

First Supplement to Memorandum 2009-32

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

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 apply to a nonresidential common interest development ("CID").

This supplement contains the text of all sections of the Davis-Stirling Act, as well as selected relevant sections of the Corporations Code.

The supplement is intended as accompanying reference material for all memoranda and recommendations that are presented in this study, as well as any other Commission study of the law relating to CIDs. It may be helpful to have the supplement available at all meetings when such presentations are scheduled.

Respectfully submitted,

Steve Cohen
Staff Counsel

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THE DAVIS-STIRLING
COMMON INTEREST DEVELOPMENT ACT
(CIV. CODE §§ 1350-1378)

1

CHAPTER 1. GENERAL PROVISIONS

2

Article 1. Preliminary Provisions

3

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

4

5

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

6

7

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

8

9

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

10

(1) Personal delivery.

11

(2) First-class mail, postage prepaid, addressed to a member at the address last shown on the books of the association or otherwise provided by the member. Delivery is deemed to be complete on deposit into the United States mail.

12

13

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

14

15

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

17

18

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

19

20

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

21

22

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

23

24

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

25

26

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

27

28

29

Article 2. Definitions

30

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

31

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

32

33

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

34

35

36

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

37

38

(1) A community apartment project.

39

40

(2) A condominium project.

1 (3) A planned development.

2 (4) A stock cooperative.

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

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

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

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

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

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

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

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

31 (f) A “condominium project” means a development consisting of condominiums. A
32 condominium consists of an undivided interest in common in a portion of real property
33 coupled with a separate interest in space called a unit, the boundaries of which are
34 described on a recorded final map, parcel map, or condominium plan in sufficient detail
35 to locate all boundaries thereof. The area within these boundaries may be filled with air,
36 earth, or water, or any combination thereof, and need not be physically attached to land
37 except by easements for access and, if necessary, support. The description of the unit may
38 refer to (1) boundaries described in the recorded final map, parcel map, or condominium
39 plan, (2) physical boundaries, either in existence, or to be constructed, such as walls,
40 floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing
41 one or more units, or (4) any combination thereof. The portion or portions of the real
42 property held in undivided interest may be all of the real property, except for the separate
43 interests, or may include a particular three-dimensional portion thereof, the boundaries of
44 which are described on a recorded final map, parcel map, or condominium plan. The area
45 within these boundaries may be filled with air, earth, or water, or any combination
46 thereof, and need not be physically attached to land except by easements for access and,
47 if necessary, support. An individual condominium within a condominium project may
48 include, in addition, a separate interest in other portions of the real property.

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

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

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

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

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

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

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

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

24 (2) A power exists in the association to enforce an obligation of an owner of a separate
25 interest with respect to the beneficial use and enjoyment of the common area by means of
26 an assessment which may become a lien upon the separate interests in accordance with
27 Section 1367 or 1367.1.

28 (l) “Separate interest” has the following meanings:

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

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

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

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

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

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

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

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

1 CHAPTER 2. GOVERNING DOCUMENTS

2 Article 1. Creation

3 **1352.** This title applies and a common interest development is created whenever a
4 separate interest coupled with an interest in the common area or membership in the
5 association is, or has been, conveyed, provided, all of the following are recorded:

6 (a) A declaration.

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

8 (c) A final map or parcel map, if Division 2 (commencing with Section 66410) of Title
9 7 of the Government Code requires the recording of either a final map or parcel map for
10 the common interest development.

11 **1352.5.** (a) No declaration or other governing document shall include a restrictive
12 covenant in violation of Section 12955 of the Government Code.

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

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

25 **1353.** (a)(1) A declaration, recorded on or after January 1, 1986, shall contain a legal
26 description of the common interest development, and a statement that the common
27 interest development is a community apartment project, condominium project, planned
28 development, stock cooperative, or combination thereof. The declaration shall
29 additionally set forth the name of the association and the restrictions on the use or
30 enjoyment of any portion of the common interest development that are intended to be
31 enforceable equitable servitudes. If the property is located within an airport influence
32 area, a declaration, recorded after January 1, 2004, shall contain the following statement:

33 NOTICE OF AIRPORT IN VICINITY

34 This property is presently located in the vicinity of an airport, within what is
35 known as an airport influence area. For that reason, the property may be subject
36 to some of the annoyances or inconveniences associated with proximity to
37 airport operations (for example: noise, vibration, or odors). Individual
38 sensitivities to those annoyances can vary from person to person. You may wish
39 to consider what airport annoyances, if any, are associated with the property
40 before you complete your purchase and determine whether they are acceptable
41 to you.

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

46 (3) If the property is within the San Francisco Bay Conservation and Development

1 Commission jurisdiction, as described in Section 66610 of the Government Code, a
2 declaration recorded on or after January 1, 2006, shall contain the following notice:

3 NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
4 DEVELOPMENT COMMISSION JURISDICTION

5 This property is located within the jurisdiction of the San Francisco Bay
6 Conservation and Development Commission. Use and development of property
7 within the commission's jurisdiction may be subject to special regulations,
8 restrictions, and permit requirements. You may wish to investigate and
9 determine whether they are acceptable to you and your intended use of the
10 property before you complete your transaction.

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

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

16 **1353.5.** (a) Except as required for the protection of the public health or safety, no
17 declaration or other governing document shall limit or prohibit, or be construed to limit
18 or prohibit, the display of the flag of the United States by an owner on or in the owner's
19 separate interest or within the owner's exclusive use common area, as defined in Section
20 1351.

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

26 (c) In any action to enforce this section, the prevailing party shall be awarded
27 reasonable attorneys' fees and costs.

28 **1353.6.** (a) The governing documents, including the operating rules, may not prohibit
29 posting or displaying of noncommercial signs, posters, flags, or banners on or in an
30 owner's separate interest, except as required for the protection of public health or safety
31 or if the posting or display would violate a local, state, or federal law.

32 (b) For purposes of this section, a noncommercial sign, poster, flag, or banner may be
33 made of paper, cardboard, cloth, plastic, or fabric, and may be posted or displayed from
34 the yard, window, door, balcony, or outside wall of the separate interest, but may not be
35 made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar
36 building, landscaping, or decorative component, or include the painting of architectural
37 surfaces.

38 (c) An association may prohibit noncommercial signs and posters that are more than 9
39 square feet in size and noncommercial flags or banners that are more than 15 square feet
40 in size.

41 **1353.7.** (a) No common interest development may require a homeowner to install or
42 repair a roof in a manner that is in violation of Section 13132.7 of the Health and Safety
43 Code.

44 (b) Governing documents of a common interest development located within a very
45 high fire severity zone, as designated by the Director of Forestry and Fire Protection
46 pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division
47 4 of the Public Resources Code or by a local agency pursuant to Chapter 6.8
48 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government
49 Code, shall allow for at least one type of fire retardant roof covering material that meets

1 the requirements of Section 13132.7 of the Health and Safety Code.

2 **1353.8.** The architectural guidelines of a common interest development shall not
3 prohibit or include conditions that have the effect of prohibiting the use of low water-
4 using plants as a group.

5 Article 2. Enforcement

6 **1354.** (a) The covenants and restrictions in the declaration shall be enforceable
7 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all
8 owners of separate interests in the development. Unless the declaration states otherwise,
9 these servitudes may be enforced by any owner of a separate interest or by the
10 association, or by both.

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

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

16 Article 3. Amendment

17 **1355.** (a) The declaration may be amended pursuant to the governing documents or this
18 title. Except as provided in Section 1356, an amendment is effective after (1) the approval
19 of the percentage of owners required by the governing documents has been given, (2) that
20 fact has been certified in a writing executed and acknowledged by the officer designated
21 in the declaration or by the association for that purpose, or if no one is designated, by the
22 president of the association, and (3) that writing has been recorded in each county in
23 which a portion of the common interest development is located.

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

39 **1355.5.** (a) Notwithstanding any provision of the governing documents of a common
40 interest development to the contrary, the board of directors of the association may, after
41 the developer of the common interest development has completed construction of the
42 development, has terminated construction activities, and has terminated his or her
43 marketing activities for the sale, lease, or other disposition of separate interests within the
44 development, adopt an amendment deleting from any of the governing documents any
45 provision which is unequivocally designed and intended, or which by its nature can only
46 have been designed or intended, to facilitate the developer in completing the construction

1 or marketing of the development. However, provisions of the governing documents
2 relative to a particular construction or marketing phase of the development may not be
3 deleted under the authorization of this subdivision until that construction or marketing
4 phase has been completed.

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

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

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

27 **1356.** (a) If in order to amend a declaration, the declaration requires owners having
28 more than 50 percent of the votes in the association, in a single class voting structure, or
29 owners having more than 50 percent of the votes in more than one class in a voting
30 structure with more than one class, to vote in favor of the amendment, the association, or
31 any owner of a separate interest, may petition the superior court of the county in which
32 the common interest development is located for an order reducing the percentage of the
33 affirmative votes necessary for such an amendment. The petition shall describe the effort
34 that has been made to solicit approval of the association members in the manner provided
35 in the declaration, the number of affirmative and negative votes actually received, the
36 number or percentage of affirmative votes required to effect the amendment in
37 accordance with the existing declaration, and other matters the petitioner considers
38 relevant to the court's determination. The petition shall also contain, as exhibits thereto,
39 copies of all of the following:

40 (1) The governing documents.

41 (2) A complete text of the amendment.

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

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

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

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

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

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

1 entitled to notice under the terms of the declaration.

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

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

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

11 (5) The amendment is reasonable.

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

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

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

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

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

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

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

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

43 **1357.** (a) The Legislature finds that there are common interest developments that have
44 been created with deed restrictions which do not provide a means for the property owners
45 to extend the term of the declaration. The Legislature further finds that covenants and
46 restrictions, contained in the declaration, are an appropriate method for protecting the
47 common plan of developments and to provide for a mechanism for financial support for
48 the upkeep of common areas including, but not limited to, roofs, roads, heating systems,
49 and recreational facilities. If declarations terminate prematurely, common interest
50 developments may deteriorate and the housing supply of affordable units could be
51 impacted adversely.

52 The Legislature further finds and declares that it is in the public interest to provide a
53 vehicle for extending the term of the declaration if owners having more than 50 percent

1 of the votes in the association choose to do so.

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

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

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

13 Article 4. Operating Rules

14 **1357.100.** As used in this article:

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

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

20 **1357.110.** An operating rule is valid and enforceable only if all of the following
21 requirements are satisfied:

22 (a) The rule is in writing.

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

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

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

30 (e) The rule is reasonable.

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

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

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

36 (3) Member discipline, including any schedule of monetary penalties for violation of
37 the governing documents and any procedure for the imposition of 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 physical
41 change to a member's separate interest or to the common area.

42 (7) Procedures for elections.

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

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

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

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

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

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

3 **1357.130.** (a) The board of directors shall provide written notice of a proposed rule
4 change to the members at least 30 days before making the rule change. The notice shall
5 include the text of the proposed rule change and a description of the purpose and effect of
6 the proposed rule change. Notice is not required under this subdivision if the board of
7 directors determines that an immediate rule change is necessary to address an imminent
8 threat to public health or safety or imminent risk of substantial economic loss to the
9 association.

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

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

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

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

24 **1357.140.** (a) Members of an association owning 5 percent or more of the separate
25 interests may call a special meeting of the members to reverse a rule change.

26 (b) A special meeting of the members may be called by delivering a written request to
27 the president or secretary of the board of directors, after which the board shall deliver
28 notice of the meeting to the association's members and hold the meeting in conformity
29 with Section 7511 of the Corporations Code. The written request may not be delivered
30 more than 30 days after the members of the association are notified of the rule change.
31 Members are deemed to have been notified of a rule change on delivery of notice of the
32 rule change, or on enforcement of the resulting rule, whichever is sooner. For the
33 purposes of Section 8330 of the Corporations Code, collection of signatures to call a
34 special meeting under this section is a purpose reasonably related to the interests of the
35 members of the association. A member request to copy or inspect the membership list
36 solely for that purpose may not be denied on the grounds that the purpose is not
37 reasonably related to the member's interests as a member.

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

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

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

50 (f) A rule change reversed under this section may not be readopted for one year after
51 the date of the meeting reversing the rule change. Nothing in this section precludes the
52 board of directors from adopting a different rule on the same subject as the rule change

1 that has been reversed.

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

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

8 **1357.150.** (a) This article applies to a rule change commenced on or after January 1,
9 2004.

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

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

15 **CHAPTER 3. OWNERSHIP RIGHTS AND INTERESTS**

16 **1358.** (a) In a community apartment project, any conveyance, judicial sale, or other
17 voluntary or involuntary transfer of the separate interest includes the undivided interest in
18 the community apartment project. Any conveyance, judicial sale, or other voluntary or
19 involuntary transfer of the owner's entire estate also includes the owner's membership
20 interest in the association.

21 (b) In a condominium project the common areas are not subject to partition, except as
22 provided in Section 1359. Any conveyance, judicial sale, or other voluntary or
23 involuntary transfer of the separate interest includes the undivided interest in the common
24 areas. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the
25 owner's entire estate also includes the owner's membership interest in the association.

26 (c) In a planned development, any conveyance, judicial sale, or other voluntary or
27 involuntary transfer of the separate interest includes the undivided interest in the common
28 areas, if any exist. Any conveyance, judicial sale, or other voluntary or involuntary
29 transfer of the owner's entire estate also includes the owner's membership interest in the
30 association.

31 (d) In a stock cooperative, any conveyance, judicial sale, or other voluntary or
32 involuntary transfer of the separate interest includes the ownership interest in the
33 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary or
34 involuntary transfer of the owner's entire estate also includes the owner's membership
35 interest in the association.

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

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

45 **1359.** (a) Except as provided in this section, the common areas in a condominium
46 project shall remain undivided, and there shall be no judicial partition thereof. Nothing in
47 this section shall be deemed to prohibit partition of a cotenancy in a condominium.

48 (b) The owner of a separate interest in a condominium project may maintain a partition

1 action as to the entire project as if the owners of all of the separate interests in the project
2 were tenants in common in the entire project in the same proportion as their interests in
3 the common areas. The court shall order partition under this subdivision only by sale of
4 the entire condominium project and only upon a showing of one of the following:

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

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

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

15 (4) The conditions for such a sale, set forth in the declaration, have been met. 1360. (a)
16 Subject to the provisions of the governing documents and other applicable provisions of
17 law, if the boundaries of the separate interest are contained within a building, the owner
18 of the separate interest may do the following:

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

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

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

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

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

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

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

43 **1360.5.** (a) No governing documents shall prohibit the owner of a separate interest
44 within a common interest development from keeping at least one pet within the common
45 interest development, subject to reasonable rules and regulations of the association. This
46 section may not be construed to affect any other rights provided by law to an owner of a
47 separate interest to keep a pet within the development.

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

51 (c) If the association implements a rule or regulation restricting the number of pets an
52 owner may keep, the new rule or regulation shall not apply to prohibit an owner from
53 continuing to keep any pet that the owner currently keeps in his or her separate interest if

1 the pet otherwise conforms with the previous rules or regulations relating to pets.

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

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

7 **1361.** Unless the declaration otherwise provides:

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

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

16 **1361.5.** Except as otherwise provided in law, an order of the court, or an order pursuant
17 to a final and binding arbitration decision, an association may not deny an owner or
18 occupant physical access to his or her separate interest, either by restricting access
19 through the common areas to the owner’s separate interest, or by restricting access solely
20 to the owner’s separate interest.

21 **1362.** Unless the declaration otherwise provides, in a condominium project, or in a
22 planned development in which the common areas are owned by the owners of the
23 separate interests, the common areas are owned as tenants in common, in equal shares,
24 one for each unit or lot.

25 **CHAPTER 4. GOVERNANCE**

26 **Article 1. Association**

27 **1363.** (a) A common interest development shall be managed by an association that may
28 be incorporated or unincorporated. The association may be referred to as a community
29 association.

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

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

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

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

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

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

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

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

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

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

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

37 **1363.001.** To the extent existing funds are available, the Department of Consumer
38 Affairs and the Department of Real Estate shall develop an on-line education course for
39 the board of directors of an association regarding the role, duties, laws, and
40 responsibilities of board members and prospective board members, and the nonjudicial
41 foreclosure process.

42 **1363.03.** (a) An association shall adopt rules, in accordance with the procedures
43 prescribed by Article 4 (commencing with Section 1357.100) of Chapter 2, that do all of
44 the following:

45 (1) Ensure that if any candidate or member advocating a point of view is provided
46 access to association media, newsletters, or Internet Web sites during a campaign, for
47 purposes that are reasonably related to that election, equal access shall be provided to all
48 candidates and members advocating a point of view, including those not endorsed by the
49 board, for purposes that are reasonably related to the election. The association shall not
50 edit or redact any content from these communications, but may include a statement
51 specifying that the candidate or member, and not the association, is responsible for that
52 content.

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

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

10 (4) Specify the qualifications for voting, the voting power of each membership, the
11 authenticity, validity, and effect of proxies, and the voting period for elections, including
12 the times at which polls will open and close, consistent with the governing documents.

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

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

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

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

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

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

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

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

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

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

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

47 (C) Receive ballots.

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

50 (E) Count and tabulate all votes.

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

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

53 (H) Perform any acts as may be proper to conduct the election with fairness to all
54 members in accordance with this section, the Corporations Code, and all applicable rules

1 of the association regarding the conduct of the election that are not in conflict with this
2 section.

