
5 members of their right to obtain copies of board meeting minutes and shall
6 describe the procedure for obtaining a copy of the minutes.

7 **Comment.** Subdivision (a) of Section 4650 continues part of the first sentence of former
8 Section 1363.05(d).

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

12 Subdivision (c) continues the substance of the second sentence of former Section 1363.05(d).
13 The second sentence of subdivision (c) makes express what is implicit in former Section
14 1363.05(d), that a member has an absolute right to inspect meeting minutes and is not required to
15 state a permissible purpose in order to obtain a copy.

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

17 **Staff Note.** The staff intends, in a future installment of the proposed law, to add a
18 provision consolidating all of the various annual reporting requirements. See, e.g., existing
19 Sections 1365 (financial statement), 1369.590 (ADR requirements), 1378(c) (architectural review
20 requirements). The incomplete reference in Section 4650 will be completed at that time.

21 **§ 4655. Application of article**

22 4655. This article applies to a board meeting or a meeting of a committee that
23 exercises a power of the board.

24 **Comment.** Section 4655 generalizes Corporations Code Section 7211(c), which does not apply
25 to a common interest development. See Section 4025.

26 **Article 3. Inspection of Records**

27 **§ 4700. Scope of inspection right**

28 4700. (a) Except as otherwise provided in this article, a member may inspect the
29 following association records:

30 (1) The governing documents.

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

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

35 (4) Any notice, report, or other document that is required to be provided to the
36 members as a general notice (Section 4045).

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

1 (6) Any invoice, receipt, cancelled check, credit card statement, statement for
2 services rendered, or reimbursement request.

3 (7) Any statement of deposits to and withdrawals from the reserve account, or
4 showing the current balance of the reserve account.

5 (8) Any executed contract.

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

7 (10) Any state or federal tax return.

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

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

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

16 (1) Any record that was prepared three or more fiscal years prior to the fiscal
17 year in which the inspection request is delivered. This paragraph does not apply to
18 the minutes of a member meeting, a board meeting, or a meeting of a committee
19 that exercises a power of the board. Minutes must be made available for inspection
20 permanently.

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

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

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

29 (5) Any interior architectural plan of a separate interest.

30 (6) Any plan showing any security features of a separate interest.

31 (7) Any record of a good or service provided to a member for a fee.

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

34 **Comment.** Subdivisions (a)-(b) of Section 4700 continue the substance of former Section
35 1356.2(a)-(b), except for the following changes:

36 Subdivision (a)(1) is new.

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

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

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

1 Subdivision (a)(8) does not limit the inspection of executed contracts to those that are not
2 privileged. A general exemption for privileged documents is provided in subdivision (b)(2).

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

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

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

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

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

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

9 Subdivision (c) is comparable to Corporations Code Section 8311.

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

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

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

23 (3) The concept of “enhanced association records” established in Section 1365.2(a)(2) is not
24 continued. The only application of that definition occurs in Section 1365.2(c)(5), which
25 authorizes billing for time spent redacting personal information from “enhanced association
26 records.” The proposed law broadens that provision. Any redaction that is required, in any type of
27 document, imposes costs and should be compensated.

28 (4) Section 1365.2(a)(1)(D) and (d)(1)(E)(iv) provide that a contract is not subject to inspection
29 if it is privileged. In what situation would a contract be privileged? Section 1365.2(d)(1)(E)(iv)
30 purports to provide that “privileged contracts shall not include contracts for maintenance,
31 management, or legal services.” Is this intended as an override of the otherwise applicable law
32 governing evidentiary privileges? Is such an override proper? Given the breadth of that override,
33 what sorts of contracts might remain privileged?

34 **§ 4705. Inspection procedure**

35 4705. (a) A member may deliver to the board (Section 4035) a written request to
36 inspect an association record. The request shall identify the record to be inspected
37 and shall state a purpose for the inspection that is reasonably related to the
38 member’s interest as a member. The request may designate an agent to inspect the
39 record on the member’s behalf.

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

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

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

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

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

2 (c) If the association has a business office in the common interest development,
3 the requested record shall be made available for inspection in that office. If the
4 association does not have a business office in the common interest development,
5 the record shall be made available for inspection at a location agreed to by the
6 association and the member who submitted the request.

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

13 **Comment.** Subdivision (a) of Section 4705 establishes a procedure to request the inspection of
14 association records.

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

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

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

24 **§ 4710. Redaction**

25 4710. (a) Before making a record available for inspection, the association shall
26 redact all of the following information from the record:

27 (1) Any financial account number.

28 (2) Any password or personal identification number.

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

30 (4) Any driver's license number.

31 (5) Any other information, if it is reasonably probable that disclosure of the
32 information will lead to unauthorized use of a person's identity or financial
33 resources, or to other fraud.

