

Memorandum 2010-10

**Common Interest Development Law: Nonresidential Associations  
(Proposed Legislation)**

This memorandum continues the Commission’s study of the application of the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1378) (hereafter “Davis-Stirling Act”) to a common interest development (“CID”) that is exclusively nonresidential. The study is intended to build upon a legislative provision enacted in 1978 that exempted nonresidential CIDs from a significant part of the then-existing provisions of the Davis-Stirling Act. See Civ. Code § 1373.

At its August meeting, the Commission analyzed the current provisions of the Davis-Stirling Act, and provisionally decided which provisions of that Act should apply to a nonresidential CID. The Commission then directed the staff to prepare a draft of proposed legislation based on those decisions. The staff draft is attached for the Commission’s review.

This memorandum invites comment on the general drafting approach used by the staff, as well as any comments on specific issues relating to the draft. If the Commission approves the draft, with or without changes, the next step in this study will be to prepare a staff draft of a tentative recommendation for Commission review.

The following email, discussed below, is attached as an Exhibit:

*Exhibit p.*

- Jeffrey Wagner, Walnut Creek (2/09/10) ..... 1

The text of the Davis-Stirling Act, previously presented to the Commission in the First Supplement to Memorandum 2009-32, may also be a useful resource in considering this memorandum.

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

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Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

## RECAP OF STUDY

At the August meeting, the Commission evaluated the various provisions of the Davis-Stirling Act, organized into functional categories, in order to decide whether those provisions should apply to a nonresidential CID.

That analysis was guided by two considerations: (1) whether a provision appeared to be primarily “foundational” or “operational” in nature, and (2) whether or not the Legislature had made the statutory treatment of a CID as set forth in a provision applicable to other commercial relationships. A “foundational” provision is one that relates to the basic nature of a CID as a form of property ownership. An “operational” provision is one that prescribes rules for ongoing operation of the governing association.

The Commission concluded, as a general matter, that foundational provisions should apply to nonresidential CIDs because they address important matters relating to the structure and nature of a CID as a form of property ownership. By contrast, an operational provision intrudes on self-governance in ways that may be necessary to provide guidance and protection to homeowners in CIDs, but are not clearly necessary for business owners. This is more likely to be true where other law (e.g., the Corporations Code) provides adequate governance rules, which apply to other similarly situated business entities. Therefore, as a general principle, operational provisions should not apply to nonresidential CIDs.

There were some exceptions to those general principles, especially where an operational provision had some functional connection to the special nature of a CID, as distinguished from other types of business entities.

## STAND-ALONE DRAFTING APPROACH

At the August 2009 meeting, the “Commission expressed a preference that the proposed law be drafted as a separate stand-alone body of law governing nonresidential CIDs, rather than as a set of exemptions from the provisions of the Davis-Stirling Act.” See Minutes (August 2009), pp. 3-5.

One of the reasons stated for that preference is that a list of exceptions could lead to problematic inferences. For example, existing Section 1353.7 prohibits a CID from requiring roof installation or repair that would violate the requirements of Health and Safety Code Section 13132.7. The Commission felt that provision should not apply to a nonresidential CID. Instead, a general provision should be added making clear that an association’s governing

documents are subordinate to the law. If that decision was implemented by adding an express exception to Section 1353.7, a reader might draw entirely the wrong conclusion — that the law was intended to exempt nonresidential CIDs from the requirements of Health and Safety Code Section 13132.7.

Other advantages of the stand-alone drafting approach are:

- It provides a clear platform for the future development nonresidential CID law as a distinct body of law. Changes or additions could be made to that body of law without the need to use an express exception or other device to make clear that the new rule does not apply to residential CIDs.
- It simplifies drafting. In some cases, a single provision may include language that should apply to a nonresidential CID and language that should not. It can be difficult to draft an exception that clearly draws such distinctions. A standalone draft does not present that problem.

The attached staff draft uses the standalone drafting approach.

#### SOURCE OF STATUTORY LANGUAGE

The stand-alone drafting approach requires that the applicable content of the Davis-Stirling Act be reiterated in a new location. That could be done in one of two ways:

- (1) Existing law could be used without any changes (other than the adjustment of section numbers). This would be the simplest approach, as it would require only that the existing language be copied, adjusted to remove inapplicable material, and renumbered.
- (2) The language and organization developed by the Commission in connection with its separate study to reorganize and simplify the Davis-Stirling Act could be used. See Memorandum 2009-53 and the Minutes of the December 2009 meeting for the most recently approved draft of that language. The advantage of this approach is that it would incorporate the benefits of the work completed in the general recodification study. The recodification draft includes significant improvements to the organization of the law, as well as some helpful clarifications of problematic language and a number of uncontroversial substantive improvements. The main disadvantage of the recodification proposal — the need to adjust to new section numbers — would not be a factor if the stand-alone drafting approach is used. Whatever the source of the language used to compile the stand-alone draft, new section numbers would be required.

The attached staff draft follows the second approach.

The staff has communicated with members of the stakeholder group that has been following our work on nonresidential CIDs. As summarized in the attached exhibit, the various drafting options were discussed with representatives from that group in a recent telephone conference, and the preliminary consensus of the group was in support of this option (with the understanding that its position might change once it had a chance to review the draft). See Exhibit p. 1.

**Is the general drafting approach described above acceptable? If not, should the staff prepare a new draft that is modeled more faithfully on the existing language and organization of the Davis-Stirling Act?**

#### SPECIFIC DRAFTING ISSUES

As outlined above, the attached draft sets out a separate body of law to govern nonresidential CIDs, using statutory language that has been approved by the Commission in the recodification study. For the most part, the draft legislation presented in this memorandum is simply an abridged version of the proposed recodification legislation. However, there are a few points of difference that merit discussion.

#### **Section Numbering**

The draft proposes placing this new body of law in the Civil Code directly following the proposed location for the recodification of the Davis-Stirling Act, using Section numbers 6500 through 6876.

#### **Excised Provisions**

As indicated, the draft legislation omits entirely several provisions of the recodification legislation that the Commission determined should be inapplicable to nonresidential CIDs. In the draft, there are no markers within the text of the legislation that note the absence of a deleted provision. However, the deleted provisions can be identified by consulting the proposed disposition table following the draft legislation, which notes the many provisions of the existing Davis-Stirling Act that have not been continued.

## **Use of Strikeout and Underscore**

Strikeout and underscore are used in two distinct ways in the attached draft legislation.

The first section in the draft is a proposed amendment to Section 1373, which would make the Davis-Stirling Act completely inapplicable to nonresidential CIDs. In that section, strikeout and underscore show changes from existing law.

The second section of the draft sets out the new stand-alone body of law that would govern nonresidential CIDs. In that part of the draft, strikeout and underscore are used to show changes from the source material (i.e., the most recent version of the general recodification draft). This is the most straightforward way to show changes from the substance of existing law, given the fact that we have used the recodification language as the expression of that substance. This is only an interim step, for the purposes of highlighting the choices made in preparing the draft. When we prepare a tentative recommendation, there will be no strikeout or underscore in the new body of law.

### *Use of Staff Notes to Explain Deviation from Recodification*

Much of the deviation from the recodification language is self-explanatory (e.g., the deletion of references to “resident,” “housing,” or “homeowner.”) In instances in which the rationale for deviation is not as apparent, a staff note following the section provides further explanation. In virtually all cases, the note explains that language stricken from the recodification legislation referenced another statutory provision that is either currently inapplicable to a nonresidential CID, or would be made inapplicable under the proposed legislation. See, e.g., proposed Section 6802.

### *Proposed Sections 6506(a) and 6566*

These two provisions are new. Proposed Section 6506(a) provides that the draft legislation applies only to a nonresidential CID, and proposed Section 6566 defines that term.

The Commission has to this point deferred making a final decision on how to define a “nonresidential CID” for purposes of this study. The placeholder definition that the Commission has relied on to this point, and that has been used in this draft, is taken verbatim from existing Section 1373.

A final decision on this issue, which the staff recommends that the Commission continue to defer pending comment on a tentative recommendation, may also require a final decision on the treatment of “mixed-use” CIDs (see discussion of that issue, below).

*Proposed Section 6612*

Proposed Section 6612 is also new. It provides that provisions of a nonresidential CID’s governing documents are subordinate to and will not prevail over any conflicting provision of law. See Minutes (August 2009), p. 5. This provision was added to replace other provisions that express the same principle in a similar but narrower way. See e.g., Section 1352.5 (prohibiting restrictive covenants in a governing document that violate Government Code Section 12955).

*Proposed Section 6620*

Section 6620 specifies the general requirements for amending a CID declaration. One of these requirements is a specified amount of notice that must be provided to members of a CID prior to a vote on the amendment. Section 6620 generally continues existing Section 1355 of the Davis-Stirling Act, a section that the Commission concluded should remain applicable to nonresidential CIDs.

In the recodification legislation, this notice requirement is contained in one of several detailed election provisions, which requires a specified amount of notice to CID members prior to *any* election. The provision in the recodification legislation containing the general rules for amending a declaration therefore does not contain any requirement at all relating to the giving of notice prior to the amendment of a declaration.

However, the Commission has concluded that the detailed election provisions in the Davis-Stirling Act should not be included in this draft legislation. Therefore, in order to properly continue Section 1355, it was necessary to restore a notice requirement to the section that would continue Section 1355.

The notice requirement that is contained in proposed Section 6620 is drawn from Section 1355(b), which addresses a specific type of amendment, and then generalized to apply to all declaration amendments.

*Proposed Section 6870*

Section 6870 is a lengthy section relating to an action of damages for alleged construction defects in a CID. The section continues, nearly verbatim, existing Section 1375 of the Davis-Stirling Act.

Subdivision (d) of existing Section 1375 references a meeting that is to take place between a prospective defendant in the construction defect litigation and the board of the association. The subdivision provides that the meeting “shall be subject to subdivision (b) of section 1363.05.”

However, the Commission has concluded that Section 1363.05, the “Common Interest Development Open Meeting Act,” should not be applicable to nonresidential CIDs, so no continuation of that section was included in the draft legislation.

As outlined above, in most other instances in which a provision in the recodification legislation contains an internal reference to another provision that is not continued in this draft legislation, the reference has simply been stricken from the draft legislation. Since the Commission has concluded that the referenced provision should not be applicable to nonresidential CIDs, deletion of the reference is normally consistent with and effectuates the Commission’s directive as to the inapplicable provision.

In this instance, however, a deviation from that general practice appeared necessary. At the August meeting, the Commission concluded that, while existing Section 1375 of the Davis-Stirling Act appeared to be an operational provision that might otherwise be classified as inapplicable to nonresidential CIDs, the fact that the section was the result of lengthy and controversial political negotiations strongly suggested that no significant change of any kind be made to the section.

As such, instead of simply deleting the reference to existing Section 1363.05, the draft legislation substitutes a substantive description of what the referenced subdivision in Section 1363.05 requires.

**The Commission should confirm that this substitution properly effectuates the Commission’s decisions as to the applicability to nonresidential CIDs of both existing Sections 1363.05 and 1375.**

## REMAINING DECISIONS

### **Continuation of Law Provision**

The draft legislation includes a modified version of a standard provision contained within most nonsubstantive recodifications, relating to the legislative intent underlying the continuation of a former provision. See proposed Section 6504. The standard provision explains that a provision restating the substance of a former provision is intended only as a restatement of that former provision, rather than a new enactment. This standard provision therefore allows judicial interpretations of the former provision to apply with equal strength to the new provision.

However, the proposed legislation in this matter will not continue any *former* provisions, as it does not repeal any provisions of the existing Davis-Stirling Act. Instead, the draft legislation effectively continues a single *aspect* of several *existing* provisions of law, namely that aspect of each provision that applied to a nonresidential CID.

Due to the unusual nature of this statutory revision, some relatively awkward tweaking was required in order to preserve the meaning of the standard “continuation” provision. **The Commission should review the text of this provision to determine whether it sufficiently clearly expresses what the Commission believes the proposed law should state relating to the continuation of existing provisions of the Davis-Stirling Act.**

### **Comment Terminology**

Consistent with the Commission’s standard practice, each section in the draft legislation is followed by a Commission Comment, referencing the source of each provision in the section, and describing the new provision’s relationship to its source.

As indicated in the previous section of this memorandum, precision in indicating just what each provision in the legislation “continues” or “restates” would make for a cumbersome and likely confusing Comment following each section in the draft legislation. Instead, the staff proposes to include a single overarching Comment following the first section in the draft legislation (proposed Section 6500) containing a relatively thorough explanation of what the legislation does, and then reference the Comment to Section 6500 following each subsequent section in the draft legislation.

There is some precedent for this approach in other Commission recodifications. See, e.g., Law Revision Commission Comment to Probate Code Section 2.

**The Commission should decide whether the text of the Comment following proposed Section 6500 in the draft legislation, in conjunction with the references to that Comment following each subsequent section, would adequately inform readers of the source of each provision in the legislation, and the relationship of the provision to its source provision.**

### **Treatment of Community Service Organizations**

A “community service organization” is typically an independent non-profit organization affiliated with a residential CID or its association, which provides services for CID residents. In the Davis-Stirling Act, the term is defined in subdivision (c) of Section 1368, a section that the Legislature declared inapplicable to nonresidential CIDs in Section 1373.

Nevertheless, another section of the Davis-Stirling Act, Section 1365.3, requires specified community service organizations to submit financial reports to a CID with which it is associated. Section 1365.3 is *not* listed in Section 1373 as a provision inapplicable to nonresidential CIDs.

Pending comment from stakeholders, at the August meeting the Commission did not classify Section 1365.3 as inapplicable to nonresidential CIDs. The draft legislation therefore includes a scaled down version of Section 1365.3, and seeks comment from stakeholders as to the inclusion of the new provision in the draft legislation. See proposed Section 6800.

In a recent telephone conference at which this issue was discussed, the consensus of the Stakeholder Group was that provisions relating to community service organizations should not be applicable to nonresidential CIDs. Exhibit p. 1. Informally, representatives of the group have indicated that such organizations have little to no involvement with nonresidential CIDs.

The Commission may seek to inquire further of any stakeholders in attendance at the upcoming meeting as to the appropriateness of including Section 6800 in the draft legislation, or the corresponding definitional provision in proposed Section 6538. Absent an expressed view to the contrary, the staff recommends that **Sections 6538 and 6800 be deleted from the draft legislation.**

## **Classification of Existing Section 1363(j)**

At the August meeting, a decision as to the applicability to a nonresidential CID of one provision of the Davis-Stirling Act was deferred, pending the Commission's applicability decisions on other related provisions.

Section 1363(j) of the Davis-Stirling Act is a "disclaimer" provision, which reads as follows:

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

The "section" that Section 1363(j) refers to, Section 1363, contains nine other subdivisions. Two of those subdivisions, subdivisions (g) and (h), relate to member discipline, and would seem to be the provisions to which Section 1363(j) is referring.

Section 1363(g) requires the board of directors of an association to distribute to members a schedule of any monetary penalties that may be imposed on a member pursuant to a policy adopted by the association. At the August meeting, the Commission concluded that this provision should remain applicable to nonresidential CIDs, and it is continued in the draft legislation. See proposed Section 6850.

Section 1363(h) of the Davis-Stirling Act specifies detailed procedures that must be followed by a board before imposing discipline on a member. The Commission concluded that this provision should not remain applicable to a nonresidential CID, and it is not continued in the draft legislation.

As long as the provision contained in Section 1363(g) continues to apply to nonresidential CIDs, it would appear to make sense to continue the application of the provision in Section 1363(j). Although initially suggesting that Section 1363(j) should not be continued in the proposed legislation, the Stakeholder Group now informally agrees that if the provision in Section 1363(g) is continued, the provision in Section 1363(j) should be continued as well.

In the draft attached to this memorandum, the provision in Section 1363(j) has been provisionally continued, but modified so as to reference only the continued provision from Section 1363(g). See proposed Section 6854.

The staff recommends that **the provision in Section 1363(j) remain applicable to nonresidential CIDs, and that the provision be continued in the draft legislation as modified.**

### **Inclusion of Provisions “Drawn From” Inapplicable Provisions**

In two instances, noncontroversial provisions in the draft legislation are indicated as having been “drawn from” a provision of the existing Davis-Stirling Act that is either a listed exemption in Section 1373, or a provision that the Commission determined should be inapplicable to a nonresidential CID.

