

## Memorandum 2009-24

**Common Interest Development Law: Nonresidential Associations  
(Discussion of Issues)**

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In this study, the Commission is considering which provisions of the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1378) (hereafter "Davis-Stirling Act") should be inapplicable to a nonresidential common interest development ("CID"). The study expands on existing Civil Code Section 1373, which presently exempts nonresidential CIDs from nine specified provisions of the act.

In connection with the matters discussed in this memorandum, we received two email messages from Craig Stevens. They are reproduced in the Exhibit, starting at page 1. The exhibit also includes the full text of the Davis-Stirling Act provisions that are analyzed in the memorandum, starting at page 4.

Except as otherwise indicated, all statutory references in this memorandum are to the Civil Code.

## REVIEW OF METHODOLOGY OF STUDY

The Commission has previously decided to consider the applicability of the Davis-Stirling Act to nonresidential CIDs in three steps:

- (1) *An analysis of provisions of the Davis-Stirling Act that the Legislature has decided should be inapplicable to nonresidential CIDs, through the enactment and amendment of Section 1373.* Policy choices made by the Legislature about the provisions listed in Section 1373 are to be given substantial deference, in the absence of a change in circumstances, or some other significant countervailing consideration.
- (2) *Extrapolation from the provisions listed in Section 1373.* The Commission will consider whether the legislative rationale for an exemption listed in Section 1373 should be extended to any other provisions in the Davis-Stirling Act.
- (3) *An analysis of the remaining provisions of the Davis-Stirling Act.* The applicability to nonresidential CIDs of all provisions that are not

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analyzed in the first two steps will be analyzed by considering factors that the Legislature has identified as relevant, other appropriate policies that become evident during the course of the study, and public input on the realities of ownership in a nonresidential CID.

The Commission has completed the first step of the methodology described above. After considering legislative history and analysis of the provisions listed in Section 1373, the Commission endorsed the continued exemption of nonresidential CIDs from each of the provisions listed in that section. See CLRC Memorandum 2009-18; Minutes (April 2009), p. 4.

This memorandum undertakes the second step of the study methodology — an attempt to extrapolate from legislative rationale underlying the exemptions in Section 1373 to other provisions in the Davis-Stirling Act.

#### PRELIMINARY ISSUE — “OPT-IN” PROVISION?

##### **Summary of Issue**

Before beginning a discussion of this extrapolation, an overarching issue recently brought to the Commission’s attention will be briefly addressed.

The Commission has received comment on this study from a group of 12 attorneys and two property managers who work with nonresidential CIDs (hereafter, “stakeholder group”). First Supplement to CLRC Memorandum 2009-18, Exhibit pp. 5-11. The stakeholder group has recommended the addition of several Davis-Stirling Act provisions to the list of exemptions in Section 1373, recommendations that will be discussed in this and subsequent memoranda.

This group has also suggested that the Commission add to Section 1373 what the group describes as an “opt-in” provision. The contemplated provision would allow an individual nonresidential CID to unilaterally *elect* to be governed by any exemption listed in Section 1373. First Supplement to CLRC Memorandum 2009-18, Exhibit p. 6.

Craig Stevens, one of the property managers in the stakeholder group, has submitted two additional emails relating to this provision. Exhibit pp. 1-3. Mr. Stevens explains that even when a majority of nonresidential CIDs desire exemption from a particular Davis-Stirling Act provision, one or more individual nonresidential CIDs might want to be governed by the provision. Exhibit p. 2. He believes the recommended opt-in provision would accommodate this interest.

## **Potential Difficulty**

In theory, this suggested option might make some classification decisions in this study easier for the Commission. Close calls might be easier to resolve if the Commission had in mind that classifying a provision as inapplicable to nonresidential CIDs would not deprive an individual nonresidential CID *desiring* to be governed by the provision from achieving that result.

However, drafting an opt-in provision that would actually allow for this self-governance would require overcoming significant implementation problems.

The stakeholder group suggests that a CID could elect this governance by simply providing for it in one of its governing documents. First Supplement to CLRC Memorandum 2009-18, Exhibit p. 6. That might work for a CID that had not yet been formed, and could include such a provision in its initial declaration. But any presently existing CID would probably have a much harder time.

In order for an existing CID to provide for this suggested elective governance in its declaration, it would have to amend the declaration. And as has been discussed, amending a CID declaration can often be a difficult task, due to voter apathy as well as supermajority voting requirements.

An attempt by an existing CID to instead provide for this elective governance in an operating rule would likely result in a different problem. To the extent the rule was deemed to be in conflict with the CID's declaration, it would be invalid. See *Major v. Miraverde Homeowners Ass'n, Inc.*, 7 Cal. App. 4th 618, 628, 9 Cal. Rptr. 2d 237, 243 (1992). And because it would be impossible to know with certainty whether such a conflict existed without the benefit of a legal ruling, reliance on the operating rule without costly judicial involvement would be risky.

## **Deferred Consideration**

Based on the nature of most of the provisions in the Davis-Stirling Act, however, the Commission can and probably should defer a decision on this issue until after the Commission has made a preliminary applicability decision about each of the provisions in the act.

The vast majority of provisions in the Davis-Stirling Act are statutory directives, compelling a CID to either engage in or refrain from some specified conduct (e.g., prepare a budget in a certain manner, follow certain procedures when holding elections, allow its owners to own at least one pet, etc.). But for a CID that independently desires to engage in or refrain from that specified

conduct, a statutory directive is superfluous. Whether such a directive is statutorily applicable to nonresidential CIDs, is declared inapplicable, or is deleted from the Civil Code entirely, the CID can and presumably will continue to engage in or refrain from the *conduct* described by the directive, on its own. Therefore, for most provisions in the Davis-Stirling Act, a statutory opt-in provision would not be needed to achieve the result the stakeholder group seeks.

There are a handful of provisions in the Davis-Stirling Act that constitute more than directives — these provisions convey some type of special statutory *authority* (e.g., specified immunity from tort liability for volunteer CID officer or director). If the Commission were to make any of *these* provisions inapplicable to nonresidential CIDs, additional legislation probably would be needed if the Commission wanted to make that statutory authority available to a nonresidential CID on an elective basis.

However, because so few Davis-Stirling Act provisions fall into this latter category, this much narrower issue can be more easily addressed once the Commission has identified any such provisions that the Commission has decided to classify as inapplicable to nonresidential CIDs.

The staff therefore recommends that **the Commission defer consideration of adding an “opt-in” provision to Section 1373 until the Commission has made preliminary applicability decisions regarding each provision of the Davis-Stirling Act.**

#### SUMMARY OF EXTRAPOLATION ANALYSIS

In the first step of this study, the Commission addressed whether to endorse legislative determinations to exempt nonresidential CIDs from the Davis-Stirling Act provisions listed in Section 1373. In this next step, the staff will discuss whether it is possible to extrapolate from the rationale underlying those legislative determinations, to similarly classify other provisions of the Davis-Stirling Act.

In this memorandum, the staff has identified those provisions of the Davis-Stirling Act for which the staff believes such extrapolation may suggest exemption. All remaining provisions of the Davis-Stirling Act will be presented to the Commission in step three of the methodology discussed above, when a *de novo* analysis of those provisions will be conducted.

The provisions presented in this memorandum are grouped by category. To facilitate the extrapolation analysis, each category is based on a specific rationale

that appears to have been relied upon by the Legislature for exempting nonresidential CIDs from one or more of the provisions listed in Section 1373. If the Commission finds an offered rationale to be a persuasive basis for exemption, the rationale may suggest classifying the provisions listed in the category as exemptions, based on similar policy considerations.

The full text of each provision presented for analysis in this memorandum is provided at Exhibit pp. 4-49.

### **Overarching Considerations**

However, extrapolation from any of the legislative rationales discussed below may also be substantially influenced by two overarching considerations.

#### *Business Sophistication of Owner in Nonresidential CID*

As has been previously mentioned in this study, an overarching rationale often offered as general support for nonresidential CID exemptions might be summarized as follows: The typical owner in a nonresidential CID can be expected to have significantly more sophistication about business related matters than the typical owner in a residential development. Therefore, a nonresidential owner should generally need less of the regulatory protection provided by Davis-Stirling Act provisions that relate to the operation and governance of a CID. And to the extent such regulatory protection is unneeded, such provisions constitute burdensome and unnecessary micro-management.

The premise of this argument — that whatever degree of business sophistication nonresidential CID owners possess translates to a need for less regulatory protection — has been both supported and criticized by commenters having familiarity with owners in nonresidential CIDs. See extended discussion in CLRC Memorandum 2009-18, pp. 4-6. As the Commission has not yet discussed this issue, **a preliminary discussion of the Commission's views on the topic prior to consideration of individual provisions may prove helpful to the Commission.**

In conjunction with a discussion of this issue, the Commission may also want to consider how much weight should be given to the interest of a *minority* of owners in a nonresidential CID. Although not directly expressed, this seems to be the focus of Tina Rasnow, one of the commenters referenced above who previously was in charge of the Self-Help Legal Access Center for the Ventura County Superior Court. CLRC Memorandum 2009-18, p. 5.

Assume for the sake of argument that a majority of owners in all existing nonresidential CIDs have the business sophistication upon which the above rationale is premised. These owners will likely have little need for the regulatory protections offered by many of the Davis-Stirling Act provisions, and will likely desire their CID to be exempt from these regulatory provisions, to the greatest extent possible. Further, because these owners have majority voting power in their CIDs, if a provision of the Davis-Stirling Act is made statutorily inapplicable to nonresidential CIDs, it is unlikely that their CID will independently provide the regulatory protection offered by that provision.

However, there will still likely be at least some owners in one or more of these CIDs that do not possess the same degree of business sophistication as the majority of owners in these CIDs, nor have the same resources. One or more of these owners may prefer or even need the regulatory protection of a particular provision, even though most owners in the CID do not.

Is it necessary for the Commission to continue an existing regulatory protection for these hypothetical minority owners, even in a corporate setting in which the Legislature has traditionally imposed less regulatory burden? Should diminished regulatory protection for individual owners in a nonresidential CID be considered an inherent component of acquiring property in a nonresidential CID?

The Commission's views on these issues will likely have a significant impact on most of its classification decisions in this study.

#### *Reliance on Existing Law*

A related and overarching factor relevant to the Commission's consideration of further exemptions for nonresidential CIDs is the extent to which some number of existing nonresidential CID owners may have *relied* on a provision presently being considered for exemption, in acquiring an interest in a nonresidential CID and starting business operations there.

This factor would likely have been a lesser consideration for the Legislature when it was considering the exemptions listed in Section 1373. At the time of the enactment of Section 1373, the Davis-Stirling Act had been in existence for only three years, and until the enactment of Section 1373, it may not have been clear to some members of the public that the Davis-Stirling Act applied to nonresidential CIDs at all. See discussion in CLRC Memorandum 2008-63, pp. 3-4.

In contrast, most of the provisions of the Davis-Stirling Act have now been in existence, and have been known to be applicable to nonresidential CIDs by prospective nonresidential CID owners, for over 20 years.

Based on comment from the stakeholder group, it appears that many of these prospective owners that ultimately decided to acquire an interest in a nonresidential CID viewed those provisions as an unfortunate but necessary aspect of owning property in a nonresidential CID. However, other prospective owners may have affirmatively *relied* on the existence of one or more of these provisions, in deciding whether to purchase an interest in a nonresidential CID and commence business operations there. Others may have relied in part on the existence of one or more of these provisions in structuring their businesses, after acquiring their interest.

This consideration, if found to be relevant to a particular provision, need not preclude classification of that provision as an exemption. But if the Commission decides that a sufficient number of nonresidential owners may have reasonably relied on a provision that the Commission otherwise would be inclined to classify as an exemption, **the Commission may want to consider *prospectively exempting nonresidential CIDs from that provision*** (i.e., making that exemption applicable only to CIDs formed after the operative date of implementing legislation). Alternatively, the Commission might wait to see whether comments relating to some type of reliance interest are received in response to a staff note in the distributed tentative recommendation.

#### PROVISIONS THAT SUBSTANTIALLY OVERLAP OTHER STATUTORY PROVISIONS

A rather straightforward rationale relied upon by the Legislature for exempting nonresidential CIDs from a provision in the Davis-Stirling Act is the existence of another statutory provision, also applicable to nonresidential CIDs, that substantially addresses the same subject matter. This rationale, which was expressly mentioned in the legislative history underlying the enactment of Section 1373 (see CLRC Memorandum 2009-18, p. 3), clearly makes sense from a statutory drafting perspective. Substantially overlapping statutory provisions can create confusion and ambiguity, and impose unnecessary administrative burden on entities governed by both provisions.

For residential CID owners, provisions in the Davis-Stirling Act that overlap other applicable provisions nevertheless provide some benefit. Although some ambiguity may still be created, the overlapping Davis-Stirling Act provision is

typically a more specific provision relating directly to CID operation or governance, thereby providing nonresidential owners and their boards with needed maximum guidance as to exactly how to conduct CID affairs.

However, depending on the Commission's view as to the relative sophistication of nonresidential owners, such specific guidance may not be needed in nonresidential CIDs. And in the absence of that countervailing consideration, the application to nonresidential CIDs of Davis-Stirling Act provisions that are largely duplicated by other statutory provisions results in confusion and unnecessary additional regulatory burden, with no substantial corresponding benefit.

The existence of overlapping statutory authority appears to be a primary reason why the Legislature exempted nonresidential CIDs from Section 1365 of the Davis-Stirling Act. Section 1365 requires a CID to prepare and distribute to its owners an annual operating budget, and various other financial information. However, the vast majority of nonresidential CIDs are organized as nonprofit mutual benefit corporations, and are therefore required by Corporations Code Sections 8320 and 8321 to provide substantially the same financial information to their member owners. See discussion in CLRC Memorandum 2009-18, pp. 13-14.

There are other provisions in the Davis-Stirling Act that are largely overlapped by provisions of the Nonprofit Mutual Benefit Corporation Law (Corp. Code §§ 7110 to 8910), and may also be appropriate for exemption. Each of these presented provisions has been recommended for exemption by the stakeholder group.

However, there is a caveat relating to exemptions in this category that is worth noting. Although no statistical documentation is available, all information the staff has been able to obtain indicates that an overwhelming majority of nonresidential CIDs are incorporated. Nevertheless, anecdotal evidence indicates there are at least a few nonresidential CIDs that are not. For those CIDs, exemption from a provision in this "statutory overlap" category would mean that particular CID would not be governed by *any* statutory provision addressing the subject matter of the exemption.