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

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

39 **Comment.** Section 4710 restates former Section 1365.2(d)(2) except that the duty to redact
40 certain information has been made mandatory.

41 **Staff Note.** Under Section 1365.2(d)(2), redaction of personal information is optional. It is
42 not clear why a CID director should have discretion in this regard. Proposed Section 4710 would
43 make redaction mandatory. The Commission invites comment on this proposed change.

1 **§ 4715. Optional exclusion from membership list**

2 4715. (a) A member may elect, in writing, to have the member’s name and
3 address redacted from the membership list.

4 (b) A member who requests the membership list may also request that the
5 association deliver material to any member whose information will be redacted
6 from the membership list. The association shall deliver the material to those
7 members by individual delivery (Section 4040), within 10 business days after
8 delivery of the request.

9 **Comment.** Section 4715 restates former Section 1356.2(a)(1)(I)(iii).

10 **§ 4720. Fees**

11 4720. (a) The association may charge a fee to recover the direct and actual cost
12 to copy or deliver a record. The association shall inform the member of the fee
13 amount, and the member shall agree to pay the fee, before a copy is made or a
14 record delivered.

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

20 **Comment.** Section 4720 continues former Section 1356.2(c)(4)-(5) without substantive
21 change, except that the authority to charge a fee for redaction has been generalized.

22 **§ 4725. Denial of request**

23 4725. (a) A member may only inspect and use an association record for a
24 purpose that is reasonably related to the requesting member’s interest as a
25 member. A member may not inspect or use an association record for a commercial
26 purpose.

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

31 **Comment.** Subdivision (a) of Section 4725 continues the substance of former Section
32 1365.2(e). See also Corp. Code § 8338 (use of membership list).

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

35 **§ 4730. Denial process**

36 4730. (a) An association that denies a request for records under this article shall
37 provide the requesting member a notice of denial, by individual delivery (Section
38 4040), within 10 business days after delivery of the inspection request.

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

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

1 (2) An offer to attempt to resolve the matter through the association’s internal
2 dispute resolution procedure provided pursuant to [Article 5 (commencing with
3 Section 133.810) of Chapter 4]. The offer may include an alternative proposal for
4 achieving the member’s purpose.

5 (3) A description of the procedure provided in subdivision (c) for objection to
6 the denial decision, and the applicable deadline.

7 (c) A member may deliver to the board (Section 4035) a written objection to the
8 denial decision, within 10 business days after delivery of the notice of denial.
9 Failure to deliver a timely objection nullifies the record inspection request.

10 (d) If a member delivers a timely objection to a decision to deny a record
11 inspection request, the association shall either comply with the record inspection
12 request or shall petition the superior court for an order setting aside the request.

13 **Comment.** Section 4730 is new.

14 **§ 4735. Action to set aside request**

15 4735. (a) An association that has complied with Section 4730 may file a petition
16 to set aside a record inspection request. The petition shall be filed within 10
17 business days after the requesting member delivers a timely objection pursuant to
18 subdivision (c) of Section 4730. Notwithstanding the other provisions of this
19 subdivision, the association may file a petition within 30 days after delivery of the
20 objection if it can show that the delay was caused by excusable neglect.

21 (b) The court may order that the record inspection request be set aside if it finds
22 that disclosure is not required under this article, that disclosure would violate a
23 member’s constitutional rights, or that there is a reasonable probability that
24 disclosure would lead to misuse of the record. The association bears the burden of
25 proving grounds for setting aside the request.

26 (c) The court may order any other relief appropriate to the circumstances,
27 including the following relief:

28 (1) An order requiring that the association distribute material to the membership
29 on behalf of the requesting member, in lieu of disclosing the membership list.

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

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

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

39 (d) If the court does not set the record inspection request aside, it shall award
40 reasonable costs and expenses, including reasonable attorney’s fees, to the
41 requesting member.

1 (e) Nothing in this section limits the right of the association to bring an action
2 under Section 4745.

3 **Comment.** Subdivision (a) of Section 4735 is comparable to Corporations Code Section
4 8331(b)-(c).

5 The first sentence of subdivision (b) is comparable to Corporations Code Sections 8331(f)(1)
6 and 8332, except that it applies to all records and not just to a membership list. The second
7 sentence continues part of the substance of former Section 1365.2(a)(1)(I)(ii) but generalizes it to
8 apply to all records and not just to a membership list.

9 Subdivision (c)(1) is comparable to Corporations Code Sections 8331(g) and 8332.

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

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

20 Subdivision (c)(4) is comparable to Corporations Code Section 8336.

21 Subdivision (d) is comparable to Corporations Code Section 8331(h).

22 Subdivision (e) is comparable to Corporations Code Section 8331(j).

23 **§ 4740. Action to compel compliance**

24 4740. (a) If an association has not complied with a document inspection request
25 within the time provided, and that failure is not excused under subdivision (c), the
26 requesting member may bring an action in the superior court to compel
27 compliance. The action may be filed in the small claims division of the superior
28 court if the amount of the demand does not exceed the jurisdiction of that court.