Proposed Section 6518 is a short provision governing the time and proof of delivery of a document. While not “continuing” any provision of the Davis-Stirling Act, the Comment to Section 6518 indicates that Section 6518 is drawn from existing Section 1350.7, a section that provides much more detailed rules for the delivery of a CID-related document. At the August meeting, the Commission concluded that Section 1350.7 should be inapplicable to nonresidential CIDs.

Proposed Section 6600(c) is also a new provision, which provides that a CID operating rule may not include a provision that is inconsistent with the declaration, articles of incorporation, or bylaws of the CID. This provision is indicated as having been drawn from Section 1357.110, a listed exemption in existing Section 1373.

In light of the relatively attenuated connection to the stated source provision, the staff recommends that **these two provisions remain in the draft legislation**. However, if the Commission decides otherwise, one or both provisions could be excised without affecting the integrity of the remainder of the proposed legislation.

### **Treatment of “Mixed-Use CIDs”**

The Commission has to date deferred a decision on how to treat “mixed use” CIDs (e.g., CIDs that contain any number of combinations of both residential and commercial separate interest). See First Supplement to Memorandum 2008-63, pp. 5-6, Minutes (December 2008), p. 4. The issue is relatively complex, as a mixed use CID can range anywhere from an overwhelmingly residential development with a single coffee shop, to an overwhelmingly commercial development with a single loft apartment for a manager or caretaker of the development. Due to limited resources, the staff has not yet begun to analyze the various distinct considerations applicable to the statutory governance of these types of CIDs.

Consistent with that deferred decision, the draft legislation presented with this memorandum would govern only exclusively nonresidential CIDs.

WHAT'S NEXT

The staff recommends that **the Commission approve the attached draft legislation, with or without changes, for inclusion in a Tentative Recommendation to be presented to the Commission at a future meeting.**

Respectfully submitted,

Steve Cohen  
Staff Counsel

Brian Hebert  
Executive Secretary

**EMAIL FROM JEFFREY G. WAGNER**  
**(FEBRUARY 9, 2010)**

Thank you again for participating in our call. We found it very helpful in understanding the staff's recommendations for implementing the changes to the Davis Stirling Act ("DSA") provisions applicable to nonresidential CIDs. After you left the call, we discussed the three ways of implementing the changes and reached a "tentative" consensus agreeing with the staff's recommendation to adopt a separate act for nonresidential CIDs using the proposed recodification provisions to the entire DSA. Prior to reaching a "final" consensus, however, the group would like to have the opportunity to review the staff memo. We understand the memo should be out sometime next week. The group has no problem with you stating in the memo that based on your conference call with the group, the group supports the staff recommendation subject to our review of the final recommendation as set forth in your memo. Our goal would be to have our final recommendation and comments in writing to you prior to the February 25th meeting. There also was a definite consensus that the provisions in the DSA concerning community service organizations should not be applicable to nonresidential CIDs. We also hope to have several members of the group attend the February 25th meeting. If you have any questions on any of the above, please give me a call.

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## NONRESIDENTIAL COMMON INTEREST DEVELOPMENTS

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## PROPOSED LEGISLATION

1 **Civ. Code § 1373 (amended). Nonresidential common interest developments**

2 SECTION 1. Section 1373 of the Civil Code is amended to read:

3 1373. (a) ~~The following provisions do~~ This title does not apply to a common  
4 interest development that is limited to industrial or commercial uses by zoning or  
5 by a declaration of covenants, conditions, and restrictions that has been recorded  
6 in the official records of each county in which the common interest development is  
7 located:-

8 ~~(1) Section 1356.~~

9 ~~(2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of~~  
10 ~~Part 4 of Division 2.~~

11 ~~(3) Subdivision (b) of Section 1363.~~

12 ~~(4) Section 1365.~~

13 ~~(5) Section 1365.5.~~

14 ~~(6) Subdivision (b) of Section 1366.~~

15 ~~(7) Section 1366.1.~~

16 ~~(8) Section 1368.~~

17 ~~(9) Section 1378.~~

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

23 **Comment.** Section 1373 is amended to make the provisions of the Davis-Stirling Common  
24 Interest Development Act inapplicable to common interest developments that are exclusively  
25 nonresidential. Many provisions of the act are continued and made applicable to exclusively  
26 nonresidential common interest developments by the Nonresidential Common Interest  
27 Development Act, Part 5.5 (commencing with Section 6500) of Division 4. For the disposition of  
28 a particular section of the Davis-Stirling Common Interest Development Act, see *Nonresidential*  
29 *Common Interest Developments*, \_\_ Cal. L. Revision Comm'n Reports \_\_ (201\_).

30 **Civ. Code § 6500-6876 (added). Nonresidential common interest developments**

31 SEC. \_\_\_\_. Part 5.5 (commencing with Section 6500) is added to Division 4 of  
32 the Civil Code to read:

33 **Staff Note.** Each of the provisions below has a parenthetical description following the section  
34 number in its heading. The descriptions have the following meanings:

35 **(UNCHANGED).** A section with this description would continue existing law almost  
36 verbatim, to the extent that existing law presently applies to a nonresidential common interest  
37 development. Minor technical changes might be made to (1) correct a cross-reference to reflect  
38 the new number of the referenced provision, (2) add or modify subdivision or paragraph  
39 designators (e.g., unnumbered paragraphs might be designated as subdivisions), or (3) conform to

1 technical stylistic conventions (e.g., to avoid use of the word “such” or the phrase “he or she”). If  
2 any of these changes are made, they will be clearly identified in the Comment following the  
3 section.

4 **(REVISED)**. A section with this description would continue or restate existing law verbatim to  
5 the extent that existing law presently applies to a nonresidential common interest development,  
6 except as specifically indicated in the Comment and “Staff Note” that follow the section. Changes  
7 made to a “(REVISED)” section may include the rewording of ambiguous or confusing language  
8 or minor substantive improvements to existing law. Any such changes will be expressly  
9 identified.

10 **(NEW)**. A section with this description would be largely new. A boxed “Staff Note” following  
11 the Comment will explain the purpose of the new section.

12 **PART 5.5. NONRESIDENTIAL COMMON**  
13 **INTEREST DEVELOPMENTS**

14 **CHAPTER 1. GENERAL PROVISIONS**

15 **Article 1. Preliminary Provisions**

16 **§ 6500 (NEW). Short title**

17 6500. This part shall be known and may be cited as the ~~Davis-Stirling~~  
18 Nonresidential Common Interest Development Act.

19 **Comment.** Section 6500 is new.

20 Common interest developments in general are governed by the Davis-Stirling Common Interest  
21 Development Act. See Sections 1350-1378. However, common interest developments that are  
22 exclusively nonresidential were exempted from the provisions of that act by 2011 Cal. Stat. ch.  
23 \_\_\_\_\_. See Section 1373.

24 This part (Sections 6500-6876) was added to establish a separate body of law, largely based on  
25 provisions of the Davis-Stirling Common Interest Development Act, that would apply to and  
26 govern exclusively nonresidential common interest developments.

27 The Comments to the sections of this act identify sections of the Davis-Stirling Common  
28 Interest Development Act that are sources of the provisions of this act, and describe how each  
29 provision in this act compares with its source. The following discussion is intended to provide  
30 guidance in interpreting terminology used to describe that comparison.

31 (1) *Continues*. A provision of this act “continues” a provision of the Davis-Stirling Common  
32 Interest Development Act if it continues the substance of the Davis-Stirling Common Interest  
33 Development Act provision to the extent that provision formerly applied to a nonresidential  
34 common interest development.

35 (2) *Continues without change*. A provision of this act continues a provision of the Davis-  
36 Stirling Common Interest Development Act “without change” if the two provisions are identical  
37 or nearly so. In some cases, there may be insignificant technical differences, such as where  
38 punctuation is changed without a change in meaning.

39 (3) *Continues without substantive change*. A provision of this act continues a provision of the  
40 Davis-Stirling Common Interest Development Act “without substantive change” if the  
41 substantive law remains the same, but the language differs to an insignificant degree.

1 (4) *Restates*. A provision of this act “restates” a provision of the Davis-Stirling Common  
2 Interest Development Act if the substantive law remains the same but the language differs to a  
3 significant degree.

4 (5) *Exceptions, additions, omissions*. If a provision of the Davis-Stirling Common Interest  
5 Development Act is “continued” or “restated” by a provision of this act, the Comment may say  
6 that the provision is continued or restated, but also note the specific differences as “exceptions  
7 to,” “additions to,” or “omissions from” the former provision.

8 (6) *Generalizes*. A provision of this act may be described as “generalizing” a provision of the  
9 Davis-Stirling Common Interest Development Act. This description means that a limited rule has  
10 been expanded to cover a broader class of cases.

11 (7) *New*. A provision of this act is described as “new” where it has no direct source in prior  
12 statutes.

13 (8) *Drawn from, consistent with*. A variety of other terms are used to indicate the relationship  
14 between a provision of this act and its source. For example, a provision may be “drawn from”  
15 another provision. In these cases, it may be useful to consult any available commentary or  
16 interpretation of the source from which the new provision is drawn for background information.

17 **§ 6502 (REVISED). Effect of headings**

18 6502. Division, part, title, chapter, article, and section headings do not in any  
19 manner affect the scope, meaning, or intent of this part.

20 **Comment.** Section 6502 continues Section 1350.5 without change, except that “article” has  
21 been added to the list of headings and the last word of the sentence is replaced with “part.” For  
22 further information, see the Law Revision Comment to Section 6500.

23 Section 6502 is a standard provision found in many codes. See, e.g., Evid. Code § 5; Fam.  
24 Code § 5; Prob. Code § 4.

25  **Staff Note.** Proposed Section 6502 would add “article” to the list of headings in existing  
26 Section 1350.5. The omission of articles from that list appears to have been inadvertent.

27 **§ 6504 (NEW). Continuation of other provision of law**

28 6504. (a) ~~A provision of this part, insofar as it is substantially the same as a~~  
29 ~~previously existing provision relating to the same subject matter, shall be~~  
30 ~~construed as a restatement and continuation thereof and not as a new enactment,~~  
31 Insofar as a provision of this part is substantially the same and relates to the same  
32 subject matter as a provision of Title 6 (commencing with Section 1350) of Part 4  
33 of Division 2, the provision of this part shall be construed as a restatement and  
34 continuation of the provision of that title, and not as a new enactment, to the extent  
35 the provision of that title applied to a nonresidential common interest development  
36 prior to the enactment of the act that added this section. and In that instance, a  
37 reference in a statute to the provision of this part shall be deemed to include a  
38 reference to the previously existing provision of Title 6 (commencing with Section  
39 1350) of Part 4 of Division 2 that it restates and continues, unless a contrary intent  
40 appears.

41 (b) A reference in the governing documents of a nonresidential common interest  
42 development, to a former provision of Title 6 (commencing with Section 1350) of  
43 Part 4 of Division 2 that is restated and continued in this part, is deemed to include  
44 a reference to the provision of this part that restates and continues the former  
45 referenced provision.

1 **Comment.** Section 6504 is new. Subdivision (a) is drawn from a standard provision found in  
2 many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a);  
3 Veh. Code § 2. See also Gov't Code §§ 9604 (construction of restatements and continuations),  
4 9605 (construction of amended statutory provision). The second sentence of subdivision (a)  
5 makes clear that a statutory reference to a provision within this part includes a reference to the  
6 law from which it is drawn. *Cf.* Gov't Code § 9604 (reference to previously existing provision  
7 deemed reference to restatement or continuation).

8 Subdivision (b) adapts the general principle of subdivision (a) to a statutory reference in an  
9 association's governing documents.

10 **Staff Note.** This provision is drawn from a standard transitional provision. It clarifies that a  
11 provision in this part that restates the substance of a provision of the Davis-Stirling Act is to be  
12 treated as a continuation of that Davis-Stirling Act provision, and not as a new enactment, to the  
13 extent the Davis-Stirling Act provision applied to a nonresidential common interest development  
14 prior to the enactment of the act that added this section. Thus, a reference to a Davis-Stirling Act  
15 provision in a court opinion, to the extent that provision was applicable to a nonresidential  
16 common interest development prior to the enactment of the act that added this section, is also to  
17 be treated as a reference to a provision in this part that restates or continues the Davis-Stirling Act  
18 provision.

19 Subdivision (b) would expressly extend that principle to references in an association's  
20 governing documents.

21 **§ 6506 (REVISED). Application of part**

22 (a) This part applies only to a nonresidential common interest development.

23 (b) Nothing in this part may be construed to apply to a development wherein  
24 there does not exist a common area as defined in Section 6532. This subdivision is  
25 declaratory of existing law.

26 **Comment.** Subdivision (a) of Section 6506 is consistent with Section 1373, except that this  
27 part additionally exempts exclusively nonresidential common interest developments from  
28 application of the following provisions: Section 1350.7, the provisions of Section 1353 that  
29 require notice if a development is within an airport influence area or within the jurisdiction of the  
30 San Francisco Bay Conservation and Development Commission, Section 1353.7, Sections  
31 1363(d), (e), (f), (h), and (i), Section 1363.03, Section 1363.04, Section 1363.05, Section  
32 1363.07, Section 1363.09, Section 1363.1, Sections 1363.810 through 1363.850, Section 1363.2,  
33 Section 1365.1, Section 1365.2, Section 1365.2.5, Section 1365.7, the last two sentences of  
34 Section 1366(a), Section 1366(d), Section 1366(e), Section 1366.2, Section 1367.1(c), Section  
35 1367.1(n), Section 1367.4, Section 1367.5, Section 1367.6, and Sections 1369.510 through  
36 1369.590. For further information, see the Law Revision Comment to Section 6500.

37 See also Section 6566 ("nonresidential common interest development").

38 A common interest development is created as provided in Section 6508.

39 Subdivision (b) continues Section 1374 without change, except that the term "title" is replaced  
40 with "part" and a cross-reference is updated to reflect the location of the referenced provision. For  
41 further information, see the Law Revision Comment to Section 6500.

42 **Staff Note.** This proposed legislation is intended to apply only to a CID that is exclusively  
43 nonresidential (i.e., that does not contain any residential separate interests). Mixed-use  
44 developments would continue to be governed by the existing Davis-Stirling Act. That rule is  
45 expressed in proposed Section 6506(a) and in proposed Section 6556, which defines  
46 "nonresidential common interest development" using language drawn from existing Section  
47 1373. The Commission invites comment on whether there are any problems with that approach.  
48 For example, are there any scenarios in which the proposed definition of "nonresidential common

1 interest development" might include a development that has one or more residential separate  
2 interests? If so, suggestions for how to eliminate that possibility are invited.

3 **§ 6508 (REVISED). Creation of common interest development**

4 6508. (a) ~~This Subject to Section 6506, this~~ part applies and a common interest  
5 development is created whenever a separate interest coupled with an interest in the  
6 common area or membership in the association is, or has been, conveyed,  
7 provided all of the following are recorded:

8 (1) A declaration.

9 (2) A condominium plan, if any exists.

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

13 (b) Notwithstanding subdivision (a), this part governs a stock cooperative that  
14 has not recorded a declaration.

15 **Comment.** Subdivision (a) of Section 6508 continues Section 1352 without change, except to  
16 make the provision subject to the general rule of application of this part. For further information,  
17 see the Law Revision Comment to Section 6500.

18 Subdivision (b) is new. It reflects the fact that some stock cooperatives are created without a  
19 recorded declaration.

20 **Staff Note.** Proposed Section 6508(b) is new. It preserves the application of this part to a  
21 stock cooperative when the cooperative lacks a recorded declaration.

22 The Commission invites comment on whether a nonresidential common interest development  
23 may be organized as a stock cooperative.

24 **§ 6510 (UNCHANGED). Construction of zoning ordinance**

25 6510. Unless a contrary intent is clearly expressed, a local zoning ordinance is  
26 construed to treat like structures, lots, parcels, areas, or spaces in like manner  
27 regardless of whether the common interest development is a community apartment  
28 project, condominium project, planned development, or stock cooperative.

29 **Comment.** Section 6510 continues Section 1372 without change. For further information, see  
30 the Law Revision Comment to Section 6500.

31 **§ 6512 (NEW). Delivery to an association**

32 6512. If a provision of this part requires that a document be delivered to an  
33 association, the document shall be delivered by first-class mail, postage prepaid, or  
34 by certified mail, ~~to the person designated in the annual policy statement, prepared~~  
35 ~~pursuant to Section 5310, to receive documents on behalf of the association.~~ If no  
36 person has been designated to receive documents, the document shall be delivered  
37 to the president or secretary of the association.