To address this issue, **the Commission may wish to consider making provisions in this category selected for exemption applicable only to nonresidential CIDs organized as corporations under the Nonprofit Mutual Benefit Corporation Law.**

## **Section 1350.7. Delivery of Document**

Section 1350.7, a section drafted by the Commission in conjunction with its study on *Common Interest Development Law: Procedural Fairness in Association Rulemaking and Decisionmaking* (33 Cal. L. Revision Comm'n Reports 81 (2003)), sets forth rules for delivering a document when such delivery is referenced by another Davis-Stirling Act provision. The rules apply whenever Section 1350.7 is made applicable by the other Davis-Stirling Act provision.

Since its enactment, Section 1350.7 has been referenced by only two other sections of the act, Sections 1357.130 and 1357.140. Both of those sections are inapplicable to nonresidential CIDs, pursuant to Section 1373.

The substance of Section 1350.7 is also substantially addressed by subdivisions (b) and (g) of Corporations Code Section 7511, which provides in full:

7511. (a) Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 nor more than 90 days before the date of the meeting to each member who, on the record date for notice of the meeting, is entitled to vote thereat; provided, however, that if notice is given by mail, and the notice is not mailed by first-class, registered, or certified mail, that notice shall be given not less than 20 days before the meeting. Subject to subdivision (f), and subdivision (b) of Section 7512, the notice shall state the place, date and time of the meeting, the means of electronic transmission by and to the corporation (Sections 20 and 21) or electronic video screen communication, if any, by which members may participate in that meeting, and (1) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (2) in the case of the regular meeting, those matters which the board, at the time the notice is given, intends to present for action by the members, but, except as provided in subdivision (b) of Section 7512, any proper matter may be presented at the meeting for the action. The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time the notice is given to members.

(b) *Notice of a members' meeting or any report shall be given personally, by electronic transmission by a corporation, or by mail or other means of written communication, addressed to a member at the address of the member appearing on the books of the corporation or given by the member to the corporation for purpose of notice; or if no such address appears or is given, at the place where the principal office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal office is located. An affidavit of giving of any notice or report in accordance with the*

provisions of this part, executed by the secretary, assistant secretary or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

*If any notice or report addressed to the member at the address of the member appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the member at the address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the member upon written demand of the member at the principal office of the corporation for a period of one year from the date of the giving of the notice or report to all other members.*

Notice given by electronic transmission by the corporation under this subdivision shall be valid only if it complies with Section 20. Notwithstanding the foregoing, notice shall not be given by electronic transmission by the corporation under this subdivision after either of the following:

(1) The corporation is unable to deliver two consecutive notices to the member by that means.

(2) The inability to so deliver the notices to the member becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice.

(c) Upon request in writing to the corporation addressed to the attention of the chairman of the board, president, vice president, or secretary by any person (other than the board) entitled to call a special meeting of members, the officer forthwith shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the board not less than 35 nor more than 90 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

(d) When a members' meeting is adjourned to another time or place, unless the bylaws otherwise require and except as provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof (or the means of electronic transmission by and to the corporation or electronic video screen communication, if any, by which members may participate) are announced at the meeting at which the adjournment is taken. No meeting may be adjourned for more than 45 days. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If after the adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member

who, on the record date for notice of the meeting, is entitled to vote at the meeting.

(e) The transactions of any meeting of members however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person (or, if proxies are allowed, by proxy), provides a waiver of notice or consent to the holding of the meeting or an approval of the minutes thereof in writing. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this part to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, unless otherwise provided in the articles or bylaws, except as provided in subdivision (f).

(f) Any approval of the members required under Section 7222, 7224, 7233, 7812, 8610, or 8719, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(g) *A court may find that notice not given in conformity with this section is still valid, if it was given in a fair and reasonable manner.*

(Emphasis added).

The staff recommends that **Section 1350.7 be added to the list of exemptions in Section 1373**. Since its enactment, Section 1350.7 has not been applicable to a nonresidential CID, and its potential application to nonresidential CIDs in the future appears to be adequately addressed by Corporations Code Section 7511.

### **Section 1363(e). Content of Meeting Notice**

Section 1363(e) requires that notices of member meetings specify the matters that a CID board intends to present for action at the meeting.

The content of notices of member meetings is also addressed, in more detail than that provided in Section 1363(e), by Corporations Code Section 7511(a) (reprinted above).

The staff recommends that **Section 1363(e) be added to the list of exemptions in Section 1373**. Its application to nonresidential CIDs appears to be adequately addressed by Corporations Code Section 7511(a).

### **Section 1363(f). Owner Access to Records**

Section 1363(f) requires a CID to provide member access to (1) association records, as well as (2) the CID's operating rules, "in accordance with" Corporations Code Section 8330 *et seq.*

Although there are provisions in the Corporations Code that substantially overlap Section 1363(f), the provisions would not appear to guarantee access to *all* records of the CID. The Corporations Code provisions do specifically provide for access to membership information (Corp. Code § 8330), as well as "accounting books and records and minutes of proceedings of the members and the board and committees of the board" (Corp. Code § 8333). However, a nonresidential owner seeking access only under the Corporations Code provisions might not be entitled to view any "association records" that could not be reasonably argued to fit within the above categories (nor, technically, to a copy of the CID's operating rules). Other "association records," as defined by another section of the Davis-Stirling Act, might include executed contracts, tax returns, contractor proposals, and bank statements. See Civ. Code § 1365.2(a)(1).

As there does not appear to be precise duplication between Section 1363(f) and other statutory provisions, whether Section 1363(f) should be classified as an exemption would appear to depend heavily on the Commission's view as to the relative sophistication of nonresidential owners, and how great their need is for *express statutory entitlement* to this additional information.

Pending the Commission's expression of its views on these issues, **the staff makes no recommendation as to whether Section 1366(f) should be added to the list of exemptions in Section 1373.**

### **Section 1363.03. Elections**

Section 1363.03, operative only since July 1, 2006, sets forth a series of procedural requirements for conducting member elections in a CID.

As discussed in the Commission's recommendation on *Statutory Clarification and Simplification of CID Law*, the substance of Section 1363.03 is addressed and overlapped by an entire chapter in the Corporations Code, beginning with Section 7510. *Statutory Clarification and Simplification of CID Law* (December 2007)

(preprint), p. 5. After considering the applicability of Section 1363.03 to nonresidential CIDs in that study, the Commission has already concluded that the provisions of Section 1363.03 should be made inapplicable to nonresidential CIDs. *Statutory Clarification and Simplification of CID Law* (December 2007) (preprint), p. 37 (see proposed Section 4020). See also discussion in Fourth Supplement to CLRC Memorandum 2007-4, pp. 2-3.

The staff recommends that **the Commission reaffirm its recent decision, and add Section 1363.03 to the list of exemptions in Section 1373.**

### **Section 1365.2. Inspection and Copying of Records**

Section 1365.2 requires a CID to make virtually all association records available to its owners for inspection and copying, and sets forth detailed procedures for how that inspection and copying should take place. While the substance of the section is generally addressed by Corporations Code Sections 8310 *et seq.* and 8330 *et seq.*, Section 1365.2 is broader in its scope. As indicated in the discussion of Section 1366(f) above, it appears that an owner is *expressly* entitled to more records under Section 1365.2 than under the Corporations Code provisions, and the Corporations Code sections offer no specific procedural rights relating to how inspection and copying is to take place.

Again, pending the Commission's expression of its view relating to the relative sophistication of nonresidential owners (and their need for the information available under Section 1365.2), **the staff makes no recommendation on whether Section 1365.2 should be added to the list of exemptions in Section 1373.**

### PROVISIONS REGULATING FINANCIAL MANAGEMENT OF A CID

The next category of potential exemptions is based on a legislative rationale best described as the protection of the freedom of a commercial endeavor to decide on its own financial management. As contrasted with a residential development, in which many owners have neither business acumen nor a substantial interest in the financial affairs of their CID, the owners in a nonresidential CID are more likely to view their businesses as part of a single enterprise, with the financial well-being of their own businesses significantly tied to the financial well-being of their CID.

This rationale appears to have been a substantial basis for the Legislature's exemption of nonresidential CIDs from Sections 1365 (requiring CIDs to compile

and provide financial information to its owners), 1365.5 (setting forth various financial obligations of a CID board, including the conducting of reserve studies), 1366(b) (in part, limiting assessment increases that may be imposed), and 1366.1 (limiting assessments to their cost).

In order to present the most straightforward extrapolation from these provisions, the staff has not included within this category provisions of the Davis-Stirling Act that relate to CID collection practices (e.g., liens and foreclosures). These provisions involve policy considerations substantially distinct from financial issues.

However, the staff has identified another section in the Davis-Stirling Act, not presently listed as an exemption in Section 1373, that does appear to directly restrict the financial management of a CID. The stakeholder group recommends that this section be added to the list of exemptions in Section 1373.

#### **Section 1366(a). Assessments**

Section 1366(a) contains two distinct provisions relating to the financial management of a CID.

The first sentence of the subdivision requires a CID to “levy regular and special assessments sufficient to perform its obligations under the governing documents and this title.”

The effect of exempting nonresidential CIDs from this provision in Section 1366(a) is unclear. In an incorporated nonresidential CID, the common law business judgment rule might require a CID board to comply with the dictates of this provision, independent of any statute. However, in an unincorporated nonresidential CID, it appears possible that exemption from this provision could permit the CID board, in an effort to please some or all owners, to under assess to the point of financial collapse of the CID.

**The staff solicits input on this issue from interested persons. Pending such input, the staff does not recommend adding the first sentence of Section 1366(a) to the list of exemptions in Section 1373.**

The second sentence of Section 1366(a) prohibits a CID board from increasing regular assessments from the year before unless the board either (1) complies with Section 1365(a) (which requires the preparation and distribution to owners of an operating budget) for that fiscal year, or (2) obtains approval for the increase from a majority of owners in the CID.

Because nonresidential CIDs are exempt from Section 1365 (Civ. Code § 1373(a)(4)), the meaning of this second sentence is arguably ambiguous. One might argue that an exemption from the requirements of Section 1365(a) is the equivalent of *compliance* with Section 1365(a), which would mean that each year nonresidential CIDs are deemed to automatically satisfy the requirement of this second sentence. Under that reading, nonresidential CIDs are *already* exempted from the second sentence of Section 1365(a).

The alternative reading of this sentence is that either of the two prerequisites may be met to allow an assessment increase to be imposed, but at least one must be met by *all* CIDs, including nonresidential CIDs. The fact that a nonresidential CID is not *required* to comply with Section 1365(a) would not *preclude* it from doing so, if it chose to rely on that option in order to impose an assessment increase. Or, a nonresidential CID could choose not to comply with Section 1365(a), in which case it would be required to satisfy the alternative prerequisite of voter approval.

The stakeholder group appears to view the provision as a limitation on a nonresidential CID's ability to impose assessment increases, arguing that "these protections are not suited for nonresidential CIDs where the flexibility to raise funds as and when needed through different funding mechanisms seems more appropriate." First Supplement to CLRC Memorandum 2009-18, Exhibit p. 10.

Requiring a CID board, prior to raising assessments, to either provide owners with an operating budget or obtain owner approval for the increase would appear to be an important procedural safeguard for owners. If this second sentence of Section 1366(a) were made inapplicable to nonresidential CIDs, it would appear a nonresidential CID board could impose annual assessment increases whenever desired, limited only by the CID's governing documents, which may not address such increases at all.

Still, an exemption from the application of this second sentence of Section 1366(a) would arguably be consistent with the "freedom from financial regulation" rationale that appears to have been relied upon by the Legislature in classifying three other provisions of the Davis-Stirling Act as exemptions in 1985. On the other hand, the Commission's view of the overarching considerations discussed above — the business sophistication of nonresidential owners (including a minority of those owners), and reliance on existing law — may cause the Commission to reach a different conclusion.

**Pending the Commission’s expression of its view on those latter considerations, the staff makes no recommendation on whether the second sentence of Section 1366(a) should be added to the list of exemptions in Section 1373.**

#### PROVISIONS REQUIRING DISCLOSURE OF CID INFORMATION TO PROSPECTIVE BUYERS

Another legislative exemption in Section 1373 appears to have been based on the Legislature’s desire to minimize the administrative burden on nonresidential CID owners to disclose information about the CID to third parties presumed capable of obtaining the information independently.

This rationale appears to be the basis for the exemption of nonresidential CIDs from Section 1368. Section 1368 requires a seller of a separate interest in a CID to disclose to the prospective buyer various information about the CID, including financial information, approved but not yet imposed assessment increases, and identified construction defects. The Legislature’s view appears to have been that prospective buyers of an interest in a nonresidential CID are either able to obtain this type of information on their own, or have no need for it, making mandatory disclosure unnecessary and administratively burdensome.

This view is consistent with the Legislature’s exemption of business entities from disclosure obligations in other statutory contexts. The Civil Code is replete with provisions that require sellers of residential property to make various disclosures to prospective buyers that are not required of sellers of commercial property. See Civ. Code §§ 1102 *et seq.* Another example, Business and Professions Code Section 11018.6, requires a seller of an interest in a subdivided lot to make various disclosures about the subdivision to the prospective purchaser, but the requirement is inapplicable if the subdivision is entirely nonresidential. Bus. & Prof. Code § 11010.3.

There is another provision in the Davis-Stirling Act, not presently listed as an exemption in Section 1373, that also requires disclosure of information about the CID to prospective buyers. The stakeholder group recommends that this provision be added to the exemptions in Section 1373.

#### **Section 1353(a). Disclosure of Special Considerations Regarding CID Location**

Portions of Section 1353(a) require that a CID disclose in its declaration that the CID is located either (1) within an “airport influence area,” as defined, or (2)

within the jurisdiction of the San Francisco Bay Conservation and Development Commission.

As defined by the section, an “airport influence area” is an area in which current or future airport activity may significantly affect or restrict land use, as determined by an airport land use commission.

According to the San Francisco Bay Conservation and Development Commission (hereafter, “BCDC”) website, a BCDC permit must be obtained before doing any of the following in an area within the Commission's jurisdiction:

- (1) Place solid material, build or repair docks, pile-supported or cantilevered structures, dispose of material or moor a vessel for a long period in San Francisco Bay or in certain tributaries that flow into the Bay.
- (2) Dredge or extract material from the Bay bottom.
- (3) Substantially change the use of any structure or area.
- (4) Construct, remodel or repair a structure.
- (5) Subdivide property or grade land.

San Francisco Bay Conservation and Development Commission website (<http://www.bcdc.ca.gov/permits/faqs.shtml#3>).

Either of these disclosures could be of substantial importance to a prospective buyer, as might be the disclosures compelled by Section 1368. Yet, consistent with the rationale underlying the exemption of Section 1368, each disclosure should be independently obtainable by the buyer, and compelled disclosure would create some administrative burden, and may be unnecessary.