29 (b) If the court finds that the failure to comply with the record inspection request
30 is not excused, it shall order compliance. The court may order any other relief
31 appropriate to the circumstances, including the following relief:

32 (1) Imposition of a civil penalty of up to \$500 against the association.

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

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

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

42 (c) Failure to comply with a record inspection request is excused if one of the
43 following conditions is satisfied:

44 (1) The request was nullified as a result of the requesting member's failure to
45 deliver a timely objection to the board.

46 (2) An action is pending under Section 4735.

1 (3) The record inspection request was set aside by a court pursuant to Section
2 4735.

3 (4) The requested record is not subject to disclosure under this article.

4 (d) If the court orders compliance with the record inspection request, it shall
5 award reasonable costs and expenses, including reasonable attorney's fees, to the
6 requesting member. If the court does not order compliance with the record
7 inspection request and it finds that the claim for enforcement was frivolous,
8 unreasonable, or without foundation, it may award reasonable costs and expenses,
9 including reasonable attorney's fees, to the association.

10 **Comment.** Section 4740 is comparable to former Section 1365.2(f) and Corporations Code
11 Sections 8336 (action to enforce inspection right) and 8337 (costs and expenses).

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

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

22 Subdivision (b)(4) is comparable to Corporations Code Section 8336.

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

24 **Staff Note.** Section 1365.2(f) provides for an award of costs and expenses to an association
25 in an action to enforce the record inspection right, if the court finds that the requesting member's
26 action is "frivolous, unreasonable, or without foundation." That seems to be aimed at limiting an
27 award of association fees to a case involving a frivolous claim. However, the language may be
28 too broad for that purpose. It allows for an award of fees where the action was "without
29 foundation." The meaning of that phrase is unclear, but it could be read to encompass any case in
30 which the court finds against the plaintiff. The Commission requests comment on whether it
31 might be better to use language drawn from Code of Civil Procedure Section 1038, which
32 governs an award of fees in a frivolous case brought under the Tort Claims Act. For example:
33 "The court may award reasonable costs and expenses, including reasonable attorney's fees, to the
34 association if it finds that the action was not brought in good faith and with reasonable cause."

35 **§ 4745. Action to enjoin improper use of records**

36 4745. An association may bring an action for injunctive relief and actual
37 damages against any person who misuses association records. In addition, a court
38 in its discretion may award exemplary damages for a fraudulent or malicious
39 misuse of association records. If the association prevails in an action brought
40 under this section, the court shall award the association reasonable costs and
41 expenses, including reasonable attorney's fees.

42 **Comment.** Section 4745 is comparable to Corporations Code Section 8338(b)-(d).

43 **§ 4750. Limited liability**

44 4750. An association, or an officer, director, employee, agent, or volunteer of an
45 association, is not liable for damages that result from a failure to withhold or

1 redact information pursuant to this article, unless the failure to withhold or redact
2 the information was intentional, willful, or negligent.

3 **Comment.** Section 4750 restates the substance of former Section 1356.2(d)(3).

4 **Staff Note.** Former Section 1356.2(d)(3) immunizes the association and its officers and
5 agents from some liability for damages resulting from a breach of the duty to withhold or redact
6 certain personal information. However, that provision seems to allow for liability where the
7 breach was merely negligent. Should the liability limitation provision be strengthened or
8 otherwise modified, especially if the duty to redact is made mandatory? See proposed Section
9 4710 and note. For example, broader protection could be given to individuals by eliminating mere
10 negligence as a basis for personal liability.

11 **§ 4755. Application of article**

12 4755. (a) For the purposes of this article, a community service organization or
13 similar entity, as defined in [paragraph (3) of subdivision (c) of Section 1368], is
14 deemed to be an association, and a member of the community service organization
15 or similar entity is deemed to be a member of an association.

16 (b) This article does not apply to common interest development in which
17 separate interests are being offered for sale by a subdivider under the authority of a
18 public report issued by the Department of Real Estate, so long as the subdivider or
19 all subdividers offering those separate interests for sale, or any employees of those
20 subdividers or any other person who receives direct or indirect compensation from
21 any of those subdividers, comprise a majority of the members of the board of
22 directors of the association. Notwithstanding the foregoing this article shall apply
23 to a common interest development no later than 10 years after the close of escrow
24 for the first sale of a separate interest to a member of the general public pursuant
25 to the public report issued for the first phase of the development.