38 **Comment.** Section 6512 is new. It provides a standard rule for delivery of a document to the  
39 association.

40 **Staff Note.** (1) Section 5310 is a new provision that would aggregate various disclosures  
41 required to be made to members in a residential CID. It is not included in this proposed  
42 legislation.

1 (2) Proposed Section 6512 is new. It would provide a clear rule for official communication  
2 with the association.

3 **§ 6514 (NEW). Individual notice**

4 6514. (a) If a provision of this part requires “individual delivery” or “individual  
5 notice,” the notice shall be delivered to the member to be notified by one of the  
6 following methods:

7 (1) First-class mail, postage prepaid, addressed to the member at the address last  
8 shown on the books of the association or otherwise provided by the member.

9 (2) E-mail, facsimile, or other electronic means, if the recipient has agreed to  
10 that method of delivery. The agreement obtained by the association shall be  
11 consistent with the conditions for obtaining consumer consent described in Section  
12 20 of the Corporations Code.

13 (b) A member may request in writing that a notice to that member be sent to up  
14 to two different addresses.

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

18 **Comment.** Section 6514 is new. It specifies acceptable methods for delivery of a notice to an  
19 individual member, as distinguished from a notice that is to be delivered to every member. See  
20 Section 6516 (general notice). The methods listed in subdivision (a) are drawn from Section  
21 1350.7(b)(2)-(3).

22 Subdivision (b) generalizes a part of Section 1367.1(k).

23 Subdivision (c) is drawn from Section 1350.7(d). It precludes use of electronic delivery  
24 methods when the recipient has not consented to use of those methods or has withdrawn such  
25 consent.

26 **Staff Note.** Proposed Section 6514 is new. It is drawn from and generalizes much of the  
27 substance of existing Section 1350.7.

28 **§ 6516 (NEW). General notice**

29 6516. (a) If a provision of this part requires “general delivery” or “general  
30 notice,” the notice shall be provided by one or more of the following methods:

31 (1) Any method provided for delivery of an individual notice (Section 6514).

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

34 (3) Posting in a location that is accessible to all members, if the location has  
35 been designated for the posting of general notices by the association ~~in the annual~~  
36 ~~policy statement, prepared pursuant to Section 5310.~~

37 (4) Publication in a periodical that is circulated primarily to members of the  
38 association.

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

1 (b) Notwithstanding subdivision (a), if a member requests to receive general  
2 notices by individual delivery, all general notices to that member shall be  
3 delivered pursuant to Section 6514. ~~The option provided in this subdivision shall~~  
4 ~~be described in the annual policy statement, prepared pursuant to Section 5310.~~

5 **Comment.** Section 6516 is new. It specifies acceptable methods for delivery of a notice to the  
6 membership generally, as distinguished from a notice that is to be delivered to a specific member.  
7 See Section 6514 (individual notice). Nothing in this section prevents an association from using  
8 supplemental notice methods, such as posting on an Internet website, so long as one or more  
9 methods authorized by this section are also used.

10 Subdivision (b) reserves the right of any member, on request, to receive general notices by the  
11 delivery methods provided for delivery of an individual notice. Thus, in an association that posts  
12 general notices to its website, individual members would still have the right, on request, to  
13 receive those notices by mail.

14 **Staff Note.** (1) Section 5310 is a new provision that would aggregate various disclosures  
15 required to be made to members in a residential CID. It is not included in this proposed  
16 legislation.

17 (2) Proposed Section 6516 is new. It would enhance efficiency by allowing an association to  
18 “broadcast” notices of general interest, while reserving the right of individual members to receive  
19 those notices as individual notices on request.

20 **§ 6518 (NEW). Time and proof of delivery**

21 6518. (a) This section governs the delivery of a document pursuant to this part.

22 (b) If a document is delivered by mail, delivery is deemed to be complete on  
23 deposit into the United States mail.

24 (c) If a document is delivered by electronic means, delivery is complete at the  
25 time of transmission.

26 **Comment.** Section 6518 is new. Subdivision (b) is drawn from the second sentence of Section  
27 1350.7(b)(2).

28 Subdivision (c) is drawn from the second sentence of Section 1350.7(b)(3).

29 **Staff Note.** Proposed Section 6518 is new. It would generalize the timing rules provided in  
30 existing Section 1350.7, so that they would apply to any notice delivered by the specified  
31 methods. This will provide greater certainty in resolving timing disputes.

32 **§ 6520 (NEW). Minimum font size**

33 6520. In any notice, ballot, report, or other writing that the association is  
34 required to prepare and deliver to a member pursuant to this part, the text shall be  
35 printed in a 12 point font or larger.

36 **Comment.** Section 6520 is new. This section does not apply to an association record that was  
37 not prepared for delivery to a member.

38 **Staff Note.** Proposed Section 6520 is new. It would generalize and standardize the minimum  
39 font size rules provided in existing Sections 1365(d) and 1365.1(a), so that they would apply to  
40 any notice or report delivered to a member pursuant to this part.

41 The Commission invites comment on whether this consumer oriented provision is needed or  
42 desirable in a nonresidential common interest development.

1 § 6522 (NEW). Approved by majority of all members

2 6522. If a provision of this part requires that an action be approved by a majority  
3 of all members, the action shall be approved or ratified by an affirmative vote of  
4 members representing more than 50 percent of the total voting power of the  
5 association.

6 **Comment.** Section 6522 is new. It is added for drafting convenience. This section only  
7 governs an election conducted pursuant to a provision of this part. An election that is not required  
8 by this part would be governed by the association’s governing documents.

9 **Staff Note.** Proposed Section 6522 is new. It would add guidance on the procedure for  
10 approval of a proposed action that must be approved “by a majority of all members.”

11 § 6524 (NEW). Approved by majority of quorum of members

12 6524. If a provision of this part requires that an action be approved by a majority  
13 of a quorum of the members, the action shall be approved or ratified by an  
14 affirmative vote of members representing more than 50 percent of the votes cast in  
15 an election at which a quorum is achieved.

16 **Comment.** Section 6524 is new. It is added for drafting convenience. This section only  
17 governs an election conducted pursuant to a provision of this part. An election that is not required  
18 by this part would be governed by the association’s governing documents.

19 **Staff Note.** Proposed Section 6524 is new. It would add guidance on the procedure for  
20 approval of a proposed action that must be approved “by a majority of a quorum of the  
21 members.”

22 Article 2. Definitions

23 § 6526 (REVISED). Application of definitions

24 6526. The definitions in this article govern the construction of this part.

25 **Comment.** Section 6526 restates the substance of the introductory clause of Section 1351. For  
26 further information, see the Law Revision Comment to Section 6500.

27 **Staff Note.** Proposed Section 6526 recasts the introductory clause of Section 1351 to better  
28 fit within the new organization, without any substantive change in its meaning.

29 § 6528 (UNCHANGED). “Association”

30 6528. “Association” means a nonprofit corporation or unincorporated  
31 association created for the purpose of managing a common interest development.

32 **Comment.** Section 6528 continues Section 1351(a) without change. For further information,  
33 see the Law Revision Comment to Section 6500.

34 § 6530 (NEW). “Board”

35 6530. “Board” means the board of directors of the association.

36 **Comment.** Section 6530 is new.

37 **Staff Note.** Proposed Section 6530 is added for drafting convenience.

1 § 6532 (REVISED). “Common area”

2 6532. (a) “Common area” means the entire common interest development  
3 except the separate interests therein. The estate in the common area may be a fee,  
4 a life estate, an estate for years, or any combination of the foregoing.

5 (b) Notwithstanding subdivision (a), in a planned development described in  
6 subdivision (b) of Section 6562, the common area may consist of mutual or  
7 reciprocal easement rights appurtenant to the separate interests.

8 **Comment.** Subdivision (a) of Section 6532 continues the first sentence of Section 1351(b)  
9 without change. For further information, see the Law Revision Comment to Section 6500.

10 Subdivision (b) continues the substance of the second sentence of Section 1351(b), but restates  
11 it for clarity. For further information, see the Law Revision Comment to Section 6500.

12 **Staff Note.** Proposed Section 6532(b) would restate the second sentence of existing Section  
13 1351(b), to improve its clarity without changing its meaning.

14 § 6534 (UNCHANGED). “Common interest development”

15 6534. “Common interest development” means any of the following:

16 (a) A community apartment project.

17 (b) A condominium project.

18 (c) A planned development.

19 (d) A stock cooperative.

20 **Comment.** Section 6534 continues Section 1351(c) without change. For further information,  
21 see the Law Revision Comment to Section 6500.

22 § 6536 (UNCHANGED). “Community apartment project”

23 6536. “Community apartment project” means a development in which an  
24 undivided interest in land is coupled with the right of exclusive occupancy of any  
25 apartment located thereon.

26 **Comment.** Section 6536 continues Section 1351(d) without change. For further information,  
27 see the Law Revision Comment to Section 6500.

28 **Staff Note.** The Commission invites comment on whether a nonresidential common interest  
29 development may be organized as a community apartment project.

30 § 6538 (UNCHANGED). “Community service organization or similar entity”

31 6538. (a) “Community service organization or similar entity” means a nonprofit  
32 entity, other than an association, that is organized to provide services to occupants  
33 of the common interest development or to the public in addition to the occupants,  
34 to the extent community common area or facilities are available to the public.

35 (b) “Community service organization or similar entity” does not include an  
36 entity that has been organized solely to raise moneys and contribute to other  
37 nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of  
38 the Internal Revenue Code and that provide housing or housing assistance.

39 **Comment.** Section 6538 is drawn from Section 1368(c)(3), but has been divided into  
40 subdivisions, the defined term “occupant” is used to replace “resident,” and the reference to  
41 “common areas” is singularized. See Section 6558 (“occupant” defined).

1 **☞ Staff Note.** The Commission invites comment on whether this provision or proposed Section  
2 6800 have any relevance to a nonresidential common interest development, or should for other  
3 reasons be included in this part.

4 **§ 6540 (REVISED). “Condominium plan”**

5 6540. “Condominium plan” means a plan consisting of:

6 (a) A description or survey map of a condominium project, which shall refer to  
7 or show monumentation on the ground.

8 (b) A three-dimensional description of a condominium project, one or more  
9 dimensions of which may extend for an indefinite distance upwards or  
10 downwards, in sufficient detail to identify the common area and each separate  
11 interest.

12 (c) A certificate consenting to the recordation of the condominium plan pursuant  
13 to this part that is signed and acknowledged as provided in Section 6624.

14 **Comment.** Section 6540 continues the introduction of Section 1351(e) without change, with  
15 the following exceptions: (1) The enumerated items are set out as subdivisions. (2) A reference to  
16 “this title” has been changed to “this part.” (3) The list of persons who must sign and  
17 acknowledge the certificate consenting to recordation of the condominium plan has been replaced  
18 with a reference to the section governing the creation and recordation of a condominium plan. For  
19 further information, see the Law Revision Comment to Section 6500.

20 **☞ Staff Note.** Proposed Section 6540 would include only the definition of the term  
21 “condominium plan.” Procedural provisions in Section 1351, relating to the creation or  
22 amendment of a condominium plan, would be located elsewhere. See proposed Sections 6624 and  
23 6626.

24 **§ 6542 (UNCHANGED). “Condominium project”**

25 6542. (a) A “condominium project” means a development consisting of  
26 condominiums.

27 (b) A condominium consists of an undivided interest in common in a portion of  
28 real property coupled with a separate interest in space called a unit, the boundaries  
29 of which are described on a recorded final map, parcel map, or condominium plan  
30 in sufficient detail to locate all boundaries thereof. The area within these  
31 boundaries may be filled with air, earth, or water, or any combination thereof, and  
32 need not be physically attached to land except by easements for access and, if  
33 necessary, support. The description of the unit may refer to (1) boundaries  
34 described in the recorded final map, parcel map, or condominium plan, (2)  
35 physical boundaries, either in existence, or to be constructed, such as walls, floors,  
36 and ceilings of a structure or any portion thereof, (3) an entire structure containing  
37 one or more units, or (4) any combination thereof.

38 (c) The portion or portions of the real property held in undivided interest may be  
39 all of the real property, except for the separate interests, or may include a  
40 particular three-dimensional portion thereof, the boundaries of which are described  
41 on a recorded final map, parcel map, or condominium plan. The area within these  
42 boundaries may be filled with air, earth, or water, or any combination thereof, and

1 need not be physically attached to land except by easements for access and, if  
2 necessary, support.

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

5 **Comment.** Section 6542 restates Section 1351(f) without change, except that the section has  
6 been organized into subdivisions for ease of reference. For further information, see the Law  
7 Revision Comment to Section 6500.

8 **§ 6544 (UNCHANGED). “Declarant”**

9 6544. “Declarant” means the person or group of persons designated in the  
10 declaration as declarant, or if no declarant is designated, the person or group of  
11 persons who sign the original declaration or who succeed to special rights,  
12 preferences, or privileges designated in the declaration as belonging to the signator  
13 of the original declaration.

14 **Comment.** Section 6544 continues Section 1351(g) without change. For further information,  
15 see the Law Revision Comment to Section 6500.

16 **§ 6546 (UNCHANGED). “Declaration”**

17 6546. “Declaration” means the document, however denominated, that contains  
18 the information required by Section 6616 and 4255.

19 **Comment.** Section 6546 continues Section 1351(h) without change, except that the word  
20 “which” has been replaced with “that” and the cross-reference has been updated to reflect the new  
21 location of the portion of the referenced provision that is continued in this part. For further  
22 information, see the Law Revision Comment to Section 6500.

23 **Staff Note.** Section 4255 would continue portions of existing Section 1353, requiring special  
24 disclosures as to airport vicinity and jurisdiction of the San Francisco Bay Conservation and  
25 Development Commission, which this proposed legislation would make inapplicable to a  
26 nonresidential CID.

27 **§ 6548 (NEW). “Director”**

28 6548. “Director” means a natural person elected, designated, or selected to serve  
29 on the board.

30 **Comment.** Section 6548 is new. It is added for drafting convenience.

31 **Staff Note.** Proposed Section 6548 is added for drafting convenience.

32 **§ 6550 (REVISED). “Exclusive use common area”**

33 6550. (a) “Exclusive use common area” means a portion of the common area  
34 designated by the declaration for the exclusive use of one or more, but fewer than  
35 all, of the owners of the separate interests and which is or will be appurtenant to  
36 the separate interest or interests.

37 (b) Unless the declaration otherwise provides, any shutters, awnings, window  
38 boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes,  
39 and hardware incident thereto, screens and windows or other fixtures designed to  
40 serve a single separate interest, but located outside the boundaries of the separate

1 interest, are exclusive use common area allocated exclusively to that separate  
2 interest.

3 (c) Notwithstanding the provisions of the declaration, internal and external  
4 communication wiring designed to serve a single separate interest, but located  
5 outside the boundaries of the separate interest, are exclusive use common area  
6 allocated exclusively to that separate interest. For the purposes of this section,  
7 “wiring” includes nonmetallic transmission lines.

8 **Comment.** Section 6550 restates Section 1351(i) without change, except that the term  
9 “telephone” has been replaced with “communication,” the last sentence of subdivision (c) is new,  
10 and several references to “common areas” are singularized. For further information, see the Law  
11 Revision Comment to Section 6500.

12 **Staff Note.** (1) Proposed Section 6550(c) has been revised to refer to “communication”  
13 wiring rather than “telephone” wiring. This modernization reflects the changing nature of  
14 communication technology.

15 (2) The last sentence of proposed Section 6550(c) is added to include transmission media other  
16 than metallic wire (e.g., fiber optic cable).

17 **§ 6552 (UNCHANGED). “Governing documents”**

18 6552. “Governing documents” means the declaration and any other documents,  
19 such as bylaws, operating rules of the association, articles of incorporation, or  
20 articles of association, which govern the operation of the common interest  
21 development or association.

22 **Comment.** Section 6552 continues Section 1351(j) without change. For further information,  
23 see the Law Revision Comment to Section 6500.

24 **§ 6554 (NEW). “Member”**

25 6554. “Member” means either of the following persons:

26 (a) An owner of a separate interest.

27 (b) A person that is designated as a member in the declaration, articles of  
28 incorporation, or bylaws. The incidents of a membership established under this  
29 paragraph may be limited by the document that establishes the membership.