Based on the rationale underlying the Legislature’s exemption of nonresidential CID owners from the comparable disclosure requirements of Section 1368, the staff recommends that **the Commission add this portion of Section 1353(a) to the list of exemptions in Section 1373.**

#### PROVISIONS THAT THWART OWNER RELIANCE ON GOVERNING DOCUMENT

A different type of rationale underlying two legislative exemptions listed in Section 1373 could be characterized as the protection of a nonresidential owner’s reliance interest on the governing documents of a CID.

The best example of this rationale would be the Legislature’s exemption of nonresidential CIDs from Section 1356. This section allows a majority of CID

owners that want to amend their declaration to seek judicial relief from a supermajority voting requirement in the declaration that would bar the proposed amendment. The Legislature likely felt that a business entity seeking to commence a commercial operation in a CID should be entitled to heavily rely on terms that appear in governing documents when formulating and implementing its business plan (such as a supermajority voting requirement that makes amendment of a governing document unlikely).

This rationale also supports the Legislature's exemption of nonresidential CIDs from Section 1366(b). That section allows a CID board, even if expressly prohibited by a governing document, to unilaterally increase assessments by up to 20 percent, without owner approval.

However, somewhat undercutting this particular rationale is the fact that an entity substantially depending on the terms of its CID's governing documents when making business plans would also seem chargeable with knowledge of existing *provisions of law* that supersede any of those terms. Viewed in this light, this rationale would only appear to support exemption for nonresidential CIDs from provisions enacted after a significant percentage of current nonresidential CID owners had already acquired their ownership interests, and started their businesses.

The staff has identified a handful of Davis-Stirling Act provisions for which this rationale might suggest exemption. For each, based on this latter consideration relating to knowledge of superseding statutory provisions, the date of enactment is indicated.

### **Sections 1351(i)(2) and 1364(f). Telephone Wiring**

Section 1351(i)(2) provides that, notwithstanding the provisions of a CID declaration, telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are to be considered exclusive use common area (generally, an area jointly owned by all owners but designated for use by less than all).

A companion provision, Section 1364(f), provides that, notwithstanding the provisions of a CID declaration, an owner of a separate interest is entitled to reasonable access to exclusive use common area, for the purpose of maintaining the wiring referenced in Section 1351(i)(2).

Both of these provisions were enacted in 1987. 1987 Cal. Stat. ch. 357.

The stakeholder group does not recommend that either of these provisions be classified as exemptions, and the rationale of protecting an owner's reliance interest does not seem particularly applicable to either provision. Moreover, the provisions have been in existence since 1987, meaning that many if not most existing nonresidential owners acquired their interest in a nonresidential CID after the enactment of both provisions.

**The staff does not recommend that either of these provisions be added to the list of exemptions in Section 1373.**

### **Section 1355.5. Deletion of Developer Provisions from Governing Document**

Section 1355.5 allows a CID board, notwithstanding a contrary provision in a CID governing document, to delete from a CID's governing documents any provision that is unequivocally designed and intended to facilitate the CID developer's construction or marketing of the CID, once that construction and marketing has been completed.

The provision was enacted in 1992. 1992 Cal. Stat. ch. 124.

The stakeholder group recommends that this provision be added as an exemption in Section 1373. However, the group offers a seemingly different rationale for exemption, arguing: "There is generally a greater balance of bargaining power between buyer and seller in nonresidential CIDs making the protections of 1355.5 unnecessary." First Supplement to CLRC Memorandum 2009-18, Exhibit p. 9.

Whether or not this greater balance of bargaining power exists, it is not clear to the staff why a nonresidential CID would not *want* to retain an option to delete seemingly unnecessary provisions from its declaration. The reliance rationale described above also does not appear to be a very good fit, as it would appear that the only entity that could have reasonably relied on provisions that this section allows to be deleted would be the developer, who should no longer have an interest in the project.

**The staff requests clarification from the stakeholder group or any other commenters on these issues. Pending that clarification, the staff makes no recommendation whether Section 1355.5 should be added to the list of exemptions in Section 1373.**

### **Section 1357(b). Extension of Termination Date**

Section 1357(b) provides a procedure for a CID to extend the termination date of its declaration, even if the declaration itself does not provide for such extension.

The provision was enacted in 1985. 1985 Cal. Stat. ch. 874.

Particularly in light of the enactment date of the provision, it is difficult to see how any nonresidential CID owner could reasonably claim any reliance on the *absence* in the governing documents of a procedural means to extend a declaration termination date.

Moreover, as is indicated in the expression of legislative intent in Section 1357(a), allowing a CID to extend the termination date of its declaration when it has neglected to provide itself a procedural means to do so has important societal benefits:

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

Civ. Code § 1357(a). Although an adverse impact on “housing supply” is one factor mentioned by the Legislature, the other considerations noted have equal application to nonresidential CIDs.

The stakeholder group does not request that Section 1357(b) be added to the list of exemptions in Section 1373.

**The staff does not recommend that Section 1357(b) be added to the exemptions in Section 1373.**

### **Section 1367.4. Collection and Foreclosure Procedures**

Section 1367.4 provides both substantive and procedural protections for owners against collection and foreclosure for delinquent payment of assessments, notwithstanding any contrary provision in the CID’s governing documents.

Section 1367.4 was enacted in 2005. 2005 Cal. Stat. ch. 452. However, by its terms, the section applies only to assessment debts that arise after January 1, 2006. Civ. Code § 1364(a).

The stakeholder group recommends adding Section 1367.4 to the list of exemptions in Section 1373. However, in light of the prospective application provision in the section, the “reasonable reliance” rationale for exempting nonresidential CIDs would not appear applicable to this provision.

Because this aspect of this study seeks only to identify exemptions based on extrapolation from considered legislative rationales, **at this time the staff does not recommend that Section 1367.4 be added to the list of exemptions in Section 1373.** However, unless the Commission instructs otherwise, the staff will present this section again in the third step of the study methodology, with a de novo analysis of the provision.

#### PROVISIONS GOVERNING CID ADMINISTRATIVE PROCEDURES

There remain two exemptions listed in Section 1373 for which no rationale has yet been presented. These would be the two pieces of legislation added to Section 1373 based on Commission recommendation, Sections 1357.100 *et seq.* (relating to rule making procedures) and 1378 (relating to architectural review).

It might be possible to identify a legislative rationale underlying these two exemptions, perhaps a protection of the freedom of a nonresidential CID to decide on its own internal administrative procedures.

However, **the staff does not recommend that the Commission add any exemptions to Section 1373 based on an extrapolation from such a rationale.** The Commission studies that led to these exemptions suggest that this was actually *not* a rationale substantially relied upon by the Legislature in classifying the provisions as exemptions. Instead, it appears that the provisions were added to Section 1373 upon Commission recommendation, which in turn was based only on a desire not to overreach, as the Commission had not considered what impact the new legislation might have on nonresidential CIDs. As neither the Commission nor the Legislature appears to have made any affirmative determination that these provisions should *not* be applicable to nonresidential CIDs, there appears to be no basis for extrapolating from any established rationale to consider new exemptions.

In the event the Commission feels differently, the staff will present an extrapolation analysis of provisions that regulate CID administrative procedure in the next memorandum in this study.

#### NEXT STEP

This memorandum has discussed exempting nonresidential CIDs from certain provisions of the Davis-Stirling Act, based on an extrapolation from the legislative rationales underlying the exemptions already listed in Section 1373. **We encourage comment on the conclusions about these exemptions reached by the Commission.**

The next step in this study will be to present to the Commission a de novo analysis of all provisions in the Davis-Stirling Act that have not yet been discussed, for purposes of determining which of these provisions should be added to the list of exemptions in Section 1373.

Respectfully submitted,

Steve Cohen  
Staff Counsel

**EMAIL EXCHANGE WITH CRAIG STEVENS  
(APRIL 20, 2009 AND APRIL 22, 2009)**

Steve,

I am in receipt of your e-mail today containing the most recent comments to the nonresidential CID project. Contained in the e-mail is a copy of a letter from the "Stakeholder Group", which includes co-authors Brent Kocal and myself. As you know, Brent Kocal and I previously submitted a letter dated February 17, 2009, which we subsequently withdrew as a result of in-depth discussions with the others comprising the Stakeholders Group.

There were a couple of items contained in our original letter that we still feel are important and would suggest be changed for nonresidential CID's. They are;

1363.6 (a)(9) The Secretary of State's form should be changed to include a designation of "residential" and "nonresidential" for clarification and tracking purposes.

1365.7 (a) This section should also include/cover nonresidential volunteer board members and officers. Given how hard it is to find volunteers, this could help increase the pool of willing volunteers.

Additionally, when you and I spoke a couple of weeks ago, I explained that in the absence of a new, clean set of nonresidential CID laws only, trying to "cut and paste" around the current Davis Stirling Act was problematic for nonresidential needs and issues. That is why the final Stakeholders Group letter expands the exemptions under 1373. The significant and very important part of the Stakeholders Group recommendation is the "Opt In Rights" language, that would allow a nonresidential CID to opt into any exempt section or part thereof. Both Brent Kocal and I plan to recommend to our boards of directors that they do opt into important portions (meaning have it apply to their nonresidential CID) of sections 1365, 1365.5, 1368, 1378 and most likely other sections. Although the entire current text in these sections does not apply completely in the nonresidential context, certain portions/aspects of the law does make sense. Using the opt in provision will allow our boards and us as managers to effectively meet the expressed needs of our owner members, which includes minimizing administrative burden and costs for them.

Please call me if you have questions.

Craig T. Stevens, CCAM  
Principal & CEO  
Mar West Real Estate  
Commercial Property Owners' Association  
Formation & Management

From: Steve Cohen  
To: Craig Stevens

Craig,

Thanks for your comments. A couple questions:

1. Is your email intended as an informal comment to staff only, or was it your understanding that the email may be reproduced to the Commission?

2. In the most recent memo you just read, we did not discuss the stakeholder group's "opt-in" proposal, because we were intending to present it to the Commission at a later point in this study, after they had made preliminary applicability decisions as to each provision in the Davis-Stirling Act. Do you believe that (1) proceeding in this manner is consistent with what the stakeholder group has recommended, or (2) is your feeling that the "opt-in" proposal is an integral part of either the group's recommendation (or your recommendation) as to each section discussed in the group's recommendation, and should be presented with a discussion of each section?

In other words, choosing just one example, is it accurate to say (as we have) that (1) the stakeholder group (which of course includes you and Brent) recommends that Section 1368 be inapplicable to nonresidential CIDs, *period*, or (2) is it only accurate to say that at least you and Brent recommend that Section 1368 be inapplicable to nonresidential CIDs, *only if that inapplicability includes an option allowing a particular CID to elect to be covered by the section?*

Please feel free to call me if you have questions, or feel you can more easily answer by phone. Thanks.

---

Steve,

My intentions were for you to use it as you see fit with the commission.

In regards to your other very good question, Brent and I say this;

In the absence of a clean, separate set of laws addressing the wants and needs of nonresidential CID owner/members and their stated desire for minimal beaurocratic/administrative layers that increase costs, and in the absence of an "opt in" clause, we endorse the Committees recommended/expanded 1373 exemption list.

With that said, since certain portions of these sections do and do not fit/meet the needs of nonresidential CID's, we strongly recommend the opt in clause. This way our members can institute those sections or portions thereof as desired and for their protection.

I would say that the attorney's on the committee don't care as much about the opt in provision as Brent and myself, as they are more focused on flexibility in the legal structuring/drafting on each unique nonresidential CID and Brent and I are focused on both the legal structure and the daily/long term operations of the nonresidential CID.

Bottom line...I think the opt in is critical to consider with the section reviews, as it is impossible to say yes/no across the board as to whether it fits and should apply (or not) as written.

I hope this helps.

Craig Stevens

SELECTED PROVISIONS OF THE DAVIS-STIRLING ACT  
(CIV. CODE §§ 1350-1378)

1       **1350.7.** (a) This section applies to delivery of a document to the extent the  
2 section is made applicable by another provision of this title.

3       (b) A document shall be delivered 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 Delivery is deemed to be complete on deposit into the United States mail.

8       (3) E-mail, facsimile, or other electronic means, if the recipient has agreed to  
9 that method of delivery. If a document is delivered by electronic means, delivery  
10 is complete at the time of transmission.

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

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

16       (6) A method of delivery provided in a recorded provision of the governing  
17 documents.

18       (7) Any other method of delivery, provided that the recipient has agreed to that  
19 method of delivery.

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

23       (d) For the purposes of this section, an unrecorded provision of the governing  
24 documents providing for a particular method of delivery does not constitute  
25 agreement by a member of the association to that method of delivery.

26  
27  
28       **1351.** As used in this title, the following terms have the following meanings:

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

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

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

38       (1) A community apartment project.

1 (2) A condominium project.

2 (3) A planned development.

3 (4) A stock cooperative.

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

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

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

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

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

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

24 Owners of mineral rights, easements, rights-of-way, and other nonpossessory  
25 interests do not need to sign the condominium plan. Further, in the event a  
26 conversion to condominiums of a community apartment project or stock  
27 cooperative has been approved by the required number of owners, trustees,  
28 beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government  
29 Code, the certificate need only be signed by those owners, trustees, beneficiaries,  
30 and mortgagees approving the conversion.

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

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

1 floors, and ceilings of a structure or any portion thereof, (3) an entire structure  
2 containing one or more units, or (4) any combination thereof. The portion or  
3 portions of the real property held in undivided interest may be all of the real  
4 property, except for the separate interests, or may include a particular three-  
5 dimensional portion thereof, the boundaries of which are described on a recorded  
6 final map, parcel map, or condominium plan. The area within these boundaries  
7 may be filled with air, earth, or water, or any combination thereof, and need not be  
8 physically attached to land except by easements for access and, if necessary,  
9 support. An individual condominium within a condominium project may include,  
10 in addition, a separate interest in other portions of the real property.

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

16 (h) “Declaration” means the document, however denominated, which contains  
17 the information required by Section 1353.

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

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

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

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

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

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

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

1 area by means of an assessment which may become a lien upon the separate  
2 interests in accordance with Section 1367 or 1367.1.

3 (l) "Separate interest" has the following meanings:

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

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

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

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

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

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

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

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

31  
32 **1353.** (a)(1) A declaration, recorded on or after January 1, 1986, shall contain a  
33 legal description of the common interest development, and a statement that the  
34 common interest development is a community apartment project, condominium  
35 project, planned development, stock cooperative, or combination thereof. The  
36 declaration shall additionally set forth the name of the association and the  
37 restrictions on the use or enjoyment of any portion of the common interest  
38 development that are intended to be enforceable equitable servitudes.