26 **Comment.** Subdivision (a) of Section 4755 continues the substance of former Section
27 1365.2(g).

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

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

1 Article 4. Record Maintenance [Reserved]

2 Article 5. Annual Notice [Reserved]

3 Article 6. Elections [Reserved]

4 Article 7. Enforcement and Dispute Resolution [Reserved]

5 Article 8. Managing Agents [Reserved]

6 CHAPTER 4. FINANCES AND MAINTENANCE [RESERVED]

7 CHAPTER 5. GOVERNING DOCUMENTS

8 Article 1. General Provisions

9 **§ 6000. Creation of common interest development**

10 6000. For the purposes of this part, a common interest development is created
11 when a separate interest coupled with an interest in the common area or
12 membership in the association is, or has been, conveyed, provided that all of the
13 following are recorded:

14 (a) A declaration.

15 (b) A condominium plan, if any exists.

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

19 **Comment.** Section 6000 continues part of the substance of former Section 1352. It governs the
20 application of this part and is not intended to govern the date of creation of a common interest
21 development for other purposes. See *City of West Hollywood v. Beverly Towers, Inc.* 52 Cal. 3d
22 1184, 278 Cal. Rptr. 375, 805 P.2d 329 (1991) (failure to convey a unit not determinative of
23 whether condominium project exists for purposes of local planning law).

24 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
25 development”), 4115 (“condominium plan”), 4130 (“declaration”), 4180 (“separate interest”).

26 **§ 6005. Document authority**

27 6005. (a) The articles of incorporation may not include a provision that is
28 inconsistent with the declaration. To the extent of any inconsistency between the
29 articles of incorporation and the declaration, the declaration controls.

30 (b) The bylaws may not include a provision that is inconsistent with the
31 declaration or the articles of incorporation. To the extent of any inconsistency
32 between the bylaws and the articles of incorporation or declaration, the articles of
33 incorporation or declaration control.

1 (c) The operating rules may not include a provision that is inconsistent with the
2 declaration, articles of incorporation, or bylaws. To the extent of any inconsistency
3 between the operating rules and the bylaws, articles of incorporation, or
4 declaration, the bylaws, articles of incorporation, or declaration control.

5 **Comment.** Section 6005 is new. Subdivision (b) is consistent with Corporations Code Section
6 7151(c) providing that the bylaws shall be consistent with the articles of incorporation.
7 Subdivision (c) is consistent with Section 6100(c) providing that an operating rule may not be
8 inconsistent with the declaration, articles of incorporation, or bylaws of the association.

9 See also Sections 4080 (“association”), 4130 (“declaration”), 4160 (“operating rule”).

10 Article 2. Declaration

11 § 6025. Content of declaration

12 6025. A declaration, recorded on or after January 1, 1986, shall contain all of the
13 following:

14 (a) A legal description of the common interest development.

15 (b) A statement that the common interest development is a community
16 apartment project, condominium project, planned development, stock cooperative,
17 or combination thereof.

18 (c) The name of the association.

19 (d) Any restriction on the use or enjoyment of any portion of the common
20 interest development that is intended to be an enforceable equitable servitude.

21 (e) Any other matter that the declarant or the members consider appropriate.

22 **Comment.** Section 6025 continues part of former Sections 1353(a)(1) and (b) without
23 substantive change. The remainder of former Section 1353(a)(1) is continued without substantive
24 change in Section 6030.

25 See also Sections 4080 (“association”), 4100 (“common interest development”), 4120
26 (“condominium project”), 4125 (“declarant”), 4130 (“declaration”), 4155 (“member”), 4170
27 (“planned development”), 4185 (“stock cooperative”).

28 **Staff Note.** The defined term “declarant” is substituted for the existing phrase “original
29 signator of the declaration” in proposed 6025(e). The Commission invites comment on whether
30 this would cause any problem.

31 § 6030. Disclosure of airport in vicinity

32 6030. (a) If a common interest development is located within an airport
33 influence area and its declaration is recorded after January 1, 2004, the declaration
34 shall contain the following statement:

35 “NOTICE OF AIRPORT IN VICINITY

36 This property is presently located in the vicinity of an airport, within what
37 is known as an airport influence area. For that reason, the property may be
38 subject to some of the annoyances or inconveniences associated with
39 proximity to airport operations (for example: noise, vibration, or odors).

40 Individual sensitivities to those annoyances can vary from person to person.

41 You may wish to consider what airport annoyances, if any, are associated

1 with the property before you complete your purchase and determine whether
2 they are acceptable to you.”

3 (b) For purposes of this section, an “airport influence area,” also known as an
4 “airport referral area,” is the area in which current or future airport-related noise,
5 overflight, safety, or airspace protection factors may significantly affect land uses
6 or necessitate restrictions on those uses as determined by an airport land use
7 commission.