30 **Comment.** Section 6554 is new. It is added for drafting convenience.

31 Subdivision (b) recognizes that the governing documents may designate a non-owner as a  
32 member for a limited purpose. For example, an association may have a cooperative or reciprocal  
33 relationship with another entity (e.g., an affiliated resort) and the governing documents may  
34 provide that a member of that entity has limited membership rights within the association.

35 **Staff Note.** Proposed Section 6554 is added for drafting convenience. Subdivision (b)  
36 acknowledges that a person other than an owner of a separate interest may be designated as a  
37 member in the governing documents, for specified purposes.

38 **§ 6556 (NEW). “Nonresidential common interest development”**

39 6556. A “nonresidential common interest development” means a common  
40 interest development that is limited to industrial or commercial uses by zoning or  
41 by a declaration of covenants, conditions, and restrictions that has been recorded

1 in the official records of each county in which the common interest development is  
2 located.

3 **Comment.** Section 6556 is drawn from Section 1373(a). It is added for drafting convenience.

4 **☞ Staff Note.** The Commission invites comment as to the adequacy of this definition of  
5 nonresidential common interest development.

6 **§ 6558 (REVISED). “Occupant”**

7 6558. “Occupant” means an owner, ~~resident~~, guest, invitee, tenant, lessee,  
8 sublessee, or other person in possession of a separate interest.

9 **Comment.** Section 6558 restates and generalizes Section 1364(e), deleting an inapplicable  
10 reference to “resident.” For further information, see the Law Revision Comment to Section 6500.

11 **☞ Staff Note.** Proposed Section 6558 would restate and generalize an existing definition of  
12 “occupant” to provide guidance with respect to other provisions that use the same term.

13 **§ 6560 (NEW). “Person”**

14 6560. “Person” means an individual, corporation, government or governmental  
15 subdivision or agency, business trust, estate, trust, partnership, limited liability  
16 company, association, or other entity.

17 **Comment.** Section 6560 is new. It is added for drafting convenience.

18 **☞ Staff Note.** Proposed Section 6560 is new. It reflects the standard statutory definition of  
19 “person” as including both natural persons and legal entities. See, e.g., Prob. Code § 56.

20 **§ 6562 (REVISED). “Planned development”**

21 6562. “Planned development” means a development (other than a community  
22 apartment project, a condominium project, or a stock cooperative) having either or  
23 both of the following features:

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

27 (b) A power exists in the association to enforce an obligation of an owner of a  
28 separate interest with respect to the beneficial use and enjoyment of the common  
29 area by means of an assessment that may become a lien upon the separate interests  
30 in accordance with Article 3 (commencing with Section 6808) of Chapter 6.

31 **Comment.** Section 6562 continues Section 1351(k) without change, with the following  
32 exceptions: (1) The cross-reference has been updated to reflect the new location of the lien  
33 provisions of former Section 1367.1. (2) “Which” has been changed to “that” for grammatical  
34 purposes. For further information, see the Law Revision Comment to Section 6500.

35 **☞ Staff Note.** Proposed Section 6562(b) replaces the existing reference in Section 1351(k) to  
36 “Section 1367 or 1367.1” with a reference to “Article 3 (commencing with Section 6808) of  
37 Chapter 6.” That reference encompasses all of the provisions of Sections 1367 and 1367.1 under  
38 which an “assessment ... may become a lien.”

1 § 6564 (UNCHANGED). “Separate interest”

2 6564. (a) “Separate interest” has the following meanings:

3 (1) In a community apartment project, “separate interest” means the exclusive  
4 right to occupy an apartment, as specified in Section 6536.

5 (2) In a condominium project, “separate interest” means an individual unit, as  
6 specified in Section 6542.

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

9 (4) In a stock cooperative, “separate interest” means the exclusive right to  
10 occupy a portion of the real property, as specified in Section 6566.

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

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

19 **Comment.** Section 6564 continues Section 1351(l) without change, except that the last two  
20 unnumbered paragraphs of Section 1351(l) are designated as subdivisions (b) and (c), cross-  
21 references are updated to reflect the new location of referenced provisions, and a reference to  
22 “common areas” is singularized. For further information, see the Law Revision Comment to  
23 Section 6500.

24 § 6566 (UNCHANGED). “Stock cooperative”

25 6566. ~~(a)~~ “Stock cooperative” means a development in which a corporation is  
26 formed or availed of, primarily for the purpose of holding title to, either in fee  
27 simple or for a term of years, improved real property, and all or substantially all of  
28 the shareholders of the corporation receive a right of exclusive occupancy in a  
29 portion of the real property, title to which is held by the corporation. The owners’  
30 interest in the corporation, whether evidenced by a share of stock, a certificate of  
31 membership, or otherwise, shall be deemed to be an interest in a common interest  
32 development and a real estate development for purposes of subdivision (f) of  
33 Section 25100 of the Corporations Code.

34 ~~(b) A “stock cooperative” includes a limited equity housing cooperative which is  
35 a stock cooperative that meets the criteria of Section 817.~~

36 **Comment.** Section 6566 continues the first paragraph of Section 1351(m) without change. For  
37 further information, see the Law Revision Comment to Section 6500.

38 **Staff Note.** The Commission invites comment on whether a nonresidential common interest  
39 development may be organized as a stock cooperative.

1 CHAPTER 2. GOVERNING DOCUMENTS

2 Article 1. General Provisions

3 § 6600 (NEW). Document authority

4 6600. (a) The articles of incorporation may not include a provision that is  
5 inconsistent with the declaration. To the extent of any inconsistency between the  
6 articles of incorporation and the declaration, the declaration controls.

7 (b) The bylaws may not include a provision that is inconsistent with the  
8 declaration or the articles of incorporation. To the extent of any inconsistency  
9 between the bylaws and the articles of incorporation or declaration, the articles of  
10 incorporation or declaration control.

11 (c) The operating rules may not include a provision that is inconsistent with the  
12 declaration, articles of incorporation, or bylaws. To the extent of any inconsistency  
13 between the operating rules and the bylaws, articles of incorporation, or  
14 declaration, the bylaws, articles of incorporation, or declaration control.

15 (d) This section does not apply to a stock cooperative.

16 **Comment.** Subdivision (a) of Section 6600 is new.

17 Subdivision (b) is consistent with Corporations Code Section 7151(c) providing that the bylaws  
18 shall be consistent with the articles of incorporation.

19 Subdivision (c) is drawn from Section 1357.110, which provides that an operating rule may not  
20 be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

21 Subdivision (d) reflects the fact that some stock cooperatives are created without a recorded  
22 declaration.

23  **Staff Note.** Proposed Section 6600 is new. It would provide guidance in resolving conflicts  
24 between different governing documents.

25 § 6602 (UNCHANGED). Liberal construction of instruments

26 6602. Any deed, declaration, or condominium plan for a common interest  
27 development shall be liberally construed to facilitate the operation of the common  
28 interest development, and its provisions shall be presumed to be independent and  
29 severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of  
30 Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the  
31 governing documents.

32 **Comment.** Section 6602 continues Section 1370 without change, except that “this division”  
33 has been replaced with “Division 2” and the phrase “of a common interest development” has not  
34 been continued. For further information, see the Law Revision Comment to Section 6500.

35 § 6604 (UNCHANGED). Boundaries of units

36 6604. In interpreting deeds and condominium plans, the existing physical  
37 boundaries of a unit in a condominium project, when the boundaries of the unit are  
38 contained within a building, or of a unit reconstructed in substantial accordance  
39 with the original plans thereof, shall be conclusively presumed to be its boundaries  
40 rather than the metes and bounds expressed in the deed or condominium plan, if

1 any exists, regardless of settling or lateral movement of the building and  
2 regardless of minor variance between boundaries shown on the plan or in the deed  
3 and those of the building.

4 **Comment.** Section 6604 continues Section 1371 without change. For further information, see  
5 the Law Revision Comment to Section 6500.

6 **Staff Note.** The Commission has received comment suggesting that Section 1371 is  
7 inadequate to address some situations. The Commission invites further comment on this issue and  
8 particularly invites specific suggestions for how the language of proposed Section 6604 should be  
9 changed to address any problems with the scope of the section.

10 **§ 6606 (REVISED). Deletion of unlawful restrictive covenants**

11 6606. (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, without approval of the members, shall amend any  
15 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  
18 no other change to the declaration or governing document.

19 (c) If the declaration is amended under this section, the board shall record the  
20 restated declaration in each county in which the common interest development is  
21 located. If the articles of incorporation are amended under this section, the board  
22 shall file a certificate of amendment pursuant to Section 7814 of the Corporations  
23 Code.

24 (d) If after providing written notice to an association (Section 6512) requesting  
25 that the association delete a restrictive covenant that violates subdivision (a), and  
26 the association fails to delete the restrictive covenant within 30 days of receiving  
27 the notice, the Department of Fair Employment and Housing, a city or county in  
28 which a common interest development is located, or any person may bring an  
29 action against the association for injunctive relief to enforce subdivision (a). The  
30 court may award attorney's fees to the prevailing party.

31 **Comment.** Section 6606 continues Section 1352.5 without change, with the following  
32 exceptions: (1) Subdivision (b) is revised to replace the term "board of directors of an  
33 association" with the defined term "board." See Section 6530 ("board" defined). (2) Subdivision  
34 (b) is revised to replace "owners" with "members." See Section 6554 ("member" defined). (3)  
35 subdivision (c) is added. (4) Subdivision (d) is revised to include a reference to the provision  
36 governing notice to an association (Section 6512). For further information, see the Law Revision  
37 Comment to Section 6500.

38 **Staff Note.** Proposed Section 6606(c) is added to require that a governing document that is in  
39 the public record be publicly updated to reflect an amendment made pursuant to this section.

40 **§ 6608 (REVISED). Deletion of declarant provisions in governing documents**

41 6608. (a) Notwithstanding any provision of the governing documents to the  
42 contrary, the board may, after the declarant has completed construction of the

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

10 (b) The provisions which may be deleted by action of the board shall be limited  
11 to those which provide for access by the declarant over or across the common area  
12 for the purposes of (1) completion of construction of the development, and (2) the  
13 erection, construction, or maintenance of structures or other facilities designed to  
14 facilitate the completion of construction or marketing of separate interests.

15 (c) At least 30 days prior to taking action pursuant to subdivision (a), the board  
16 shall deliver to all members, by individual delivery (Section 6514), (1) a copy of  
17 all amendments to the governing documents proposed to be adopted under  
18 subdivision (a), and (2) a notice of the time, date, and place the board will consider  
19 adoption of the amendments. The board may consider adoption of amendments to  
20 the governing documents pursuant to subdivision (a) only at a meeting that is open  
21 to all members, who shall be given opportunity to make comments thereon. All  
22 deliberations of the board on any action proposed under subdivision (a) shall only  
23 be conducted in an open meeting.

24 (d) The board may not amend the governing documents pursuant to this section  
25 without the approval of a majority of a quorum of the members (Section 6524).  
26 For the purposes of this section, “quorum” means members representing more than  
27 50 percent of the voting power of the association, excluding members who own  
28 more than two separate interests in the development.

29 **Comment.** Section 6608 continues Section 1355.5 without change, with the following  
30 exceptions: (1) The phrase “his or her” is not continued in subdivision (a). (2) The phrase “of a  
31 common interest development” has not been continued in subdivision (a). (3) The terms “board of  
32 directors” and “board of directors of the association” are replaced throughout with the defined  
33 term “board.” See Section 6530 (“board” defined). (4) The defined term “declarant” is used  
34 throughout, in place of “developer.” See Section 6544 (“declarant” defined). (5) Subdivision (b)  
35 has been revised to use numerals to number the listed items, rather than letters. (6) Subdivisions  
36 (c) and (d) are revised to use the defined term “member.” See Section 6554 (“member” defined).  
37 (7) Subdivision (c) is revised to provide for individual delivery of the specified notice. See  
38 Section 6514. (8) Subdivision (c) is revised to delete the unnecessary word “such.” (9)  
39 Subdivision (c) is revised to replace “which” with “that.” (10) Subdivision (d) is revised to use  
40 the standard term “approval of a majority of a quorum of the members.” See Section 6524. (11)  
41 The quorum rule provided in subdivision (d) is revised to make clear that a quorum is based on a  
42 majority of the voting power (excluding those who own more than two units), and not on a  
43 majority of the members. This avoids uncertainty about the calculation of a quorum when a single  
44 separate interest is owned by more than one person. For further information, see the Law  
45 Revision Comment to Section 6500.

1 **☞ Staff Note.** The quorum rule provided in proposed Section 6608(d) is revised to make clear  
2 that a quorum is based on a majority of the *voting power* (excluding those who own more than  
3 two units), and not on a majority of the *owners*. This avoids uncertainty about the calculation of a  
4 quorum when a single separate interest is owned by more than one person.

5 **§ 6610 (NEW). Correction of statutory cross-reference**

6 6610. (a) Notwithstanding any other provision of law or provision of the  
7 governing documents, if the governing documents include a reference to a  
8 provision of the Davis Stirling Common Interest Development Act that was  
9 ~~repealed and~~ continued in a new provision by the act that added this section, the  
10 board may amend the governing documents, solely to correct the cross-reference,  
11 by adopting a board resolution that shows the correction.

12 (b) A governing document that is corrected under this section may be restated in  
13 corrected form and recorded, provided that a copy of the board resolution  
14 authorizing the corrections is recorded along with the restated governing  
15 document.

16 **Comment.** Section 6610 is new. It is intended to provide a simplified method to correct  
17 statutory cross-references in an association's governing documents that are required as a result of  
18 the enactment of the act that added this section. No other amendment can be made under this  
19 section.

20 **☞ Staff Note.** Proposed Section 6610 is new. It would provide a simplified method to update  
21 statutory cross-references to reflect changes made by the proposed law. This would reduce the  
22 transitional complications resulting from the enactment of this act.

23 **§ 6612 (NEW). Conflict with applicable law**

24 6612. Notwithstanding a contrary provision of the governing documents, in the  
25 event of a conflict between a provision of a governing document and any  
26 governing provision of law, including, but not limited to, a statute, ordinance,  
27 regulation, building code, or court decision, the governing provision of law shall  
28 prevail.

29 **Comment.** Section 6612 is new. It is added to make clear that an association's governing  
30 documents are subordinate to the law and are not enforceable to the extent they are contradicted  
31 by the law.

32 **☞ Staff Note.** Proposed Section 6612 is new. It makes clear that an association's governing  
33 documents are subordinate to the law and are not enforceable to the extent they are contradicted  
34 by the law. It is drawn from more specific provisions of the Davis-Stirling Act that are not  
35 included in this legislation.

36 **Article 2. Declaration**

37 **§ 6614 (REVISED). Content of declaration**

38 6614. (a) A declaration, recorded on or after January 1, 1986, shall contain a  
39 legal description of the common interest development, and a statement that the  
40 common interest development is a community apartment project, condominium

1 project, planned development, stock cooperative, or combination thereof. The  
2 declaration shall additionally set forth the name of the association and the  
3 restrictions on the use or enjoyment of any portion of the common interest  
4 development that are intended to be enforceable equitable servitudes.

5 (b) The declaration may contain any other matters the declarant or the members  
6 consider appropriate.

7 **Comment.** Subdivision (a) of Section 6614 continues the first two sentences of Section  
8 1353(a)(1) without change. For further information, see the Law Revision Comment to Section  
9 6500.

10 Subdivision (b) continues Section 1353(b) without change, with the following exceptions: (1)  
11 The defined term “member” is used in place of “owner.” See Section 6554 (“member” defined).  
12 (2) The defined term “declarant” is used in place of “original signator of the declaration.” See  
13 Section 6544 (“declarant” defined). For further information, see the Law Revision Comment to  
14 Section 6500.

15 **Staff Note.** Proposed Section 6614(b) would use the defined term “declarant” in place of  
16 “original signator of the declaration.” That would seem to be a slight substantive change, as the  
17 existing language could be read to apply only to the *original* declarant (as opposed to any  
18 successor declarant). However, the staff does not see any good policy reason to preclude a  
19 successor declarant, who may own a large percentage of the separate interests within a CID, from  
20 having a say as to what is appropriate for inclusion in the declaration. The Commission invites  
21 comment on whether the proposed change would cause any problems.