39 If the property is located within an airport influence area, a declaration, recorded  
40 after January 1, 2004, shall contain the following statement:

41

1 NOTICE OF AIRPORT IN VICINITY

2  
3 This property is presently located in the vicinity of an airport,  
4 within what is known as an airport influence area. For that reason,  
5 the property may be subject to some of the annoyances or  
6 inconveniences associated with proximity to airport operations (for  
7 example: noise, vibration, or odors). Individual sensitivities to those  
8 annoyances can vary from person to person. You may wish to  
9 consider what airport annoyances, if any, are associated with the  
10 property before you complete your purchase and determine whether  
11 they are acceptable to you.  
12

13 (2) For purposes of this section, an “airport influence area,” also known as an  
14 “airport referral area,” is the area in which current or future airport-related noise,  
15 overflight, safety, or airspace protection factors may significantly affect land uses  
16 or necessitate restrictions on those uses as determined by an airport land use  
17 commission.

18 (3) If the property is within the San Francisco Bay Conservation and  
19 Development Commission jurisdiction, as described in Section 66610 of the  
20 Government Code, a declaration recorded on or after January 1, 2006, shall  
21 contain the following notice:  
22

23 NOTICE OF SAN FRANCISCO BAY CONSERVATION AND  
24 DEVELOPMENT COMMISSION JURISDICTION  
25

26 This property is located within the jurisdiction of the San  
27 Francisco Bay Conservation and Development Commission. Use  
28 and development of property within the commission’s jurisdiction  
29 may be subject to special regulations, restrictions, and permit  
30 requirements. You may wish to investigate and determine whether  
31 they are acceptable to you and your intended use of the property  
32 before you complete your transaction.  
33

34 (4) The statement in a declaration acknowledging that a property is located in an  
35 airport influence area or within the jurisdiction of the San Francisco Bay  
36 Conservation and Development Commission does not constitute a title defect, lien,  
37 or encumbrance.

38 (b) The declaration may contain any other matters the original signator of the  
39 declaration or the owners consider appropriate.  
40

41  
42 **1355.5.** (a) Notwithstanding any provision of the governing documents of a  
43 common interest development to the contrary, the board of directors of the

1 association may, after the developer of the common interest development has  
2 completed construction of the development, has terminated construction activities,  
3 and has terminated his or her marketing activities for the sale, lease, or other  
4 disposition of separate interests within the development, adopt an amendment  
5 deleting from any of the governing documents any provision which is  
6 unequivocally designed and intended, or which by its nature can only have been  
7 designed or intended, to facilitate the developer in completing the construction or  
8 marketing of the development. However, provisions of the governing documents  
9 relative to a particular construction or marketing phase of the development may  
10 not be deleted under the authorization of this subdivision until that construction or  
11 marketing phase has been completed.

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

17 (c) At least 30 days prior to taking action pursuant to subdivision (a), the board  
18 of directors of the association shall mail to all owners of the separate interests, by  
19 first-class mail, (1) a copy of all amendments to the governing documents  
20 proposed to be adopted under subdivision (a) and (2) a notice of the time, date,  
21 and place the board of directors will consider adoption of the amendments. The  
22 board of directors of an association may consider adoption of amendments to the  
23 governing documents pursuant to subdivision (a) only at a meeting which is open  
24 to all owners of the separate interests in the common interest development, who  
25 shall be given opportunity to make comments thereon. All deliberations of the  
26 board of directors on any action proposed under subdivision (a) shall only be  
27 conducted in such an open meeting.

28 (d) The board of directors of the association may not amend the governing  
29 documents pursuant to this section without the approval of the owners, casting a  
30 majority of the votes at a meeting or election of the association constituting a  
31 quorum and conducted in accordance with Chapter 5 (commencing with Section  
32 7510) of Part 3 of Division 2 of Title 1 of, and Section 7613 of, the Corporations  
33 Code. For the purposes of this section, "quorum" means more than 50 percent of  
34 the owners who own no more than two separate interests in the development.

35  
36  
37 **1356.** (a) If in order to amend a declaration, the declaration requires owners  
38 having more than 50 percent of the votes in the association, in a single class voting  
39 structure, or owners having more than 50 percent of the votes in more than one  
40 class in a voting structure with more than one class, to vote in favor of the  
41 amendment, the association, or any owner of a separate interest, may petition the  
42 superior court of the county in which the common interest development is located  
43 for an order reducing the percentage of the affirmative votes necessary for such an

1 amendment. The petition shall describe the effort that has been made to solicit  
2 approval of the association members in the manner provided in the declaration, the  
3 number of affirmative and negative votes actually received, the number or  
4 percentage of affirmative votes required to effect the amendment in accordance  
5 with the existing declaration, and other matters the petitioner considers relevant to  
6 the court's determination. The petition shall also contain, as exhibits thereto,  
7 copies of all of the following:

8 (1) The governing documents.

9 (2) A complete text of the amendment.

10 (3) Copies of any notice and solicitation materials utilized in the solicitation of  
11 owner approvals.

12 (4) A short explanation of the reason for the amendment.

13 (5) Any other documentation relevant to the court's determination.

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

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

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

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

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

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

34 (5) The amendment is reasonable.

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

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

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

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

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

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

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

22 (g) Within a reasonable time after the amendment is recorded the association  
23 shall mail a copy of the amendment to each member of the association, together  
24 with a statement that the amendment has been recorded.  
25  
26

27 **1357.** (a) The Legislature finds that there are common interest developments that  
28 have been created with deed restrictions which do not provide a means for the  
29 property owners to extend the term of the declaration. The Legislature further  
30 finds that covenants and restrictions, contained in the declaration, are an  
31 appropriate method for protecting the common plan of developments and to  
32 provide for a mechanism for financial support for the upkeep of common areas  
33 including, but not limited to, roofs, roads, heating systems, and recreational  
34 facilities. If declarations terminate prematurely, common interest developments  
35 may deteriorate and the housing supply of affordable units could be impacted  
36 adversely.

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

40 (b) A declaration which specifies a termination date, but which contains no  
41 provision for extension of the termination date, may be extended by the approval  
42 of owners having more than 50 percent of the votes in the association or any  
43 greater percentage specified in the declaration for an amendment thereto. If the

1 approval of owners having more than 50 percent of the votes in the association is  
2 required to amend the declaration, the term of the declaration may be extended in  
3 accordance with Section 1356.

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

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

9  
10  
11 **1357.100.** As used in this article:

12 (a) "Operating rule" means a regulation adopted by the board of directors of the  
13 association that applies generally to the management and operation of the common  
14 interest development or the conduct of the business and affairs of the association.

15 (b) "Rule change" means the adoption, amendment, or repeal of an operating  
16 rule by the board of directors of the association.

17  
18 **1357.110.** An operating rule is valid and enforceable only if all of the following  
19 requirements are satisfied:

20 (a) The rule is in writing.

21 (b) The rule is within the authority of the board of directors of the association  
22 conferred by law or by the declaration, articles of incorporation or association, or  
23 bylaws of the association.

24 (c) The rule is not inconsistent with governing law and the declaration, articles  
25 of incorporation or association, and bylaws of the association.

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

28 (e) The rule is reasonable.

29  
30 **1357.120.** (a) Sections 1357.130 and 1357.140 only apply to an operating rule  
31 that relates to one or more of the following subjects:

32 (1) Use of the common area or of an exclusive use common area.

33 (2) Use of a separate interest, including any aesthetic or architectural standards  
34 that govern alteration of a separate interest.

35 (3) Member discipline, including any schedule of monetary penalties for  
36 violation of the governing documents and any procedure for the imposition of  
37 penalties.

38 (4) Any standards for delinquent assessment payment plans.

39 (5) Any procedures adopted by the association for resolution of disputes.

40 (6) Any procedures for reviewing and approving or disapproving a proposed  
41 physical change to a member's separate interest or to the common area.

42 (7) Procedures for elections.

1 (b) Sections 1357.130 and 1357.140 do not apply to the following actions by the  
2 board of directors of an association:

3 (1) A decision regarding maintenance of the common area.

4 (2) A decision on a specific matter that is not intended to apply generally.

5 (3) A decision setting the amount of a regular or special assessment.

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

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

10  
11 **1357.130.** (a) The board of directors shall provide written notice of a proposed  
12 rule change to the members at least 30 days before making the rule change. The  
13 notice shall include the text of the proposed rule change and a description of the  
14 purpose and effect of the proposed rule change. Notice is not required under this  
15 subdivision if the board of directors determines that an immediate rule change is  
16 necessary to address an imminent threat to public health or safety or imminent risk  
17 of substantial economic loss to the association.

18 (b) A decision on a proposed rule change shall be made at a meeting of the  
19 board of directors, after consideration of any comments made by association  
20 members.

21 (c) As soon as possible after making a rule change, but not more than 15 days  
22 after making the rule change, the board of directors shall deliver notice of the rule  
23 change to every association member. If the rule change was an emergency rule  
24 change made under subdivision (d), the notice shall include the text of the rule  
25 change, a description of the purpose and effect of the rule change, and the date that  
26 the rule change expires.

27 (d) If the board of directors determines that an immediate rule change is required  
28 to address an imminent threat to public health or safety, or an imminent risk of  
29 substantial economic loss to the association, it may make an emergency rule  
30 change; and no notice is required, as specified in subdivision (a). An emergency  
31 rule change is effective for 120 days, unless the rule change provides for a shorter  
32 effective period. A rule change made under this subdivision may not be readopted  
33 under this subdivision.

34 (e) A notice required by this section is subject to Section 1350.7.

35  
36 **1357.140.** (a) Members of an association owning 5 percent or more of the  
37 separate interests may call a special meeting of the members to reverse a rule  
38 change.

39 (b) A special meeting of the members may be called by delivering a written  
40 request to the president or secretary of the board of directors, after which the board  
41 shall deliver notice of the meeting to the association's members and hold the  
42 meeting in conformity with Section 7511 of the Corporations Code. The written  
43 request may not be delivered more than 30 days after the members of the

1 association are notified of the rule change. Members are deemed to have been  
2 notified of a rule change on delivery of notice of the rule change, or on  
3 enforcement of the resulting rule, whichever is sooner. For the purposes of Section  
4 8330 of the Corporations Code, collection of signatures to call a special meeting  
5 under this section is a purpose reasonably related to the interests of the members  
6 of the association. A member request to copy or inspect the membership list solely  
7 for that purpose may not be denied on the grounds that the purpose is not  
8 reasonably related to the member's interests as a member.

9 (c) The rule change may be reversed by the affirmative vote of a majority of the  
10 votes represented and voting at a duly held meeting at which a quorum is present  
11 (which affirmative votes also constitute a majority of the required quorum), or if  
12 the declaration or bylaws require a greater proportion, by the affirmative vote or  
13 written ballot of the proportion required. In lieu of calling the meeting described in  
14 this section, the board may distribute a written ballot to every member of the  
15 association in conformity with the requirements of Section 7513 of the  
16 Corporations Code.

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

19 (e) A meeting called under this section is governed by Chapter 5 (commencing  
20 with Section 7510) of Part 3 of Division 2 of Title 1 of, and Sections 7612 and  
21 7613 of, the Corporations Code.

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

26 (g) As soon as possible after the close of voting, but not more than 15 days after  
27 the close of voting, the board of directors shall provide notice of the results of a  
28 member vote held pursuant to this section to every association member. Delivery  
29 of notice under this subdivision is subject to Section 1350.7.

30 (h) This section does not apply to an emergency rule change made under  
31 subdivision (d) of Section 1357.130.

32  
33 **1357.150.** (a) This article applies to a rule change commenced on or after  
34 January 1, 2004.

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

37 (c) For the purposes of this section, a rule change is commenced when the board  
38 of directors of the association takes its first official action leading to adoption of  
39 the rule change.

1       **1363.** (a) A common interest development shall be managed by an association  
2 that may be incorporated or unincorporated. The association may be referred to as  
3 a community association.

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

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

14       The association, whether incorporated or unincorporated, may exercise the  
15 powers granted to an association in this title.

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

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

23       (f) Members of the association shall have access to association records,  
24 including accounting books and records and membership lists, in accordance with  
25 Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of  
26 Title 1 of the Corporations Code. The members of the association shall have the  
27 same access to the operating rules of the association as they have to the accounting  
28 books and records of the association.

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

40       (h) When the board of directors is to meet to consider or impose discipline upon  
41 a member, the board shall notify the member in writing, by either personal  
42 delivery or first-class mail, at least 10 days prior to the meeting. The notification  
43 shall contain, at a minimum, the date, time, and place of the meeting, the nature of

1 the alleged violation for which a member may be disciplined, and a statement that  
2 the member has a right to attend and may address the board at the meeting. The  
3 board of directors of the association shall meet in executive session if requested by  
4 the member being disciplined.

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

10 (i) Whenever two or more associations have consolidated any of their functions  
11 under a joint neighborhood association or similar organization, members of each  
12 participating association shall be (1) entitled to attend all meetings of the joint  
13 association other than executive sessions, (2) given reasonable opportunity for  
14 participation in those meetings, and (3) entitled to the same access to the joint  
15 association's records as they are to the participating association's records.

16 (j) Nothing in this section shall be construed to create, expand, or reduce the  
17 authority of the board of directors of an association to impose monetary penalties  
18 on an association member for a violation of the governing documents or rules of  
19 the association.  
20  
21

22 **1363.03.** (a) An association shall adopt rules, in accordance with the procedures  
23 prescribed by Article 4 (commencing with Section 1357.100) of Chapter 2, that do  
24 all of the following:

25 (1) Ensure that if any candidate or member advocating a point of view is  
26 provided access to association media, newsletters, or Internet Web sites during a  
27 campaign, for purposes that are reasonably related to that election, equal access  
28 shall be provided to all candidates and members advocating a point of view,  
29 including those not endorsed by the board, for purposes that are reasonably related  
30 to the election. The association shall not edit or redact any content from these  
31 communications, but may include a statement specifying that the candidate or  
32 member, and not the association, is responsible for that content.

33 (2) Ensure access to the common area meeting space, if any exists, during a  
34 campaign, at no cost, to all candidates, including those who are not incumbents,  
35 and to all members advocating a point of view, including those not endorsed by  
36 the board, for purposes reasonably related to the election.

37 (3) Specify the qualifications for candidates for the board of directors and any  
38 other elected position, and procedures for the nomination of candidates, consistent  
39 with the governing documents. A nomination or election procedure shall not be  
40 deemed reasonable if it disallows any member of the association from nominating  
41 himself or herself for election to the board of directors.

42 (4) Specify the qualifications for voting, the voting power of each membership,  
43 the authenticity, validity, and effect of proxies, and the voting period for elections,

1 including the times at which polls will open and close, consistent with the  
2 governing documents.

3 (5) Specify a method of selecting one or three independent third parties as  
4 inspector, or inspectors, of election utilizing one of the following methods:

5 (A) Appointment of the inspector or inspectors by the board.

6 (B) Election of the inspector or inspectors by the members of the association.