8 (c) A statement in a declaration acknowledging that a property is located in an
9 airport influence area is not a title defect, lien, or encumbrance.

10 **Comment.** Section 6030 continues part of former Sections 1353(a)(1)-(2), (4) without
11 substantive change. The remainder of former Section 1351(a)(1) is continued without substantive
12 change in Section 6025. See Bus. & Prof. Code § 11010 (disclosure of property within airport
13 influence area); Pub. Util. Code § 21675 (designation of “airport influence area” by county
14 airport land use commission).

15 See also Sections 4100 (“common interest development”), 4130 (“declaration”).

16 **§ 6035. Disclosure of BCDC jurisdiction**

17 6035. (a) If a common interest development is within the jurisdiction of the San
18 Francisco Bay Conservation and Development Commission, as described in
19 Section 66610 of the Government Code, and its declaration is recorded on or after
20 January 1, 2006, the declaration shall contain the following notice:

21 “NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
22 DEVELOPMENT COMMISSION JURISDICTION

23 This property is located within the jurisdiction of the San Francisco Bay
24 Conservation and Development Commission. Use and development of
25 property within the commission’s jurisdiction may be subject to special
26 regulations, restrictions, and permit requirements. You may wish to
27 investigate and determine whether they are acceptable to you and your
28 intended use of the property before you complete your transaction.”

29 (b) A statement in a declaration acknowledging that a property is located within
30 the jurisdiction of the San Francisco Bay Conservation and Development
31 Commission is not a title defect, lien, or encumbrance.

32 **Comment.** Section 6035 continues former Section 1353(a)(3)-(4) without substantive change.
33 See also Section 4100 (“common interest development”), 4130 (“declaration”).

34 **§ 6040. Amendment authorized**

35 6040. (a) Unless a declaration expressly provides otherwise, any provision of the
36 declaration can be amended.

37 (b) If a provision of a declaration can be amended, it can be amended at any
38 time.

39 (c) The Legislature finds that there are common interest developments that have
40 been created with deed restrictions that do not provide a means for the property

1 owners to extend the term of the declaration. The Legislature further finds that
2 covenants and restrictions, contained in the declaration, are an appropriate method
3 for protecting the common plan of developments and to provide for a mechanism
4 for financial support for the upkeep of common areas including, but not limited to,
5 roofs, roads, heating systems, and recreational facilities. If declarations terminate
6 prematurely, common interest developments may deteriorate and the supply of
7 affordable housing units could be impacted adversely. The Legislature further
8 finds and declares that it is in the public interest to provide a vehicle for extending
9 the term of the declaration if owners having more than 50 percent of the votes in
10 the association choose to do so.

11 (d) A declaration may be amended to extend the termination date of the
12 declaration, notwithstanding any contrary provision of the declaration. No single
13 extension of the term of the declaration made pursuant to this subdivision shall
14 exceed the initial term of the declaration or 20 years, whichever is less. However,
15 more than one extension may be made pursuant to this subdivision.

16 **Comment.** Subdivisions (a)-(b) of Section 6040 restate the first sentence of former Section
17 1355(b) without substantive change.

18 Subdivisions (c)-(d) restate Section 1357 without substantive change except that the procedure
19 for approving an amendment of a declaration to extend its termination date is not continued. An
20 amendment under this subdivision would be approved pursuant to Section 6045.

21 See also Sections 4080 (“association”), 4100 (“common interest development”), 4130
22 (“declaration”).

23 **Staff Notes.** (1) The Commission invites comment on whether the proposed restatement of
24 the first sentence of Section 1355(b) would cause any substantive change in the law.

25 (2) Existing law acknowledges that a declaration may be drafted so as to limit or prohibit its
26 amendment. That could result in permanent restrictions that become inappropriate over time, due
27 to changed circumstances or the changed desires of the property owners. The common law
28 recognizes a defense to the enforcement of an equitable servitude where “the original purpose for
29 the restrictions has become obsolete and continued enforcement of the restrictions would be
30 oppressive and inequitable.” H. Miller & M. Starr, California Real Estate § 24:20 (3d ed. 2004).
31 As a matter of policy, should there be a procedure for amendment of a declaration by the
32 members of a homeowner association, even if the declaration prohibits its own amendment?

33 **§ 6045. Approval of amendment**

34 6045. (a) If the governing documents provide a procedure for approval of an
35 amendment of the declaration, an amendment may be approved by that procedure.

36 (b) If the governing documents do not provide a procedure for approval of an
37 amendment of the declaration, an amendment may be approved by a majority of
38 all members (Section 4060).

39 (c) The board shall provide individual notice (Section 4040) to all members of
40 an amendment approved under this section.