22 **§ 6616 (REVISED). Amendment authorized**

23 6616. Except to the extent that a declaration provides by its express terms that it  
24 is not amendable, in whole or in part, a declaration that fails to include provisions  
25 permitting its amendment at all times during its existence may be amended at any  
26 time.

27 **Comment.** Section 6616 continues the first sentence of Section 1355(b) without change,  
28 except “which” is replaced with “that. For further information, see the Law Revision Comment to  
29 Section 6500.

30 **Staff Note.** Proposed Section 6616 continues the authority to amend a declaration that is  
31 silent as to whether it may be amended, but does not continue the procedure specified for doing  
32 so. Instead, the amendment would be made using the general procedure for amending a  
33 declaration, which is provided in proposed Section 6620.

34 **§ 6618 (REVISED). Amendment to extend term of declaration authorized**

35 6618. (a) The Legislature finds that there are common interest developments that  
36 have been created with deed restrictions which do not provide a means for the  
37 members to extend the term of the declaration. The Legislature further finds that  
38 covenants and restrictions, contained in the declaration, are an appropriate method  
39 for protecting the common plan of developments and to provide for a mechanism  
40 for financial support for the upkeep of common area including, but not limited to,  
41 roofs, roads, heating systems, and recreational facilities. If declarations terminate  
42 prematurely, common interest developments may deteriorate and the housing  
43 supply of affordable units could be impacted adversely. The Legislature further  
44 finds and declares that it is in the public interest to provide a vehicle for extending

1 the term of the declaration if members having more than 50 percent of the votes in  
2 the association choose to do so.

3 (b) A declaration that specifies a termination date, but that contains no provision  
4 for extension of the termination date, may be extended by the approval of  
5 members pursuant to Section 6620.

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

9 **Comment.** Subdivision (a) of Section 6618 continues Section 1357(a) without change, except  
10 that a reference to “common areas” is singularized, a reference to “housing” is deleted, and the  
11 defined term “member” is used. See Section 6554 (“member” defined). For further information,  
12 see the Law Revision Comment to Section 6500.

13 Subdivision (b) restates part of the substance of Section 1357(b), authorizing extension of the  
14 termination date of a declaration that does not provide for extension of the termination date. The  
15 procedure for extension of the termination date provided in Section 1357(b)-(c) is not continued.  
16 An extension would instead be made pursuant to the general procedure for amendment of a  
17 declaration. See Section 6620. For further information, see the Law Revision Comment to Section  
18 6500.

19 Subdivision (c) continues Section 1357(d) without change. For further information, see the  
20 Law Revision Comment to Section 6500.

21 **Staff Note.** Proposed Section 6618 continues the authority to amend a declaration to extend  
22 its term, but does not continue the procedure specified for doing so. Instead, the extension would  
23 be made using the general procedure for amending a declaration, which is provided in proposed  
24 Section 6620.

25 **§ 6620 (REVISED). Amendment procedure**

26 6620. (a) A declaration may be amended pursuant to the governing documents  
27 or this part. ~~Except as provided in Section 4275, an~~ An amendment is effective  
28 after (1) the proposed amendment has been delivered by individual notice to all  
29 members not less than 15 days and not more than 60 days prior to any approval  
30 being solicited, (2) the approval of the percentage of members required by the  
31 governing documents has been given, ~~(2)~~ (3) that fact has been certified in a  
32 writing executed and acknowledged by the officer designated in the declaration or  
33 by the association for that purpose, or if no one is designated, by the president of  
34 the association, and ~~(3)~~ (4) that writing has been recorded in each county in which  
35 a portion of the common interest development is located.

36 (b) If the governing documents do not specify the percentage of members who  
37 must approve an amendment of the declaration, an amendment may be approved  
38 by a majority of all members (Section 6522).

39 **Comment.** Subdivision (a) of Section 6620 restates Section 1355(a), with the following  
40 exceptions: (1) The first word is replaced with “a.” (2) “Title” is replaced with “part.” (3) A  
41 reference to a statutory exception that is not continued in this part is deleted. (4) A notice  
42 requirement drawn from Section 1355(b) is added. (5) The defined term “member” is used. See  
43 Section 6554 (“member” defined). For further information, see the Law Revision Comment to  
44 Section 6500.

45 Subdivision (b) generalizes a rule stated in Sections 1355(b) and 1357. For further information,  
46 see the Law Revision Comment to Section 6500.

1 **Staff Note.** Proposed Section 6620(b) would provide a default rule on member approval of an  
2 amendment where the governing documents are silent on the matter. That rule is drawn from  
3 Sections 1355(b) and 1357.

4 Article 3. Articles of Incorporation

5 **§ 6622 (REVISED). Content of articles**

6 6622. (a) The articles of incorporation of a common interest development  
7 association filed with the Secretary of State on or after January 1, 1995, shall  
8 include a statement, which shall be in addition to the statement of purposes of the  
9 corporation, that does all of the following:

10 (1) Identifies the corporation as an association formed to manage a common  
11 interest development under the ~~Davis-Stirling~~ Nonresidential Common Interest  
12 Development Act.

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

17 (3) States the name and address of the association's managing agent, if any.

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

22 **Comment.** Section 6622 continues Section 1363.5 without change, except that a reference to  
23 this part is substituted for a reference to the Davis Stirling Common Interest Development Act,  
24 and a cross-reference to the definition of "managing agent" has not been continued. For further  
25 information, see the Law Revision Comment to Section 6500.

26 See also Corp. Code §§ 1502 (annual statement), 7130-7135 (content of articles of  
27 incorporation), 7810-7820 (amendment of articles of incorporation), 7150-7153 (content and  
28 amendment of bylaws).

29 Article 4. Condominium Plan

30 **§ 6624 (REVISED). Recordation of condominium plan**

31 6624. (a) The certificate consenting to the recordation of a condominium plan  
32 that is required by subdivision (c) of Section 6540 shall be signed and  
33 acknowledged by all of the following persons:

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

36 (2) In the case of a condominium project that will terminate upon the  
37 termination of an estate for years, by all lessors and lessees of the estate for years.

38 (3) In the case of a condominium project subject to a life estate, by all life  
39 tenants and remainder interests.

1 (4) The trustee or the beneficiary of each recorded deed of trust, and the  
2 mortgagee of each recorded mortgage encumbering the property.

3 (b) Owners of mineral rights, easements, rights-of-way, and other nonpossessory  
4 interests do not need to sign the certificate.

5 (c) In the event a conversion to condominiums of a community apartment  
6 project or stock cooperative has been approved by the required number of owners,  
7 trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the  
8 Government Code, the certificate need only be signed by those owners, trustees,  
9 beneficiaries, and mortgagees approving the conversion.

10 **Comment.** Section 6624 restates Section 1351(e)(3), except that the last paragraph of (e)(3) is  
11 not continued in this section and a cross-reference to Section 6540(c) is added to the first  
12 paragraph. For further information, see the Law Revision Comment to Section 6500.

13 **Staff Note.** Proposed Section 6624 would restate the procedural provisions of existing  
14 Section 1351(e). Doing so necessitates a number of minor nonsubstantive language revisions.

15 **§ 6626 (REVISED). Amendment or revocation of condominium plan**

16 6626. A condominium plan may be amended or revoked by a recorded  
17 instrument that is acknowledged and signed by all the persons who, at the time of  
18 amendment or revocation, are persons whose signatures are required under Section  
19 6624.

20 **Comment.** Section 6626 continues the last paragraph of Section 1351(e) without change,  
21 except that language is added to make clear that the persons whose signatures are required for  
22 amendment or revocation of a condominium plan are the persons who fall within the groups  
23 described in Section 6624 at the time of amendment or revocation. For further information, see  
24 the Law Revision Comment to Section 6500.

25 **Staff Note.** Proposed Section 6626 is revised to make its meaning more clear, as described in  
26 the Comment following the section.

27 **CHAPTER 3. OWNERSHIP AND TRANSFER OF INTERESTS**

28 **Article 1. Ownership Rights and Interests**

29 **§ 6650 (UNCHANGED). Ownership of common area**

30 6650. Unless the declaration otherwise provides, in a condominium project, or in  
31 a planned development in which the common area is owned by the owners of the  
32 separate interests, the common area is owned as tenants in common, in equal  
33 shares, one for each unit or lot.

34 **Comment.** Section 6650 continues Section 1362 without change, except that the references to  
35 “common areas” are singularized. For further information, see the Law Revision Comment to  
36 Section 6500.

1 § 6652 (UNCHANGED). Appurtenant rights and easements

2 6652. Unless the declaration otherwise provides:

3 (a) In a community apartment project and condominium project, and in those  
4 planned developments with common area owned in common by the owners of the  
5 separate interests, there are appurtenant to each separate interest nonexclusive  
6 rights of ingress, egress, and support, if necessary, through the common area. The  
7 common area is subject to these rights.

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

12 **Comment.** Section 6652 continues Section 1361 without change, except that the references to  
13 “common areas” are singularized. For further information, see the Law Revision Comment to  
14 Section 6500.

15 § 6654 (REVISED). Access to separate interest property

16 6654. Except as otherwise provided in law, an order of the court, or an order  
17 pursuant to a final and binding arbitration decision, an association may not deny a  
18 member or occupant physical access to the member’s or occupant’s separate  
19 interest, either by restricting access through the common area to the separate  
20 interest, or by restricting access solely to the separate interest.

21 **Comment.** Section 6654 continues Section 1361.5 without change, with the following  
22 exceptions: (1) The phrase “his or her” has been replaced with “the member’s or occupant’s.” (2)  
23 References to the “owner’s” separate interest have been revised to omit the word “owner’s.” This  
24 will help to avoid any implication that the reference does not also apply to an “occupant” of a  
25 separate interest. (3) The defined term “member” is used in place of “owner” throughout. See  
26 Section 6554 (“member” defined). (4) The references to “common areas” is singularized. For  
27 further information, see the Law Revision Comment to Section 6500.

28 **Staff Note.** Although it is clear that Section 1361.5 is intended to protect both owners and  
29 occupants of separate interests, that section twice refers to the “owner’s separate interest,”  
30 without any reference to an occupant. That could create the impression that the Legislature  
31 intended to draw some sort of distinction between owners and occupants, which the staff does not  
32 believe to be the case. Proposed Section 6654 would adjust the language of Section 1361.5 to  
33 avoid that implication. Note also that the defined term “member” is used in place of “owner”  
34 throughout.

35 Article 2. Restrictions on Transfers

36 § 6656 (REVISED). Partition of condominium project

37 6656. (a) Except as provided in this section, the common area in a condominium  
38 project shall remain undivided, and there shall be no judicial partition thereof.  
39 Nothing in this section shall be deemed to prohibit partition of a cotenancy in a  
40 condominium.

41 (b) The owner of a separate interest in a condominium project may maintain a  
42 partition action as to the entire project as if the owners of all of the separate

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

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

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

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

15 (4) Any conditions in the declaration for sale under the circumstances described  
16 in this subdivision have been met.

17 **Comment.** Section 6656 continues Section 1359 without change, except that references to  
18 “common areas” are singularized and subdivision (b)(4) is rephrased to avoid use of “such.” For  
19 further information, see the Law Revision Comment to Section 6500.

20 **Staff Note.** Proposed Section 6656(b)(4) would rephrase Section 1359(b)(4) to avoid use of  
21 the word “such,” which is strongly disfavored in statutory drafting. The Commission invites  
22 comment on whether the rephrasing would cause any substantive change in the meaning of the  
23 provision.

24 **§ 6658 (UNCHANGED). Lien for work performed in condominium project**

25 6658. (a) In a condominium project, no labor performed or services or materials  
26 furnished with the consent of, or at the request of, an owner in the condominium  
27 project or the owners’ agent or contractor shall be the basis for the filing of a lien  
28 against any other property of any other owner in the condominium project unless  
29 that other owner has expressly consented to or requested the performance of the  
30 labor or furnishing of the materials or services. However, express consent shall be  
31 deemed to have been given by the owner of any condominium in the case of  
32 emergency repairs thereto.

33 (b) Labor performed or services or materials furnished for the common area, if  
34 duly authorized by the association, shall be deemed to be performed or furnished  
35 with the express consent of each condominium owner.

36 (c) The owner of any condominium may remove that owner’s condominium  
37 from a lien against two or more condominiums or any part thereof by payment to  
38 the holder of the lien of the fraction of the total sum secured by the lien that is  
39 attributable to the owner’s condominium.

40 **Comment.** Section 6658 continues Section 1369 without change, except for the following  
41 changes: (1) Subdivisions are added. (2) The phrase “his or her” is replaced with references to the  
42 owner throughout. (3) A reference to “common areas” is singularized. (4) The word “which” is

1 replaced with “that” in subdivision (c). For further information, see the Law Revision Comment  
2 to Section 6500.

3 Article 3. Transfer of Separate Interest

4 **§ 6660 (UNCHANGED). Community apartment project**

5 6660. In a community apartment project, any conveyance, judicial sale, or other  
6 voluntary or involuntary transfer of the separate interest includes the undivided  
7 interest in the community apartment project. Any conveyance, judicial sale, or  
8 other voluntary or involuntary transfer of the owner’s entire estate also includes  
9 the owner’s membership interest in the association.

10 **Comment.** Section 6660 continues Section 1358(a) without change. For further information,  
11 see the Law Revision Comment to Section 6500.

12  **Staff Note.** The Commission invites comment on whether a nonresidential common interest  
13 development may be organized as a community apartment project, or whether this provision is  
14 unnecessary.

15 **§ 6662 (UNCHANGED). Condominium project**

16 6662. In a condominium project the common area is not subject to partition,  
17 except as provided in Section 6656. Any conveyance, judicial sale, or other  
18 voluntary or involuntary transfer of the separate interest includes the undivided  
19 interest in the common area. Any conveyance, judicial sale, or other voluntary or  
20 involuntary transfer of the owner’s entire estate also includes the owner’s  
21 membership interest in the association.

22 **Comment.** Section 6662 continues Section 1358(b) without change, except that the cross-  
23 reference is updated to reflect the new location of the referenced provision and references to  
24 “common areas” are singularized. For further information, see the Law Revision Comment to  
25 Section 6500.

26 **§ 6664 (UNCHANGED). Planned development**

27 6664. In a planned development, any conveyance, judicial sale, or other  
28 voluntary or involuntary transfer of the separate interest includes the undivided  
29 interest in the common area, if any exists. Any conveyance, judicial sale, or other  
30 voluntary or involuntary transfer of the owner’s entire estate also includes the  
31 owner’s membership interest in the association.

32 **Comment.** Section 6664 continues Section 1358(c) without change, except that a reference to  
33 “common areas” is singularized. For further information, see the Law Revision Comment to  
34 Section 6500.

35 **§ 6666 (UNCHANGED). Stock cooperative**

36 6666. In a stock cooperative, any conveyance, judicial sale, or other voluntary or  
37 involuntary transfer of the separate interest includes the ownership interest in the  
38 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary

1 or involuntary transfer of the owner’s entire estate also includes the owner’s  
2 membership interest in the association.

3 **Comment.** Section 6666 continues Section 1358(d) without change. For further information,  
4 see the Law Revision Comment to Section 6500.

5 **Staff Note.** The Commission invites comment on whether a nonresidential common interest  
6 development may be organized as a stock cooperative, or whether this provision is unnecessary.

7 **§ 6668 (UNCHANGED). Transfer of exclusive use common area**

8 6668. Nothing in this article prohibits the transfer of exclusive use areas,  
9 independent of any other interest in a common interest subdivision, if  
10 authorization to separately transfer exclusive use areas is expressly stated in the  
11 declaration and the transfer occurs in accordance with the terms of the declaration.

12 **Comment.** Section 6668 continues the next to last paragraph of Section 1358 without change,  
13 except that “section” is replaced with “article.” For further information, see the Law Revision  
14 Comment to Section 6500.

15 **§ 6670 (UNCHANGED). Severability of interests**

16 6670. Any restrictions upon the severability of the component interests in real  
17 property which are contained in the declaration shall not be deemed conditions  
18 repugnant to the interest created within the meaning of Section 711. However,  
19 these restrictions shall not extend beyond the period in which the right to partition  
20 a project is suspended under Section 6656.

21 **Comment.** Section 6670 continues the last paragraph of Section 1358 without change, with the  
22 following exceptions: (1) A superfluous reference to the “Civil Code” is omitted. (2) The cross-  
23 reference is updated to reflect the new location of the referenced provision. For further  
24 information, see the Law Revision Comment to Section 6500.