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

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

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

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

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

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

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

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

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

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

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

1 (h) The sealed ballots at all times shall be in the custody of the inspector or inspectors
2 of election or at a location designated by the inspector or inspectors until after the
3 tabulation of the vote, and until the time allowed by Section 7527 of the Corporations
4 Code for challenging the election has expired, at which time custody shall be transferred
5 to the association. If there is a recount or other challenge to the election process, the
6 inspector or inspectors of election shall, upon written request, make the ballots available
7 for inspection and review by an association member or his or her authorized
8 representative. Any recount shall be conducted in a manner that preserves the
9 confidentiality of the vote.

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

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

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

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

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

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

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

29 **1363.04.** (a) Association funds shall not be used for campaign purposes in connection
30 with any association board election. Funds of the association shall not be used for
31 campaign purposes in connection with any other association election except to the extent
32 necessary to comply with duties of the association imposed by law.

33 (b) For the purposes of this section, "campaign purposes" includes, but is not limited
34 to, the following:

35 (1) Expressly advocating the election or defeat of any candidate that is on the
36 association election ballot.

37 (2) Including the photograph or prominently featuring the name of any candidate on a
38 communication from the association or its board, excepting the ballot and ballot
39 materials, within 30 days of an election. This is not a campaign purpose if the
40 communication is one for which subdivision (a) of Section 1363.03 requires that equal
41 access be provided to another candidate or advocate.

42 Article 2. Common Interest Development Open Meeting Act

43 **1363.05.** (a) This section shall be known and may be cited as the Common Interest
44 Development Open Meeting Act.

45 (b) Any member of the association may attend meetings of the board of directors of the
46 association, except when the board adjourns to executive session to consider litigation,
47 matters relating to the formation of contracts with third parties, member discipline,
48 personnel matters, or to meet with a member, upon the member's request, regarding the
49 member's payment of assessments, as specified in Section 1367 or 1367.1. The board of
50 directors of the association shall meet in executive session, if requested by a member who

1 may be subject to a fine, penalty, or other form of discipline, and the member shall be
2 entitled to attend the executive session.

3 (c) Any matter discussed in executive session shall be generally noted in the minutes of
4 the immediately following meeting that is open to the entire membership.

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

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

15 (f) Unless the time and place of meeting is fixed by the bylaws, or unless the bylaws
16 provide for a longer period of notice, members shall be given notice of the time and place
17 of a meeting as defined in subdivision (j), except for an emergency meeting, at least four
18 days prior to the meeting. Notice shall be given by posting the notice in a prominent
19 place or places within the common area and by mail to any owner who had requested
20 notification of board meetings by mail, at the address requested by the owner. Notice may
21 also be given, by mail or delivery of the notice to each unit in the development or by
22 newsletter or similar means of communication. The notice shall contain the agenda for
23 the meeting.

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

29 (h) The board of directors of the association shall permit any member of the association
30 to speak at any meeting of the association or the board of directors, except for meetings
31 of the board held in executive session. A reasonable time limit for all members of the
32 association to speak to the board of directors or before a meeting of the association shall
33 be established by the board of directors.

34 (i)(1) Except as described in paragraphs (2) to (4), inclusive, the board of directors of
35 the association may not discuss or take action on any item at a nonemergency meeting
36 unless the item was placed on the agenda included in the notice that was posted and
37 distributed pursuant to subdivision (f). This subdivision does not prohibit a resident who
38 is not a member of the board from speaking on issues not on the agenda.

39 (2) Notwithstanding paragraph (1), a member of the board of directors, a managing
40 agent or other agent of the board of directors, or a member of the staff of the board of
41 directors, may do any of the following:

42 (A) Briefly respond to statements made or questions posed by a person speaking at a
43 meeting as described in subdivision (h).

44 (B) Ask a question for clarification, make a brief announcement, or make a brief report
45 on his or her own activities, whether in response to questions posed by a member of the
46 association or based upon his or her own initiative.

47 (3) Notwithstanding paragraph (1), the board of directors or a member of the board of
48 directors, subject to rules or procedures of the board of directors, may do any of the
49 following:

50 (A) Provide a reference to, or provide other resources for factual information to, its
51 managing agent or other agents or staff.

52 (B) Request its managing agent or other agents or staff to report back to the board of
53 directors at a subsequent meeting concerning any matter, or take action to direct its
54 managing agent or other agents or staff to place a matter of business on a future agenda.

1 (C) Direct its managing agent or other agents or staff to perform administrative tasks
2 that are necessary to carry out this subdivision.

3 (4)(A) Notwithstanding paragraph (1), the board of directors may take action on any
4 item of business not appearing on the agenda posted and distributed pursuant to
5 subdivision (f) under any of the following conditions:

6 (i) Upon a determination made by a majority of the board of directors present at the
7 meeting that an emergency situation exists. An emergency situation exists if there are
8 circumstances that could not have been reasonably foreseen by the board, that require
9 immediate attention and possible action by the board, and that, of necessity, make it
10 impracticable to provide notice.

11 (ii) Upon a determination made by the board by a vote of two-thirds of the members
12 present at the meeting, or, if less than two-thirds of total membership of the board is
13 present at the meeting, by a unanimous vote of the members present, that there is a need
14 to take immediate action and that the need for action came to the attention of the board
15 after the agenda was posted and distributed pursuant to subdivision (f).

16 (iii) The item appeared on an agenda that was posted and distributed pursuant to
17 subdivision (f) for a prior meeting of the board of directors that occurred not more than
18 30 calendar days before the date that action is taken on the item and, at the prior meeting,
19 action on the item was continued to the meeting at which the action is taken.

20 (B) Before discussing any item pursuant to this paragraph, the board of directors shall
21 openly identify the item to the members in attendance at the meeting.

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

26 **1363.07.** (a) After an association acquires fee title to, or any easement right over, a
27 common area, unless the association's governing documents specify a different
28 percentage, the affirmative vote of members owning at least 67 percent of the separate
29 interests in the common interest development shall be required before the board of
30 directors may grant exclusive use of any portion of that common area to any member,
31 except for any of the following:

32 (1) A reconveyance of all or any portion of that common area to the subdivider to
33 enable the continuation of development that is in substantial conformance with a detailed
34 plan of phased development submitted to the Real Estate Commissioner with the
35 application for a public report.

36 (2) Any grant of exclusive use that is in substantial conformance with a detailed plan of
37 phased development submitted to the Real Estate Commissioner with the application for
38 a public report or in accordance with the governing documents approved by the Real
39 Estate Commissioner.

40 (3) Any grant of exclusive use that is for any of the following reasons:

41 (A) To eliminate or correct engineering errors in documents recorded with the county
42 recorder or on file with a public agency or utility company.

43 (B) To eliminate or correct encroachments due to errors in construction of any
44 improvements.

45 (C) To permit changes in the plan of development submitted to the Real Estate
46 Commissioner in circumstances where the changes are the result of topography,
47 obstruction, hardship, aesthetic considerations, or environmental conditions.

48 (D) To fulfill the requirement of a public agency.

49 (E) To transfer the burden of management and maintenance of any common area that is
50 generally inaccessible and not of general use to the membership at large of the
51 association.

52 (F) Any grant in connection with an expressly zoned industrial or commercial
53 development, or any grant within a subdivision of the type defined in Section 1373.

1 (b) Any measure placed before the members requesting that the board of directors grant
2 exclusive use of any portion of the common area shall specify whether the association
3 will receive any monetary consideration for the grant and whether the association or the
4 transferee will be responsible for providing any insurance coverage for exclusive use of
5 the common area.

6 **1363.09.** (a) A member of an association may bring a civil action for declaratory or
7 equitable relief for a violation of this article by an association of which he or she is a
8 member, including, but not limited to, injunctive relief, restitution, or a combination
9 thereof, within one year of the date the cause of action accrues. Upon a finding that the
10 election procedures of this article, or the adoption of and adherence to rules provided by
11 Article 4 (commencing with Section 1357.100) of Chapter 2, were not followed, a court
12 may void any results of the election.

13 (b) A member who prevails in a civil action to enforce his or her rights pursuant to this
14 article shall be entitled to reasonable attorney's fees and court costs, and the court may
15 impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that
16 each identical violation shall be subject to only one penalty if the violation affects each
17 member of the association equally. A prevailing association shall not recover any costs,
18 unless the court finds the action to be frivolous, unreasonable, or without foundation.

19 (c) A cause of action under Section 1363.03 with respect to access to association
20 resources by a candidate or member advocating a point of view, the receipt of a ballot by
21 a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection
22 and review after tabulation may be brought in small claims court if the amount of the
23 demand does not exceed the jurisdiction of that court.

24 Article 3. Managing Agents

25 **1363.1.** (a) A prospective managing agent of a common interest development shall
26 provide a written statement to the board of directors of the association of a common
27 interest development as soon as practicable, but in no event more than 90 days, before
28 entering into a management agreement which shall contain all of the following
29 information concerning the managing agent:

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

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

38 (A) What license is held.

39 (B) The dates the license is valid.

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

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

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

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

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

49 (b) As used in this section, a "managing agent" is a person or entity who, for
50 compensation or in expectation of compensation, exercises control over the assets of a

1 common interest development. A “managing agent” does not include either of the
2 following:

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

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

6 **1363.2.** (a) A managing agent of a common interest development who accepts or
7 receives funds belonging to the association shall deposit all such funds that are not placed
8 into an escrow account with a bank, savings association, or credit union or into an
9 account under the control of the association, into a trust fund account maintained by the
10 managing agent in a bank, savings association, or credit union in this state. All funds
11 deposited by the managing agent in the trust fund account shall be kept in this state in a
12 financial institution, as defined in Section 31041 of the Financial Code, which is insured
13 by the federal government, and shall be maintained there until disbursed in accordance
14 with written instructions from the association entitled to the funds.

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

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

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

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

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

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

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

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

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

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

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

49 (4) If there are any changes in the bond coverage or the companies providing the
50 coverage, the managing agent discloses that fact to the board of directors of each affected
51 association as soon as practical, but in no event more than 10 days after the change.

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

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

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

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

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

12 Article 4. Public Information

13 **1363.5.** (a) The articles of incorporation of a common interest development association
14 filed with the Secretary of State on or after January 1, 1995, shall include a statement,
15 which shall be in addition to the statement of purposes of the corporation, that does all of
16 the following:

17 (1) Identifies the corporation as an association formed to manage a common interest
18 development under the Davis-Stirling Common Interest Development Act.

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

23 (3) States the name and address of the association’s managing agent, as defined in
24 Section 1363.1, if any.

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

28 **1363.6.** (a) To assist with the identification of common interest developments, each
29 association, whether incorporated or unincorporated, shall submit to the Secretary of
30 State, on a form and for a fee not to exceed thirty dollars (\$30) that the Secretary of State
31 shall prescribe, the following information concerning the association and the
32 development that it manages:

33 (1) A statement that the association is formed to manage a common interest
34 development under the Davis-Stirling Common Interest Development Act.

35 (2) The name of the association.

36 (3) The street address of the association’s onsite office, or, if none, of the responsible
37 officer or managing agent of the association.

38 (4) The name, address, and either the daytime telephone number or e-mail address of
39 the president of the association, other than the address, telephone number, or e-mail
40 address of the association’s onsite office or managing agent of the association.

41 (5) The name, street address, and daytime telephone number of the association’s
42 managing agent, if any.

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

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

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

50 (9) The type of common interest development, as defined in subdivision (c) of Section

1 1351, managed by the association.

2 (10) The number of separate interests, as defined in subdivision (I) of Section 1351, in
3 the development.

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

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

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

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

16 (d) On and after January 1, 2006, the penalty for an incorporated association's
17 noncompliance with the initial or biennial filing requirements of this section shall be
18 suspension of the association's rights, privileges, and powers as a corporation and
19 monetary penalties, to the same extent and in the same manner as suspension and
20 monetary penalties imposed pursuant to Section 8810 of the Corporations Code.

21 (e) The Secretary of State shall make the information submitted pursuant to paragraph
22 (4) of subdivision (a) available only for governmental purposes and only to Members of
23 the Legislature and the Business, Transportation and Housing Agency, upon written
24 request. All other information submitted pursuant to this section shall be subject to public
25 inspection pursuant to the California Public Records Act, Chapter 3.5 (commencing with
26 Section 6250) of Division 7 of Title 1 of the Government Code. The information
27 submitted pursuant to this section shall be made available for governmental or public
28 inspection, as the case may be, on or before July 1, 2004, and thereafter.

29 Article 5. Dispute Resolution Procedure

30 **1363.810.** (a) This article applies to a dispute between an association and a member
31 involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual
32 Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title
33 1 of the Corporations Code), or under the governing documents of the common interest
34 development or association.

35 (b) This article supplements, and does not replace, Article 2 (commencing with Section
36 1369.510) of Chapter 7, relating to alternative dispute resolution as a prerequisite to an
37 enforcement action.

38 **1363.820.** (a) An association shall provide a fair, reasonable, and expeditious
39 procedure for resolving a dispute within the scope of this article.

40 (b) In developing a procedure pursuant to this article, an association shall make
41 maximum, reasonable use of available local dispute resolution programs involving a
42 neutral third party, including low-cost mediation programs such as those listed on the
43 Internet Web sites of the Department of Consumer Affairs and the United States
44 Department of Housing and Urban Development.

45 (c) If an association does not provide a fair, reasonable, and expeditious procedure for
46 resolving a dispute within the scope of this article, the procedure provided in Section
47 1363.840 applies and satisfies the requirement of subdivision (a).

48 **1363.830.** A fair, reasonable, and expeditious dispute resolution procedure shall at a
49 minimum satisfy all of the following requirements:

1 (a) The procedure may be invoked by either party to the dispute. A request invoking
2 the procedure shall be in writing.

3 (b) The procedure shall provide for prompt deadlines. The procedure shall state the
4 maximum time for the association to act on a request invoking the procedure.

5 (c) If the procedure is invoked by a member, the association shall participate in the
6 procedure.

7 (d) If the procedure is invoked by the association, the member may elect not to
8 participate in the procedure. If the member participates but the dispute is resolved other
9 than by agreement of the member, the member shall have a right of appeal to the
10 association's board of directors.

11 (e) A resolution of a dispute pursuant to the procedure, that is not in conflict with the
12 law or the governing documents, binds the association and is judicially enforceable. An
13 agreement reached pursuant to the procedure, that is not in conflict with the law or the
14 governing documents, binds the parties and is judicially enforceable.

15 (f) The procedure shall provide a means by which the member and the association may
16 explain their positions.

17 (g) A member of the association shall not be charged a fee to participate in the process.

18 **1363.840.** (a) This section applies in an association that does not otherwise provide a
19 fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in
20 this section is fair, reasonable, and expeditious, within the meaning of this article.

21 (b) Either party to a dispute within the scope of this article may invoke the following
22 procedure:

23 (1) The party may request the other party to meet and confer in an effort to resolve the
24 dispute. The request shall be in writing.

25 (2) A member of an association may refuse a request to meet and confer. The
26 association may not refuse a request to meet and confer.

27 (3) The association's board of directors shall designate a member of the board to meet
28 and confer.

29 (4) The parties shall meet promptly at a mutually convenient time and place, explain
30 their positions to each other, and confer in good faith in an effort to resolve the dispute.

31 (5) A resolution of the dispute agreed to by the parties shall be memorialized in writing
32 and signed by the parties, including the board designee on behalf of the association.

33 (c) An agreement reached under this section binds the parties and is judicially
34 enforceable if both of the following conditions are satisfied:

35 (1) The agreement is not in conflict with law or the governing documents of the
36 common interest development or association.

37 (2) The agreement is either consistent with the authority granted by the board of
38 directors to its designee or the agreement is ratified by the board of directors.

39 (d) A member of the association may not be charged a fee to participate in the process.

40 **1363.850.** The notice provided pursuant to Section 1369.590 shall include a description
41 of the internal dispute resolution process provided pursuant to this article.

42 CHAPTER 5. OPERATIONS

43 Article 1. Common Areas

44 **1364.** (a) Unless otherwise provided in the declaration of a common interest
45 development, the association is responsible for repairing, replacing, or maintaining the
46 common areas, other than exclusive use common areas, and the owner of each separate
47 interest is responsible for maintaining that separate interest and any exclusive use
48 common area appurtenant to the separate interest.

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

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

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

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

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

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

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

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

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

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

41 Article 2. Fiscal Matters

42 **1365.** Unless the governing documents impose more stringent standards, the
43 association shall prepare and distribute to all of its members the following documents:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (e) A statement describing the association's policies and practices in enforcing lien
23 rights or other legal remedies for default in payment of its assessments against its
24 members shall be annually delivered to the members not less than 30 days nor more than
25 90 days immediately preceding the beginning of the association's fiscal year.

26 (f)(1) A summary of the association's property, general liability, earthquake, flood, and
27 fidelity insurance policies, which shall be distributed not less than 30 days nor more than
28 90 days preceding the beginning of the association's fiscal year, that includes all of the
29 following information about each policy:

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

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

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

45 (4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-
46 point boldface type, the following statement: "This summary of the association's policies
47 of insurance provides only certain information, as required by subdivision (f) of Section
48 1365 of the Civil Code, and should not be considered a substitute for the complete policy
49 terms and conditions contained in the actual policies of insurance. Any association
50 member may, upon request and provision of reasonable notice, review the association's
51 insurance policies and, upon request and payment of reasonable duplication charges,
52 obtain copies of those policies. Although the association maintains the policies of
53 insurance specified in this summary, the association's policies of insurance may not
54 cover your property, including personal property or, real property improvements to or

1 around your dwelling, or personal injuries or other losses that occur within or around
2 your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying
3 all or a portion of any deductible that applies. Association members should consult with
4 their individual insurance broker or agent for appropriate additional coverage.”