41 **Comment.** Section 6045 is comparable to the provisions of former Section 1355 that relate to
42 approval of an amendment of the declaration. See Sections 4040 (individual notice), 4060
43 (approved by all members).

44 See also Sections 4085 (“board”), 4130 (“declaration”), 4145 (“governing documents”), 4155
45 (“member”).

1 **☞ Staff Notes.** (1) The Corporations Code provisions governing the amendment of the articles
2 of incorporation and bylaws address the possibility that the governing documents may require the
3 approval of a specific class of voters or of a specified third party in order to amend the governing
4 documents. See, e.g. Corp. Code § 7150(b), (d). Should similar provisions be applied to
5 amendment of the declaration? For example, suppose that the declaration provides that a minority
6 class of voters must approve any action that changes the proportional share of assessments
7 collected from each class. Should the majority class be able to delete that provision from the
8 declaration without the approval of a majority of the other class?

9 (2) Civil Code Section 1356 authorizes a director or member to petition the superior court for
10 an order lowering the number or percentage of affirmative votes required to approve an
11 amendment of the declaration. A comparable order may be obtained under Corporations Code
12 Section 7515. The staff does not see the benefit in providing two separate and slightly different
13 provisions to achieve the same result. For that reason, Section 1356 is not continued in the
14 proposed law. Instead, the staff intends to restate Section 7515 in the provisions of the proposed
15 law that will govern election procedures. That general provision would apply to any action that
16 requires member approval (as Section 7515 currently does). The Commission invites comment on
17 whether this would create any problems.

18 **§ 6050. Approval of amendment to delete obsolete construction or marketing provision**

19 6050. Notwithstanding Section 6045, the deletion of a provision of the
20 declaration may be approved by the board (Section 4055) and by a majority of a
21 quorum of the members (Section 4065) if all of the following conditions are
22 satisfied:

23 (a) The provision to be deleted is unequivocally designed and intended, or by its
24 nature can only have been designed or intended, to facilitate the developer in
25 completing the construction or marketing of the development or of a particular
26 phase of the development.

27 (b) The provision to be deleted authorizes access by the developer over or across
28 the common area for the purposes of (1) completion of construction of the
29 development, and (2) the erection, construction, or maintenance of structures or
30 other facilities designed to facilitate the completion of construction or marketing
31 of separate interests.

32 (c) The construction or marketing activities governed by the provision to be
33 deleted have been completed or terminated.

34 **Comment.** Section 6050 is comparable to former Section 1355.5 but applies only to the
35 amendment of a declaration. The requirement of former Section 1355.5(c), that members be given
36 notice before the board approves the amendment is not continued. As a general rule, member
37 notice is required before board meetings and before a member vote is held. See [§ 1363.05(d)];
38 Corp. Code § 7511.

39 See Sections 4055 (approved by the board), 4065 (approved by majority of quorum of all
40 members). See also Sections 4085 (“board”), 4095 (“common area”), 4130 (“declaration”), 4155
41 (“member”), 4180 (“separate interest”).

42 **☞ Staff Notes.** (1) Existing Section 1355.5 provides an optional procedure for deletion of
43 obsolete developer provisions from any type of governing document, including the articles of
44 incorporation and bylaws. However, it doesn’t appear that this section serves a useful purpose
45 when applied to the articles or bylaws. The existing procedures for amendment of those
46 documents is as expeditious or more expeditious than the procedure provided in Section 1355.5.
47 See Corp. Code §§ 7151 (amendment of bylaws), 7810-7820 (amendment of articles).

1 (2) Existing Section 1355.5 limits the optional procedure to deletion of provisions that
2 “[provide] for access by the developer over or across the common area for the purposes of (a)
3 completion of construction of the development, and (b) the erection, construction, or maintenance
4 of structures or other facilities designed to facilitate the completion of construction or marketing
5 of separate interests. Does the use of “and” imply that the provision must satisfy both of the
6 enumerated criteria? Should “and” be changed to “or”?

7 (3) Is it necessary to continue the requirement that the board approve an amendment under this
8 section? It seems unlikely that a board would ever oppose such an amendment if it were approved
9 by the members.

10 **§ 6055. Effective date of amendment**

11 6055. Notwithstanding any contrary provision of the governing documents, an
12 amendment approved pursuant to this article becomes effective once the following
13 actions have been completed:

14 (a) An officer of the association certifies, in a writing that is signed and
15 acknowledged by the officer, that the amendment was approved pursuant to this
16 article. The certifying officer shall be the officer designated for that purpose by the
17 governing documents, or if no one is designated, the president of the association.

18 (b) The written certification and the amended text of the declaration are recorded
19 in each county in which the common interest development is located.