25 **CHAPTER 4. PROPERTY USE AND MAINTENANCE**

26 **Article 1. Use of Separate Interest**

27 **§ 6700 (NEW). Application of article**

28 6700. This article includes provisions that limit the authority of an association to  
29 regulate the use of a member’s separate interest. Nothing in this article is intended  
30 to affect the application of any other provision that limits the authority of an  
31 association to regulate the use of a member’s separate interest, including, but not  
32 limited to, the following provisions:

33 (a) Sections 712 and 713, relating to the display of signs.

34 (b) Sections 714 and 714.1, relating to solar energy systems.

35 (c) Section 714.5, relating to structures that are constructed offsite and moved to  
36 the property in sections or modules.

37 (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the  
38 Government Code, relating to racial restrictions.

1 ~~(e) Section 12927 of the Government Code, relating to the modification of~~  
2 ~~property to accommodate a disability.~~

3 ~~(f) Section 1597.40 of the Health and Safety Code, relating to the operation of a~~  
4 ~~family day care home.~~

5 **Comment.** Section 6700 is new. It provides a non-exclusive list of provisions outside of this  
6 part that limit the authority of an association to regulate separate interest property use.

7 **Staff Note.** (1) Subdivisions (e) and (f) of this section reference statutory provisions that  
8 by their terms have no application to nonresidential developments.

9 (2) Proposed Section 6700 is new. It introduces the article and lists other provisions that protect  
10 separate interest use rights.

11 **§ 6702 (UNCHANGED). Display of U.S. flag**

12 6702. (a) Except as required for the protection of the public health or safety, no  
13 declaration or other governing document shall limit or prohibit, or be construed to  
14 limit or prohibit, the display of the flag of the United States by a member on or in  
15 the member's separate interest or within the member's exclusive use common  
16 area.

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

22 (c) In any action to enforce this section, the prevailing party shall be awarded  
23 reasonable attorney's fees and costs.

24 **Comment.** Section 6702 continues Section 1353.5 without change, except that a superfluous  
25 cross-reference to governing definitions is omitted and the defined term "member" is used in  
26 place of "owner." See Section 6554 ("member" defined). For further information, see the Law  
27 Revision Comment to Section 6500.

28 **§ 6704 (UNCHANGED). Noncommercial sign**

29 6704. (a) The governing documents may not prohibit posting or displaying of  
30 noncommercial signs, posters, flags, or banners on or in a member's separate  
31 interest, except as required for the protection of public health or safety or if the  
32 posting or display would violate a local, state, or federal law.

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

39 (c) An association may prohibit noncommercial signs and posters that are more  
40 than 9 square feet in size and noncommercial flags or banners that are more than  
41 15 square feet in size.

1       **Comment.** Section 6704 continues Section 1353.6 without change, except that the redundant  
2 phrase “including the operating rules” is not continued and the defined term “member” is used in  
3 place of “owner.” See Section 6554 (“member” defined). For further information, see the Law  
4 Revision Comment to Section 6500.

5       **§ 6706 (REVISED). Pets**

6       6706. (a) No governing documents shall prohibit the owner of a separate interest  
7 within a common interest development from keeping at least one pet within the  
8 common interest development, subject to reasonable rules and regulations of the  
9 association. This section may not be construed to affect any other rights provided  
10 by law to an owner of a separate interest to keep a pet within the development.

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

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

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

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

25       **Comment.** Section 6704 continues Section 1360.5 without change, except that a reference to  
26 “homeowner” has been replaced with “owner” in subdivision (b), and “his or her” has been  
27 replaced with “the owner’s” in subdivision (c). For further information, see the Law Revision  
28 Comment to Section 6500.

29       **§ 6708 (UNCHANGED). Television antenna or satellite dish**

30       6708. (a) Any covenant, condition, or restriction contained in any deed, contract,  
31 security instrument, or other instrument affecting the transfer or sale of, or any  
32 interest in, a common interest development that effectively prohibits or restricts  
33 the installation or use of a video or television antenna, including a satellite dish, or  
34 that effectively prohibits or restricts the attachment of that antenna to a structure  
35 within that development where the antenna is not visible from any street or  
36 common area, except as otherwise prohibited or restricted by law, is void and  
37 unenforceable as to its application to the installation or use of a video or television  
38 antenna that has a diameter or diagonal measurement of 36 inches or less.

39       (b) This section shall not apply to any covenant, condition, or restriction, as  
40 described in subdivision (a), that imposes reasonable restrictions on the  
41 installation or use of a video or television antenna, including a satellite dish, that  
42 has a diameter or diagonal measurement of 36 inches or less. For purposes of this

1 section, “reasonable restrictions” means those restrictions that do not significantly  
2 increase the cost of the video or television antenna system, including all related  
3 equipment, or significantly decrease its efficiency or performance and include all  
4 of the following:

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

7 (2) Requirement of a member to obtain the approval of the association for the  
8 installation of a video or television antenna that has a diameter or diagonal  
9 measurement of 36 inches or less on a separate interest owned by another.

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

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

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

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

24 **Comment.** Section 6708 restates Section 1376 without change, except that the defined term  
25 “member” is used in place of “owner.” See Section 6554 (“member” defined). See also 47 C.F.R.  
26 § 1.4000. For further information, see the Law Revision Comment to Section 6500.

27 **Staff Note:** In prior comments, it has been suggested that existing Section 1376 is largely  
28 preempted by the FCC regulation cited in the Comment above and should not be continued. See  
29 Memorandum 2008-43, p. 43. The staff requests public comment on the merits of that suggestion.

30 **§ 6710 (REVISED). Marketing restriction**

31 6710. (a) Any governing document of an association that arbitrarily or  
32 unreasonably restricts an owner’s ability to market the owner’s interest in a  
33 common interest development is void.

34 (b) No association may adopt, enforce, or otherwise impose any governing  
35 document that does either of the following:

36 (1) Imposes an assessment or fee in connection with the marketing of an  
37 owner’s interest in an amount that exceeds the association’s actual or direct costs.  
38 ~~That assessment or fee shall be deemed to violate the limitation set forth in~~  
39 ~~subdivision (b) of Section 5600.~~

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

1 separate interests owned by the association or to the sale or marketing of common  
2 area by the association.

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

6 (d) This section does not apply to rules or regulations made pursuant to Section  
7 712 or 713 regarding real estate signs.

8 **Comment.** Section 6710 continues Section 1368.1 without change, with the following  
9 exceptions: (1) The phrase “rule or regulation” is replaced with “governing document.” This  
10 broadens the application of the section so that it governs any provision in the governing  
11 documents and not just an operating rule. (2) The phrase “his or her” is replaced with “the  
12 owner’s” in subdivision (a). (3) A reference to a statutory limitation that is not continued in this  
13 part is deleted. (4) A reference to “common areas” is singularized. For further information, see  
14 the Law Revision Comment to Section 6500.

15 **Staff Note.** (1) Section 5600(b) would continue existing Section 1366.1, which is  
16 inapplicable to a nonresidential CID pursuant to Section 1373.

17 (2) Proposed Section 6710 would apply to any governing document, and not just to a “rule or  
18 regulation” (which is unclear and may only encompass an operating rule).

19 **§ 6712 (UNCHANGED). Low water-using plants**

20 6712. (a) Notwithstanding any other law, a provision of the governing  
21 documents shall be void and unenforceable if it does any of the following:

22 (1) Prohibits, or includes conditions that have the effect of prohibiting, the use  
23 of low water-using plants as a group.

24 (2) Has the effect of prohibiting or restricting compliance with either of the  
25 following:

26 (A) A water-efficient landscape ordinance adopted or in effect pursuant to  
27 subdivision (c) of Section 65595 of the Government Code.

28 (B) Any regulation or restriction on the use of water adopted pursuant to Section  
29 353 or 375 of the Water Code.

30 (b) This section shall not prohibit an association from applying landscaping  
31 rules established in the governing documents, to the extent the rules fully conform  
32 with the requirements of subdivision (a).

33 **Comment.** Section 6712 continues Section 1353.8 without change, except that surplus  
34 language is not continued (i.e., the phrases “of any,” “of a common interest development,” and  
35 “and regulations”). The term “governing documents” includes all governing documents of a  
36 common interest development. See Section 6552 (“governing documents” defined). For further  
37 information, see the Law Revision Comment to Section 6500.

38 **Article 2. Modification of Separate Interest**

39 **§ 6714 (REVISED). Improvements to separate interest**

40 6714. (a) Subject to the governing documents and applicable law, a member  
41 may do the following:

1 (1) Make any improvement or alteration within the boundaries of the member's  
2 separate interest that does not impair the structural integrity or mechanical systems  
3 or lessen the support of any portions of the common interest development.

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

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

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

15 (C) Modifications external to the dwelling shall not prevent reasonable passage  
16 by other occupants, and shall be removed by the member when the separate  
17 interest is no longer occupied by persons requiring those modifications who are  
18 blind, visually handicapped, deaf, or physically disabled.

19 (D) Any member who intends to modify a separate interest pursuant to this  
20 paragraph shall submit plans and specifications to the association for review to  
21 determine whether the modifications will comply with the provisions of this  
22 paragraph. The association shall not deny approval of the proposed modifications  
23 under this paragraph without good cause.

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

26 **Comment.** Section 6714 continues Section 1360 without change, with the following  
27 exceptions: (1) The scope of the provision is broadened to apply to any separate interest, and not  
28 just a unit in a condominium project. (2) The phrase "his or her" is not continued in subdivision  
29 (a)(2)(D). (3) The defined term "member" is used in place of "owner" throughout. See Section  
30 6554 ("member" defined). (4) The defined term "occupant" is used in place of "resident." See  
31 Section 6558 ("occupant" defined). For further information, see the Law Revision Comment to  
32 Section 6500.

33 **Staff Note.** Proposed Section 6714 would broaden the scope of Section 1360 to include all  
34 CIDs, and not just condominiums. References to "units" are replaced with references to "separate  
35 interests." References to condominium associations are changed to refer to associations generally.

36 Article 3. Maintenance

37 § 6716 (UNCHANGED). Maintenance responsibility generally

38 6716. (a) Unless otherwise provided in the declaration of a common interest  
39 development, the association is responsible for repairing, replacing, or maintaining  
40 the common area, other than exclusive use common area, and the owner of each

1 separate interest is responsible for maintaining that separate interest and any  
2 exclusive use common area appurtenant to the separate interest.

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

6 **Comment.** Subdivision (a) of Section 6716 continues Section 1364(a) without change, except  
7 that references to “common areas” are singularized. For further information, see the Law  
8 Revision Comment to Section 6500.

9 Subdivision (b) continues Section 1364(c) without change. For further information, see the  
10 Law Revision Comment to Section 6500.

11 **§ 6718 (REVISED). Wood-destroying pests or organisms**

12 6718. (a) In a community apartment project, condominium project, or stock  
13 cooperative, unless otherwise provided in the declaration, the association is  
14 responsible for the repair and maintenance of the common area occasioned by the  
15 presence of wood-destroying pests or organisms.

16 (b) In a planned development, unless a different maintenance scheme is  
17 provided in the declaration, each owner of a separate interest is responsible for the  
18 repair and maintenance of that separate interest as may be occasioned by the  
19 presence of wood-destroying pests or organisms. Upon approval of the majority of  
20 all members of the association (Section 6522), that responsibility may be  
21 delegated to the association, which shall be entitled to recover the cost thereof as a  
22 special assessment.

23 **Comment.** Subdivision (a) of Section 6718 continues Section 1364(b)(1) without change,  
24 except that a superfluous cross-reference to governing definitions has not been continued. For  
25 further information, see the Law Revision Comment to Section 6500.

26 Subdivision (b) continues Section 1364(b)(2) without change, with the following exceptions:  
27 (1) A superfluous cross-reference to a governing definition has not been continued. (2) A cross-  
28 reference to Section 6522 is added. (3) The last sentence is revised to avoid use of the word  
29 “such.” For further information, see the Law Revision Comment to Section 6500.

30 **Staff Note.** The last sentence of Section 1364(b)(2) has been restated, in proposed Section  
31 6718(b), to avoid use of the word “such.” Standard legislative drafting practice is to avoid the use  
32 of “such” as a shorthand reference for a previously described thing.

33 **§ 6720 (REVISED). Temporary removal of occupant to perform treatment of wood-**  
34 **destroying pests**

35 6720. (a) The association may cause the temporary, summary removal of any  
36 occupant of a common interest development for such periods and at such times as  
37 may be necessary for prompt, effective treatment of wood-destroying pests or  
38 organisms.

39 (b) The association shall give notice of the need to temporarily vacate a separate  
40 interest to the occupants and to the owners, not less than 15 days nor more than 30  
41 days prior to the date of the temporary relocation. The notice shall state the reason  
42 for the temporary relocation, the date and time of the beginning of treatment, the

1 anticipated date and time of termination of treatment, and that the occupants will  
2 be responsible for their own accommodations during the temporary relocation.

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

4 (1) Personal delivery of a copy of the notice to the occupants, and if an occupant  
5 is not the owner, individual delivery (Section 6514) of a copy of the notice to the  
6 owner.

7 (2) Individual delivery (Section 6514) to the occupant at the address of the  
8 separate interest, and if the occupant is not the owner, individual delivery (Section  
9 6514) of a copy of the notice to the owner.

10 **Comment.** Section 6720 continues Section 1364(d) without change, except that subdivision (c)  
11 is revised to improve its clarity and to incorporate the “individual delivery” notice procedure. For  
12 further information, see the Law Revision Comment to Section 6500.

13 **Staff Note.** Proposed Section 6720(c) is revised to improve its clarity and to incorporate the  
14 “individual delivery” notice procedure.

15 **§ 6722 (REVISED). Exclusive use communication wiring**

16 6722. (a) Notwithstanding the provisions of the declaration, a member is entitled  
17 to reasonable access to the common area for the purpose of maintaining the  
18 internal and external communication wiring made part of the exclusive use  
19 common area of the member’s separate interest pursuant to subdivision (c) of  
20 Section 6550. The access shall be subject to the consent of the association, whose  
21 approval shall not be unreasonably withheld, and which may include the  
22 association’s approval of telephone wiring upon the exterior of the common area,  
23 and other conditions as the association determines reasonable.

24 (b) For the purposes of this section, “wiring” includes, without limitation,  
25 nonmetallic transmission lines.

26 **Comment.** Subdivision (a) of Section 6722 continues Section 1364(f) without change, with the  
27 following exceptions: (1) The reference to “telephone wiring” has been generalized to  
28 accommodate non-telephonic communication wiring. (2) A cross-reference is updated to reflect  
29 the new location of the referenced provision. (3) The defined term “member” is used in place of  
30 “owner.” See Section 6554 (“member” defined). (4) References to “common areas” are  
31 singularized. For further information, see the Law Revision Comment to Section 6500.

32 Subdivision (b) is new.

33 **Staff Note.** Proposed Section 6722 would expand the scope of Section 1364(f) slightly, to  
34 include non-telephonic communication wiring (e.g., Ethernet) and non-metallic lines (e.g., fiber-  
35 optic).

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CHAPTER 5. ASSOCIATION GOVERNANCE

Article 1. Association Existence and Powers

**§ 6750 (UNCHANGED). Association**

6750. A common interest development shall be managed by an association that may be incorporated or unincorporated. The association may be referred to as a community association.

**Comment.** Section 6750 continues Section 1363(a) without change. For further information, see the Law Revision Comment to Section 6500.

**§ 6752 (UNCHANGED). Association powers**

6752. (a) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

(b) The association, whether incorporated or unincorporated, may exercise the powers granted to an association in this part.

**Comment.** Section 6752 continues former Section 1363(c) without change, except that subdivisions are added and “title” is replaced with “part.” For further information, see the Law Revision Comment to Section 6500.

**§ 6754 (UNCHANGED). Standing**

6754. An association established to manage a common interest development has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the members, in matters pertaining to the following:

- (a) Enforcement of the governing documents.
- (b) Damage to the common area.
- (c) Damage to a separate interest that the association is obligated to maintain or repair.
- (d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair.

**Comment.** Section 6754 continues Section 1368.3 without change, except that the defined term “member” is used in place of “owner.” See Section 6554 (“member” defined). For further information, see the Law Revision Comment to Section 6500.