5 **1365.1.** (a) The association shall distribute the written notice described in subdivision
6 (b) to each member of the association during the 60-day period immediately preceding
7 the beginning of the association’s fiscal year. The notice shall be printed in at least 12-
8 point type. An association distributing the notice to an owner of an interest that is
9 described in Section 11212 of the Business and Professions Code that is not otherwise
10 exempt from this section pursuant to subdivision (a) of Section 11211.7 may delete from
11 the notice described in subdivision (b) the portion regarding meetings and payment plans.

12 (b) The notice required by this section shall read as follows:

13 “NOTICE ASSESSMENTS AND FORECLOSURE

14 This notice outlines some of the rights and responsibilities of owners of
15 property in common interest developments and the associations that manage
16 them. Please refer to the sections of the Civil Code indicated for further
17 information. A portion of the information in this notice applies only to liens
18 recorded on or after January 1, 2003. You may wish to consult a lawyer if you
19 dispute an assessment.

20 ASSESSMENTS AND FORECLOSURE

21 Assessments become delinquent 15 days after they are due, unless the
22 governing documents provide for a longer time. The failure to pay association
23 assessments may result in the loss of an owner’s property through foreclosure.
24 Foreclosure may occur either as a result of a court action, known as judicial
25 foreclosure or without court action, often referred to as nonjudicial foreclosure.
26 For liens recorded on and after January 1, 2006, an association may not use
27 judicial or nonjudicial foreclosure to enforce that lien if the amount of the
28 delinquent assessments or dues, exclusive of any accelerated assessments, late
29 charges, fees, attorney’s fees, interest, and costs of collection, is less than one
30 thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in
31 excess of one thousand eight hundred dollars (\$1,800) or more than 12 months
32 delinquent, an association may use judicial or nonjudicial foreclosure subject to
33 the conditions set forth in Section 1367.4 of the Civil Code. When using judicial
34 or nonjudicial foreclosure, the association records a lien on the owner’s
35 property. The owner’s property may be sold to satisfy the lien if the amounts
36 secured by the lien are not paid. (Sections 1366, 1367.1, and 1367.4 of the Civil
37 Code)

38 In a judicial or nonjudicial foreclosure, the association may recover
39 assessments, reasonable costs of collection, reasonable attorney’s fees, late
40 charges, and interest. The association may not use nonjudicial foreclosure to
41 collect fines or penalties, except for costs to repair common areas damaged by a
42 member or a member’s guests, if the governing documents provide for this.
43 (Sections 1366 and 1367.1 of the Civil Code)

44 The association must comply with the requirements of Section 1367.1 of the
45 Civil Code when collecting delinquent assessments. If the association fails to
46 follow these requirements, it may not record a lien on the owner’s property until
47 it has satisfied those requirements. Any additional costs that result from
48 satisfying the requirements are the responsibility of the association. (Section
49 1367.1 of the Civil Code)

50 At least 30 days prior to recording a lien on an owner’s separate interest, the

1 association must provide the owner of record with certain documents by
2 certified mail, including a description of its collection and lien enforcement
3 procedures and the method of calculating the amount. It must also provide an
4 itemized statement of the charges owed by the owner. An owner has a right to
5 review the association's records to verify the debt. (Section 1367.1 of the Civil
6 Code)

7 If a lien is recorded against an owner's property in error, the person who
8 recorded the lien is required to record a lien release within 21 days, and to
9 provide an owner certain documents in this regard. (Section 1367.1 of the Civil
10 Code)

11 The collection practices of the association may be governed by state and
12 federal laws regarding fair debt collection. Penalties can be imposed for debt
13 collection practices that violate these laws.

14 PAYMENTS

15 When an owner makes a payment, he or she may request a receipt, and the
16 association is required to provide it. On the receipt, the association must indicate
17 the date of payment and the person who received it. The association must inform
18 owners of a mailing address for overnight payments. (Section 1367.1 of the
19 Civil Code)

20 An owner may, but is not obligated to, pay under protest any disputed charge
21 or sum levied by the association, including, but not limited to, an assessment,
22 fine, penalty, late fee, collection cost, or monetary penalty imposed as a
23 disciplinary measure, and by so doing, specifically reserve the right to contest
24 the disputed charge or sum in court or otherwise.

25 An owner may dispute an assessment debt by submitting a written request for
26 dispute resolution to the association as set forth in Article 5 (commencing with
27 Section 1368.810) of Chapter 4 of Title 6 of Division 2 of the Civil Code. In
28 addition, an association may not initiate a foreclosure without participating in
29 alternative dispute resolution with a neutral third party as set forth in Article 2
30 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 of
31 the Civil Code, if so requested by the owner. Binding arbitration shall not be
32 available if the association intends to initiate a judicial foreclosure.

33 An owner is not liable for charges, interest, and costs of collection, if it is
34 established that the assessment was paid properly on time. (Section 1367.1 of
35 the Civil Code)

36 MEETINGS AND PAYMENT PLANS

37 An owner of a separate interest that is not a timeshare may request the
38 association to consider a payment plan to satisfy a delinquent assessment. The
39 association must inform owners of the standards for payment plans, if any exist.
40 (Section 1367.1 of the Civil Code)

41 The board of directors must meet with an owner who makes a proper written
42 request for a meeting to discuss a payment plan when the owner has received a
43 notice of a delinquent assessment. These payment plans must conform with the
44 payment plan standards of the association, if they exist. (Section 1367.1 of the
45 Civil Code)"

46 (c) A member of an association may provide written notice by facsimile transmission
47 or United States mail to the association of a secondary address. If a secondary address is
48 provided, the association shall send any and all correspondence and legal notices required
49 pursuant to this article to both the primary and the secondary address.

1 **1365.2.** (a) For the purposes of this section, the following definitions shall apply:
2 (1) “Association records” means all of the following:
3 (A) Any financial document required to be provided to a member in Section 1365.
4 (B) Any financial document or statement required to be provided in Section 1368.
5 (C) Interim financial statements, periodic or as compiled, containing any of the
6 following:
7 (i) Balance sheet.
8 (ii) Income and expense statement.
9 (iii) Budget comparison.
10 (iv) General ledger. A “general ledger” is a report that shows all transactions that
11 occurred in an association account over a specified period of time.
12 The records described in this subparagraph shall be prepared in accordance with an
13 accrual or modified accrual basis of accounting.
14 (D) Executed contracts not otherwise privileged under law.
15 (E) Written board approval of vendor or contractor proposals or invoices.
16 (F) State and federal tax returns.
17 (G) Reserve account balances and records of payments made from reserve accounts.
18 (H) Agendas and minutes of meetings of the members, the board of directors and any
19 committees appointed by the board of directors pursuant to Section 7212 of the
20 Corporations Code; excluding, however, agendas, minutes, and other information from
21 executive sessions of the board of directors as described in Section 1363.05.
22 (I)(i) Membership lists, including name, property address, and mailing address, if the
23 conditions set forth in clause (ii) are met and except as otherwise provided in clause (iii).
24 (ii) The member requesting the list shall state the purpose for which the list is requested
25 which purpose shall be reasonably related to the requester’s interest as a member. If the
26 association reasonably believes that the information in the list will be used for another
27 purpose, it may deny the member access to the list. If the request is denied, in any
28 subsequent action brought by the member under subdivision (f), the association shall
29 have the burden to prove that the member would have allowed use of the information for
30 purposes unrelated to his or her interest as a member.
31 (iii) A member of the association may opt out of the sharing of his or her name,
32 property address, and mailing address by notifying the association in writing that he or
33 she prefers to be contacted via the alternative process described in subdivision (c) of
34 Section 8330 of the Corporations Code. This opt-out shall remain in effect until changed
35 by the member.
36 (J) Check registers.
37 (2) “Enhanced association records” means invoices, receipts and canceled checks for
38 payments made by the association, purchase orders approved by the association, credit
39 card statements for credit cards issued in the name of the association, statements for
40 services rendered, and reimbursement requests submitted to the association, provided that
41 the person submitting the reimbursement request shall be solely responsible for removing
42 all personal identification information from the request.
43 (b)(1) The association shall make available association records and enhanced
44 association records for the time periods and within the timeframes provided in
45 subdivisions (i) and (j) for inspection and copying by a member of the association, or the
46 member’s designated representative. The association may bill the requesting member for
47 the direct and actual cost of copying requested documents. The association shall inform
48 the member of the amount of the copying costs before copying the requested documents.
49 (2) A member of the association may designate another person to inspect and copy the
50 specified association records on the member’s behalf. The member shall make this
51 designation in writing.
52 (c)(1) The association shall make the specified association records available for
53 inspection and copying in the association’s business office within the common interest
54 development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (2) Except as provided by the attorney-client privilege, the association may not
53 withhold or redact information concerning the compensation paid to employees, vendors,
54 or contractors. Compensation information for individual employees shall be set forth by

1 job classification or title, not by the employee's name, social security number, or other
2 personal information.

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

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

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

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

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

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

30 (g) The provisions of this section apply to any community service organization or
31 similar entity, as defined in paragraph (3) of subdivision (c) of Section 1368, that is
32 related to the association, and this section shall operate to give a member of the
33 community service organization or similar entity a right to inspect and copy the records
34 of that organization or entity equivalent to that granted to association members by this
35 section.

36 (h) Requesting parties shall have the option of receiving specifically identified records
37 by electronic transmission or machine-readable storage media as long as those records
38 can be transmitted in a redacted format that does not allow the records to be altered. The
39 cost of duplication shall be limited to the direct cost of producing the copy of a record in
40 that electronic format. The association may deliver specifically identified records by
41 electronic transmission or machine-readable storage media as long as those records can
42 be transmitted in a redacted format that prevents the records from being altered.

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

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

46 (2) Minutes of member and board meetings shall be permanently made available. If a
47 committee has decisionmaking authority, minutes of the meetings of that committee shall
48 be made available commencing January 1, 2007, and shall thereafter be permanently
49 made available.

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

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

54 (2) Association records prepared during the previous two fiscal years, within 30

1 calendar days following the association's receipt of the request.

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

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

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

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

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

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

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

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

27 **1365.2.5.** (a) The disclosures required by this article with regard to an association or a
28 property shall be summarized on the following form:

29 **Assessment and Reserve Funding Disclosure Summary**

30 (1) The current regular assessment per ownership interest is \$_____ per _____.

31 Note: If assessments vary by the size or type of ownership interest, the
32 assessment applicable to this ownership interest may be found on page _____ of
33 the attached summary.

34 (2) Additional regular or special assessments that have already been scheduled
35 to be imposed or charged, regardless of the purpose, if they have been approved
36 by the board and/or members:

	Amount per	
	ownership	
	interest per	
	month or year	
	(If assessments	
	are variable,	
	see note	
Date	immediately	Purpose of the
assessment	below):	assessment:
will be due:		

1				
2	+-----+	+-----+	+-----+	+-----+
3				
4	+-----+	+-----+	+-----+	+-----+
5		Total:		
6	+-----+	+-----+	+-----+	+-----+

7 Note: If assessments vary by the size or type of ownership interest, the
8 assessment applicable to this ownership interest may be found on page ____ of
9 the attached report.

10 (3) Based upon the most recent reserve study and other information available
11 to the board of directors, will currently projected reserve account balances be
12 sufficient at the end of each year to meet the association's obligation for repair
13 and/or replacement of major components during the next 30 years?

14 Yes _____
15 No _____

16 (4) If the answer to (3) is no, what additional assessments or other
17 contributions to reserves would be necessary to ensure that sufficient reserve
18 funds will be available each year during the next 30 years that have not yet been
19 approved by the board or the members?

20	+-----+	+-----+	+-----+
21		Amount per	
22	Approximate date	ownership	
23	assessment	interest	
24	will be due:	per month or	
25		year:	
26	+-----+	+-----+	+-----+
27			
28	+-----+	+-----+	+-----+
29			
30	+-----+	+-----+	+-----+
31			
32	+-----+	+-----+	+-----+
33			
34	+-----+	+-----+	+-----+
35		Total:	
36	+-----+	+-----+	+-----+

37 (5) All major components are included in the reserve study and are included in
38 its calculations.

39 (6) Based on the method of calculation in paragraph (4) of subdivision (b) of
40 Section 1365.2.5, the estimated amount required in the reserve fund at the end of
41 the current fiscal year is \$____, based in whole or in part on the last reserve
42 study or update prepared by ____ as of ____ (month), ____ (year). The
43 projected reserve fund cash balance at the end of the current fiscal year is \$____,
44 resulting in reserves being ____ percent funded at this date. If an alternate, but
45 generally accepted, method of calculation is also used, the required reserve
46 amount is \$____. (See attached explanation)

47 (7) Based on the method of calculation in paragraph (4) of subdivision (b) of
48 Section 1365.2.5 of the Civil Code, the estimated amount required in the reserve
49 fund at the end of each of the next five budget years is \$____, and the
50 projected reserve fund cash balance in each of those years, taking into account

1 only assessments already approved and other known revenues, is \$_____,
2 leaving the reserve at _____ percent funding. If the reserve funding plan
3 approved by the association is implemented, the projected reserve fund cash
4 balance in each of those years will be \$_____, leaving the reserve at _____
5 percent funding.

6 Note: The financial representations set forth in this summary are based on the
7 best estimates of the preparer at that time. The estimates are subject to change.

8 (b) For the purposes of preparing a summary pursuant to this section:

9 (1) "Estimated remaining useful life" means the time reasonably calculated to remain
10 before a major component will require replacement.

11 (2) "Major component" has the meaning used in Section 1365.5. Components with an
12 estimated remaining useful life of more than 30 years may be included in a study as a
13 capital asset or disregarded from the reserve calculation, so long as the decision is
14 revealed in the reserve study report and reported in the Assessment and Reserve Funding
15 Disclosure Summary.

16 (3) The form set out in subdivision (a) shall accompany each pro forma operating
17 budget or summary thereof that is delivered pursuant to this article. The form may be
18 supplemented or modified to clarify the information delivered, so long as the minimum
19 information set out in subdivision (a) is provided.

20 (4) For the purpose of the report and summary, the amount of reserves needed to be
21 accumulated for a component at a given time shall be computed as the current cost of
22 replacement or repair multiplied by the number of years the component has been in
23 service divided by the useful life of the component. This shall not be construed to require
24 the board to fund reserves in accordance with this calculation.

25 **1365.3.** Unless the governing documents impose more stringent standards, any
26 community service organization as defined in paragraph (3) of subdivision (c) of Section
27 1368 whose funding from the association or its members exceeds 10 percent of the
28 organization's annual budget shall prepare and distribute to the association a report that
29 meets the requirements of Section 5012 of the Corporations Code, and that describes in
30 detail administrative costs and identifies the payees of those costs in a manner consistent
31 with the provisions of Section 1365.2. If the community service organization does not
32 comply with the standards, the report shall disclose the noncompliance in detail. If a
33 community service organization is responsible for the maintenance of major components
34 for which an association would otherwise be responsible, the community service
35 organization shall supply to the association the information regarding those components
36 that the association would use to complete disclosures and reserve reports required under
37 this article. An association may rely upon information received from a community
38 service organization, and shall provide access to the information pursuant to the
39 provisions of Section 1365.2.

40 **1365.5.** (a) Unless the governing documents impose more stringent standards, the
41 board of directors of the association shall do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **1365.6.** Notwithstanding any other law, and regardless of whether an association is a
30 corporation, as defined in Section 162 of the Corporations Code, the provisions of
31 Section 310 of the Corporations Code shall apply to any contract or other transaction
32 authorized, approved, or ratified by the board or a committee of the board.

33 Article 3. Insurance

34 **1365.7.** (a) A volunteer officer or volunteer director of an association, as defined in
35 subdivision (a) of Section 1351, which manages a common interest development that is
36 exclusively residential, shall not be personally liable in excess of the coverage of
37 insurance specified in paragraph (4) to any person who suffers injury, including, but not
38 limited to, bodily injury, emotional distress, wrongful death, or property damage or loss
39 as a result of the tortious act or omission of the volunteer officer or volunteer director if
40 all of the following criteria are met:

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

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

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

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

50 (A) At least five hundred thousand dollars (\$500,000) if the common interest

1 development consists of 100 or fewer separate interests.

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

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

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

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

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

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

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

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

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

30 **1365.9.** (a) It is the intent of the Legislature to offer civil liability protection to owners
31 of the separate interests in a common interest development that have common areas
32 owned in tenancy-in-common if the association carries a certain level of prescribed
33 insurance that covers a cause of action in tort.

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

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

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

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

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

46 Article 4. Assessments

47 **1366.** (a) Except as provided in this section, the association shall levy regular and
48 special assessments sufficient to perform its obligations under the governing documents
49 and this title. However, annual increases in regular assessments for any fiscal year, as
50 authorized by subdivision (b), shall not be imposed unless the board has complied with

1 subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the
2 approval of owners, constituting a quorum, casting a majority of the votes at a meeting or
3 election of the association conducted in accordance with Chapter 5 (commencing with
4 Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section
5 7613 of the Corporations Code. For the purposes of this section, “quorum” means more
6 than 50 percent of the owners of an association.