20 **Comment.** Subdivisions (a) and (b) of Section 6055 are comparable to the provisions of
21 former Section 1355 that relate to certification and recordation of an amendment of the
22 declaration. See Sections 1180-1207 (acknowledgement of instrument).

23 See also Sections 4080 (“association”), 4100 (“common interest development”), 4130
24 (“declaration”), 4145 (“governing documents”).

25 **Article 3. Articles of Incorporation**

26 **§ 6060. Content of articles**

27 6060. (a) The articles of incorporation of an association that are filed with the
28 Secretary of State on or after January 1, 1995, shall include all of the following:

29 (1) A statement that the corporation is an association formed to manage a
30 common interest development under the Davis-Stirling Common Interest
31 Development Act.

32 (2) The address of the business or corporate office of the association, if any.

33 (3) If the association has no business or corporate office, or if the business or
34 corporate office is not on the site of the common interest development, the nine-
35 digit ZIP Code, front street, and nearest cross street for the physical location of the
36 common interest development.

37 (4) The name and address of the association’s managing agent.

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

1 (4) A rule change that is required by law, if the board has no discretion as to the
2 substantive effect of the rule change.

3 (5) Issuance of a document that merely repeats existing law or the governing
4 documents.

5 **Comment.** Section 6110 continues former Section 1357.120 without substantive change.

6 See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4140
7 (“exclusive use common area”), 4145 (“governing documents”), 4155 (“member”), 4160
8 (“operating rule), 4175 (“rule change”), 4180 (“separate interest”).

9 **§ 6115. Approval of rule change by board**

10 6115. (a) The board shall provide general notice (Section 4045) of a proposed
11 rule change at least 30 calendar days before making the rule change. The notice
12 shall include the text of the proposed rule change and a description of the purpose
13 and effect of the proposed rule change. Notice is not required under this
14 subdivision if the board determines that an immediate rule change is necessary to
15 address an imminent threat to public health or safety or imminent risk of
16 substantial economic loss to the association.

17 (b) A proposed rule change may be approved by the board (Section 4055).

18 (c) As soon as possible after approving a rule change, but not more than 15
19 calendar days after approving the rule change, the board shall provide general
20 notice (Section 4045) of the rule change. If the rule change was an emergency rule
21 change made under subdivision (d), the notice shall include the text of the rule
22 change, a description of the purpose and effect of the rule change, and the date that
23 the rule change expires.

24 (d) If the board determines that an immediate rule change is required to address
25 an imminent threat to public health or safety, or an imminent risk of substantial
26 economic loss to the association, the board may approve an emergency rule
27 change (Section 4055) without providing general notice (Section 4045) of the
28 proposed rule change. An emergency rule change is effective for 120 calendar
29 days, unless the board provides for a shorter effective period. A rule change made
30 under this subdivision may not be readopted under this subdivision.

31 **Comment.** Section 6115 restates former Section 1357.130 without substantive change. See
32 Sections 4045 (general notice), 4055 (approved by the board).

33 See also Sections 4080 (“association”), 4085 (“board”), 4175 (“rule change”).

34 **§ 6120. Reversal of rule change by members**

35 6120. (a) Members of an association owning five percent or more of the separate
36 interests may call a special meeting of the members to reverse a rule change that
37 was approved by the board.

38 (b) A special meeting of the members may be called by delivering a request to
39 the board (Section 4035) that includes the requisite number of member signatures,
40 after which the board shall provide general notice (Section 4045) of the meeting
41 and hold the meeting in conformity with Article 2 (commencing with Section
42 4600) of Chapter 3. A written request may only be delivered within 30 calendar

1 days after general notice (Section 4045) of the rule change or enforcement of the
2 resulting rule, whichever occurs first.

3 (c) For the purposes of Article 3 (commencing with Section 4700) of Chapter 3,
4 collection of signatures to call a special meeting under this section is a purpose
5 reasonably related to the interests of the members of the association. A member
6 request to copy or inspect the membership list solely for that purpose may not be
7 denied on the grounds that the purpose is not reasonably related to the member's
8 interests as a member.

9 (d) A decision to reverse a rule change may be approved by a majority of a
10 quorum of the members (Section 4065), or if the declaration or bylaws require a
11 greater proportion, by the affirmative vote or written ballot of the proportion
12 required. In lieu of calling the meeting described in this section, the board may
13 distribute a written ballot to every member of the association in conformity with
14 the requirements of [Section 7513 of the Corporations Code].

15 (e) Unless otherwise provided in the declaration, articles of incorporation, or
16 bylaws, for the purposes of this section, a member may cast one vote per separate
17 interest owned.

18 (f) A meeting called under this section is governed by [Chapter 5 (commencing
19 with Section 7510) of Part 3 of Division 2 of Title 1 of, and Sections 7612 and
20 7613 of, the Corporations Code].