1 (5) Review of a proposed physical change to the separate interest of the director  
2 or committee member.

3 (6) A grant of exclusive use common area to the director or committee member.

4 (c) Nothing in this section limits any other provision of law or the governing  
5 documents that governs a decision in which a director may have an interest.

6 **Comment.** Subdivision (a) of Section 6758 continues Section 1365.6 without substantive  
7 change, except that the reference to Corporations Code Section 310, which governs for-profit  
8 corporations, has been replaced with a reference to Corporations Code Sections 7233 and 7234,  
9 which state equivalent rules for nonprofit mutual benefit corporations. For further information,  
10 see the Law Revision Comment to Section 6500.

11 Subdivisions (b) and (c) are new.

12 **Staff Note.** (1) Proposed Section 6758(a) would correct an apparently erroneous reference to  
13 Corporations Code Section 310, which governs for-profit corporations. The reference would be  
14 replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent  
15 rules for nonprofit mutual benefit corporations.

16 (2) Subdivision (b) is added to provide simplified guidance to association board members on  
17 impermissible conflicts. Subdivision (c) makes clear that the section is not intended as a complete  
18 codification of the law governing director conflicts of interest.

19 Article 3. Government Assistance

20 § 6760 (UNCHANGED). Director training course

21 6760. To the extent existing funds are available, the Department of Consumer  
22 Affairs and the Department of Real Estate shall develop an on-line education  
23 course for the board regarding the role, duties, laws, and responsibilities of  
24 directors and prospective directors, and the nonjudicial foreclosure process.

25 **Comment.** Section 6760 continues Section 1363.001 without substantive change, except that  
26 the term “board of directors” has been replaced with the defined term “board” and the defined  
27 term “director” is used in place of “board member.” See Sections 6530 (“board” defined), 6548  
28 (“director” defined). For further information, see the Law Revision Comment to Section 6500.

29 § 6762 (UNCHANGED). State registry

30 6762. (a) To assist with the identification of common interest developments,  
31 each association, whether incorporated or unincorporated, shall submit to the  
32 Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that  
33 the Secretary of State shall prescribe, the following information concerning the  
34 association and the development that it manages:

35 (1) A statement that the association is formed to manage a common interest  
36 development under the ~~Davis-Stirling~~ Nonresidential Common Interest  
37 Development Act.

38 (2) The name of the association.

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

1 (4) The name, address, and either the daytime telephone number or e-mail  
2 address of the president of the association, other than the address, telephone  
3 number, or e-mail address of the association's onsite office or managing agent.

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

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

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

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

13 (9) The type of common interest development, as defined in Section 6534,  
14 managed by the association.

15 (10) The number of separate interests, as defined in Section 6564, in the  
16 development.

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

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

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

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

30 (d) The penalty for an incorporated association's noncompliance with the initial  
31 or biennial filing requirements of this section shall be suspension of the  
32 association's rights, privileges, and powers as a corporation and monetary  
33 penalties, to the same extent and in the same manner as suspension and monetary  
34 penalties imposed pursuant to Section 8810 of the Corporations Code.

35 (e) The Secretary of State shall make the information submitted pursuant to  
36 paragraph (4) of subdivision (a) available only for governmental purposes and  
37 only to Members of the Legislature and the Business, Transportation and Housing  
38 Agency, upon written request. All other information submitted pursuant to this  
39 section shall be subject to public inspection pursuant to the California Public  
40 Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title  
41 1 of the Government Code. The information submitted pursuant to this section  
42 shall be made available for governmental or public inspection.

1 **Comment.** Section 6762 continues Section 1363.6 without change, except that a reference to  
2 this part is substituted for a reference to the Davis-Stirling common Interest Development Act,  
3 cross-references are updated to reflect the new location of the referenced provisions, the  
4 redundant phrase “of the association” is omitted in subdivision (a)(4), and obsolete transitional  
5 dates are omitted in subdivisions (d) and (e). For further information, see the Law Revision  
6 Comment to Section 6500.

7 CHAPTER 6. FINANCES

8 Article 1. Reserve Planning

9 **§ 6800 (REVISED). Community service organization report**

10 6800. (a) Unless the governing documents impose more stringent standards, any  
11 community service organization whose funding from the association or its  
12 members exceeds 10 percent of the organization’s annual budget shall prepare and  
13 distribute to the association a report that meets the requirements of Section 5012  
14 of the Corporations Code, and that describes in detail administrative costs and  
15 identifies the payees of those costs ~~in a manner consistent with the provisions of~~  
16 ~~Article 5 (commencing with Section 5200).~~

17 (b) If the community service organization does not comply with the standards,  
18 the report shall disclose the noncompliance in detail. ~~If a community service~~  
19 ~~organization is responsible for the maintenance of major components for which an~~  
20 ~~association would otherwise be responsible, the community service organization~~  
21 ~~shall supply to the association the information regarding those components that the~~  
22 ~~association would use to complete disclosures and reserve reports required under~~  
23 ~~this article and Section 5300. An association may rely upon information received~~  
24 ~~from a community service organization, and shall provide access to the~~  
25 ~~information pursuant to the provisions of Article 5 (commencing with Section~~  
26 ~~5200).~~

27 **Comment.** Section 6800 restates Section 1365.3 to provide for limited application to a  
28 nonresidential common interest development under this part. For further information, see the Law  
29 Revision Comment to Section 6500.

30 **Staff Note.** The Commission invites comment on whether this section has any relevance to  
31 a nonresidential common interest development, or should be included in this part for other  
32 reasons.

33 Article 2. Assessment Setting

34 **§ 6802 (REVISED). Levy of assessment**

35 6802. (a) ~~Except as provided in Section 5605, the~~ The association shall levy  
36 regular and special assessments sufficient to perform its obligations under the  
37 governing documents and this title.

1 ~~(b) An association shall not impose or collect an assessment or fee that exceeds~~  
2 ~~the amount necessary to defray the costs for which it is levied.~~

3 **Comment.** Subdivision (a) of Section 6802 restates the first sentence of Section 1366(a)  
4 without substantive change, except that a statutory exception not applicable to a nonresidential  
5 common interest development is deleted. For further information, see the Law Revision Comment  
6 to Section 6500.

7 **Staff Note.** Section 5605 would continue portions of existing Section 1366(a) that this  
8 proposed legislation would make inapplicable to a nonresidential CID, and portions of existing  
9 Section 1366(b), which is inapplicable to a nonresidential CID pursuant to existing Section 1373.  
10 Subdivision (b) of this section would continue existing Section 1366.1, which this proposed  
11 legislation would make inapplicable to a nonresidential CID.

12 **§ 6804 (REVISED). Exemption from execution**

13 6804. (a) Regular assessments imposed or collected to perform the obligations  
14 of an association under the governing documents or this title shall be exempt from  
15 execution by a judgment creditor of the association only to the extent necessary  
16 for the association to perform essential services, such as paying for utilities and  
17 insurance. In determining the appropriateness of an exemption, a court shall  
18 ensure that only essential services are protected under this subdivision.

19 (b) This exemption shall not apply to any consensual pledges, liens, or  
20 encumbrances that have been approved by a majority of a quorum of members  
21 (Section 6524) at a member meeting or election, or to any state tax lien, or to any  
22 lien for labor or materials supplied to the common area.

23 **Comment.** Section 6804 continues Section 1366(c) without change, with the following  
24 exceptions: (1) Subdivisions are added. (2) A reference to approval of a majority of members  
25 casting a vote at a meeting at which a quorum is established has been replaced with a reference to  
26 the standard provision on approval by a majority of a quorum of members (Section 6524). (3)  
27 Quorum-related language from Section 1366(b)-(c) is not continued. For further information, see  
28 the Law Revision Comment to Section 6500.

29 See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing  
30 documents”), 6554 (“member”).

31 **Staff Note.** Both Section 1366(a) and (b) contain the following sentence: “For the purposes  
32 of this section, ‘quorum’ means more than 50 percent of the owners of an association.” Although  
33 those provisions purport to apply to the “section” as a whole, the fact that the sentence is repeated  
34 in subdivisions (a) and (b) suggests that the intention may have been to limit the application of  
35 the sentence to just those subdivisions. If so, then the special quorum rule would not apply to the  
36 reference in Section 1366(c) to “any consensual pledges, liens, or encumbrances that have been  
37 approved by the owners of an association, *constituting a quorum*, casting a majority of the votes  
38 at a meeting or election of the association...” (Emphasis added.) Proposed Section 6804 is  
39 drafted on the basis of that interpretation, and does not include the special quorum rule.

40 **§ 6806 (UNCHANGED). Property tax value as basis for assessments**

41 6806. (a) Except as provided in subdivision (b), notwithstanding any provision  
42 of this part or the governing documents to the contrary, an association shall not  
43 levy assessments on separate interests within the common interest development  
44 based on the taxable value of the separate interests unless the association, on or  
45 before December 31, 2009, in accordance with its governing documents, levied

1 assessments on those separate interests based on their taxable value, as determined  
2 by the tax assessor of the county in which the separate interests are located.

3 (b) An association that is responsible for paying taxes on the separate interests  
4 within the common interest development may levy that portion of assessments on  
5 separate interests that is related to the payment of taxes based on the taxable value  
6 of the separate interest, as determined by the tax assessor.

7 **Comment.** Proposed Section 6806 continues Section 1366.4 without change, except that “title”  
8 is changed to “part.” For further information, see the Law Revision Comment to Section 6500.

9 Article 3. Assessment Payment and Delinquency

10 § 6808 (UNCHANGED). Assessment debt and delinquency

11 6808. (a) A regular or special assessment and any late charges, reasonable fees  
12 and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as  
13 determined in accordance with subdivision (b), shall be a debt of the owner of the  
14 separate interest at the time the assessment or other sums are levied.

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

19 ~~(1) Reasonable costs incurred in collecting the delinquent assessment, including  
20 reasonable attorney’s fees.~~

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

25 ~~(3) Interest on all sums imposed in accordance with this section, including the  
26 delinquent assessments, reasonable fees and costs of collection, and reasonable  
27 attorney’s fees, at an annual interest rate not to exceed 12 percent, commencing 30  
28 days after the assessment becomes due, unless the declaration specifies the  
29 recovery of interest at a rate of a lesser amount, in which case the lesser rate of  
30 interest shall apply.~~

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

33 **Comment.** Subdivision (a) of Section 6808 continues the first sentence of Section 1367.1(a)  
34 without change, except that a cross-reference is updated to reflect the new location of the  
35 referenced provision. For further information, see the Law Revision Comment to Section 6500.

36 Subdivision (b) continues Section 1366(f) without change. For further information, see the Law  
37 Revision Comment to Section 6500.

38 **Staff Note.** Subdivisions (b) and (c) would continue portions of existing Section 1366, which  
39 this proposed legislation would make inapplicable to a nonresidential CID.

1 § 6810 (REVISED). Payments

2 6810. (a) Any payments made by the owner of a separate interest toward  
3 assessments shall first be applied to the assessments owed, and, only after the  
4 assessments owed are paid in full shall the payments be applied to the fees and  
5 costs of collection, attorney’s fees, late charges, or interest.

6 (b) When an owner makes a payment, the owner may request a receipt and the  
7 association shall provide it. The receipt shall indicate the date of payment and the  
8 person who received it.

9 (c) The association shall provide a mailing address for overnight payment of  
10 assessments.

11 **Comment.** Section 6810 continues Section 1367.1(b) without substantive change, with the  
12 following exceptions: (1) A reference to assessment debt “set forth, as required in subdivision  
13 (a)” is not continued. (2) Subdivisions are added. For further information, see the Law Revision  
14 Comment to Section 6500.

15 **Staff Note.** Existing Section 1367.1(b) refers to payments made toward “the debt set forth, as  
16 required in subdivision (a)...” The purpose of that language is unclear and it is potentially  
17 problematic. It could be understood as limiting the right established in Section 1367.1(b) to debts  
18 that have been properly noticed, pursuant to Section 1367.1(a). In other words, if the association  
19 makes a technical mistake in describing the debt, the member’s right to pay off the principal first  
20 might not apply. The staff sees no policy reason for such a result. The limiting language would  
21 not be continued in proposed Section 6810.

22 § 6812 (REVISED). Pre-lien notice

23 6812. At least 30 days prior to recording a lien upon the separate interest of the  
24 owner of record to collect a debt that is past due under Section 6808, the  
25 association shall notify the owner of record in writing by certified mail of the  
26 following:

27 (a) A general description of the collection and lien enforcement procedures of  
28 the association and the method of calculation of the amount, a statement that the  
29 owner of the separate interest has the right to inspect the association records  
30 pursuant to ~~Section 5205~~ Section 8333 of the Corporations Code, and the  
31 following statement in 14-point boldface type, if printed, or in capital letters, if  
32 typed:

33 “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN  
34 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS,  
35 IT MAY BE SOLD WITHOUT COURT ACTION.”

36 (b) An itemized statement of the charges owed by the owner, including items on  
37 the statement which indicate the amount of any delinquent assessments, the fees  
38 and reasonable costs of collection, reasonable attorney’s fees, any late charges,  
39 and interest, if any.

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

43 ~~(d) The right to request a meeting with the board as provided by Section 5665.~~

1 ~~(e) The right to dispute the assessment debt by submitting a written request for~~  
2 ~~dispute resolution to the association pursuant to the association's "meet and~~  
3 ~~confer" program required in Article 2 (commencing with Section 5900) of Chapter~~  
4 ~~8.~~

5 ~~(f) The right to request alternative dispute resolution with a neutral third party~~  
6 ~~pursuant to Article 3 (commencing with Section 5925) of Chapter 8 before the~~  
7 ~~association may initiate foreclosure against the owner's separate interest, except~~  
8 ~~that binding arbitration shall not be available if the association intends to initiate a~~  
9 ~~judicial foreclosure.~~

10 **Comment.** Section 6812 continues the second sentence of Section 1367.1(a), and paragraphs  
11 (1) to (3) of that provision, inclusive, without change, except that a cross-reference to another  
12 provision of the Davis-Stirling Common Interest Development Act is updated to reflect the new  
13 location of the referenced provision. For further information, see the Law Revision Comment to  
14 Section 6500.

15 **Staff Note.** Section 5205 would continue parts of existing Section 1365.2, which this  
16 proposed legislation would make inapplicable to a nonresidential CID. The reference to Section  
17 8333 of the Corporations Code is contained in existing law. Subdivisions (d) through (f) of this  
18 section would continue portions of existing Sections 1367.1, 1363.810 et seq, and 1369.510 et  
19 seq, all sections that this proposed legislation would make inapplicable to a nonresidential CID.

20 **§ 6814 (UNCHANGED). Notice of delinquent assessment**

21 6814. (a) The amount of the assessment, plus any costs of collection, late  
22 charges, and interest assessed in accordance with subdivision (b) of Section 6808,  
23 shall be a lien on the owner's separate interest in the common interest  
24 development from and after the time the association causes to be recorded with the  
25 county recorder of the county in which the separate interest is located, a notice of  
26 delinquent assessment, which shall state the amount of the assessment and other  
27 sums imposed in accordance with subdivision (b) of Section 6808, a legal  
28 description of the owner's separate interest in the common interest development  
29 against which the assessment and other sums are levied, and the name of the  
30 record owner of the separate interest in the common interest development against  
31 which the lien is imposed.

32 (b) The itemized statement of the charges owed by the owner described in  
33 subdivision (b) of Section 6812 shall be recorded together with the notice of  
34 delinquent assessment.

35 (c) In order for the lien to be enforced by nonjudicial foreclosure as provided in  
36 Sections 6820 and 6822, the notice of delinquent assessment shall state the name  
37 and address of the trustee authorized by the association to enforce the lien by sale.

38 (d) The notice of delinquent assessment shall be signed by the person designated  
39 in the declaration or by the association for that purpose, or if no one is designated,  
40 by the president of the association.

41 (e) A copy of the recorded notice of delinquent assessment shall be mailed by  
42 certified mail to every person whose name is shown as an owner of the separate

1 interest in the association's records, and the notice shall be mailed no later than 10  
2 calendar days after recordation.

3 (f) Upon receipt of a written request by an owner identifying a secondary  
4 address for purposes of collection notices, the association shall send additional  
5 copies of any notices required by this section to the secondary address provided.  
6 The association shall notify owners of their right to submit secondary addresses to  
7 the association, ~~in the annual policy statement prepared pursuant to Section 5310.~~  
8 The owner's request shall be in writing and shall be mailed to the association in a  
9 manner that shall indicate the association has received it. The owner may identify  
10 or change a secondary address at any time, provided that, if a secondary address is  
11 identified or changed during the collection process, the association shall only be  
12 required to send notices to the indicated secondary address from the point the  
13 association receives the request.