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

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

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

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

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

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

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

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

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

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

54 (3) Interest on all sums imposed in accordance with this section, including the

1 delinquent assessments, reasonable fees and costs of collection, and reasonable attorney's
2 fees, at an annual interest rate not to exceed 12 percent, commencing 30 days after the
3 assessment becomes due, unless the declaration specifies the recovery of interest at a rate
4 of a lesser amount, in which case the lesser rate of interest shall apply.

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

7 **1366.1.** An association shall not impose or collect an assessment or fee that exceeds the
8 amount necessary to defray the costs for which it is levied.

9 **1366.2.** (a) In order to facilitate the collection of regular assessments, special
10 assessments, transfer fees, and similar charges, the board of directors of any association is
11 authorized to record a statement or amended statement identifying relevant information
12 for the association. This statement may include any or all of the following information:

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

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

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

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

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

24 (6) If an amended statement is being recorded, the recording information identifying
25 the prior statement or statements which the amendment is superseding.(b) The county
26 recorder is authorized to charge a fee for recording the document described in subdivision
27 (a), which fee shall be based upon the number of pages in the document and the
28 recorder's per-page recording fee.

29 **1367.** (a) A regular or special assessment and any late charges, reasonable costs of
30 collection, and interest, as assessed in accordance with Section 1366, shall be a debt of
31 the owner of the separate interest at the time the assessment or other sums are levied.
32 Before an association may place a lien upon the separate interest of an owner to collect a
33 debt which is past due under this subdivision, the association shall notify the owner in
34 writing by certified mail of the fee and penalty procedures of the association, provide an
35 itemized statement of the charges owed by the owner, including items on the statement
36 which indicate the assessments owed, any late charges and the method of calculation, any
37 attorney's fees, and the collection practices used by the association, including the right of
38 the association to the reasonable costs of collection. In addition, any payments toward
39 that debt shall first be applied to the assessments owed, and only after the principal owed
40 is paid in full shall the payments be applied to interest or collection expenses.

41 (b) The amount of the assessment, plus any costs of collection, late charges, and
42 interest assessed in accordance with Section 1366, shall be a lien on the owner's interest
43 in the common interest development from and after the time the association causes to be
44 recorded with the county recorder of the county in which the separate interest is located, a
45 notice of delinquent assessment, which shall state the amount of the assessment and other
46 sums imposed in accordance with Section 1366, a legal description of the owner's
47 interest in the common interest development against which the assessment and other
48 sums are levied, the name of the record owner of the owner's interest in the common
49 interest development against which the lien is imposed, and, in order for the lien to be
50 enforced by nonjudicial foreclosure as provided in subdivision (e) the name and address
51 of the trustee authorized by the association to enforce the lien by sale. The notice of

1 delinquent assessment shall be signed by the person designated in the declaration or by
2 the association for that purpose, or if no one is designated, by the president of the
3 association, and mailed in the manner set forth in Section 2924b, to all record owners of
4 the owner's interest in the common interest development no later than 10 calendar days
5 after recordation. Upon payment of the sums specified in the notice of delinquent
6 assessment, the association shall cause to be recorded a further notice stating the
7 satisfaction and release of the lien thereof. A monetary penalty imposed by the
8 association as a means of reimbursing the association for costs incurred by the
9 association in the repair of damage to common areas and facilities for which the member
10 or the member's guests or tenants were responsible may become a lien against the
11 member's separate interest enforceable by the sale of the interest under Sections 2924,
12 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing
13 documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title
14 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for
15 associations of subdivisions that are being sold under authority of a subdivision public
16 report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business
17 and Professions Code.

18 (c) Except as indicated in subdivision (b), a monetary penalty imposed by the
19 association as a disciplinary measure for failure of a member to comply with the
20 governing instruments, except for the late payments, may not be characterized nor treated
21 in the governing instruments as an assessment which may become a lien against the
22 member's subdivision interest enforceable by the sale of the interest under Sections 2924,
23 2924b, and 2924c.

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

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

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

37 (g) This section only applies to liens recorded on or after January 1, 1986 and prior to
38 January 1, 2003.

39 **1367.1.** (a) A regular or special assessment and any late charges, reasonable fees and
40 costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined
41 in accordance with Section 1366, shall be a debt of the owner of the separate interest at
42 the time the assessment or other sums are levied. At least 30 days prior to recording a lien
43 upon the separate interest of the owner of record to collect a debt that is past due under
44 this subdivision, the association shall notify the owner of record in writing by certified
45 mail of the following:

46 (1) A general description of the collection and lien enforcement procedures of the
47 association and the method of calculation of the amount, a statement that the owner of the
48 separate interest has the right to inspect the association records, pursuant to Section 8333
49 of the Corporations Code, and the following statement in 14-point boldface type, if
50 printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE
51 INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN
52 YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

53 (2) An itemized statement of the charges owed by the owner, including items on the

1 statement which indicate the amount of any delinquent assessments, the fees and
2 reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if
3 any.

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

6 (4) The right to request a meeting with the board as provided by paragraph (3) of
7 subdivision (c).

8 (5) The right to dispute the assessment debt by submitting a written request for dispute
9 resolution to the association pursuant to the association's "meet and confer" program
10 required in Article 5 (commencing with Section 1363.810) of Chapter 4.

11 (6) The right to request alternative dispute resolution with a neutral third party pursuant
12 to Article 2 (commencing with Section 1369.510) of Chapter 7 before the association
13 may initiate foreclosure against the owner's separate interest, except that binding
14 arbitration shall not be available if the association intends to initiate a judicial
15 foreclosure.

16 (b) Any payments made by the owner of a separate interest toward the debt set forth, as
17 required in subdivision (a), shall first be applied to the assessments owed, and, only after
18 the assessments owed are paid in full shall the payments be applied to the fees and costs
19 of collection, attorney's fees, late charges, or interest. When an owner makes a payment,
20 the owner may request a receipt and the association shall provide it. The receipt shall
21 indicate the date of payment and the person who received it. The association shall
22 provide a mailing address for overnight payment of assessments.

23 (c)(1)(A) Prior to recording a lien for delinquent assessments, an association shall offer
24 the owner and, if so requested by the owner, participate in dispute resolution pursuant to
25 the association's "meet and confer" program required in Article 5 (commencing with
26 Section 1363.810) of Chapter 4.

27 (B) Prior to initiating a foreclosure for delinquent assessments, an association shall
28 offer the owner and, if so requested by the owner, shall participate in dispute resolution
29 pursuant to the association's "meet and confer" program required in Article 5
30 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution with
31 a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of
32 Chapter 7. The decision to pursue dispute resolution or a particular type of alternative
33 dispute resolution shall be the choice of the owner, except that binding arbitration shall
34 not be available if the association intends to initiate a judicial foreclosure.

35 (2) For liens recorded on or after January 1, 2006, the decision to record a lien for
36 delinquent assessments shall be made only by the board of directors of the association
37 and may not be delegated to an agent of the association. The board shall approve the
38 decision by a majority vote of the board members in an open meeting. The board shall
39 record the vote in the minutes of that meeting.

40 (3) An owner, other than an owner of any interest that is described in Section 11212 of
41 the Business and Professions Code that is not otherwise exempt from this section
42 pursuant to subdivision (a) of Section 11211.7, may submit a written request to meet with
43 the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The
44 association shall provide the owners the standards for payment plans, if any exist. The
45 board shall meet with the owner in executive session within 45 days of the postmark of
46 the request, if the request is mailed within 15 days of the date of the postmark of the
47 notice, unless there is no regularly scheduled board meeting within that period, in which
48 case the board may designate a committee of one or more members to meet with the
49 owner. Payment plans may incorporate any assessments that accrue during the payment
50 plan period. Payment plans shall not impede an association's ability to record a lien on
51 the owner's separate interest to secure payment of delinquent assessments. Additional
52 late fees shall not accrue during the payment plan period if the owner is in compliance
53 with the terms of the payment plan. In the event of a default on any payment plan, the
54 association may resume its efforts to collect the delinquent assessments from the time

1 prior to entering into the payment plan.

2 (d) The amount of the assessment, plus any costs of collection, late charges, and
3 interest assessed in accordance with Section 1366, shall be a lien on the owner's separate
4 interest in the common interest development from and after the time the association
5 causes to be recorded with the county recorder of the county in which the separate
6 interest is located, a notice of delinquent assessment, which shall state the amount of the
7 assessment and other sums imposed in accordance with Section 1366, a legal description
8 of the owner's separate interest in the common interest development against which the
9 assessment and other sums are levied, and the name of the record owner of the separate
10 interest in the common interest development against which the lien is imposed. The
11 itemized statement of the charges owed by the owner described in paragraph (2) of
12 subdivision (a) shall be recorded together with the notice of delinquent assessment. In
13 order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g),
14 the notice of delinquent assessment shall state the name and address of the trustee
15 authorized by the association to enforce the lien by sale. The notice of delinquent
16 assessment shall be signed by the person designated in the declaration or by the
17 association for that purpose, or if no one is designated, by the president of the association.
18 A copy of the recorded notice of delinquent assessment shall be mailed by certified mail
19 to every person whose name is shown as an owner of the separate interest in the
20 association's records, and the notice shall be mailed no later than 10 calendar days after
21 recordation. Within 21 days of the payment of the sums specified in the notice of
22 delinquent assessment, the association shall record or cause to be recorded in the office of
23 the county recorder in which the notice of delinquent assessment is recorded a lien
24 release or notice of rescission and provide the owner of the separate interest a copy of the
25 lien release or notice that the delinquent assessment has been satisfied. A monetary
26 charge imposed by the association as a means of reimbursing the association for costs
27 incurred by the association in the repair of damage to common areas and facilities for
28 which the member or the member's guests or tenants were responsible may become a lien
29 against the member's separate interest enforceable by the sale of the interest under
30 Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in
31 the governing documents. It is the intent of the Legislature not to contravene Section
32 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on
33 January 1, 1996, for associations of subdivisions that are being sold under authority of a
34 subdivision public report, pursuant to Part 2 (commencing with Section 11000) of
35 Division 4 of the Business and Professions Code.

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

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

45 (g) An association may not voluntarily assign or pledge the association's right to
46 collect payments or assessments, or to enforce or foreclose a lien to a third party, except
47 when the assignment or pledge is made to a financial institution or lender chartered or
48 licensed under federal or state law, when acting within the scope of that charter or
49 license, as security for a loan obtained by the association; however, the foregoing
50 provision may not restrict the right or ability of an association to assign any unpaid
51 obligations of a former member to a third party for purposes of collection. Subject to the
52 limitations of this subdivision, after the expiration of 30 days following the recording of a
53 lien created pursuant to subdivision (d), the lien may be enforced in any manner
54 permitted by law, including sale by the court, sale by the trustee designated in the notice

1 of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any
2 sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and
3 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The
4 fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d,
5 plus the cost of service for either of the following:

6 (1) The notice of default pursuant to subdivision (j) of Section 1367.1.

7 (2) The decision of the board to foreclose upon the separate interest of an owner as
8 described in paragraph (3) of subdivision (c) of Section 1367.4.

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

13 (i) If it is determined that a lien previously recorded against the separate interest was
14 recorded in error, the party who recorded the lien shall, within 21 calendar days, record or
15 cause to be recorded in the office of the county recorder in which the notice of delinquent
16 assessment is recorded a lien release or notice of rescission and provide the owner of the
17 separate interest with a declaration that the lien filing or recording was in error and a
18 copy of the lien release or notice of rescission.

19 (j) In addition to the requirements of Section 2924, a notice of default shall be served
20 by the association on the owner's legal representative in accordance with the manner of
21 service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title
22 5 of Part 2 of the Code of Civil Procedure. The owner's legal representative shall be the
23 person whose name is shown as the owner of a separate interest in the association's
24 records, unless another person has been previously designated by the owner as his or her
25 legal representative in writing and mailed to the association in a manner that indicates
26 that the association has received it.

27 (k) Upon receipt of a written request by an owner identifying a secondary address for
28 purposes of collection notices, the association shall send additional copies of any notices
29 required by this section to the secondary address provided. The association shall notify
30 owners of their right to submit secondary addresses to the association, at the time the
31 association issues the pro forma operating budget pursuant to Section 1365. The owner's
32 request shall be in writing and shall be mailed to the association in a manner that shall
33 indicate the association has received it. The owner may identify or change a secondary
34 address at any time, provided that, if a secondary address is identified or changed during
35 the collection process, the association shall only be required to send notices to the
36 indicated secondary address from the point the association receives the request.

37 (l)(1) An association that fails to comply with the procedures set forth in this section
38 shall, prior to recording a lien, recommence the required notice process.

39 (2) Any costs associated with recommencing the notice process shall be borne by the
40 association and not by the owner of a separate interest.

41 (m) This section only applies to liens recorded on or after January 1, 2003.

42 (n) This section is subordinate to, and shall be interpreted in conformity with, Section
43 1367.4.

44 **1367.4.** (a) Notwithstanding any law or any provisions of the governing documents to
45 the contrary, this section shall apply to debts for assessments that arise on and after
46 January 1, 2006.

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

52 (1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with
53 Section 116.110) of Title 1 of the Code of Civil Procedure. An association that chooses to

1 proceed by an action in small claims court, and prevails, may enforce the judgment as
2 permitted under Article 8 (commencing with Section 116.810) of Title 1 of the Code of
3 Civil Procedure. The amount that may be recovered in small claims court to collect upon
4 a debt for delinquent assessments may not exceed the jurisdictional limits of the small
5 claims court and shall be the sum of the following:

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

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

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

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

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

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

35 (2) The decision to initiate foreclosure of a lien for delinquent assessments that has
36 been validly recorded shall be made only by the board of directors of the association and
37 may not be delegated to an agent of the association. The board shall approve the decision
38 by a majority vote of the board members in an executive session. The board shall record
39 the vote in the minutes of the next meeting of the board open to all members. The board
40 shall maintain the confidentiality of the owner or owners of the separate interest by
41 identifying the matter in the minutes by the parcel number of the property, rather than the
42 name of the owner or owners. A board vote to approve foreclosure of a lien shall take
43 place at least 30 days prior to any public sale.

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

53 (4) A nonjudicial foreclosure by an association to collect upon a debt for delinquent
54 assessments shall be subject to a right of redemption. The redemption period within

1 which the separate interest may be redeemed from a foreclosure sale under this paragraph
2 ends 90 days after the sale. In addition to the requirements of Section 2924f, a notice of
3 sale in connection with an association’s foreclosure of a separate interest in a common
4 interest development shall include a statement that the property is being sold subject to
5 the right of redemption created in this paragraph.

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

10 **1367.5.** If it is determined through dispute resolution pursuant to the association’s
11 “meet and confer” program required in Article 5 (commencing with Section 1363.810) of
12 Chapter 4 or alternative dispute resolution with a neutral third party pursuant to Article 2
13 (commencing with Section 1369.510) of Chapter 7 that an association has recorded a lien
14 for a delinquent assessment in error, the association shall promptly reverse all late
15 charges, fees, interest, attorney’s fees, costs of collection, costs imposed for the notice
16 prescribed in subdivision (a) of Section 1367.1, and costs of recordation and release of
17 the lien authorized under subdivision (b) of Section 1367.4, and pay all costs related to
18 the dispute resolution or alternative dispute resolution.

19 **1367.6.** (a) If a dispute exists between the owner of a separate interest and the
20 association regarding any disputed charge or sum levied by the association, including, but
21 not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty
22 imposed as a disciplinary measure, and the amount in dispute does not exceed the
23 jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil
24 Procedure, the owner of the separate interest may, in addition to pursuing dispute
25 resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4, pay
26 under protest the disputed amount and all other amounts levied, including any fees and
27 reasonable costs of collection, reasonable attorney’s fees, late charges, and interest, if
28 any, pursuant to subdivision (e) of Section 1366, and commence an action in small claims
29 court pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code
30 of Civil Procedure.

31 (b) Nothing in this section shall impede an association’s ability to collect delinquent
32 assessments as provided in Sections 1367.1 and 1367.4.

33 CHAPTER 6. TRANSFER OF OWNERSHIP INTERESTS

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

39 (1) A copy of the governing documents of the common interest development, including
40 any operating rules, and including a copy of the association’s articles of incorporation, or,
41 if not incorporated, a statement in writing from an authorized representative of the
42 association that the association is not incorporated.

43 (2) If there is a restriction in the governing documents limiting the occupancy,
44 residency, or use of a separate interest on the basis of age in a manner different from that
45 provided in Section 51.3, a statement that the restriction is only enforceable to the extent
46 permitted by Section 51.3 and a statement specifying the applicable provisions of Section
47 51.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (g) For the purposes of this section, a person who acts as a community association
33 manager is an agent, as defined in Section 2297, of the association. 1368.1. (a) Any rule
34 or regulation of an association that arbitrarily or unreasonably restricts an owner’s ability
35 to market his or her interest in a common interest development is void.

36 (b) No association may adopt, enforce, or otherwise impose any rule or regulation that
37 does either of the following:

38 (1) Imposes an assessment or fee in connection with the marketing of an owner’s
39 interest in an amount that exceeds the association’s actual or direct costs. That assessment
40 or fee shall be deemed to violate the limitation set forth in Section 1366.1.

41 (2) Establishes an exclusive relationship with a real estate broker through which the
42 sale or marketing of interests in the development is required to occur. The limitation set
43 forth in this paragraph does not apply to the sale or marketing of separate interests owned
44 by the association or to the sale or marketing of common areas by the association.