7 (C) Any other method for selecting the inspector or inspectors.

8 (6) Allow the inspector, or inspectors, to appoint and oversee additional persons  
9 to verify signatures and to count and tabulate votes as the inspector or inspectors  
10 deem appropriate, provided that the persons are independent third parties.

11 (b) Notwithstanding any other law or provision of the governing documents,  
12 elections regarding assessments legally requiring a vote, election and removal of  
13 members of the association board of directors, amendments to the governing  
14 documents, or the grant of exclusive use of common area property pursuant to  
15 Section 1363.07 shall be held by secret ballot in accordance with the procedures  
16 set forth in this section. A quorum shall be required only if so stated in the  
17 governing documents of the association or other provisions of law. If a quorum is  
18 required by the governing documents, each ballot received by the inspector of  
19 elections shall be treated as a member present at a meeting for purposes of  
20 establishing a quorum. An association shall allow for cumulative voting using the  
21 secret ballot procedures provided in this section, if cumulative voting is provided  
22 for in the governing documents.

23 (c) (1) The association shall select an independent third party or parties as an  
24 inspector of election. The number of inspectors of election shall be one or three.

25 (2) For the purposes of this section, an independent third party includes, but is  
26 not limited to, a volunteer poll worker with the county registrar of voters, a  
27 licensee of the California Board of Accountancy, or a notary public. An  
28 independent third party may be a member of the association, but may not be a  
29 member of the board of directors or a candidate for the board of directors or  
30 related to a member of the board of directors or a candidate for the board of  
31 directors. An independent third party may not be a person, business entity, or  
32 subdivision of a business entity who is currently employed or under contract to the  
33 association for any compensable services unless expressly authorized by rules of  
34 the association adopted pursuant to paragraph (5) of subdivision (a).

35 (3) The inspector or inspectors of election shall do all of the following:

36 (A) Determine the number of memberships entitled to vote and the voting power  
37 of each.

38 (B) Determine the authenticity, validity, and effect of proxies, if any.

39 (C) Receive ballots.

40 (D) Hear and determine all challenges and questions in any way arising out of or  
41 in connection with the right to vote.

42 (E) Count and tabulate all votes.

1 (F) Determine when the polls shall close, consistent with the governing  
2 documents.

3 (G) Determine the tabulated results of the election.

4 (H) Perform any acts as may be proper to conduct the election with fairness to  
5 all members in accordance with this section, the Corporations Code, and all  
6 applicable rules of the association regarding the conduct of the election that are  
7 not in conflict with this section.

8 (4) An inspector of election shall perform his or her duties impartially, in good  
9 faith, to the best of his or her ability, and as expeditiously as is practical. If there  
10 are three inspectors of election, the decision or act of a majority shall be effective  
11 in all respects as the decision or act of all. Any report made by the inspector or  
12 inspectors of election is prima facie evidence of the facts stated in the report.

13 (d) (1) For purposes of this section, the following definitions shall apply:

14 (A) "Proxy" means a written authorization signed by a member or the authorized  
15 representative of the member that gives another member or members the power to  
16 vote on behalf of that member.

17 (B) "Signed" means the placing of the member's name on the proxy (whether by  
18 manual signature, typewriting, telegraphic transmission, or otherwise) by the  
19 member or authorized representative of the member.

20 (2) Proxies shall not be construed or used in lieu of a ballot. An association may  
21 use proxies if permitted or required by the bylaws of the association and if those  
22 proxies meet the requirements of this article, other laws, and the association's  
23 governing documents, but the association shall not be required to prepare or  
24 distribute proxies pursuant to this section.

25 (3) Any instruction given in a proxy issued for an election that directs the  
26 manner in which the proxyholder is to cast the vote shall be set forth on a separate  
27 page of the proxy that can be detached and given to the proxyholder to retain. The  
28 proxyholder shall cast the member's vote by secret ballot. The proxy may be  
29 revoked by the member prior to the receipt of the ballot by the inspector of  
30 elections as described in Section 7613 of the Corporations Code.

31 (e) Ballots and two preaddressed envelopes with instructions on how to return  
32 ballots shall be mailed by first-class mail or delivered by the association to every  
33 member not less than 30 days prior to the deadline for voting. In order to preserve  
34 confidentiality, a voter may not be identified by name, address, or lot, parcel, or  
35 unit number on the ballot. The association shall use as a model those procedures  
36 used by California counties for ensuring confidentiality of voter absentee ballots,  
37 including all of the following:

38 (1) The ballot itself is not signed by the voter, but is inserted into an envelope  
39 that is sealed. This envelope is inserted into a second envelope that is sealed. In  
40 the upper left hand corner of the second envelope, the voter shall sign his or her  
41 name, indicate his or her name, and indicate the address or separate interest  
42 identifier that entitles him or her to vote.

1 (2) The second envelope is addressed to the inspector or inspectors of election,  
2 who will be tallying the votes. The envelope may be mailed or delivered by hand  
3 to a location specified by the inspector or inspectors of election. The member may  
4 request a receipt for delivery.

5 (f) All votes shall be counted and tabulated by the inspector or inspectors of  
6 election or his or her designee in public at a properly noticed open meeting of the  
7 board of directors or members. Any candidate or other member of the association  
8 may witness the counting and tabulation of the votes. No person, including a  
9 member of the association or an employee of the management company, shall  
10 open or otherwise review any ballot prior to the time and place at which the ballots  
11 are counted and tabulated. The inspector of election, or his or her designee, may  
12 verify the member's information and signature on the outer envelope prior to the  
13 meeting at which ballots are tabulated. Once a secret ballot is received by the  
14 inspector of elections, it shall be irrevocable.

15 (g) The tabulated results of the election shall be promptly reported to the board  
16 of directors of the association and shall be recorded in the minutes of the next  
17 meeting of the board of directors and shall be available for review by members of  
18 the association. Within 15 days of the election, the board shall publicize the  
19 tabulated results of the election in a communication directed to all members.

20 (h) The sealed ballots at all times shall be in the custody of the inspector or  
21 inspectors of election or at a location designated by the inspector or inspectors  
22 until after the tabulation of the vote, and until the time allowed by Section 7527 of  
23 the Corporations Code for challenging the election has expired, at which time  
24 custody shall be transferred to the association. If there is a recount or other  
25 challenge to the election process, the inspector or inspectors of election shall, upon  
26 written request, make the ballots available for inspection and review by an  
27 association member or his or her authorized representative. Any recount shall be  
28 conducted in a manner that preserves the confidentiality of the vote.

29 (i) After the transfer of the ballots to the association, the ballots shall be stored  
30 by the association in a secure place for no less than one year after the date of the  
31 election.

32 (j) Notwithstanding any other provision of law, the rules adopted pursuant to  
33 this section may provide for the nomination of candidates from the floor of  
34 membership meetings or nomination by any other manner. Those rules may permit  
35 write-in candidates for ballots.

36 (k) Except for the meeting to count the votes required in subdivision (f), an  
37 election may be conducted entirely by mail unless otherwise specified in the  
38 governing documents.

39 (l) The provisions of this section apply to both incorporated and unincorporated  
40 associations, notwithstanding any contrary provision of the governing documents.

41 (m) The procedures set forth in this section shall apply to votes cast directly by  
42 the membership, but do not apply to votes cast by delegates or other elected  
43 representatives.

1 (n) In the event of a conflict between this section and the provisions of the  
2 Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section  
3 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the  
4 provisions of this section shall prevail.

5 (o) The amendments made to this section by the act adding this subdivision shall  
6 become operative on July 1, 2006.

7  
8  
9 **1364.** (a) Unless otherwise provided in the declaration of a common interest  
10 development, the association is responsible for repairing, replacing, or maintaining  
11 the common areas, other than exclusive use common areas, and the owner of each  
12 separate interest is responsible for maintaining that separate interest and any  
13 exclusive use common area appurtenant to the separate interest.

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

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

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

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

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

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

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

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

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

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

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18 **1365.** Unless the governing documents impose more stringent standards, the  
19 association shall prepare and distribute to all of its members the following  
20 documents:

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

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

23 (2) A summary of the association’s reserves based upon the most recent review  
24 or study conducted pursuant to Section 1365.5, based only on assets held in cash  
25 or cash equivalents, which shall be printed in boldface type and include all of the  
26 following:

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

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

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

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

34 (iii) If applicable, the amount of funds received from either a compensatory  
35 damage award or settlement to an association from any person or entity for  
36 injuries to property, real or personal, arising out of any construction or design  
37 defects, and the expenditure or disposition of funds, including the amounts  
38 expended for the direct and indirect costs of repair of construction or design  
39 defects. These amounts shall be reported at the end of the fiscal year for which the  
40 study is prepared as separate line items under cash reserves pursuant to clause (ii).  
41 Instead of complying with the requirements set forth in this clause, an association  
42 that is obligated to issue a review of their financial statement pursuant to

1 subdivision (b) may include in the review a statement containing all of the  
2 information required by this clause.

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

6 (D) The current deficiency in reserve funding expressed on a per unit basis. The  
7 figure shall be calculated by subtracting the amount determined for purposes of  
8 clause (ii) of subparagraph (B) from the amount determined for purposes of  
9 clause (i) of subparagraph (B) and then dividing the result by the number of  
10 separate interests within the association, except that if assessments vary by the size  
11 or type of ownership interest, then the association shall calculate the current  
12 deficiency in a manner that reflects the variation.

13 (3) A statement as to all of the following:

14 (A) Whether the board of directors of the association has determined to defer or  
15 not undertake repairs or replacement of any major component with a remaining  
16 life of 30 years or less, including a justification for the deferral or decision not to  
17 undertake the repairs or replacement.

18 (B) Whether the board of directors of the association, consistent with the reserve  
19 funding plan adopted pursuant to subdivision (e) of Section 1365.5, has  
20 determined or anticipates that the levy of one or more special assessments will be  
21 required to repair, replace, or restore any major component or to provide adequate  
22 reserves therefor. If so, the statement shall also set out the estimated amount,  
23 commencement date, and duration of the assessment.

24 (C) The mechanism or mechanisms by which the board of directors will fund  
25 reserves to repair or replace major components, including assessments, borrowing,  
26 use of other assets, deferral of selected replacements or repairs, or alternative  
27 mechanisms.

28 (D) Whether the association has any outstanding loans with an original term of  
29 more than one year, including the payee, interest rate, amount outstanding, annual  
30 payment, and when the loan is scheduled to be retired.

31 (4) A general statement addressing the procedures used for the calculation and  
32 establishment of those reserves to defray the future repair, replacement, or  
33 additions to those major components that the association is obligated to maintain.  
34 The report shall include, but need not be limited to, reserve calculations made  
35 using the formula described in paragraph (4) of subdivision (b) of Section  
36 1365.2.5, and may not assume a rate of return on cash reserves in excess of 2  
37 percent above the discount rate published by the Federal Reserve Bank of San  
38 Francisco at the time the calculation was made.

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

1 Notwithstanding a contrary provision in the governing documents, a copy of the  
2 operating budget shall be annually distributed not less than 30 days nor more than  
3 90 days prior to the beginning of the association's fiscal year.

4 (b) Commencing January 1, 2009, a summary of the reserve funding plan  
5 adopted by the board of directors of the association, as specified in paragraph (4)  
6 of subdivision (e) of Section 1365.5. The summary shall include notice to  
7 members that the full reserve study plan is available upon request, and the  
8 association shall provide the full reserve plan to any member upon request.

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

15 (d) Instead of the distribution of the pro forma operating budget required by  
16 subdivision (a), the board of directors may elect to distribute a summary of the pro  
17 forma operating budget to all of its members with a written notice that the pro  
18 forma operating budget is available at the business office of the association or at  
19 another suitable location within the boundaries of the development, and that copies  
20 will be provided upon request and at the expense of the association. If any member  
21 requests that a copy of the pro forma operating budget required by subdivision (a)  
22 be mailed to the member, the association shall provide the copy to the member by  
23 first-class United States mail at the expense of the association and delivered within  
24 five days. The written notice that is distributed to each of the association members  
25 shall be in at least 10-point boldface type on the front page of the summary of the  
26 budget.

27 (e) A statement describing the association's policies and practices in enforcing  
28 lien rights or other legal remedies for default in payment of its assessments against  
29 its members shall be annually delivered to the members not less than 30 days nor  
30 more than 90 days immediately preceding the beginning of the association's fiscal  
31 year.

32 (f)(1) A summary of the association's property, general liability, earthquake,  
33 flood, and fidelity insurance policies, which shall be distributed not less than 30  
34 days nor more than 90 days preceding the beginning of the association's fiscal  
35 year, that includes all of the following information about each policy:

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

40 (2) The association shall, as soon as reasonably practicable, notify its members  
41 by first-class mail if any of the policies described in paragraph (1) have lapsed,  
42 been canceled, and are not immediately renewed, restored, or replaced, or if there  
43 is a significant change, such as a reduction in coverage or limits or an increase in

1 the deductible, as to any of those policies. If the association receives any notice of  
2 nonrenewal of a policy described in paragraph (1), the association shall  
3 immediately notify its members if replacement coverage will not be in effect by  
4 the date the existing coverage will lapse.

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

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

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26  
27 **1365.2.** (a) For the purposes of this section, the following definitions shall  
28 apply:

29 (1) “Association records” means all of the following:

30 (A) Any financial document required to be provided to a member in Section  
31 1365.

32 (B) Any financial document or statement required to be provided in Section  
33 1368.

34 (C) Interim financial statements, periodic or as compiled, containing any of the  
35 following:

36 (i) Balance sheet.

37 (ii) Income and expense statement.

38 (iii) Budget comparison.

39 (iv) General ledger. A “general ledger” is a report that shows all transactions  
40 that occurred in an association account over a specified period of time.

41 The records described in this subparagraph shall be prepared in accordance with  
42 an accrual or modified accrual basis of accounting.

43 (D) Executed contracts not otherwise privileged under law.