21 (g) A rule change reversed under this section may not be readopted for one year
22 after the date of the meeting reversing the rule change. Nothing in this section
23 precludes the board from adopting a different rule on the same subject as the rule
24 change that has been reversed.

25 (h) As soon as possible after the close of voting, but not more than 15 calendar
26 days after the close of voting, the board shall provide general notice (Section
27 4045) of the results of the member vote.

28 (i) This section does not apply to an emergency rule change made under
29 subdivision (d) of Section 6115.

30 **Comment.** Section 6120 continues former Section 1357.140 without substantive change. See
31 Sections 4035 (delivered to board) 4045 (general notice), 4065 (approved by majority of quorum
32 of the members).

33 See also Sections 4080 ("association"), 4085 ("board"), 4130 ("declaration"), 4155
34 ("member"), 4175 ("rule change"), 4180 ("separate interest").

35 **Staff Note.** A future installment of the proposed law will address general procedures for
36 meetings. That installment will reconcile the differences the notice requirements provided in the
37 proposed law and those provided in the Corporations Code.

38 **§ 6125. Applicability of article to changes commenced before and after January 1, 2004**

39 6125. (a) This article applies to a rule change commenced on or after January 1,
40 2004.

41 (b) Nothing in this article affects the validity of a rule change commenced
42 before January 1, 2004.

1 (c) For the purposes of this section, a rule change is commenced when the board
2 takes its first official action leading to adoption of the rule change.

3 **Comment.** Section 6125 continues former Section 1357.150 without substantive change.
4 See also Sections 4085 (“board”), 4175 (“rule change”).

5 Article 6. Unlawful Restrictions

6 § 6150. Discriminatory restriction

7 6150. (a) No governing document shall include a restrictive covenant in
8 violation of Section 12955 of the Government Code.

9 (b) Notwithstanding any other provision of law or provision of the governing
10 documents, the board shall amend the governing documents to delete the unlawful
11 restrictive covenant and to restate the governing document without the deleted
12 restrictive covenant. No other person is required to approve the amendment.

13 (c) If the declaration is amended under this section, the board shall record the
14 restated declaration in each county in which the common interest development is
15 located. If the articles of incorporation are amended under this section, the board
16 shall file a certificate of amendment pursuant to Section 7814 of the Corporations
17 Code.

18 (d) The Department of Fair Employment and Housing, a city or county in which
19 a common interest development is located, or any other person may provide
20 written notice to a board (Section 6030) requesting that it comply with this section.
21 If the board fails to comply with this section within 30 calendar days after delivery
22 of the notice under this subdivision, the person who sent the notice may bring an
23 action against the association for injunctive relief to enforce this section. The court
24 may award attorney’s fees to the prevailing party.

25 **Comment.** Section 6150 restates former Section 1352.5 without substantive change, except
26 that subdivision (c) is added. See Section 4030 (delivery to board).

27 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest
28 development”), 4130 (“declaration”), 4145 (“governing documents”), 4165 (“person”).

29 **Staff Note.** The use of the term “restrictive covenant” in existing Section 1352.5 would
30 seem to limit its scope to a discriminatory provision in the recorded declaration (see Civ. Code §
31 1468(d) (covenant must be recorded to bind successive owners)). That is contrary to the express
32 terms of the section, which provide that it applies to a “declaration *or other governing*
33 *documents.*” Would it be appropriate to replace the term “restrictive covenant” with the broader
34 term “rule or restriction”?

35 Article 7. Construction of Documents

36 § 6175. Liberal construction of instruments

37 6175. (a) Any deed, declaration, or condominium plan for a common interest
38 development shall be liberally construed to facilitate the operation of the common
39 interest development, and its provisions shall be presumed to be independent and
40 severable.

1 (b) Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2
2 of Part 1 of Division 2 shall operate to invalidate any provisions of the governing
3 documents of a common interest development.

4 **Comment.** Section 6175 continues former Section 1370 without substantive change.

5 See also Sections 4100 (“common interest development”), 4115 (“condominium plan”), 4130
6 (“declaration”), 4145 (“governing documents”).

7 **§ 6180. Boundaries of units**

8 6180. In interpreting a deed or condominium plan, the existing physical
9 boundaries of a unit in a condominium project, when the boundaries of the unit are
10 contained within a building, or of a unit reconstructed in substantial accordance
11 with the original plans thereof, shall be conclusively presumed to be its boundaries
12 rather than the metes and bounds expressed in the deed or condominium plan, if
13 any exists, regardless of settling or lateral movement of the building and
14 regardless of minor variance between boundaries shown on the plan or in the deed
15 and those of the building.

16 **Comment.** Section 6180 continues former Section 1371 without substantive change.

17 See also Sections 4115 (“condominium plan”), 4120 (“condominium project”).