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

47 (d) This section does not apply to rules or regulations made pursuant to Section 712 or
48 713 regarding real estate signs.

1 CHAPTER 7. CIVIL ACTIONS AND LIENS

2 Article 1. Miscellaneous Provisions

3 **1368.3.** An association established to manage a common interest development has
4 standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or
5 administrative proceedings in its own name as the real party in interest and without
6 joining with it the individual owners of the common interest development, in matters
7 pertaining to the following:

8 (a) Enforcement of the governing documents.

9 (b) Damage to the common area.

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

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

14 **1368.4.** (a) In an action maintained by an association pursuant to subdivision (b), (c),
15 or (d) of Section 1368.3, the amount of damages recovered by the association shall be
16 reduced by the amount of damages allocated to the association or its managing agents in
17 direct proportion to their percentage of fault based upon principles of comparative fault.
18 The comparative fault of the association or its managing agents may be raised by way of
19 defense, but shall not be the basis for a cross-action or separate action against the
20 association or its managing agents for contribution or implied indemnity, where the only
21 damage was sustained by the association or its members. It is the intent of the Legislature
22 in enacting this subdivision to require that comparative fault be pleaded as an affirmative
23 defense, rather than a separate cause of action, where the only damage was sustained by
24 the association or its members.

25 (b) In an action involving damages described in subdivision (b), (c), or (d) of Section
26 1368.3, the defendant or cross-defendant may allege and prove the comparative fault of
27 the association or its managing agents as a setoff to the liability of the defendant or cross-
28 defendant even if the association is not a party to the litigation or is no longer a party
29 whether by reason of settlement, dismissal, or otherwise.

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

31 (d) Nothing in this section affects a person's liability under Section 1431, or the
32 liability of the association or its managing agent for an act or omission which causes
33 damages to another.

34 **1368.5.** (a) Not later than 30 days prior to the filing of any civil action by the
35 association against the declarant or other developer of a common interest development
36 for alleged damage to the common areas, alleged damage to the separate interests that the
37 association is obligated to maintain or repair, or alleged damage to the separate interests
38 that arises out of, or is integrally related to, damage to the common areas or separate
39 interests that the association is obligated to maintain or repair, the board of directors of
40 the association shall provide a written notice to each member of the association who
41 appears on the records of the association when the notice is provided. This notice shall
42 specify all of the following:

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

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

46 (3) The time and place of this meeting.

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

1 action.

2 **1369.** In a condominium project, no labor performed or services or materials furnished
3 with the consent of, or at the request of, an owner in the condominium project or his or
4 her agent or his or her contractor shall be the basis for the filing of a lien against any
5 other property of any other owner in the condominium project unless that other owner has
6 expressly consented to or requested the performance of the labor or furnishing of the
7 materials or services. However, express consent shall be deemed to have been given by
8 the owner of any condominium in the case of emergency repairs thereto. Labor
9 performed or services or materials furnished for the common areas, if duly authorized by
10 the association, shall be deemed to be performed or furnished with the express consent of
11 each condominium owner. The owner of any condominium may remove his or her
12 condominium from a lien against two or more condominiums or any part thereof by
13 payment to the holder of the lien of the fraction of the total sum secured by the lien which
14 is attributable to his or her condominium.

15 **Article 2. Alternative Dispute Resolution**

16 **1369.510.** As used in this article:

17 (a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other
18 nonjudicial procedure that involves a neutral party in the decisionmaking process. The
19 form of alternative dispute resolution chosen pursuant to this article may be binding or
20 nonbinding, with the voluntary consent of the parties.

21 (b) “Enforcement action” means a civil action or proceeding, other than a cross-
22 complaint, for any of the following purposes:

23 (1) Enforcement of this title.

24 (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3
25 commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

26 (3) Enforcement of the governing documents of a common interest development.
27 **1369.520.** (a) An association or an owner or a member of a common interest development
28 may not file an enforcement action in the superior court unless the parties have
29 endeavored to submit their dispute to alternative dispute resolution pursuant to this
30 article.

31 (b) This section applies only to an enforcement action that is solely for declaratory,
32 injunctive, or writ relief, or for that relief in conjunction with a claim for monetary
33 damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221
34 of the Code of Civil Procedure.

35 (c) This section does not apply to a small claims action.

36 (d) Except as otherwise provided by law, this section does not apply to an assessment
37 dispute.

38 **1369.530.** (a) Any party to a dispute may initiate the process required by Section
39 1369.520 by serving on all other parties to the dispute a Request for Resolution. The
40 Request for Resolution shall include all of the following:

41 (1) A brief description of the dispute between the parties.

42 (2) A request for alternative dispute resolution.

43 (3) A notice that the party receiving the Request for Resolution is required to respond
44 within 30 days of receipt or the request will be deemed rejected.

45 (4) If the party on whom the request is served is the owner of a separate interest, a copy
46 of this article.

47 (b) Service of the Request for Resolution shall be by personal delivery, first-class mail,
48 express mail, facsimile transmission, or other means reasonably calculated to provide the
49 party on whom the request is served actual notice of the request.

1 (c) A party on whom a Request for Resolution is served has 30 days following service
2 to accept or reject the request. If a party does not accept the request within that period,
3 the request is deemed rejected by the party. 1369.540. (a) If the party on whom a
4 Request for Resolution is served accepts the request, the parties shall complete the
5 alternative dispute resolution within 90 days after the party initiating the request receives
6 the acceptance, unless this period is extended by written stipulation signed by both
7 parties.

8 (b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code
9 applies to any form of alternative dispute resolution initiated by a Request for Resolution
10 under this article, other than arbitration.

11 (c) The costs of the alternative dispute resolution shall be borne by the parties.
12 1369.550. If a Request for Resolution is served before the end of the applicable time
13 limitation for commencing an enforcement action, the time limitation is tolled during the
14 following periods:

15 (a) The period provided in Section 1369.530 for response to a Request for Resolution.

16 (b) If the Request for Resolution is accepted, the period provided by Section 1369.540
17 for completion of alternative dispute resolution, including any extension of time
18 stipulated to by the parties pursuant to Section 1369.540.

19 **1369.560.** (a) At the time of commencement of an enforcement action, the party
20 commencing the action shall file with the initial pleading a certificate stating that one or
21 more of the following conditions is satisfied:

22 (1) Alternative dispute resolution has been completed in compliance with this article.

23 (2) One of the other parties to the dispute did not accept the terms offered for
24 alternative dispute resolution.

25 (3) Preliminary or temporary injunctive relief is necessary.

26 (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a
27 motion to strike unless the court finds that dismissal of the action for failure to comply
28 with this article would result in substantial prejudice to one of the parties.

29 **1369.570.** (a) After an enforcement action is commenced, on written stipulation of the
30 parties, the matter may be referred to alternative dispute resolution. The referred action is
31 stayed. During the stay, the action is not subject to the rules implementing subdivision (c)
32 of Section 68603 of the Government Code.

33 (b) The costs of the alternative dispute resolution shall be borne by the parties.

34 **1369.580.** In an enforcement action in which fees and costs may be awarded pursuant
35 to subdivision (c) of Section 1354, the court, in determining the amount of the award,
36 may consider whether a party's refusal to participate in alternative dispute resolution
37 before commencement of the action was reasonable.

38 **1369.590.** (a) An association shall annually provide its members a summary of the
39 provisions of this article that specifically references this article. The summary shall
40 include the following language:

41 "Failure of a member of the association to comply with the alternative dispute
42 resolution requirements of Section 1369.520 of the Civil Code may result in the loss of
43 your right to sue the association or another member of the association regarding
44 enforcement of the governing documents or the applicable law."

45 (b) The summary shall be provided either at the time the pro forma budget required by
46 Section 1365 is distributed or in the manner prescribed in Section 5016 of the
47 Corporations Code. The summary shall include a description of the association's internal
48 dispute resolution process, as required by Section 1363.850.

1 CHAPTER 8. CONSTRUCTION OF INSTRUMENTS AND ZONING

2 **1370.** Any deed, declaration, or condominium plan for a common interest development
3 shall be liberally construed to facilitate the operation of the common interest
4 development, and its provisions shall be presumed to be independent and severable.
5 Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2 of Part 1 of
6 this division shall operate to invalidate any provisions of the governing documents of a
7 common interest development.

8 **1371.** In interpreting deeds and condominium plans, the existing physical boundaries of
9 a unit in a condominium project, when the boundaries of the unit are contained within a
10 building, or of a unit reconstructed in substantial accordance with the original plans
11 thereof, shall be conclusively presumed to be its boundaries rather than the metes and
12 bounds expressed in the deed or condominium plan, if any exists, regardless of settling or
13 lateral movement of the building and regardless of minor variance between boundaries
14 shown on the plan or in the deed and those of the building.

15 **1372.** Unless a contrary intent is clearly expressed, local zoning ordinances shall be
16 construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless
17 of whether the common interest development is a community apartment project,
18 condominium project, planned development, or stock cooperative.

19 **1373.** (a) The following provisions do not apply to a common interest development that
20 is limited to industrial or commercial uses by zoning or by a declaration of covenants,
21 conditions, and restrictions that has been recorded in the official records of each county
22 in which the common interest development is located:

23 (1) Section 1356.

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

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

27 (4) Section 1365.

28 (5) Section 1365.5.

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

30 (7) Section 1366.1.

31 (8) Section 1368.

32 (9) Section 1378.

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

38 **1374.** Nothing in this title may be construed to apply to a development wherein there
39 does not exist a common area as defined in subdivision (b) of Section 1351.

40 This section is declaratory of existing law.

41 CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

42 **1375.** (a) Before an association files a complaint for damages against a builder,
43 developer, or general contractor (“respondent”) of a common interest development based
44 upon a claim for defects in the design or construction of the common interest

1 development, all of the requirements of this section shall be satisfied with respect to the
2 builder, developer, or general contractor.

3 (b) The association shall serve upon the respondent a “Notice of Commencement of
4 Legal Proceedings.” The notice shall be served by certified mail to the registered agent of
5 the respondent, or if there is no registered agent, then to any officer of the respondent. If
6 there are no current officers of the respondent, service shall be upon the person or entity
7 otherwise authorized by law to receive service of process. Service upon the general
8 contractor shall be sufficient to initiate the process set forth in this section with regard to
9 any builder or developer, if the builder or developer is not amenable to service of process
10 by the foregoing methods. This notice shall toll all applicable statutes of limitation and
11 repose, whether contractual or statutory, by and against all potentially responsible parties,
12 regardless of whether they were named in the notice, including claims for indemnity
13 applicable to the claim for the period set forth in subdivision (c). The notice shall include
14 all of the following:

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

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

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

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

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

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

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

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

44 (1) The respondent shall provide the association with access to, for inspection and
45 copying of, all plans and specifications, subcontracts, and other construction files for the
46 project that are reasonably calculated to lead to the discovery of admissible evidence
47 regarding the defects claimed. The association shall provide the respondent with access
48 to, for inspection and copying of, all files reasonably calculated to lead to the discovery
49 of admissible evidence regarding the defects claimed, including all reserve studies,
50 maintenance records and any survey questionnaires, or results of testing to determine the
51 nature and extent of defects. To the extent any of the above documents are withheld
52 based on privilege, a privilege log shall be prepared and submitted to all other parties. All
53 other potentially responsible parties shall have the same rights as the respondent
54 regarding the production of documents upon receipt of written notice of the claim, and

1 shall produce all relevant documents within 60 days of receipt of the notice of the claim.

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

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

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

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

45 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of subdivision (e),
46 the association, respondent, subcontractors, design professionals, and their insurers who
47 have been sent a notice as described in paragraph (2) of subdivision (e) shall meet and
48 confer in an effort to select a dispute resolution facilitator to preside over the mandatory
49 dispute resolution process prescribed by this section. Any subcontractor or design
50 professional who has been given timely notice of this meeting but who does not
51 participate, waives any challenge he or she may have as to the selection of the dispute
52 resolution facilitator. The role of the dispute resolution facilitator is to attempt to resolve
53 the conflict in a fair manner. The dispute resolution facilitator shall be sufficiently
54 knowledgeable in the subject matter and be able to devote sufficient time to the case. The

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

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

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

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

37 (5) Any subcontractor or design professional who receives notice of the association's
38 claim without having previously received timely notice of the meet and confer to select
39 the dispute resolution facilitator shall be notified by the respondent regarding the name,
40 address, and telephone number of the dispute resolution facilitator. Any such
41 subcontractor or design professional may serve upon the parties and the dispute
42 resolution facilitator a written objection to the dispute resolution facilitator within 15
43 days of receiving notice of the claim. Within seven days after service of this objection,
44 the subcontractor or design professional may petition the superior court to replace the
45 dispute resolution facilitator. The court may replace the dispute resolution facilitator only
46 upon a showing of good cause, liberally construed. Failure to satisfy the deadlines set
47 forth in this subdivision shall constitute a waiver of the right to challenge the dispute
48 resolution facilitator.

49 (6) The costs of the dispute resolution facilitator shall be apportioned in the following
50 manner: one-third to be paid by the association; one-third to be paid by the respondent;
51 and one-third to be paid by the subcontractors and design professionals, as allocated
52 among them by the dispute resolution facilitator. The costs of the dispute resolution
53 facilitator shall be recoverable by the prevailing party in any subsequent litigation
54 pursuant to Section 1032 of the Code of Civil Procedure, provided however that any

1 nonsettling party may, prior to the filing of the complaint, petition the facilitator to
2 reallocate the costs of the dispute resolution facilitator as they apply to any nonsettling
3 party. The determination of the dispute resolution facilitator with respect to the allocation
4 of these costs shall be binding in any subsequent litigation. The dispute resolution
5 facilitator shall take into account all relevant factors and equities between all parties in
6 the dispute resolution process when reallocating costs.

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

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

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

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

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

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

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

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

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

39 (2) Provision of a more detailed list of defects by the association to the respondent after
40 the association completes a visual inspection of the project. This list of defects shall
41 provide sufficient detail for the respondent to ensure that all potentially responsible
42 subcontractors and design professionals are provided with notice of the dispute resolution
43 process. If not already completed prior to the case management meeting, the Notice of
44 Commencement of Legal Proceedings shall be served by the respondent on all additional
45 subcontractors and design professionals whose potential responsibility appears on the
46 face of the more detailed list of defects within seven days of receipt of the more detailed
47 list. The respondent shall serve a copy of the case management statement, including the
48 name, address, and telephone number of the dispute resolution facilitator, to all the
49 potentially responsible subcontractors and design professionals at the same time.

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

52 (4) Invasive testing conducted by the association, if the association deems appropriate.
53 All parties may observe and photograph any testing conducted by the association
54 pursuant to this paragraph, but may not take samples or direct testing unless, by mutual

1 agreement, costs of testing are shared by the parties.

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

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

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

9 (8) Facilitated dispute resolution of the claim, with all parties, including peripheral
10 parties, as appropriate, and insurers, if any, present and having settlement authority. The
11 dispute resolution facilitators shall endeavor to set specific times for the attendance of
12 specific parties at dispute resolution sessions. If the dispute resolution facilitator does not
13 set specific times for the attendance of parties at dispute resolution sessions, the dispute
14 resolution facilitator shall permit those parties to participate in dispute resolution sessions
15 by telephone.

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

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

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

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

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

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

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

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

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

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

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

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

52 (ii) The options that are available to address the problems, including the filing of a civil
53 action and a statement of the various alternatives that are reasonably foreseeable by the
54 association to pay for those options and whether these payments are expected to be made

1 from the use of reserve account funds or the imposition of regular or special assessments,
2 or emergency assessment increases.

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

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

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

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

15 (I) Except for the purpose of in camera review as provided in subdivision (c) of Section
16 1375.05, all defect lists and demands, communications, negotiations, and settlement
17 offers made in the course of the prelitigation dispute resolution process provided by this
18 section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive, of the
19 Evidence Code and all applicable decisional law. This inadmissibility shall not be
20 extended to any other documents or communications which would not otherwise be
21 deemed inadmissible.

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

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

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

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

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

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

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

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

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

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

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

16 (p) As used in this section:

17 (1) "Association" shall have the same meaning as defined in subdivision (a) of Section
18 1351.

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

20 (3) "Common interest development" shall have the same meaning as in subdivision (c)
21 of Section 1351, except that it shall not include developments or projects with less than
22 20 units.

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

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

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

30 **1375.05.** (a) Upon the completion of the mandatory prefiling dispute resolution process
31 described in Section 1375, if the parties have not settled the matter, the association or its
32 assignee may file a complaint in the superior court in the county in which the project is
33 located. Those matters shall be given trial priority.

34 (b) In assigning trial priority, the court shall assign the earliest possible trial date,
35 taking into consideration the pretrial preparation completed pursuant to Section 1375, and
36 shall deem the complaint to have been filed on the date of service of the Notice of
37 Commencement of Legal Proceedings described under Section 1375.

38 (c) Any respondent, subcontractor, or design professional who received timely prior
39 notice of the inspections and testing conducted under Section 1375 shall be prohibited
40 from engaging in additional inspection or testing, except if all of the following specific
41 conditions are met, upon motion to the court:

42 (1) There is an insurer for a subcontractor or design professional, that did not have
43 timely notice that legal proceedings were commenced under Section 1375 at least 30 days
44 prior to the commencement of inspections or testing pursuant to paragraph (6) of
45 subdivision (h) of Section 1375.

46 (2) The insurer's insured did not participate in any inspections or testing conducted
47 under the provisions of paragraph (6) of subdivision (h) of Section 1375.