- 1 (E) Written board approval of vendor or contractor proposals or invoices.
- 2 (F) State and federal tax returns.
- 3 (G) Reserve account balances and records of payments made from reserve  
4 accounts.
- 5 (H) Agendas and minutes of meetings of the members, the board of directors  
6 and any committees appointed by the board of directors pursuant to Section 7212  
7 of the Corporations Code; excluding, however, agendas, minutes, and other  
8 information from executive sessions of the board of directors as described in  
9 Section 1363.05.
- 10 (I)(i) Membership lists, including name, property address, and mailing address,  
11 if the conditions set forth in clause (ii) are met and except as otherwise provided in  
12 clause (iii).
- 13 (ii) The member requesting the list shall state the purpose for which the list is  
14 requested which purpose shall be reasonably related to the requester's interest as a  
15 member. If the association reasonably believes that the information in the list will  
16 be used for another purpose, it may deny the member access to the list. If the  
17 request is denied, in any subsequent action brought by the member under  
18 subdivision (f), the association shall have the burden to prove that the member  
19 would have allowed use of the information for purposes unrelated to his or her  
20 interest as a member.
- 21 (iii) A member of the association may opt out of the sharing of his or her name,  
22 property address, and mailing address by notifying the association in writing that  
23 he or she prefers to be contacted via the alternative process described in  
24 subdivision (c) of Section 8330 of the Corporations Code. This opt-out shall  
25 remain in effect until changed by the member.
- 26 (J) Check registers.
- 27 (2) "Enhanced association records" means invoices, receipts and canceled  
28 checks for payments made by the association, purchase orders approved by the  
29 association, credit card statements for credit cards issued in the name of the  
30 association, statements for services rendered, and reimbursement requests  
31 submitted to the association, provided that the person submitting the  
32 reimbursement request shall be solely responsible for removing all personal  
33 identification information from the request.
- 34 (b) (1) The association shall make available association records and enhanced  
35 association records for the time periods and within the timeframes provided in  
36 subdivisions (i) and (j) for inspection and copying by a member of the association,  
37 or the member's designated representative. The association may bill the requesting  
38 member for the direct and actual cost of copying requested documents. The  
39 association shall inform the member of the amount of the copying costs before  
40 copying the requested documents.
- 41 (2) A member of the association may designate another person to inspect and  
42 copy the specified association records on the member's behalf. The member shall  
43 make this designation in writing.

1 (c) (1) The association shall make the specified association records available for  
2 inspection and copying in the association's business office within the common  
3 interest development.

4 (2) If the association does not have a business office within the development, the  
5 association shall make the specified association records available for inspection  
6 and copying at a place that the requesting member and the association agree upon.

7 (3) If the association and the requesting member cannot agree upon a place for  
8 inspection and copying pursuant to paragraph (2), or if the requesting member  
9 submits a written request directly to the association for copies of specifically  
10 identified records, the association may satisfy the requirement to make the  
11 association records available for inspection and copying by mailing copies of the  
12 specifically identified records to the member by first-class mail within the  
13 timeframes set forth in subdivision (j).

14 (4) The association may bill the requesting member for the direct and actual cost  
15 of copying and mailing requested documents. The association shall inform the  
16 member of the amount of the copying and mailing costs, and the member shall  
17 agree to pay those costs, before copying and sending the requested documents.

18 (5) In addition to the direct and actual costs of copying and mailing, the  
19 association may bill the requesting member an amount not in excess of ten dollars  
20 (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written  
21 request, for the time actually and reasonably involved in redacting the enhanced  
22 association records as provided in paragraph (2) of subdivision (a). The  
23 association shall inform the member of the estimated costs, and the member shall  
24 agree to pay those costs, before retrieving the requested documents.

25 (d) (1) Except as provided in paragraph (2), the association may withhold or  
26 redact information from the association records for any of the following reasons:

27 (A) The release of the information is reasonably likely to lead to identity theft.  
28 For the purposes of this section, "identity theft" means the unauthorized use of  
29 another person's personal identifying information to obtain credit, goods, services,  
30 money, or property. Examples of information that may be withheld or redacted  
31 pursuant to this paragraph include bank account numbers of members or vendors,  
32 social security or tax identification numbers, and check, stock, and credit card  
33 numbers.

34 (B) The release of the information is reasonably likely to lead to fraud in  
35 connection with the association.

36 (C) The information is privileged under law. Examples include documents  
37 subject to attorney-client privilege or relating to litigation in which the association  
38 is or may become involved, and confidential settlement agreements.

39 (D) The release of the information is reasonably likely to compromise the  
40 privacy of an individual member of the association.

41 (E) The information contains any of the following:

1 (i) Records of a-la-carte goods or services provided to individual members of the  
2 association for which the association received monetary consideration other than  
3 assessments.

4 (ii) Records of disciplinary actions, collection activities, or payment plans of  
5 members other than the member requesting the records.

6 (iii) Any person's personal identification information, including, without  
7 limitation, social security number, tax identification number, driver's license  
8 number, credit card account numbers, bank account number, and bank routing  
9 number.

10 (iv) Agendas, minutes, and other information from executive sessions of the  
11 board of directors as described in Section 1363.05, except for executed contracts  
12 not otherwise privileged. Privileged contracts shall not include contracts for  
13 maintenance, management, or legal services.

14 (v) Personnel records other than the payroll records required to be provided  
15 under paragraph (2).

16 (vi) Interior architectural plans, including security features, for individual  
17 homes.

18 (2) Except as provided by the attorney-client privilege, the association may not  
19 withhold or redact information concerning the compensation paid to employees,  
20 vendors, or contractors. Compensation information for individual employees shall  
21 be set forth by job classification or title, not by the employee's name, social  
22 security number, or other personal information.

23 (3) No association, officer, director, employee, agent or volunteer of an  
24 association shall be liable for damages to a member of the association or any third  
25 party as the result of identity theft or other breach of privacy because of the failure  
26 to withhold or redact that member's information under this subdivision unless the  
27 failure to withhold or redact the information was intentional, willful, or negligent.

28 (4) If requested by the requesting member, an association that denies or redacts  
29 records shall provide a written explanation specifying the legal basis for  
30 withholding or redacting the requested records.

31 (e) (1) The association records, and any information from them, may not be sold,  
32 used for a commercial purpose, or used for any other purpose not reasonably  
33 related to a member's interest as a member. An association may bring an action  
34 against any person who violates this section for injunctive relief and for actual  
35 damages to the association caused by the violation.

36 (2) This section may not be construed to limit the right of an association to  
37 damages for misuse of information obtained from the association records pursuant  
38 to this section or to limit the right of an association to injunctive relief to stop the  
39 misuse of this information.

40 (3) An association shall be entitled to recover reasonable costs and expenses,  
41 including reasonable attorney's fees, in a successful action to enforce its rights  
42 under this section.

1 (f) A member of an association may bring an action to enforce the member's  
2 right to inspect and copy the association records. If a court finds that the  
3 association unreasonably withheld access to the association records, the court shall  
4 award the member reasonable costs and expenses, including reasonable attorney's  
5 fees, and may assess a civil penalty of up to five hundred dollars (\$500) for the  
6 denial of each separate written request. A cause of action under this section may  
7 be brought in small claims court if the amount of the demand does not exceed the  
8 jurisdiction of that court. A prevailing association may recover any costs if the  
9 court finds the action to be frivolous, unreasonable, or without foundation.

10 (g) The provisions of this section apply to any community service organization  
11 or similar entity, as defined in paragraph (3) of subdivision (c) of Section 1368,  
12 that is related to the association, and this section shall operate to give a member of  
13 the community service organization or similar entity a right to inspect and copy  
14 the records of that organization or entity equivalent to that granted to association  
15 members by this section.

16 (h) Requesting parties shall have the option of receiving specifically identified  
17 records by electronic transmission or machine-readable storage media as long as  
18 those records can be transmitted in a redacted format that does not allow the  
19 records to be altered. The cost of duplication shall be limited to the direct cost of  
20 producing the copy of a record in that electronic format. The association may  
21 deliver specifically identified records by electronic transmission or machine-  
22 readable storage media as long as those records can be transmitted in a redacted  
23 format that prevents the records from being altered.

24 (i) The time periods for which specified records shall be provided is as follows:

25 (1) Association records shall be made available for the current fiscal year and  
26 for each of the previous two fiscal years.

27 (2) Minutes of member and board meetings shall be permanently made  
28 available. If a committee has decisionmaking authority, minutes of the meetings of  
29 that committee shall be made available commencing January 1, 2007, and shall  
30 thereafter be permanently made available.

31 (j) The timeframes in which access to specified records shall be provided to a  
32 requesting member are as follows:

33 (1) Association records prepared during the current fiscal year, within 10  
34 business days following the association's receipt of the request.

35 (2) Association records prepared during the previous two fiscal years, within 30  
36 calendar days following the association's receipt of the request.

37 (3) Any record or statement available pursuant to Section 1365 or 1368, within  
38 the timeframe specified therein.

39 (4) Minutes of member and board meetings, within the timeframe specified in  
40 subdivision (d) of Section 1363.05.

41 (5) Minutes of meetings of committees with decisionmaking authority for  
42 meetings commencing on or after January 1, 2007, within 15 calendar days  
43 following approval.

1 (6) Membership list, within the timeframe specified in Section 8330 of the  
2 Corporations Code.

3 (k) There shall be no liability pursuant to this section for an association that fails  
4 to retain records for the periods specified in subdivision (i) that were created prior  
5 to January 1, 2006.

6 (l) As applied to an association and its members, the provisions of this section  
7 are intended to supersede the provisions of Sections 8330 and 8333 of the  
8 Corporations Code to the extent those sections are inconsistent.

9 (m) The provisions of this section shall not apply to any common interest  
10 development in which separate interests are being offered for sale by a subdivider  
11 under the authority of a public report issued by the Department of Real Estate so  
12 long as the subdivider or all subdividers offering those separate interests for sale,  
13 or any employees of those subdividers or any other person who receives direct or  
14 indirect compensation from any of those subdividers, comprise a majority of the  
15 members of the board of directors of the association. Notwithstanding the  
16 foregoing, this section shall apply to that common interest development no later  
17 than 10 years after the close of escrow for the first sale of a separate interest to a  
18 member of the general public pursuant to the public report issued for the first  
19 phase of the development.

20 (n) This section shall become operative on July 1, 2006.

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22  
23 **1365.5.** (a) Unless the governing documents impose more stringent standards,  
24 the board of directors of the association shall do all of the following:

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

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

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

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

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

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

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

1 (2) However, the board may authorize the temporary transfer of moneys from a  
2 reserve fund to the association's general operating fund to meet short-term  
3 cashflow requirements or other expenses, if the board has provided notice of the  
4 intent to consider the transfer in a notice of meeting, which shall be provided as  
5 specified in Section 1363.05. The notice shall include the reasons the transfer is  
6 needed, some of the options for repayment, and whether a special assessment may  
7 be considered. If the board authorizes the transfer, the board shall issue a written  
8 finding, recorded in the board's minutes, explaining the reasons that the transfer is  
9 needed, and describing when and how the moneys will be repaid to the reserve  
10 fund. The transferred funds shall be restored to the reserve fund within one year of  
11 the date of the initial transfer, except that the board may, after giving the same  
12 notice required for considering a transfer, and, upon making a finding supported  
13 by documentation that a temporary delay would be in the best interests of the  
14 common interest development, temporarily delay the restoration. The board shall  
15 exercise prudent fiscal management in maintaining the integrity of the reserve  
16 account, and shall, if necessary, levy a special assessment to recover the full  
17 amount of the expended funds within the time limits required by this section. This  
18 special assessment is subject to the limitation imposed by Section 1366. The board  
19 may, at its discretion, extend the date the payment on the special assessment is  
20 due. Any extension shall not prevent the board from pursuing any legal remedy to  
21 enforce the collection of an unpaid special assessment.

22 (d) When the decision is made to use reserve funds or to temporarily transfer  
23 moneys from the reserve fund to pay for litigation, the association shall notify the  
24 members of the association of that decision in the next available mailing to all  
25 members pursuant to Section 5016 of the Corporations Code, and of the  
26 availability of an accounting of those expenses. Unless the governing documents  
27 impose more stringent standards, the association shall make an accounting of  
28 expenses related to the litigation on at least a quarterly basis. The accounting shall  
29 be made available for inspection by members of the association at the  
30 association's office.

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

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

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

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

6 (3) An estimate of the cost of repair, replacement, restoration, or maintenance of  
7 the components identified in paragraph (1).

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

12 (5) A reserve funding plan that indicates how the association plans to fund the  
13 contribution identified in paragraph (4) to meet the association's obligation for the  
14 repair and replacement of all major components with an expected remaining life of  
15 30 years or less, not including those components that the board has determined  
16 will not be replaced or repaired. The plan shall include a schedule of the date and  
17 amount of any change in regular or special assessments that would be needed to  
18 sufficiently fund the reserve funding plan. The plan shall be adopted by the board  
19 of directors at an open meeting before the membership of the association as  
20 described in Section 1363.05. If the board of directors determines that an  
21 assessment increase is necessary to fund the reserve funding plan, any increase  
22 shall be approved in a separate action of the board that is consistent with the  
23 procedure described in Section 1366.

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

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

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

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

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

39  
40  
41 **1366.** (a) Except as provided in this section, the association shall levy regular  
42 and special assessments sufficient to perform its obligations under the governing  
43 documents and this title. However, annual increases in regular assessments for any

1 fiscal year, as authorized by subdivision (b), shall not be imposed unless the board  
2 has complied with subdivision (a) of Section 1365 with respect to that fiscal year,  
3 or has obtained the approval of owners, constituting a quorum, casting a majority  
4 of the votes at a meeting or election of the association conducted in accordance  
5 with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1  
6 of the Corporations Code and Section 7613 of the Corporations Code. For the  
7 purposes of this section, “quorum” means more than 50 percent of the owners of  
8 an association.

9 (b) Notwithstanding more restrictive limitations placed on the board by the  
10 governing documents, the board of directors may not impose a regular assessment  
11 that is more than 20 percent greater than the regular assessment for the  
12 association’s preceding fiscal year or impose special assessments which in the  
13 aggregate exceed 5 percent of the budgeted gross expenses of the association for  
14 that fiscal year without the approval of owners, constituting a quorum, casting a  
15 majority of the votes at a meeting or election of the association conducted in  
16 accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division  
17 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.  
18 For the purposes of this section, quorum means more than 50 percent of the  
19 owners of an association. This section does not limit assessment increases  
20 necessary for emergency situations. For purposes of this section, an emergency  
21 situation is any one of the following:

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

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

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

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

41 This exemption shall not apply to any consensual pledges, liens, or  
42 encumbrances that have been approved by the owners of an association,  
43 constituting a quorum, casting a majority of the votes at a meeting or election of

1 the association, or to any state tax lien, or to any lien for labor or materials  
2 supplied to the common area.

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

7 (e) Regular and special assessments levied pursuant to the governing documents  
8 are delinquent 15 days after they become due, unless the declaration provides a  
9 longer time period, in which case the longer time period shall apply. If an  
10 assessment is delinquent the association may recover all of the following:

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

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

17 (3) Interest on all sums imposed in accordance with this section, including the  
18 delinquent assessments, reasonable fees and costs of collection, and reasonable  
19 attorney's fees, at an annual interest rate not to exceed 12 percent, commencing 30  
20 days after the assessment becomes due, unless the declaration specifies the  
21 recovery of interest at a rate of a lesser amount, in which case the lesser rate of  
22 interest shall apply.

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

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26  
27 **1366.1.** An association shall not impose or collect an assessment or fee that  
28 exceeds the amount necessary to defray the costs for which it is levied.

29  
30 **1367.4.** (a) Notwithstanding any law or any provisions of the governing  
31 documents to the contrary, this section shall apply to debts for assessments that  
32 arise on and after January 1, 2006.

33 (b) An association that seeks to collect delinquent regular or special assessments  
34 of an amount less than one thousand eight hundred dollars (\$1,800), not including  
35 any accelerated assessments, late charges, fees and costs of collection, attorney's  
36 fees, or interest, may not collect that debt through judicial or nonjudicial  
37 foreclosure, but may attempt to collect or secure that debt in any of the following  
38 ways:

39 (1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing  
40 with Section 116.110) of Title 1 of the Code of Civil Procedure. An association  
41 that chooses to proceed by an action in small claims court, and prevails, may  
42 enforce the judgment as permitted under Article 8 (commencing with Section  
43 116.810) of Title 1 of the Code of Civil Procedure. The amount that may be

1 recovered in small claims court to collect upon a debt for delinquent assessments  
2 may not exceed the jurisdictional limits of the small claims court and shall be the  
3 sum of the following:

4 (A) The amount owed as of the date of filing the complaint in the small claims  
5 court proceeding.

6 (B) In the discretion of the court, an additional amount to that described in  
7 subparagraph (A) equal to the amount owed for the period from the date the  
8 complaint is filed until satisfaction of the judgment, which total amount may  
9 include accruing unpaid assessments and any reasonable late charges, fees and  
10 costs of collection, attorney's fees, and interest, up to the jurisdictional limits of  
11 the small claims court.

12 (2) By recording a lien on the owner's separate interest upon which the  
13 association may not foreclose until the amount of the delinquent assessments  
14 secured by the lien, exclusive of any accelerated assessments, late charges, fees  
15 and costs of collection, attorney's fees, or interest, equals or exceeds one thousand  
16 eight hundred dollars (\$1,800) or the assessments secured by the lien are more  
17 than 12 months delinquent. An association that chooses to record a lien under  
18 these provisions, prior to recording the lien, shall offer the owner and, if so  
19 requested by the owner, participate in dispute resolution as set forth in Article 5  
20 (commencing with Section 1363.810) of Chapter 4.

21 (3) Any other manner provided by law, except for judicial or nonjudicial  
22 foreclosure.

23 (c) An association that seeks to collect delinquent regular or special assessments  
24 of an amount of one thousand eight hundred dollars (\$1,800) or more, not  
25 including any accelerated assessments, late charges, fees and costs of collection,  
26 attorney's fees, or interest, or any assessments secured by the lien that are more  
27 than 12 months delinquent, may use judicial or nonjudicial foreclosure subject to  
28 the following conditions:

29 (1) Prior to initiating a foreclosure on an owner's separate interest, the  
30 association shall offer the owner and, if so requested by the owner, participate in  
31 dispute resolution pursuant to the association's "meet and confer" program  
32 required in Article 5 (commencing with Section 1363.810) of Chapter 4 or  
33 alternative dispute resolution as set forth in Article 2 (commencing with Section  
34 1369.510) of Chapter 7. The decision to pursue dispute resolution or a particular  
35 type of alternative dispute resolution shall be the choice of the owner, except that  
36 binding arbitration shall not be available if the association intends to initiate a  
37 judicial foreclosure.

38 (2) The decision to initiate foreclosure of a lien for delinquent assessments that  
39 has been validly recorded shall be made only by the board of directors of the  
40 association and may not be delegated to an agent of the association. The board  
41 shall approve the decision by a majority vote of the board members in an  
42 executive session. The board shall record the vote in the minutes of the next  
43 meeting of the board open to all members. The board shall maintain the

1 confidentiality of the owner or owners of the separate interest by identifying the  
2 matter in the minutes by the parcel number of the property, rather than the name of  
3 the owner or owners. A board vote to approve foreclosure of a lien shall take place  
4 at least 30 days prior to any public sale.

5 (3) The board shall provide notice by personal service in accordance with the  
6 manner of service of summons in Article 3 (commencing with Section 415.10) of  
7 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an owner of a  
8 separate interest who occupies the separate interest or to the owner's legal  
9 representative, if the board votes to foreclose upon the separate interest. The board  
10 shall provide written notice to an owner of a separate interest who does not occupy  
11 the separate interest by first-class mail, postage prepaid, at the most current  
12 address shown on the books of the association. In the absence of written  
13 notification by the owner to the association, the address of the owner's separate  
14 interest may be treated as the owner's mailing address.

15 (4) A nonjudicial foreclosure by an association to collect upon a debt for  
16 delinquent assessments shall be subject to a right of redemption. The redemption  
17 period within which the separate interest may be redeemed from a foreclosure sale  
18 under this paragraph ends 90 days after the sale. In addition to the requirements of  
19 Section 2924f, a notice of sale in connection with an association's foreclosure of a  
20 separate interest in a common interest development shall include a statement that  
21 the property is being sold subject to the right of redemption created in this  
22 paragraph.

23 (d) The limitation on foreclosure of assessment liens for amounts under the  
24 stated minimum in this section does not apply to assessments owed by owners of  
25 separate interests in timeshare estates, as defined in subdivision (x) of Section  
26 11112 of the Business and Professions Code, or to assessments owed by  
27 developers.

28  
29  
30 **1368.** (a) The owner of a separate interest, other than an owner subject to the  
31 requirements of Section 11018.6 of the Business and Professions Code, shall, as  
32 soon as practicable before transfer of title to the separate interest or execution of a  
33 real property sales contract therefor, as defined in Section 2985, provide the  
34 following to the prospective purchaser:

35 (1) A copy of the governing documents of the common interest development,  
36 including any operating rules, and including a copy of the association's articles of  
37 incorporation, or, if not incorporated, a statement in writing from an authorized  
38 representative of the association that the association is not incorporated.

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

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

2 (4) A true statement in writing obtained from an authorized representative of the  
3 association as to the amount of the association's current regular and special  
4 assessments and fees, any assessments levied upon the owner's interest in the  
5 common interest development that are unpaid on the date of the statement, and any  
6 monetary fines or penalties levied upon the owner's interest and unpaid on the  
7 date of the statement. The statement obtained from an authorized representative  
8 shall also include true information on late charges, interest, and costs of collection  
9 which, as of the date of the statement, are or may be made a lien upon the owner's  
10 interest in a common interest development pursuant to Section 1367 or 1367.1.

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

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

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

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

31 (b) Upon written request, an association shall, within 10 days of the mailing or  
32 delivery of the request, provide the owner of a separate interest with a copy of the  
33 requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a).  
34 The items required to be made available pursuant to this section may be  
35 maintained in electronic form and requesting parties shall have the option of  
36 receiving them by electronic transmission or machine readable storage media if  
37 the association maintains these items in electronic form. The association may  
38 charge a reasonable fee for this service based upon the association's actual cost to  
39 procure, prepare, and reproduce the requested items.

40 (c)(1) Subject to the provisions of paragraph (2), neither an association nor a  
41 community service organization or similar entity may impose or collect any  
42 assessment, penalty, or fee in connection with a transfer of title or any other  
43 interest except for the following:

1 (A) An amount not to exceed the association’s actual costs to change its records.

2 (B) An amount authorized by subdivision (b).

3 (2) The amendments made to this subdivision by the act adding this paragraph  
4 do not apply to a community service organization or similar entity that is  
5 described in subparagraph (A) or (B):

6 (A) The community service organization or similar entity satisfies both of the  
7 following requirements:

8 (i) The community service organization or similar entity was established prior to  
9 February 20, 2003.

10 (ii) The community service organization or similar entity exists and operates, in  
11 whole or in part, to fund or perform environmental mitigation or to restore or  
12 maintain wetlands or native habitat, as required by the state or local government as  
13 an express written condition of development.

14 (B) The community service organization or similar entity satisfies all of the  
15 following requirements:

16 (i) The community service organization or similar entity is not an organization  
17 or entity described in subparagraph (A).

18 (ii) The community service organization or similar entity was established and  
19 received a transfer fee prior to January 1, 2004.

20 (iii) On and after January 1, 2006, the community service organization or similar  
21 entity offers a purchaser the following payment options for the fee or charge it  
22 collects at time of transfer:

23 (I) Paying the fee or charge at the time of transfer.

24 (II) Paying the fee or charge pursuant to an installment payment plan for a  
25 period of not less than seven years. If the purchaser elects to pay the fee or charge  
26 in installment payments, the community service organization or similar entity may  
27 also collect additional amounts that do not exceed the actual costs for billing and  
28 financing on the amount owed. If the purchaser sells the separate interest before  
29 the end of the installment payment plan period, he or she shall pay the remaining  
30 balance prior to transfer.

31 (3) For the purposes of this subdivision, a “community service organization or  
32 similar entity” means a nonprofit entity, other than an association, that is  
33 organized to provide services to residents of the common interest development or  
34 to the public in addition to the residents, to the extent community common areas  
35 or facilities are available to the public. A “community service organization or  
36 similar entity” does not include an entity that has been organized solely to raise  
37 moneys and contribute to other nonprofit organizations that are qualified as tax  
38 exempt under Section 501(c)(3) of the Internal Revenue Code and that provide  
39 housing or housing assistance.

40 (d) Any person or entity who willfully violates this section is liable to the  
41 purchaser of a separate interest that is subject to this section for actual damages  
42 occasioned thereby and, in addition, shall pay a civil penalty in an amount not to

1 exceed five hundred dollars (\$500). In an action to enforce this liability, the  
2 prevailing party shall be awarded reasonable attorneys' fees.

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

5 (f) In addition to the requirements of this section, an owner transferring title to a  
6 separate interest shall comply with applicable requirements of Sections 1133 and  
7 1134.

8 (g) For the purposes of this section, a person who acts as a community  
9 association manager is an agent, as defined in Section 2297, of the association.

10  
11  
12 **1373.** (a) The following provisions do not apply to a common interest  
13 development that is limited to industrial or commercial uses by zoning or by a  
14 declaration of covenants, conditions, and restrictions that has been recorded in the  
15 official records of each county in which the common interest development is  
16 located:

17 (1) Section 1356.

18 (2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of  
19 Part 4 of Division 2.

20 (3) Subdivision (b) of Section 1363.

21 (4) Section 1365.

22 (5) Section 1365.5.

23 (6) Subdivision (b) of Section 1366.

24 (7) Section 1366.1.

25 (8) Section 1368.

26 (9) Section 1378.

27 (b) The Legislature finds that the provisions listed in subdivision (a) are  
28 appropriate to protect purchasers in residential common interest developments,  
29 however, the provisions may not be necessary to protect purchasers in commercial  
30 or industrial developments since the application of those provisions could result in  
31 unnecessary burdens and costs for these types of developments.

32  
33  
34 **1375.** (a) Before an association files a complaint for damages against a builder,  
35 developer, or general contractor ("respondent") of a common interest development  
36 based upon a claim for defects in the design or construction of the common  
37 interest development, all of the requirements of this section shall be satisfied with  
38 respect to the builder, developer, or general contractor.

39 (b) The association shall serve upon the respondent a "Notice of  
40 Commencement of Legal Proceedings." The notice shall be served by certified  
41 mail to the registered agent of the respondent, or if there is no registered agent,  
42 then to any officer of the respondent. If there are no current officers of the  
43 respondent, service shall be upon the person or entity otherwise authorized by law

1 to receive service of process. Service upon the general contractor shall be  
2 sufficient to initiate the process set forth in this section with regard to any builder  
3 or developer, if the builder or developer is not amenable to service of process by  
4 the foregoing methods. This notice shall toll all applicable statutes of limitation  
5 and repose, whether contractual or statutory, by and against all potentially  
6 responsible parties, regardless of whether they were named in the notice, including  
7 claims for indemnity applicable to the claim for the period set forth in subdivision  
8 (c). The notice shall include all of the following:

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

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

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

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

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

18 (c) Service of the notice shall commence a period, not to exceed 180 days,  
19 during which the association, the respondent, and all other participating parties  
20 shall try to resolve the dispute through the processes set forth in this section. This  
21 180-day period may be extended for one additional period, not to exceed 180 days,  
22 only upon the mutual agreement of the association, the respondent, and any parties  
23 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any  
24 extensions beyond the first extension shall require the agreement of all  
25 participating parties. Unless extended, the dispute resolution process prescribed by  
26 this section shall be deemed completed. All extensions shall continue the tolling  
27 period described in subdivision (b).

28 (d) Within 25 days of the date the association serves the Notice of  
29 Commencement of Legal Proceedings, the respondent may request in writing to  
30 meet and confer with the board of directors of the association. Unless the  
31 respondent and the association otherwise agree, there shall be not more than one  
32 meeting, which shall take place no later than 10 days from the date of the  
33 respondent's written request, at a mutually agreeable time and place. The meeting  
34 shall be subject to subdivision (b) of Section 1363.05. The discussions at the  
35 meeting are privileged communications and are not admissible in evidence in any  
36 civil action, unless the association and the respondent consent in writing to their  
37 admission.

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

40 (1) The respondent shall provide the association with access to, for inspection  
41 and copying of, all plans and specifications, subcontracts, and other construction  
42 files for the project that are reasonably calculated to lead to the discovery of  
43 admissible evidence regarding the defects claimed. The association shall provide

1 the respondent with access to, for inspection and copying of, all files reasonably  
2 calculated to lead to the discovery of admissible evidence regarding the defects  
3 claimed, including all reserve studies, maintenance records and any survey  
4 questionnaires, or results of testing to determine the nature and extent of defects.  
5 To the extent any of the above documents are withheld based on privilege, a  
6 privilege log shall be prepared and submitted to all other parties. All other  
7 potentially responsible parties shall have the same rights as the respondent  
8 regarding the production of documents upon receipt of written notice of the claim,  
9 and shall produce all relevant documents within 60 days of receipt of the notice of  
10 the claim.