48 (3) The insurer has, after receiving notice of a complaint filed in superior court under
49 subdivision (a), retained separate counsel, who did not participate in the Section 1375
50 dispute resolution process, to defend its insured as to the allegations in the complaint.

51 (4) It is reasonably likely that the insured would suffer prejudice if additional
52 inspections or testing are not permitted.

53 (5) The information obtainable through the proposed additional inspections or testing is

1 not available through any reasonable alternative sources.

2 If the court permits additional inspections or testing upon finding that these
3 requirements are met, any additional inspections or testing shall be limited to the extent
4 reasonably necessary to avoid the likelihood of prejudice and shall be coordinated among
5 all similarly situated parties to ensure that they occur without unnecessary duplication.
6 For purposes of providing notice to an insurer prior to inspections or testing under
7 paragraph (6) of subdivision (h) of Section 1375, if notice of the proceedings was not
8 provided by the insurer's insured, notice may be made via certified mail either by the
9 subcontractor, design professional, association, or respondent to the address specified in
10 the Statement of Insurance provided under paragraph (2) of subdivision (e) of Section
11 1375. Nothing herein shall affect the rights of an intervenor who files a complaint in
12 intervention. If the association alleges defects that were not specified in the prefiling
13 dispute resolution process under Section 1375, the respondent, subcontractor, and design
14 professionals shall be permitted to engage in testing or inspection necessary to respond to
15 the additional claims. A party who seeks additional inspections or testing based upon the
16 amendment of claims shall apply to the court for leave to conduct those inspections or
17 that testing. If the court determines that it must review the defect claims alleged by the
18 association in the prefiling dispute resolution process in order to determine whether the
19 association alleges new or additional defects, this review shall be conducted in camera.
20 Upon objection of any party, the court shall refer the matter to a judge other than the
21 assigned trial judge to determine if the claim has been amended in a way that requires
22 additional testing or inspection.

23 (d) Any subcontractor or design professional who had notice of the facilitated dispute
24 resolution conducted under Section 1375 but failed to attend, or attended without
25 settlement authority, shall be bound by the amount of any settlement reached in the
26 facilitated dispute resolution in any subsequent trial, although the affected party may
27 introduce evidence as to the allocation of the settlement. Any party who failed to
28 participate in the facilitated dispute resolution because the party did not receive timely
29 notice of the mediation shall be relieved of any obligation to participate in the settlement.
30 Notwithstanding any privilege applicable to the prefiling dispute resolution process
31 provided by Section 1375, evidence may be introduced by any party to show whether a
32 subcontractor or design professional failed to attend or attended without settlement
33 authority. The binding effect of this subdivision shall in no way diminish or reduce a
34 nonsettling subcontractor or design professional's right to defend itself or assert all
35 available defenses relevant to its liability in any subsequent trial. For purposes of this
36 subdivision, a subcontractor or design professional shall not be deemed to have attended
37 without settlement authority because it asserted defenses to its potential liability.

38 (e) Notice of the facilitated dispute resolution conducted under Section 1375 must be
39 mailed by the respondent no later than 20 days prior to the date of the first facilitated
40 dispute resolution session to all parties. Notice shall also be mailed to each of these
41 parties' known insurance carriers. Mailing of this notice shall be by certified mail. Any
42 subsequent facilitated dispute resolution notices shall be served by any means reasonably
43 calculated to provide those parties actual notice.

44 (f) As to the complaint, the order of discovery shall, at the request of any defendant,
45 except upon a showing of good cause, permit the association's expert witnesses to be
46 deposed prior to any percipient party depositions. The depositions shall, at the request of
47 the association, be followed immediately by the defendant's experts and then by the
48 subcontractors' and design professionals' experts, except on a showing of good cause.
49 For purposes of this section, in determining what constitutes "good cause," the court shall
50 consider, among other things, the goal of early disclosure of defects and whether the
51 expert is prepared to render a final opinion, except that the court may modify the scope of
52 any expert's deposition to address those concerns.

53 (g)(1) The only method of seeking judicial relief for the failure of the association or the
54 respondent to complete the dispute resolution process under Section 1375 shall be the

1 assertion, as provided for in this subdivision, of a procedural deficiency to an action for
2 damages by the association against the respondent after that action has been filed. A
3 verified application asserting a procedural deficiency shall be filed with the court no later
4 than 90 days after the answer to the plaintiff's complaint has been served, unless the court
5 finds that extraordinary conditions exist.

6 (2) Upon the verified application of the association or the respondent alleging
7 substantial noncompliance with Section 1375, the court shall schedule a hearing within
8 21 days of the application to determine whether the association or respondent has
9 substantially complied with this section. The issue may be determined upon affidavits or
10 upon oral testimony, in the discretion of the court.

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

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

23 (h) This section is operative on July 1, 2002, but does not apply to any action or
24 proceeding pending on that date.

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

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

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

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

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

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

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

53 (d) For the purposes of the disclosures required pursuant to this section, the term

1 “defects” shall be defined to include any damage resulting from defects.

2 CHAPTER 10. IMPROVEMENTS

3 **1376.** (a) Any covenant, condition, or restriction contained in any deed, contract,
4 security instrument, or other instrument affecting the transfer or sale of, or any interest in,
5 a common interest development that effectively prohibits or restricts the installation or
6 use of a video or television antenna, including a satellite dish, or that effectively prohibits
7 or restricts the attachment of that antenna to a structure within that development where
8 the antenna is not visible from any street or common area, except as otherwise prohibited
9 or restricted by law, is void and unenforceable as to its application to the installation or
10 use of a video or television antenna that has a diameter or diagonal measurement of 36
11 inches or less.

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

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

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

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

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

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

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

37 **1378.** (a) This section applies if an association’s governing documents require
38 association approval before an owner of a separate interest may make a physical change
39 to the owner’s separate interest or to the common area. In reviewing and approving or
40 disapproving a proposed change, the association shall satisfy the following requirements:

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

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

48 (3) Notwithstanding a contrary provision of the governing documents, a decision on a
49 proposed change may not violate any governing provision of law, including, but not

1 limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section
2 12900) of Division 3 of Title 2 of the Government Code), or a building code or other
3 applicable law governing land use or public safety.

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

8 (5) If a proposed change is disapproved, the applicant is entitled to reconsideration by
9 the board of directors of the association that made the decision, at an open meeting of the
10 board. This paragraph does not require reconsideration of a decision that is made by the
11 board of directors or a body that has the same membership as the board of directors, at a
12 meeting that satisfies the requirements of Section 1363.05. Reconsideration by the board
13 does not constitute dispute resolution within the meaning of Section 1363.820.

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

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

CORPORATIONS CODE PROVISIONS

1 **7211.** (a) Unless otherwise provided in the articles or in the bylaws, all of the following
2 apply:

3 (1) Meetings of the board may be called by the chair of the board or the president or
4 any vice president or the secretary or any two directors.

5 (2) Regular meetings of the board may be held without notice if the time and place of
6 the meetings are fixed by the bylaws or the board. Special meetings of the board shall be
7 held upon four days' notice by first-class mail or 48 hours' notice delivered personally or
8 by telephone, including a voice messaging system or by electronic transmission by the
9 corporation (Section 20). The articles or bylaws may not dispense with notice of a special
10 meeting. A notice, or waiver of notice, need not specify the purpose of any regular or
11 special meeting of the board.

12 (3) Notice of a meeting need not be given to a director who provided a waiver of notice
13 or consent to holding the meeting or an approval of the minutes thereof in writing,
14 whether before or after the meeting, or who attends the meeting without protesting, prior
15 thereto or at its commencement, the lack of notice to that director. These waivers,
16 consents and approvals shall be filed with the corporate records or made a part of the
17 minutes of the meetings.

18 (4) A majority of the directors present, whether or not a quorum is present, may
19 adjourn any meeting to another time and place. If the meeting is adjourned for more than
20 24 hours, notice of an adjournment to another time or place shall be given prior to the
21 time of the adjourned meeting to the directors who were not present at the time of the
22 adjournment.

23 (5) Meetings of the board may be held at a place within or without the state that has
24 been designated in the notice of the meeting or, if not stated in the notice or if there is no
25 notice, designated in the bylaws or by resolution of the board.

26 (6) Members of the board may participate in a meeting through use of conference
27 telephone, electronic video screen communication, or electronic transmission by and to
28 the corporation (Sections 20 and 21). Participation in a meeting through use of
29 conference telephone or electronic video screen communication pursuant to this
30 subdivision constitutes presence in person at that meeting as long as all members
31 participating in the meeting are able to hear one another. Participation in a meeting
32 through use of electronic transmission by and to the corporation, other than conference
33 telephone and electronic video screen communication, pursuant to this subdivision
34 constitutes presence in person at that meeting if both of the following apply:

35 (A) Each member participating in the meeting can communicate with all of the other
36 members concurrently.

37 (B) Each member is provided the means of participating in all matters before the board,
38 including, without limitation, the capacity to propose, or to interpose an objection to, a
39 specific action to be taken by the corporation.

40 (7) A majority of the number of directors authorized in the articles or bylaws
41 constitutes a quorum of the board for the transaction of business. The articles or bylaws
42 may not provide that a quorum shall be less than one-fifth the number of directors
43 authorized in the articles or bylaws, or less than two, whichever is larger, unless the
44 number of directors authorized in the articles or bylaws is one, in which case one director
45 constitutes a quorum.

46 (8) Subject to the provisions of Sections 7212, 7233, 7234, and subdivision (e) of
47 Section 7237 and Section 5233, insofar as it is made applicable pursuant to Section 7238,
48 an act or decision done or made by a majority of the directors present at a meeting duly
49 held at which a quorum is present is the act of the board. The articles or bylaws may not
50 provide that a lesser vote than a majority of the directors present at a meeting is the act of
51 the board. A meeting at which a quorum is initially present may continue to transact

1 business notwithstanding the withdrawal of directors, if any action taken is approved by
2 at least a majority of the required quorum for that meeting, or a greater number required
3 by this division, the articles or bylaws.

4 (b) An action required or permitted to be taken by the board may be taken without a
5 meeting, if all members of the board shall individually or collectively consent in writing
6 to that action. The written consent or consents shall be filed with the minutes of the
7 proceedings of the board. The action by written consent shall have the same force and
8 effect as a unanimous vote of the directors. For purposes of this subdivision only, “all
9 members of the board” does not include an “interested director” as defined in Section
10 5233, insofar as it is made applicable pursuant to Section 7238.

11 (c) This section applies also to incorporators, to committees of the board, and to action
12 by those incorporators or committees mutatis mutandis.

13 **7510.** (a) Meetings of members may be held at a place within or without this state as
14 may be stated in or fixed in accordance with the bylaws. If no other place is stated or so
15 fixed, meetings of members shall be held at the principal executive office of the
16 corporation. Unless prohibited by the bylaws of the corporation, if authorized by the
17 board of directors in its sole discretion, and subject to the requirement of consent in
18 clause (b) of Section 20 and those guidelines and procedures as the board of directors
19 may adopt, members not physically present in person (or, if proxies are allowed, by
20 proxy) at a meeting of members may, by electronic transmission by and to the
21 corporation (Sections 20 and 21) or by electronic video screen communication,
22 participate in a meeting of members, be deemed present in person (or, if proxies are
23 allowed, by proxy), and vote at a meeting of members whether that meeting is to be held
24 at a designated place or in whole or in part by means of electronic transmission by and to
25 the corporation or by electronic video screen communication, in accordance with
26 subdivision (f).

27 (b) A regular meeting of members shall be held on a date and time, and with the
28 frequency stated in or fixed in accordance with the bylaws, but in any event in each year
29 in which directors are to be elected at that meeting for the purpose of conducting such
30 election, and to transact any other proper business which may be brought before the
31 meeting.

32 (c) If a corporation with members is required by subdivision (b) to hold a regular
33 meeting and fails to hold the regular meeting for a period of 60 days after the date
34 designated therefor or, if no date has been designated, for a period of 15 months after the
35 formation of the corporation or after its last regular meeting, or if the corporation fails to
36 hold a written ballot for a period of 60 days after the date designated therefor, then the
37 superior court of the proper county may summarily order the meeting to be held or the
38 ballot to be conducted upon the application of a member or the Attorney General, after
39 notice to the corporation giving it an opportunity to be heard.

40 (d) The votes represented, either in person (or, if proxies are allowed, by proxy), at a
41 meeting called or by written ballot ordered pursuant to subdivision (c), and entitled to be
42 cast on the business to be transacted shall constitute a quorum, notwithstanding any
43 provision of the articles or bylaws or in this part to the contrary. The court may issue such
44 orders as may be appropriate including, without limitation, orders designating the time
45 and place of the meeting, the record date for determination of members entitled to vote,
46 and the form of notice of the meeting.

47 (e) Special meetings of members for any lawful purpose may be called by the board,
48 the chairman of the board, the president, or such other persons, if any, as are specified in
49 the bylaws. In addition, special meetings of members for any lawful purpose may be
50 called by 5 percent or more of the members.

51 (f) A meeting of the members may be conducted, in whole or in part, by electronic
52 transmission by and to the corporation or by electronic video screen communication (1) if
53 the corporation implements reasonable measures to provide members in person (or, if

1 proxies are allowed, by proxy) a reasonable opportunity to participate in the meeting and
2 to vote on matters submitted to the members, including an opportunity to read or hear the
3 proceedings of the meeting substantially concurrently with those proceedings, and (2) if
4 any member votes or takes other action at the meeting by means of electronic
5 transmission to the corporation or electronic video screen communication, a record of
6 that vote or action is maintained by the corporation. Any request by a corporation to a
7 member pursuant to clause (b) of Section 20 for consent to conduct a meeting of
8 members by electronic transmission by and to the corporation, shall include a notice that
9 absent consent of the member pursuant to clause (b) of Section 20, the meeting shall be
10 held at a physical location in accordance with subdivision (a).

11 **7511.** (a) Whenever members are required or permitted to take any action at a meeting,
12 a written notice of the meeting shall be given not less than 10 nor more than 90 days
13 before the date of the meeting to each member who, on the record date for notice of the
14 meeting, is entitled to vote thereat; provided, however, that if notice is given by mail, and
15 the notice is not mailed by first-class, registered, or certified mail, that notice shall be
16 given not less than 20 days before the meeting. Subject to subdivision (f), and subdivision
17 (b) of Section 7512, the notice shall state the place, date and time of the meeting, the
18 means of electronic transmission by and to the corporation (Sections 20 and 21) or
19 electronic video screen communication, if any, by which members may participate in that
20 meeting, and (1) in the case of a special meeting, the general nature of the business to be
21 transacted, and no other business may be transacted, or (2) in the case of the regular
22 meeting, those matters which the board, at the time the notice is given, intends to present
23 for action by the members, but, except as provided in subdivision (b) of Section 7512,
24 any proper matter may be presented at the meeting for the action. The notice of any
25 meeting at which directors are to be elected shall include the names of all those who are
26 nominees at the time the notice is given to members.

27 (b) Notice of a members' meeting or any report shall be given personally, by electronic
28 transmission by a corporation, or by mail or other means of written communication,
29 addressed to a member at the address of the member appearing on the books of the
30 corporation or given by the member to the corporation for purpose of notice; or if no such
31 address appears or is given, at the place where the principal office of the corporation is
32 located or by publication at least once in a newspaper of general circulation in the county
33 in which the principal office is located. An affidavit of giving of any notice or report in
34 accordance with the provisions of this part, executed by the secretary, assistant secretary
35 or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

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

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

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

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

53 (c) Upon request in writing to the corporation addressed to the attention of the

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

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

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

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

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

44 **7512.** (a) One-third of the voting power, represented in person or by proxy, shall
45 constitute a quorum at a meeting of members, but, subject to subdivisions (b) and (c), a
46 bylaw may set a different quorum. Any bylaw amendment to increase the quorum may be
47 adopted only by approval of the members (Section 5034). If a quorum is present, the
48 affirmative vote of the majority of the voting power represented at the meeting, entitled
49 to vote, and voting on any matter shall be the act of the members unless the vote of a
50 greater number or voting by classes is required by this part or the articles or bylaws.

51 (b) Where a bylaw authorizes a corporation to conduct a meeting with a quorum of less
52 than one-third of the voting power, then the only matters that may be voted upon at any
53 regular meeting actually attended, in person or by proxy, by less than one-third of the

1 voting power are matters notice of the general nature of which was given, pursuant to the
2 first sentence of subdivision (a) of Section 7511.

3 (c) Subject to subdivision (b), the members present at a duly called or held meeting at
4 which a quorum is present may continue to transact business until adjournment
5 notwithstanding the withdrawal of enough members to leave less than a quorum, if any
6 action taken (other than adjournment) is approved by at least a majority of the members
7 required to constitute a quorum or, if required by this division, or by the articles or the
8 bylaws, the vote of the greater number or voting by classes.

9 (d) In the absence of a quorum, any meeting of members may be adjourned from time
10 to time by the vote of a majority of the votes represented either in person or by proxy, but
11 no other business may be transacted, except as provided in subdivision (c).

12 **7513.** (a) Subject to subdivision (e), and unless prohibited in the articles or bylaws,
13 any action which may be taken at any regular or special meeting of members may be
14 taken without a meeting if the corporation distributes a written ballot to every member
15 entitled to vote on the matter. Unless otherwise provided by the articles or bylaws and if
16 approved by the board of directors, that ballot and any related material may be sent by
17 electronic transmission by the corporation (Section 20) and responses may be returned to
18 the corporation by electronic transmission to the corporation (Section 21). That ballot
19 shall set forth the proposed action, provide an opportunity to specify approval or
20 disapproval of any proposal, and provide a reasonable time within which to return the
21 ballot to the corporation.

22 (b) Approval by written ballot pursuant to this section shall be valid only when the
23 number of votes cast by ballot within the time period specified equals or exceeds the
24 quorum required to be present at a meeting authorizing the action, and the number of
25 approvals equals or exceeds the number of votes that would be required to approve at a
26 meeting at which the total number of votes cast was the same as the number of votes cast
27 by ballot.

28 (c) Ballots shall be solicited in a manner consistent with the requirements of
29 subdivision (b) of Section 7511 and Section 7514. All such solicitations shall indicate the
30 number of responses needed to meet the quorum requirement and, with respect to ballots
31 other than for the election of directors, shall state the percentage of approvals necessary
32 to pass the measure submitted. The solicitation must specify the time by which the ballot
33 must be received in order to be counted.

34 (d) Unless otherwise provided in the articles or bylaws, a written ballot may not be
35 revoked.

36 (e) Directors may be elected by written ballot under this section, where authorized by
37 the articles or bylaws, except that election by written ballot may not be authorized where
38 the directors are elected by cumulative voting pursuant to Section 7615.

39 (f) When directors are to be elected by written ballot and the articles or bylaws
40 prescribe a nomination procedure, the procedure may provide for a date for the close of
41 nominations prior to the printing and distributing of the written ballots.

42 **7514.** (a) Any form of proxy or written ballot distributed to 10 or more members of a
43 corporation with 100 or more members shall afford an opportunity on the proxy or form
44 of written ballot to specify a choice between approval and disapproval of each matter or
45 group of related matters intended, at the time the written ballot or proxy is distributed, to
46 be acted upon at the meeting for which the proxy is solicited or by such written ballot,
47 and shall provide, subject to reasonable specified conditions, that where the person
48 solicited specifies a choice with respect to any such matter the vote shall be cast in
49 accordance therewith.

50 (b) In any election of directors, any form of proxy or written ballot in which the
51 directors to be voted upon are named therein as candidates and which is marked by a
52 member "withhold" or otherwise marked in a manner indicating that the authority to vote

1 for the election of directors is withheld shall not be voted either for or against the election
2 of a director.

3 (c) Failure to comply with this section shall not invalidate any corporate action taken,
4 but may be the basis for challenging any proxy at a meeting or written ballot and the
5 superior court may compel compliance therewith at the suit of any member.

6 **7515.** (a) If for any reason it is impractical or unduly difficult for any corporation to
7 call or conduct a meeting of its members, delegates or directors, or otherwise obtain their
8 consent, in the manner prescribed by its articles or bylaws, or this part, then the superior
9 court of the proper county, upon petition of a director, officer, delegate or member, may
10 order that such a meeting be called or that a written ballot or other form of obtaining the
11 vote of members, delegates or directors be authorized, in such a manner as the court finds
12 fair and equitable under the circumstances.

13 (b) The court shall, in an order issued pursuant to this section, provide for a method of
14 notice reasonably designed to give actual notice to all parties who would be entitled to
15 notice of a meeting held pursuant to the articles, bylaws and this part, whether or not the
16 method results in actual notice to every such person, or conforms to the notice
17 requirements that would otherwise apply. In a proceeding under this section the court
18 may determine who the members or directors are.

19 (c) The order issued pursuant to this section may dispense with any requirement
20 relating to the holding of and voting at meetings or obtaining of votes, including any
21 requirement as to quorums or as to the number or percentage of votes needed for
22 approval, that would otherwise be imposed by the articles, bylaws, or this part.

23 (d) Wherever practical any order issued pursuant to this section shall limit the subject
24 matter of the meetings or other forms of consent authorized to items, including
25 amendments to the articles or bylaws, the resolution of which will or may enable the
26 corporation to continue managing its affairs without further resort to this section;
27 provided, however, that an order under this section may also authorize the obtaining of
28 whatever votes and approvals are necessary for the dissolution, merger, sale of assets or
29 reorganization of the corporation.

30 (e) Any meeting or other method of obtaining the vote of members, delegates or
31 directors conducted pursuant to an order issued under this section, and which complies
32 with all the provisions of such order, is for all purposes a valid meeting or vote, as the
33 case may be, and shall have the same force and effect as if it complied with every
34 requirement imposed by the articles, bylaws, and this part.

35 **7516.** Any action required or permitted to be taken by the members may be taken
36 without a meeting, if all members shall individually or collectively consent in writing to
37 the action. The written consent or consents shall be filed with the minutes of the
38 proceedings of the members. The action by written consent shall have the same force and
39 effect as the unanimous vote of the members.

40 **7517.** (a) If the name signed on a ballot, consent, waiver, or proxy appointment
41 corresponds to the name of a member, the corporation if acting in good faith is entitled to
42 accept the ballot, consent, waiver or proxy appointment and give it effect as the act of the
43 member.

44 (b) If the name signed on a ballot, consent, waiver, or proxy appointment does not
45 correspond to the record name of a member, the corporation if acting in good faith is
46 nevertheless entitled to accept the ballot, consent, waiver, or proxy appointment and give
47 it effect as the act of the member if any of the following occur:

48 (1) The member is an entity and the name signed purports to be that of an officer or
49 agent of the entity.

50 (2) The name signed purports to be that of an attorney-in-fact of the member and if the
51 corporation requests, evidence acceptable to the corporation of the signatory's authority

1 to sign for the member has been presented with respect to the ballot, consent, waiver, or
2 proxy appointment.

3 (3) Two or more persons hold the membership as cotenants or fiduciaries and the name
4 signed purports to be the name of at least one of the coholders and the person signing
5 appears to be acting on behalf of all the coholders.

6 (4) The name signed purports to be that of an administrator, executor, guardian, or
7 conservator representing the member and, if the corporation requests, evidence of
8 fiduciary status acceptable to the corporation has been presented with respect to the
9 ballot, consent, waiver, or proxy appointment.

10 (5) The name signed purports to be that of a receiver or trustee in bankruptcy of the
11 member, and, if the corporation requests, evidence of this status acceptable to the
12 corporation has been presented with respect to the ballot, consent, waiver, or proxy
13 appointment.

14 (c) The corporation is entitled to reject a ballot, consent, waiver, or proxy appointment
15 if the secretary or other officer or agent authorized to tabulate votes, acting in good faith,
16 has a reasonable basis for doubt concerning the validity of the signature or the signatory's
17 authority to sign for the member.

18 (d) The corporation and any officer or agent thereof who accepts or rejects a ballot,
19 consent, waiver, or proxy appointment in good faith and in accordance with the standards
20 of this section shall not be liable in damages to the member for the consequences of the
21 acceptance or rejection.

22 (e) Corporate action based on the acceptance or rejection of a ballot, consent, waiver,
23 or proxy appointment under this section is valid unless a court of competent jurisdiction
24 determines otherwise.

25 **7520.** (a) As to directors elected by members, there shall be available to the members
26 reasonable nomination and election procedures given the nature, size and operations of
27 the corporation.

28 (b) If a corporation complies with all of the provisions of Sections 7521, 7522, 7523,
29 and 7524 applicable to a corporation with the same number of members, the nomination
30 and election procedures of that corporation, shall be deemed reasonable. However, those
31 sections do not prescribe the exclusive means of making available to the members
32 reasonable procedures for nomination and election of directors. A corporation may make
33 available to the members other reasonable nomination and election procedures given the
34 nature, size, and operations of the corporation.

35 (c) Subject to the provisions of subdivisions (a), (b), and (d) of Section 7616, the
36 superior court of the proper county shall enforce the provisions of this section.

37 **7521.** A corporation with 500 or more members may provide that, except for directors
38 who are elected as authorized by Section 7152 or 7153, and except as provided in Section
39 7522, any person who is qualified to be elected to the board of directors of the
40 corporation may be nominated:

41 (a) By any method authorized by the bylaws, or if no method is set forth in the bylaws
42 by any method authorized by the board.

43 (b) By petition delivered to an officer of the corporation, signed within 11 months
44 preceding the next time directors will be elected, by members representing the following
45 number of votes:

46 Number of Votes Eligible to be Cast for Director Disregarding any Provision for
47 Cumulative Voting

48 Number of Votes

49 Under 5,000 2 percent of voting power

1 5,000 or more one-twentieth of 1 percent of voting power but not less than 100.

2 This subdivision does not apply to a corporation described in subdivision (c).

3 (c) In corporations with one million or more members engaged primarily in the
4 business of retail merchandising of consumer goods, by petition delivered to an officer of
5 the corporation, signed within 11 months preceding the next time directors will be
6 elected, by such reasonable number of members as is set forth in the bylaws, or if no
7 number is set forth in the bylaws, by such reasonable number of members as is
8 determined by the directors.

9 (d) If there is a meeting to elect directors, by any member present at the meeting in
10 person or by proxy if proxies are permitted.

11 **7522.** A corporation with 5,000 or more members may provide that, in any election of
12 a director or directors by members of the corporation except for an election authorized by
13 Section 7152 or 7153:

14 (a) The corporation's articles or bylaws shall set a date for the close of nominations for
15 the board. The date shall not be less than 50 nor more than 120 days before the day
16 directors are to be elected. No nominations for the board can be made after the date set
17 for the close of nominations.

18 (b) If more people are nominated for the board than can be elected, the election shall
19 take place by means of a procedure which allows all nominees a reasonable opportunity
20 to solicit votes and all members a reasonable opportunity to choose among the nominees.

21 (c) A nominee shall have a reasonable opportunity to communicate to the members the
22 nominee's qualifications and the reasons for the nominee's candidacy.

23 (d) If after the close of nominations the number of people nominated for the board is
24 not more than the number of directors to be elected, the corporation may without further
25 action declare that those nominated and qualified to be elected have been elected.

26 **7523.** Where a corporation with 500 or more members publishes any material soliciting
27 a vote for any nominee for director in any publication owned or controlled by the
28 corporation, the corporation may provide that it shall make available to all other
29 nominees, in the same issue of the publication, an equal amount of space, with equal
30 prominence, to be used by the nominee for a purpose reasonably related to the election.

31 **7524.** A corporation with 500 or more members may provide that upon written request
32 by any nominee for election to the board and the payment of the reasonable costs of
33 mailing (including postage), the corporation shall within 10 business days after such
34 request (provided payment has been made) mail to all members, or such portion of them
35 as the nominee may reasonably specify, any material, which the nominee may furnish
36 and which is reasonably related to the election, unless the corporation within five
37 business days after the request allows the nominee, at the corporation's option, the rights
38 set forth in either paragraph (1) or (2) of subdivision (a) of Section 8330.

39 **7525.** (a) This section shall apply to corporations publishing or mailing materials on
40 behalf of any nominee in connection with procedures for the nomination and election of
41 directors.

42 (b) Neither the corporation, nor its agents, officers, directors, or employees, may be
43 held criminally liable, liable for any negligence (active or passive) or otherwise liable for
44 damages to any person on account of any material which is supplied by a nominee for
45 director and which it mails or publishes in procedures intended to comply with Section
46 7520 or pursuant to Section 7523 or 7524 but the nominee on whose behalf such material
47 was published or mailed shall be liable and shall indemnify and hold the corporation, its
48 agents, officers, directors, and employees and each of them harmless from all demands,
49 costs, including reasonable legal fees and expenses, claims, damages and causes of action

1 arising out of such material or any such mailing or publication.

2 (c) Nothing in this section shall prevent a corporation or any of its agents, officers,
3 directors, or employees from seeking a court order providing that the corporation need
4 not mail or publish material tendered by or on behalf of a nominee under this article on
5 the ground the material will expose the moving party to liability.

6 **7526.** Without authorization of the board, no corporation funds may be expended to
7 support a nominee for director after there are more people nominated for director than
8 can be elected.

9 **7527.** An action challenging the validity of any election, appointment or removal of a
10 director or directors must be commenced within nine months after the election,
11 appointment or removal. If no such action is commenced, in the absence of fraud, any
12 election, appointment or removal of a director is conclusively presumed valid nine
13 months thereafter.

14 **7610.** Except as provided in a corporation's articles or bylaws or Section 7615, each
15 member shall be entitled to one vote on each matter submitted to a vote of the members.
16 Single memberships in which two or more persons have an indivisible interest shall be
17 voted as provided in Section 7612.

18 **7611.** (a) The bylaws may provide or, in the absence of such provision, the board may
19 fix, in advance, a date as the record date for the purpose of determining the members
20 entitled to notice of any meeting of members. Such record date shall not be more than 90
21 nor less than 10 days before the date of the meeting. If no record date is fixed, members
22 at the close of business on the business day preceding the day on which notice is given or,
23 if notice is waived, at the close of business on the business day preceding the day on
24 which the meeting is held are entitled to notice of a meeting of members. A determination
25 of members entitled to notice of a meeting of members shall apply to any adjournment of
26 the meeting unless the board fixes a new record date for the adjourned meeting.

27 (b) The bylaws may provide or, in the absence of such provision, the board may fix, in
28 advance, a date as the record date for the purpose of determining the members entitled to
29 vote at a meeting of members. Such record date shall not be more than 60 days before the
30 date of the meeting. Such record date shall also apply in the case of an adjournment of the
31 meeting unless the board fixes a new record date for the adjourned meeting. If no record
32 date is fixed, members on the day of the meeting who are otherwise eligible to vote are
33 entitled to vote at the meeting of members or, in the case of an adjourned meeting,
34 members on the day of the adjourned meeting who are otherwise eligible to vote are
35 entitled to vote at the adjourned meeting of members.

36 (c) The bylaws may provide or, in the absence of such provision, the board may fix, in
37 advance, a date as the record date for the purpose of determining the members entitled to
38 cast written ballots (Section 7513). Such record date shall not be more than 60 days
39 before the day on which the first written ballot is mailed or solicited. If no record date is
40 fixed, members on the day the first written ballot is mailed or solicited who are otherwise
41 eligible to vote are entitled to cast written ballots.

42 (d) The bylaws may provide or, in the absence of such provision, the board may fix, in
43 advance, a date as the record date for the purpose of determining the members entitled to
44 exercise any rights in respect of any other lawful action. Such record date shall not be
45 more than 60 days prior to such other action. If no record date is fixed, members at the
46 close of business on the day on which the board adopts the resolution relating thereto, or
47 the 60th day prior to the date of such other action, whichever is later, are entitled to
48 exercise such rights.

49 **7612.** If a membership stands of record in the names of two or more persons, whether

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

8 (a) If only one votes, such act binds all; or

9 (b) If more than one vote, the act of the majority so voting binds all.

10 **7613.** (a) Any member may authorize another person or persons to act by proxy with
11 respect to such membership except that this right may be limited or withdrawn by the
12 articles or bylaws, subject to subdivision (f). Any proxy purported to be executed in
13 accordance with the provisions of this part shall be presumptively valid.

14 (b) No proxy shall be valid after the expiration of 11 months from the date thereof
15 unless otherwise provided in the proxy, except that the maximum term of any proxy shall
16 be three years from the date of execution. Every proxy continues in full force and effect
17 until revoked by the person executing it prior to the vote pursuant thereto, except as
18 otherwise provided in this section. Such revocation may be effected by a writing
19 delivered to the corporation stating that the proxy is revoked or by a subsequent proxy
20 executed by the person executing the prior proxy and presented to the meeting, or as to
21 any meeting by attendance at such meeting and voting in person by the person executing
22 the proxy. The dates contained on the forms of proxy presumptively determine the order
23 of execution, regardless of the postmark dates on the envelopes in which they are mailed.

24 (c) A proxy is not revoked by the death or incapacity of the maker or the termination of
25 a membership as a result thereof unless, before the vote is counted, written notice of such
26 death or incapacity is received by the corporation.

27 (d) Unless otherwise provided in the articles or bylaws, the proxy of a member which
28 states that it is irrevocable is irrevocable for the period specified therein (notwithstanding
29 subdivisions (b) and (c)) when it is held by any of the following or a nominee of any of
30 the following:

31 (1) A person who has purchased or who has agreed to purchase the membership;

32 (2) A creditor or creditors of the corporation or the member who extended or continued
33 credit to the corporation or the member in consideration of the proxy if the proxy states
34 that it was given in consideration of such extension or continuation of credit and the
35 name of the person extending or continuing the credit; or

36 (3) A person who has contracted to perform services as an employee of the corporation,
37 if the proxy is required by the contract of employment and if the proxy states that it was
38 given in consideration of such contract of employment, the name of the employee and the
39 period of employment contracted for.

40 Notwithstanding the period of irrevocability specified, the proxy becomes revocable
41 when the agreement to purchase is terminated; the debt of the corporation or the member
42 is paid; or the period of employment provided for in the contract of employment has
43 terminated. In addition to the foregoing paragraphs (1) through (3), a proxy of a member
44 may be made irrevocable (notwithstanding subdivision (c)) if it is given to secure the
45 performance of a duty or to protect a title, either legal or equitable, until the happening of
46 events which, by its terms, discharge the obligations secured by it.

47 (e) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a
48 transferee of a membership without knowledge of the existence of the provision unless
49 the existence of the proxy and its irrevocability appears on the certificate representing the
50 membership.