11 (2) The respondent shall provide written notice by certified mail to all  
12 subcontractors, design professionals, their insurers, and the insurers of any  
13 additional insured whose identities are known to the respondent or readily  
14 ascertainable by review of the project files or other similar sources and whose  
15 potential responsibility appears on the face of the notice. This notice to  
16 subcontractors, design professionals, and insurers shall include a copy of the  
17 Notice of Commencement of Legal Proceedings, and shall specify the date and  
18 manner by which the parties shall meet and confer to select a dispute resolution  
19 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its  
20 obligation to participate in the meet and confer or serve a written acknowledgment  
21 of receipt regarding this notice, advise the recipient that it will waive any  
22 challenge to selection of the dispute resolution facilitator if it elects not to  
23 participate in the meet and confer, advise the recipient that it may be bound by any  
24 settlement reached pursuant to subdivision (d) of Section 1375.05, advise the  
25 recipient that it may be deemed to have waived rights to conduct inspection and  
26 testing pursuant to subdivision (c) of Section 1375.05, advise the recipient that it  
27 may seek the assistance of an attorney, and advise the recipient that it should  
28 contact its insurer, if any. Any subcontractor or design professional, or insurer for  
29 that subcontractor, design professional, or additional insured, who receives written  
30 notice from the respondent regarding the meet and confer shall, prior to the meet  
31 and confer, serve on the respondent a written acknowledgment of receipt. That  
32 subcontractor or design professional shall, within 10 days of service of the written  
33 acknowledgment of receipt, provide to the association and the respondent a  
34 Statement of Insurance that includes both of the following:

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

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

41 (3) Any subcontractor or design professional, or insurer for that subcontractor,  
42 design professional, or additional insured, who so chooses, may, at any time, make  
43 a written request to the dispute resolution facilitator for designation as a peripheral

1 party. That request shall be served contemporaneously on the association and the  
2 respondent. If no objection to that designation is received within 15 days, or upon  
3 rejection of that objection, the dispute resolution facilitator shall designate that  
4 subcontractor or design professional as a peripheral party, and shall thereafter seek  
5 to limit the attendance of that subcontractor or design professional only to those  
6 dispute resolution sessions deemed peripheral party sessions or to those sessions  
7 during which the dispute resolution facilitator believes settlement as to peripheral  
8 parties may be finalized. Nothing in this subdivision shall preclude a party who  
9 has been designated a peripheral party from being reclassified as a nonperipheral  
10 party, nor shall this subdivision preclude a party designated as a nonperipheral  
11 party from being reclassified as a peripheral party after notice to all parties and an  
12 opportunity to object. For purposes of this subdivision, a peripheral party is a party  
13 having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

14 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of  
15 subdivision (e), the association, respondent, subcontractors, design professionals,  
16 and their insurers who have been sent a notice as described in paragraph (2) of  
17 subdivision (e) shall meet and confer in an effort to select a dispute resolution  
18 facilitator to preside over the mandatory dispute resolution process prescribed by  
19 this section. Any subcontractor or design professional who has been given timely  
20 notice of this meeting but who does not participate, waives any challenge he or she  
21 may have as to the selection of the dispute resolution facilitator. The role of the  
22 dispute resolution facilitator is to attempt to resolve the conflict in a fair manner.  
23 The dispute resolution facilitator shall be sufficiently knowledgeable in the subject  
24 matter and be able to devote sufficient time to the case. The dispute resolution  
25 facilitator shall not be required to reside in or have an office in the county in which  
26 the project is located. The dispute resolution facilitator and the participating  
27 parties shall agree to a date, time, and location to hold a case management meeting  
28 of all parties and the dispute resolution facilitator, to discuss the claims being  
29 asserted and the scheduling of events under this section. The case management  
30 meeting with the dispute resolution facilitator shall be held within 100 days of  
31 service of the Notice of Commencement of Legal Proceedings at a location in the  
32 county where the project is located. Written notice of the case management  
33 meeting with the dispute resolution facilitator shall be sent by the respondent to  
34 the association, subcontractors and design professionals, and their insurers who are  
35 known to the respondent to be on notice of the claim, no later than 10 days prior to  
36 the case management meeting, and shall specify its date, time, and location. The  
37 dispute resolution facilitator in consultation with the respondent shall maintain a  
38 contact list of the participating parties.

39 (2) No later than 10 days prior to the case management meeting, the dispute  
40 resolution facilitator shall disclose to the parties all matters that could cause a  
41 person aware of the facts to reasonably entertain a doubt that the proposed dispute  
42 resolution facilitator would be able to resolve the conflict in a fair manner. The  
43 facilitator's disclosure shall include the existence of any ground specified in

1 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any  
2 attorney-client relationship the facilitator has or had with any party or lawyer for a  
3 party to the dispute resolution process, and any professional or significant personal  
4 relationship the facilitator or his or her spouse or minor child living in the  
5 household has or had with any party to the dispute resolution process. The  
6 disclosure shall also be provided to any subsequently noticed subcontractor or  
7 design professional within 10 days of the notice.

8 (3) A dispute resolution facilitator shall be disqualified by the court if he or she  
9 fails to comply with this paragraph and any party to the dispute resolution process  
10 serves a notice of disqualification prior to the case management meeting. If the  
11 dispute resolution facilitator complies with this paragraph, he or she shall be  
12 disqualified by the court on the basis of the disclosure if any party to the dispute  
13 resolution process serves a notice of disqualification prior to the case management  
14 meeting.

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

21 (5) Any subcontractor or design professional who receives notice of the  
22 association's claim without having previously received timely notice of the meet  
23 and confer to select the dispute resolution facilitator shall be notified by the  
24 respondent regarding the name, address, and telephone number of the dispute  
25 resolution facilitator. Any such subcontractor or design professional may serve  
26 upon the parties and the dispute resolution facilitator a written objection to the  
27 dispute resolution facilitator within 15 days of receiving notice of the claim.  
28 Within seven days after service of this objection, the subcontractor or design  
29 professional may petition the superior court to replace the dispute resolution  
30 facilitator. The court may replace the dispute resolution facilitator only upon a  
31 showing of good cause, liberally construed. Failure to satisfy the deadlines set  
32 forth in this subdivision shall constitute a waiver of the right to challenge the  
33 dispute resolution facilitator.

34 (6) The costs of the dispute resolution facilitator shall be apportioned in the  
35 following manner: one-third to be paid by the association; one-third to be paid by  
36 the respondent; and one-third to be paid by the subcontractors and design  
37 professionals, as allocated among them by the dispute resolution facilitator. The  
38 costs of the dispute resolution facilitator shall be recoverable by the prevailing  
39 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil  
40 Procedure, provided however that any nonsettling party may, prior to the filing of  
41 the complaint, petition the facilitator to reallocate the costs of the dispute  
42 resolution facilitator as they apply to any nonsettling party. The determination of  
43 the dispute resolution facilitator with respect to the allocation of these costs shall

1 be binding in any subsequent litigation. The dispute resolution facilitator shall take  
2 into account all relevant factors and equities between all parties in the dispute  
3 resolution process when reallocating costs.

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

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

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

12 (A) The scope of the work performed by each potentially responsible  
13 subcontractor.

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

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

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

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

28 (1) Establishment of a document depository, located in the county where the  
29 project is located, for deposit of documents, defect lists, demands, and other  
30 information provided for under this section. All documents exchanged by the  
31 parties and all documents created pursuant to this subdivision shall be deposited in  
32 the document depository, which shall be available to all parties throughout the  
33 prefiling dispute resolution process and in any subsequent litigation. When any  
34 document is deposited in the document depository, the party depositing the  
35 document shall provide written notice identifying the document to all other parties.  
36 The costs of maintaining the document depository shall be apportioned among the  
37 parties in the same manner as the costs of the dispute resolution facilitator.

38 (2) Provision of a more detailed list of defects by the association to the  
39 respondent after the association completes a visual inspection of the project. This  
40 list of defects shall provide sufficient detail for the respondent to ensure that all  
41 potentially responsible subcontractors and design professionals are provided with  
42 notice of the dispute resolution process. If not already completed prior to the case  
43 management meeting, the Notice of Commencement of Legal Proceedings shall be

1 served by the respondent on all additional subcontractors and design professionals  
2 whose potential responsibility appears on the face of the more detailed list of  
3 defects within seven days of receipt of the more detailed list. The respondent shall  
4 serve a copy of the case management statement, including the name, address, and  
5 telephone number of the dispute resolution facilitator, to all the potentially  
6 responsible subcontractors and design professionals at the same time.

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

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

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

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

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

21 (8) Facilitated dispute resolution of the claim, with all parties, including  
22 peripheral parties, as appropriate, and insurers, if any, present and having  
23 settlement authority. The dispute resolution facilitators shall endeavor to set  
24 specific times for the attendance of specific parties at dispute resolution sessions.  
25 If the dispute resolution facilitator does not set specific times for the attendance of  
26 parties at dispute resolution sessions, the dispute resolution facilitator shall permit  
27 those parties to participate in dispute resolution sessions by telephone.

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

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

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

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

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

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

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

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

11 (C) No less than 10 days after the respondent submits the items required by this  
12 paragraph, the respondent and the board of directors of the association shall meet  
13 and confer about the respondent's settlement offer.

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

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

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

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

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

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

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

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

39 (I) Except for the purpose of in camera review as provided in subdivision (c) of  
40 Section 1375.05, all defect lists and demands, communications, negotiations, and  
41 settlement offers made in the course of the prelitigation dispute resolution process  
42 provided by this section shall be inadmissible pursuant to Sections 1119 to 1124,  
43 inclusive, of the Evidence Code and all applicable decisional law. This

1 inadmissibility shall not be extended to any other documents or communications  
2 which would not otherwise be deemed inadmissible.

3 (m) Any subcontractor or design professional may, at any time, petition the  
4 dispute resolution facilitator to release that party from the dispute resolution  
5 process upon a showing that the subcontractor or design professional is not  
6 potentially responsible for the defect claims at issue. The petition shall be served  
7 contemporaneously on all other parties, who shall have 15 days from the date of  
8 service to object. If a subcontractor or design professional is released, and it later  
9 appears to the dispute resolution facilitator that it may be a responsible party in  
10 light of the current defect list or demand, the respondent shall renotify the party as  
11 provided by paragraph (2) of subdivision (e), provide a copy of the current defect  
12 list or demand, and direct the party to attend a dispute resolution session at a stated  
13 time and location. A party who subsequently appears after having been released by  
14 the dispute resolution facilitator shall not be prejudiced by its absence from the  
15 dispute resolution process as the result of having been previously released by the  
16 dispute resolution facilitator.

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

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

24 (2) To resolve any disputes concerning inspection, testing, production of  
25 documents, or exchange of information provided for under this section.

26 (3) To resolve any disagreements relative to the timing or contents of the case  
27 management statement.

28 (4) To authorize internal extensions of timeframes set forth in the case  
29 management statement.

30 (5) To seek a determination that a settlement is a good faith settlement pursuant  
31 to Section 877.6 of the Code of Civil Procedure and all related authorities. The  
32 page limitations and meet and confer requirements specified in this section shall  
33 not apply to these motions, which may be made on shortened notice. Instead, these  
34 motions shall be subject to other applicable state law, rules of court, and local  
35 rules. A determination made by the court pursuant to this motion shall have the  
36 same force and effect as the determination of a postfiling application or motion for  
37 good faith settlement.

38 (6) To ensure compliance, on shortened notice, with the obligation to provide a  
39 Statement of Insurance pursuant to paragraph (2) of subdivision (e).

40 (7) For any other relief appropriate to the enforcement of the provisions of this  
41 section, including the ordering of parties, and insurers, if any, to the dispute  
42 resolution process with settlement authority.

1 (o)(1) A petition filed pursuant to subdivision (n) shall be filed in the superior  
2 court in the county in which the project is located. The court shall hear and decide  
3 the petition within 10 days after filing. The petitioning party shall serve the  
4 petition on all parties, including the date, time, and location of the hearing no later  
5 than five business days prior to the hearing. Any responsive papers shall be filed  
6 and served no later than three business days prior to the hearing. Any petition or  
7 response filed under this section shall be no more than three pages in length.

8 (2) All parties shall meet with the dispute resolution facilitator, if one has been  
9 appointed and confer in person or by the telephone prior to the filing of that  
10 petition to attempt to resolve the matter without requiring court intervention.

11 (p) As used in this section:

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

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

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

18 (q) The alternative dispute resolution process and procedures described in this  
19 section shall have no application or legal effect other than as described in this  
20 section.

21 (r) This section shall become operative on July 1, 2002, however it shall not  
22 apply to any pending suit or claim for which notice has previously been given.

23 (s) This section shall become inoperative on July 1, 2010, and as of January 1,  
24 2011, is repealed, unless a later enacted statute, that is enacted before January 1,  
25 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

26  
27  
28 **1375.1.** (a) As soon as is reasonably practicable after the association and the  
29 builder have entered into a settlement agreement or the matter has otherwise been  
30 resolved regarding alleged defects in the common areas, alleged defects in the  
31 separate interests that the association is obligated to maintain or repair, or alleged  
32 defects in the separate interests that arise out of, or are integrally related to, defects  
33 in the common areas or separate interests that the association is obligated to  
34 maintain or repair, where the defects giving rise to the dispute have not been  
35 corrected, the association shall, in writing, inform only the members of the  
36 association whose names appear on the records of the association that the matter  
37 has been resolved, by settlement agreement or other means, and disclose all of the  
38 following:

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

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

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

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

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

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

14  
15  
16 **1378.** (a) This section applies if an association’s governing documents require  
17 association approval before an owner of a separate interest may make a physical  
18 change to the owner’s separate interest or to the common area. In reviewing and  
19 approving or disapproving a proposed change, the association shall satisfy the  
20 following requirements:

21 (1) The association shall provide a fair, reasonable, and expeditious procedure  
22 for making its decision. The procedure shall be included in the association’s  
23 governing documents. The procedure shall provide for prompt deadlines. The  
24 procedure shall state the maximum time for response to an application or a request  
25 for reconsideration by the board of directors.

26 (2) A decision on a proposed change shall be made in good faith and may not be  
27 unreasonable, arbitrary, or capricious.

28 (3) Notwithstanding a contrary provision of the governing documents, a decision  
29 on a proposed change may not violate any governing provision of law, including,  
30 but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing  
31 with Section 12900) of Division 3 of Title 2 of the Government Code), or a  
32 building code or other applicable law governing land use or public safety.

33 (4) A decision on a proposed change shall be in writing. If a proposed change is  
34 disapproved, the written decision shall include both an explanation of why the  
35 proposed change is disapproved and a description of the procedure for  
36 reconsideration of the decision by the board of directors.

37 (5) If a proposed change is disapproved, the applicant is entitled to  
38 reconsideration by the board of directors of the association that made the decision,  
39 at an open meeting of the board. This paragraph does not require reconsideration  
40 of a decision that is made by the board of directors or a body that has the same  
41 membership as the board of directors, at a meeting that satisfies the requirements  
42 of Section 1363.05. Reconsideration by the board does not constitute dispute  
43 resolution within the meaning of Section 1363.820.

1 (b) Nothing in this section authorizes a physical change to the common area in a  
2 manner that is inconsistent with an association's governing documents, unless the  
3 change is required by law.

4 (c) An association shall annually provide its members with notice of any  
5 requirements for association approval of physical changes to property. The notice  
6 shall describe the types of changes that require association approval and shall  
7 include a copy of the procedure used to review and approve or disapprove a  
8 proposed change.

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