51 (f) Subdivision (a) notwithstanding:

52 (1) No amendment of the articles or bylaws repealing, restricting, creating or
53 expanding proxy rights may be adopted without approval by the members (Section 5034);

1 and

2 (2) No amendment of the articles or bylaws restricting or limiting the use of proxies
3 may affect the validity of a previously issued irrevocable proxy during the term of its
4 irrevocability, so long as it complied with applicable provisions, if any, of the articles or
5 bylaws at the time of its issuance, and is otherwise valid under this section.

6 (g) Anything to the contrary notwithstanding, any revocable proxy covering matters
7 requiring a vote of the members pursuant to Section 7222; Section 7224; Section 7233;
8 paragraph (1) of subdivision (f) of this section; Section 7812; paragraph (2) of
9 subdivision (a) of Section 7911; Section 8012; subdivision (a) of Section 8015; Section
10 8610; or subdivision (a) of Section 8719 is not valid as to such matters unless it sets forth
11 the general nature of the matter to be voted on.

12 **7614.** (a) In advance of any meeting of members, the board may appoint inspectors of
13 election to act at the meeting and any adjournment thereof. If inspectors of election are
14 not so appointed, or if any persons so appointed fail to appear or refuse to act, the
15 chairman of any meeting of members may, and on the request of any member or a
16 member's proxy shall, appoint inspectors of election (or persons to replace those who so
17 fail or refuse) at the meeting. The number of inspectors shall be either one or three. If
18 appointed at a meeting on the request of one or more members or proxies, the majority of
19 members represented in person or by proxy shall determine whether one or three
20 inspectors are to be appointed. In the case of any action by written ballot (Section 7513),
21 the board may similarly appoint inspectors of election to act with powers and duties as set
22 forth in this section.

23 (b) The inspectors of election shall determine the number of memberships outstanding
24 and the voting power of each, the number represented at the meeting, the existence of a
25 quorum, and the authenticity, validity and effect of proxies, receive votes, ballots or
26 consents, hear and determine all challenges and questions in any way arising in
27 connection with the right to vote, count and tabulate all votes or consents, determine
28 when the polls shall close, determine the result and do such acts as may be proper to
29 conduct the election or vote with fairness to all members.

30 (c) The inspectors of election shall perform their duties impartially, in good faith, to the
31 best of their ability and as expeditiously as is practical. If there are three inspectors of
32 election, the decision, act or certificate of a majority is effective in all respects as the
33 decision, act or certificate of all. Any report or certificate made by the inspectors of
34 election is prima facie evidence of the facts stated therein.

35 **7615.** (a) If the articles or bylaws authorize cumulative voting, but not otherwise, every
36 member entitled to vote at any election of directors may cumulate the member's votes
37 and give one candidate a number of votes equal to the number of directors to be elected
38 multiplied by the number of votes to which the member is entitled, or distribute the
39 member's votes on the same principle among as many candidates as the member thinks
40 fit. An article or bylaw provision authorizing cumulative voting may be repealed or
41 amended only by approval of the members (Section 5034), except that the governing
42 article or bylaw provision may require the vote of a greater proportion of the members, or
43 of the members of any class, for its repeal.

44 (b) No member shall be entitled to cumulate votes for a candidate or candidates unless
45 the candidate's name or candidates' names have been placed in nomination prior to the
46 voting and the member has given notice at the meeting prior to the voting of the
47 member's intention to cumulate votes. If any one member has given this notice, all
48 members may cumulate their votes for candidates in nomination.

49 (c) In any election of directors by cumulative voting, the candidates receiving the
50 highest number of votes are elected, subject to any lawful provision specifying election
51 by classes.

52 (d) In any election of directors not governed by subdivision (c), unless otherwise

1 provided in the articles or bylaws, the candidates receiving the highest number of votes
2 are elected.

3 (e) Elections for directors need not be by ballot unless a member demands election by
4 ballot at the meeting and before the voting begins or unless the bylaws so require.

5 **7616.** (a) Upon the filing of an action therefor by any director or member or by any
6 person who had the right to vote in the election at issue, the superior court of the proper
7 county shall determine the validity of any election or appointment of any director of any
8 corporation.

9 (b) In the case of a corporation holding assets in charitable trust, any person bringing
10 an action under this section shall give notice of the action to the Attorney General, who
11 may intervene.

12 (c) Upon the filing of the complaint, and before any further proceedings are had, the
13 court shall enter an order fixing a date for the hearing, which shall be within five days
14 unless for good cause shown a later date is fixed, and requiring notice of the date for the
15 hearing and a copy of the complaint to be served upon the corporation and upon the
16 person whose purported election or appointment is questioned and upon any person
17 (other than the plaintiff) whom the plaintiff alleges to have been elected or appointed, in
18 the manner in which a summons is required to be served, or, if the court so directs, by
19 registered mail; and the court may make such further requirements as to notice as appear
20 to be proper under the circumstances.

21 (d) The court, consistent with the provisions of this part and in conformity with the
22 articles and bylaws to the extent feasible, may determine the person entitled to the office
23 of director or may order a new election to be held or appointment to be made, may
24 determine the validity, effectiveness and construction of voting agreements and voting
25 trusts, the validity of the issuance of memberships and the right of persons to vote and
26 may direct such other relief as may be just and proper.

27 **8330.** (a) Subject to Sections 8331 and 8332, and unless the corporation provides a
28 reasonable alternative pursuant to subdivision (c), a member may do either or both of the
29 following as permitted by subdivision (b):

30 (1) Inspect and copy the record of all the members' names, addresses and voting rights,
31 at reasonable times, upon five business days' prior written demand upon the corporation
32 which demand shall state the purpose for which the inspection rights are requested; or

33 (2) Obtain from the secretary of the corporation, upon written demand and tender of a
34 reasonable charge, a list of the names, addresses and voting rights of those members
35 entitled to vote for the election of directors, as of the most recent record date for which it
36 has been compiled or as of a date specified by the member subsequent to the date of
37 demand. The demand shall state the purpose for which the list is requested. The
38 membership list shall be made available on or before the later of ten business days after
39 the demand is received or after the date specified therein as the date as of which the list is
40 to be compiled.

41 (b) The rights set forth in subdivision (a) may be exercised by:

42 (1) Any member, for a purpose reasonably related to such person's interest as a
43 member. Where the corporation reasonably believes that the information will be used for
44 another purpose, or where it provides a reasonable alternative pursuant to subdivision (c),
45 it may deny the member access to the list. In any subsequent action brought by the
46 member under Section 8336, the court shall enforce the rights set forth in subdivision (a)
47 unless the corporation proves that the member will allow use of the information for
48 purposes unrelated to the person's interest as a member or that the alternative method
49 offered reasonably achieves the proper purpose set forth in the demand.

50 (2) The authorized number of members for a purpose reasonably related to the
51 members' interest as members.

52 (c) The corporation may, within ten business days after receiving a demand under

1 subdivision (a), deliver to the person or persons making the demand a written offer of an
2 alternative method of achieving the purpose identified in said demand without providing
3 access to or a copy of the membership list. An alternative method which reasonably and
4 in a timely manner accomplishes the proper purpose set forth in a demand made under
5 subdivision (a) shall be deemed a reasonable alternative, unless within a reasonable time
6 after acceptance of the offer the corporation fails to do those things which it offered to
7 do. Any rejection of the offer shall be in writing and shall indicate the reasons the
8 alternative proposed by the corporation does not meet the proper purpose of the demand
9 made pursuant to subdivision (a).

10 **8331.** (a) Where the corporation, in good faith, and with a substantial basis, believes
11 that the membership list, demanded under Section 8330 by the authorized number
12 (Section 5036), will be used for a purpose not reasonably related to the interests as
13 members of the person or persons making the demand (hereinafter called the requesting
14 parties) as members or provides a reasonable alternative pursuant to subdivision (c) of
15 Section 8330, it may petition the superior court of the proper county for an order setting
16 aside the demand.

17 (b) Except as provided in subdivision (c), a petition for an order to show cause why a
18 protective order pursuant to subdivision (d) should not issue shall be filed within 10
19 business days after the demand by the authorized number under Section 8330 or receipt
20 of a written rejection by the authorized number of an offer made pursuant to subdivision
21 (c) of Section 8330, whichever is later. The petition shall be accompanied by an
22 application for a hearing on the petition. Upon the filing of the petition, the court shall
23 issue a protective order staying production of the list demanded until the hearing on the
24 order to show cause. The court shall set the hearing on the order to show cause not more
25 than 20 days from the date of the filing of the petition. The order to show cause shall be
26 granted unless the court finds that there is no reasonable probability that the corporation
27 will make the showing required under subdivision (f).

28 (c) A corporation may file a petition under this section more than 10 business days
29 after the demand or rejection under Section 8330, but only upon a showing the delay was
30 caused by excusable neglect. In no event, however, may any petition under this section be
31 considered if filed more than 30 days after the requesting parties' demand or rejection,
32 whichever is later.

33 (d) Upon the return day of the order to show cause, the court may issue a protective
34 order staying production of the list demanded until final adjudication of the petition filed
35 pursuant to this section. No protective order shall issue under this subdivision unless the
36 court finds that the rights of the requesting parties can reasonably be preserved and that
37 the corporation is likely to make the showing required by subdivision (f) or the court is
38 likely to issue a protective order pursuant to subdivision (g).

39 (e) If the corporation fails to file a petition within the time allowed by subdivision (b)
40 or (c), whichever is applicable, or fails to obtain a protective order under subdivision (d),
41 then the corporation shall comply with the demand, and no further action may be brought
42 by the corporation under this section.

43 (f) The court shall issue the final order setting aside the demand only if the corporation
44 proves:

45 (1) That there is a reasonable probability that the requesting parties will permit use of
46 the membership list for a purpose unrelated to their interests as members; or

47 (2) That the method offered by the corporation is a reasonable alternative in that it
48 reasonably achieves the proper purpose set forth in the requesting parties' demand and
49 that the corporation intends and is able to effectuate the reasonable alternative.

50 (g) In the final order, the court may, in its discretion, order an alternate mechanism for
51 achieving the proper purposes of the requesting parties, or impose just and proper
52 conditions upon the use of the membership list which reasonably assures compliance with
53 Section 8330 and Section 8338.

1 (h) The court shall award reasonable costs and expenses including reasonable
2 attorneys' fees, to requesting parties who successfully oppose any petition or application
3 filed pursuant to this section.

4 (i) Where the corporation has neither, within the time allowed, complied with a
5 demand by the authorized number (Section 5036) under Section 8330, nor obtained a
6 protective order staying production of the list, or a final order setting aside the demand,
7 which is then in effect, the requesting parties may petition the superior court of the proper
8 county for a writ of mandamus pursuant to Section 1085 of the Code of Civil Procedure
9 compelling the corporation to comply with the demand. At the hearing, the court shall
10 hear the parties summarily, by affidavit or otherwise, and shall issue a peremptory writ of
11 mandamus unless it appears that the demand was not made by an authorized number
12 (Section 5036), that the demand has been complied with, that the corporation, pursuant to
13 subdivision (c) of Section 8330, made an offer which was not rejected in writing within a
14 reasonable time, or that a protective or final order properly issued under subdivision (d),
15 (f) or (g) is then in effect. No inquiry may be made in such proceeding into the use for
16 which the authorized number seek the list. The court shall award reasonable costs and
17 expenses, including reasonable attorneys' fees, to persons granted an order under this
18 subdivision.

19 (j) Nothing in this section shall be construed to limit the right of the corporation to
20 obtain damages for any misuse of a membership list obtained under Section 8330, or
21 otherwise, or to obtain injunctive relief necessary to restrain misuse of a member list. A
22 corporation shall be entitled to recover reasonable costs and expenses, including
23 reasonable attorneys' fees, incurred in successfully bringing any such action.

24 **8332.** (a) Upon petition of the corporation or any member, the superior court of the
25 proper county may limit or restrict the rights set forth in Section 8330 where, and only
26 where, such limitation or restriction is necessary to protect the rights of any member
27 under the Constitution of the United States or the Constitution of the State of California.
28 An order issued pursuant to this subdivision shall provide, insofar as possible, for
29 alternative mechanisms by which the persons seeking to exercise rights under Section
30 8330 may communicate with members for purposes reasonably related to their interests
31 as members.

32 (b) Upon the filing of a petition under subdivision (a), the court may, if requested by
33 the person making the petition, issue a temporary order suspending the running of any
34 time limit specified in Section 8330 for compliance with that section. Such an order may
35 be extended, after notice and hearing, until final adjudication of the petition, wherever it
36 appears that the petitioner may prevail on the merits, and it is otherwise equitable to do
37 so.

38 **8333.** The accounting books and records and minutes of proceedings of the members
39 and the board and committees of the board shall be open to inspection upon the written
40 demand on the corporation of any member at any reasonable time, for a purpose
41 reasonably related to such person's interests as a member.

42 **8334.** Every director shall have the absolute right at any reasonable time to inspect and
43 copy all books, records and documents of every kind and to inspect the physical
44 properties of the corporation of which such person is a director.

45 **8335.** Where the proper purpose of the person or persons making a demand pursuant to
46 Section 8330 is frustrated by (1) any delay by the corporation in complying with a
47 demand under Section 8330 beyond the time limits specified therein, or (2) any delay
48 caused by the filing of a petition under Section 8331 or Section 8332, or (3) any delay
49 caused by the alternative proposed under subdivision (c) of Section 8330, the person or
50 persons properly making the demand shall have, in the discretion of the court, a right to

1 obtain from the superior court an order postponing any members' meeting previously
2 noticed for a period equal to the period of such delay. The members may obtain such an
3 order in a proceeding brought pursuant to Section 8331 upon the filing of a verified
4 complaint in the proper county and after a hearing, notice of which shall be given to such
5 persons and in such manner as the court may direct. Such right shall be in addition to any
6 other legal or equitable remedies to which the member may be entitled. 8336. (a) Upon
7 refusal of a lawful demand for inspection under this chapter, or a lawful demand pursuant
8 to Section 8330 or Section 8333, the superior court of the proper county, or the county
9 where the books or records in question are kept, may enforce the demand or right of
10 inspection with just and proper conditions or may, for good cause shown, appoint one or
11 more competent inspectors or independent accountants to audit the financial statements
12 kept in this state and investigate the property, funds and affairs of any corporation and of
13 any subsidiary corporation thereof, domestic or foreign, keeping records in this state and
14 to report thereon in such manner as the court may direct.

15 (b) All officers and agents of the corporation shall produce to the inspectors or
16 accountants so appointed all books and documents in their custody or power, under
17 penalty of punishment for contempt of court.

18 (c) All expenses of the investigation or audit shall be defrayed by the applicant unless
19 the court orders them to be paid or shared by the corporation.

20 **8337.** In any action or proceeding under this article, and except as required by Section
21 8331, if the court finds the failure of the corporation to comply with a proper demand
22 thereunder was without justification, the court may award the member reasonable costs
23 and expenses, including reasonable attorneys' fees, in connection with such action or
24 proceeding.

25 **8338.** (a) A membership list is a corporate asset. Without consent of the board a
26 membership list or any part thereof may not be obtained or used by any person for any
27 purpose not reasonably related to a member's interest as a member. Without limiting the
28 generality of the foregoing, without the consent of the board a membership list or any
29 part thereof may not be:

30 (1) Used to solicit money or property unless such money or property will be used
31 solely to solicit the vote of the members in an election to be held by their corporation.

32 (2) Used for any purpose which the user does not reasonably and in good faith believe
33 will benefit the corporation.

34 (3) Used for any commercial purpose or purpose in competition with the corporation.

35 (4) Sold to or purchased by any person.

36 (b) Any person who violates the provisions of subdivision (a) shall be liable for any
37 damage such violation causes the corporation and shall account for and pay to the
38 corporation any profit derived as a result of said violation. In addition, a court in its
39 discretion may award exemplary damages for a fraudulent or malicious violation of
40 subdivision (a).

41 (c) Nothing in this article shall be construed to limit the right of a corporation to obtain
42 injunctive relief necessary to restrain misuse of a membership list or any part thereof.

43 (d) In any action or proceeding under this section, a court may award the corporation
44 reasonable costs and expenses, including reasonable attorneys' fees, in connection with
45 such action or proceeding.

46 (e) As used in this section, the term "membership list" means the record of the
47 members' names and addresses.

48 **18330.** Except as otherwise provided by statute or by an unincorporated association's
49 governing principles, the following rules govern a member vote conducted pursuant to
50 this chapter:

51 (a) A vote may be conducted either at a member meeting at which a quorum is present

1 or by a written ballot in which the number of votes cast equals or exceeds the number
2 required for a quorum. Approval of a matter voted on requires an affirmative majority of
3 the votes cast.

4 (b) Written notice of the vote shall be delivered to all members entitled to vote on the
5 date of delivery. The notice shall be delivered or mailed or sent electronically to the
6 member addresses shown in the association's records a reasonable time before the vote is
7 to be conducted. The notice shall not be delivered electronically, unless the recipient has
8 consented to electronic delivery of the notice. The notice shall state the matter to be
9 decided and describe how and when the vote is to be conducted.

10 (c) If the vote is to be conducted by written ballot, the notice of the vote shall serve as
11 the ballot. It shall set forth the proposed action, provide an opportunity to specify
12 approval or disapproval of any proposal, and provide a reasonable time within which to
13 return the ballot to the unincorporated association.

14 (d) One-third the voting power of the association constitutes a quorum.

15 (e) The voting power of the association is the total number of votes that can be cast by
16 members on a particular issue at the time the member vote is held.