14 (g) An association that fails to comply with the procedures set forth in this  
15 section shall, prior to recording a lien, recommence the required notice process.  
16 Any costs associated with recommencing the notice process shall be borne by the  
17 association and not by the owner of a separate interest.

18 **Comment.** Subdivisions (a)-(e) of Section 6814 continue the first five sentences of Section  
19 1367.1(d) without change, except that cross-references are updated to reflect the new location of  
20 the referenced provisions. For further information, see the Law Revision Comment to Section  
21 6500.

22 Subdivision (f) continues Section 1367.1(k) without change, except that a requirement that a  
23 specified notification to owners be included in the annual budget has been deleted. For further  
24 information, see the Law Revision Comment to Section 6500.

25 Subdivision (g) continues Section 1367.1(l) without change. For further information, see the  
26 Law Revision Comment to Section 6500.

27 **Staff Note.** Section 5310 is a new provision that would aggregate various disclosures  
28 required to be made to members in a residential CID. It is not included in this proposed  
29 legislation.

30 **§ 6816 (REVISED). Lien priority**

31 6816. A lien created pursuant to Section 6814 shall be prior to all other liens  
32 recorded subsequent to the notice of delinquent assessment, except that the  
33 declaration may provide for the subordination thereof to any other liens and  
34 encumbrances.

35 **Comment.** Section 6816 continues Section 1367.1(f) without change, with the following  
36 exceptions: (1) The phrase "notice of assessment" is replaced with the more specific "notice of  
37 delinquent assessment." (2) A cross-reference is updated to reflect the new location of the  
38 referenced provision. For further information, see the Law Revision Comment to Section 6500.

39 **Staff Note.** Section 1367.1(f) refers to the "notice of assessment." It appears that the intention  
40 was to refer to the "notice of delinquent assessment" specified in Section 1367.1(d). In order to  
41 avoid any ambiguity, proposed Section 6816 uses the more specific term.

1 § 6818 (REVISED). Lien release

2 6818. (a) Within 21 days of the payment of the sums specified in the notice of  
3 delinquent assessment, the association shall record or cause to be recorded in the  
4 office of the county recorder in which the notice of delinquent assessment is  
5 recorded a lien release or notice of rescission and provide the owner of the  
6 separate interest a copy of the lien release or notice that the delinquent assessment  
7 has been satisfied.

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

15 ~~(c) If it is determined that an association has recorded a lien for a delinquent~~  
16 ~~assessment in error, the association shall promptly reverse all late charges, fees,~~  
17 ~~interest, attorney's fees, costs of collection, costs imposed for the notice prescribed~~  
18 ~~in Section 5660, and costs of recordation and release of the lien authorized under~~  
19 ~~subdivision (b) of Section 5720, and pay all costs related to any related dispute~~  
20 ~~resolution or alternative dispute resolution.~~

21 **Comment.** Subdivision (a) of Section 6818 continues the sixth sentence of Section 1367.1(d)  
22 without change. For further information, see the Law Revision Comment to Section 6500.

23 Subdivision (b) continues Section 1367.1(i) without change. For further information, see the  
24 Law Revision Comment to Section 6500.

25 **Staff Note.** Subdivision (c) would continue existing Section 1367.5, which this proposed  
26 legislation would make inapplicable to a nonresidential CID.

27 Article 4. Assessment Collection

28 § 6820 (REVISED). Collection generally

29 6820. (a) Except as otherwise provided in this article, after the expiration of 30  
30 days following the recording of a lien created pursuant to Section 6814, the lien  
31 may be enforced in any manner permitted by law, including sale by the court, sale  
32 by the trustee designated in the notice of delinquent assessment, or sale by a  
33 trustee substituted pursuant to Section 2934a.

34 (b) Nothing in Article 3 (commencing with Section 6808) or in subdivision (a)  
35 of Section 726 of the Code of Civil Procedure prohibits actions against the owner  
36 of a separate interest to recover sums for which a lien is created pursuant to Article  
37 3 (commencing with Section 6808) or prohibits an association from taking a deed  
38 in lieu of foreclosure.

39 **Comment.** Subdivision (a) of Section 6820 continues the second sentence of Section  
40 1367.1(g), with the following exceptions: (1) The introductory clause has been broadened to  
41 recognize the application of all restrictions on collection that are provided in this article. See, e.g.,  
42 Section 6826 (limitation on assignment). (2) Cross-references are updated to reflect the new

1 location of the referenced provisions. For further information, see the Law Revision Comment to  
2 Section 6500.

3 Subdivision (b) continues Section 1367.1(h) without change, except that cross-references are  
4 updated to reflect the new location of the referenced provisions. For further information, see the  
5 Law Revision Comment to Section 6500.

6 **§ 6822 (UNCHANGED). Foreclosure**

7 6822. (a) Any sale by the trustee shall be conducted in accordance with Sections  
8 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages  
9 and deeds of trust.

10 (b) In addition to the requirements of Section 2924, a notice of default shall be  
11 served by the association on the owner's legal representative in accordance with  
12 the manner of service of summons in Article 3 (commencing with Section 415.10)  
13 of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The owner's legal  
14 representative shall be the person whose name is shown as the owner of a separate  
15 interest in the association's records, unless another person has been previously  
16 designated by the owner as his or her legal representative in writing and mailed to  
17 the association in a manner that indicates that the association has received it.

18 (c) The fees of a trustee may not exceed the amounts prescribed in Sections  
19 2924c and 2924d, plus the cost of service for ~~either of the following:~~

20 ~~(1) The notice of default pursuant to subdivision (b).~~

21 ~~(2) The decision of the board to foreclose upon the separate interest of an owner  
22 as described in subdivision (d) of Section 5705.~~

23 **Comment.** Subdivision (a) Section 6822 continues the third sentence of Section 1367.1(g)  
24 without change. For further information, see the Law Revision Comment to Section 6500.

25 Subdivision (b) continues Section 1367.1(j) without change. For further information, see the  
26 Law Revision Comment to Section 6500.

27 Subdivision (c) continues the fourth sentence and paragraph (1) of Section 1367.1(g), without  
28 change. For further information, see the Law Revision Comment to Section 6500.

29 **Staff Note.** Section 5705 would continue existing Section 1367.4, which this proposed  
30 legislation would make inapplicable to a nonresidential CID.]

31 **§ 6824 (REVISED). Property damage and fines**

32 6824. (a) A monetary charge imposed by the association as a means of  
33 reimbursing the association for costs incurred by the association in the repair of  
34 damage to common area and facilities caused by a member, an occupant of the  
35 member's separate interest, or the member's guest, invitee, or tenant may become  
36 a lien against the member's separate interest enforceable by the sale of the interest  
37 under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is  
38 set forth in the governing documents. It is the intent of the Legislature not to  
39 contravene Section 2792.26 of Title 10 of the California Code of Regulations, as  
40 that section appeared on January 1, 1996, for associations of subdivisions that are  
41 being sold under authority of a subdivision public report, pursuant to Part 2  
42 (commencing with Section 11000) of Division 4 of the Business and Professions  
43 Code.

1 (b) A monetary penalty imposed by the association as a disciplinary measure for  
2 failure of a member to comply with the governing documents, except for the late  
3 payments, may not be characterized nor treated in the governing documents as an  
4 assessment that may become a lien against the member's separate interest  
5 enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

6 **Comment.** Subdivision (a) of Section 6824 continues the seventh and eighth sentences of  
7 Section 1367.1(d) without change, except that (1) the section makes clear that a member may be  
8 liable for damage caused by an occupant of the member's separate interest or an invitee and (2) a  
9 reference to "common areas" is singularized. For further information, see the Law Revision  
10 Comment to Section 6500.

11 On January 1, 1996, Section 2792.26 of Title 10 of the California Code of Regulations read as  
12 follows:

13 2792.26. (a) The Association cannot be empowered to cause a forfeiture or abridgement of  
14 an owner's right to the full use and enjoyment of his individually-owned subdivision interest  
15 on account of the failure by the owner to comply with provisions of the governing  
16 instruments or of duly-added rules of operation for common areas and facilities except by  
17 judgment of a court or a decision arising out of an arbitration or on account of a foreclosure  
18 or sale under a power of sale for failure of the owner to pay assessments duly levied by the  
19 Association.

20 (b) The governing instruments shall include provisions which authorize the governing body  
21 to impose monetary penalties, temporary suspensions of an owner's rights as a member of the  
22 Association or other appropriate discipline for failure to comply with the governing  
23 instruments provided that the procedures for notice and hearing, satisfying the minimum  
24 requirements of subdivision (h) of Section 1363 of the Civil Code, are followed with respect  
25 to the accused member before a decision to impose discipline is reached.

26 (c) A monetary penalty imposed by the Association as a disciplinary measure for failure of  
27 a member to comply with the governing instruments or as a means of reimbursing the  
28 Association for costs incurred by the Association in the repair of damage to common areas  
29 and facilities for which the member was allegedly responsible or in bringing the member and  
30 his subdivision interest into compliance with the governing instruments may not be  
31 characterized nor treated in the governing instruments as an assessment which may become a  
32 lien against the member's subdivision interest enforceable by a sale of the interest in  
33 accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

34 (d) The provisions of subdivision (c) do not apply to charges imposed against an owner  
35 consisting of reasonable late payment penalties for delinquent assessments and/or charges to  
36 reimburse the Association for the loss of interest and for costs reasonably incurred (including  
37 attorney's fees) in its efforts to collect delinquent assessments.

38 Subdivision (b) continues Section 1367.1(e) without change, with the following exceptions: (1)  
39 The introductory clause "except as indicated in subdivision (d)" is not continued. (2) The  
40 undefined term "governing instruments" is replaced with the defined term "governing  
41 documents." (3) The undefined term "subdivision separate interest" is replaced with the defined  
42 term "separate interest." For further information, see the Law Revision Comment to Section  
43 6500.

44 **Staff Note.** (1) Proposed Section 6824(a) would expand the scope of the existing rule  
45 governing reimbursement of costs incurred for damage caused by an owner or the owner's guest  
46 or tenant, to also include damage caused by an owner's invitee or a resident of the owner's  
47 separate interest.

48 (2) Proposed Section 6824(b) would omit the introductory clause of Section 1367.1(e): "Except  
49 as indicated in subdivision (d)..." The staff sees nothing in Section 1367.1(d) that would operate  
50 as an exception to the rule stated in Section 1367.1(e).

1 (3) Proposed Section 6824(b) would substitute the defined term “governing documents” for the  
2 undefined term “governing instruments.”

3 (4) Proposed Section 6824(b) would substitute the defined term “separate interest” for the  
4 undefined term “subdivision separate interest.”

5 **§ 6826 (REVISED). Assignment or pledge**

6 6826. (a) An association may not voluntarily assign or pledge the association’s  
7 right to collect payments or assessments, or to enforce or foreclose a lien to a third  
8 party, except when the assignment or pledge is made to a financial institution or  
9 lender chartered or licensed under federal or state law, when acting within the  
10 scope of that charter or license, as security for a loan obtained by the association.

11 (b) Nothing in subdivision (a) restricts the right or ability of an association to  
12 assign any unpaid obligations of a former member to a third party for purposes of  
13 collection.

14 **Comment.** Section 6826 continues the first sentence of Section 1367.1(g) without change, with  
15 the following exceptions: (1) The provision is divided into subdivisions. (2) An introductory  
16 clause is added in subdivision (b) to make the relationship between the two provisions clearer.  
17 For further information, see the Law Revision Comment to Section 6500.

18 **Staff Note.** Proposed Section 6826 would break the first sentence of Section 1367.1(g) into  
19 two subdivisions and add an introductory clause in the second provision, to better define their  
20 relationship. (In existing law the two provisions are joined by a semi-colon and the ambiguous  
21 conjunction “however.”).

22 **§ 6828 (NEW). Application of article**

23 6828. (a) Except as otherwise provided, this article applies to a lien created on or  
24 after January 1, ~~2003~~ 2013.

25 (b) A lien created before January 1, ~~2003~~ 2013, is governed by the law in  
26 existence at the time the lien was created.

27 **Comment.** Section 6828 is new. A lien created on or after January 1, 1986, and before January  
28 1, 2003, is governed by Section 1367. A lien created on or after January 1, 2003 and before the  
29 enactment of the act that added this section, is governed by Section 1367.1 and Section 1367.4.

30 **Staff Note.** Under existing law, Section 1367 governs liens recorded on or after January 1,  
31 1986, but before January 1, 2003. Liens that are recorded on or after January 1, 2003, are  
32 governed by Section 1367.1 (except that inconsistent provisions of Section 1367.4 govern debts  
33 for assessments that arise on or after January 1, 2006). However, as this proposed legislation  
34 would make a portion of Section 1367.1 and the entirety of Section 1367.4 inapplicable to a  
35 nonresidential CID, for those CIDs the relevant date in this provision would be the effective date  
36 of this legislation.

37 **CHAPTER 7. INSURANCE AND LIABILITY**

38 **§ 6840 (UNCHANGED). Limitation of member liability**

39 6840. (a) It is the intent of the Legislature to offer civil liability protection to  
40 owners of the separate interests in a common interest development that have

1 common area owned in tenancy-in-common if the association carries a certain  
2 level of prescribed insurance that covers a cause of action in tort.

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

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

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

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

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

17 **Comment.** Section 6840 continues Section 1365.9 without change, except that a superfluous  
18 cross-reference to a governing definition is not continued, a reference to “common areas” is  
19 singularized, and subdivision (b)(1) is revised to replace “which” with “that.” For further  
20 information, see the Law Revision Comment to Section 6500.

## 21 CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT

### 22 Article 1. Disciplinary Action

#### 23 § 6850 (REVISED). Schedule of monetary penalties

24 6850. If an association adopts or has adopted a policy imposing any monetary  
25 penalty, including any fee, on any association member for a violation of the  
26 governing documents, the board shall adopt and distribute to each member, ~~in the~~  
27 ~~annual policy statement prepared pursuant to Section 5310, by personal delivery or~~  
28 first-class mail, a schedule of the monetary penalties that may be assessed for  
29 those violations, which shall be in accordance with authorization for member  
30 discipline contained in the governing documents.

31 **Comment.** Section 6850 continues the first sentence of Section 1363(g) without change, with  
32 the following exceptions: (1) A reference to the “rules of the association” is superfluous and is  
33 not continued. The term “governing documents” encompasses rules. See Section 6552. (2) A  
34 clause making clear that a violation of the governing documents can include a violation by a  
35 member’s guest or invitee is not continued in this section. The substance of that clause is  
36 continued in Section 6852. (3) The term “board of directors” has been replaced with the defined  
37 term “board.” See Section 6530 (“board” defined). For further information, see the Law Revision  
38 Comment to Section 6500.

39 **Staff Note.** (1) Section 5310 is a new provision that would aggregate various disclosures  
40 required to be made to members in a residential CID. It is not included in this proposed  
41 legislation.

1 (2) Existing Section 1363(g) makes clear that a violation of the governing documents includes  
2 a violation by a member’s guest or invitee. That principle would be generalized, to include a  
3 tenant or other resident of a member’s separate interest, in proposed Section 6850.

4 **§ 6852 (NEW). Responsibility for guest, invitee, tenant, or resident**

5 6852. For the purposes of this article, a member may be held responsible for a  
6 violation of the governing documents or damage to the common area caused by  
7 the member’s guest, invitee, or tenant, or occupant of the member’s separate  
8 interest.

9 **Comment.** Section 6852 is new. It generalizes a clause of Section 1363(g), which provided  
10 that a member may be liable for a violation of the governing documents by the member’s guest or  
11 invitee. For further information, see the Law Revision Comment to Section 6500.

12 **Staff Note.** Proposed Section 6852 would fill a gap in existing law, which recognizes a  
13 member’s vicarious liability for conduct of a guest or invitee, but not for a tenant or other  
14 occupant of the member’s separate interest.

15 **§ 6854 (REVISED). No effect on authority of board**

16 6854. Nothing in Section 6850 ~~or 5855~~ shall be construed to create, expand, or  
17 reduce the authority of the board to impose monetary penalties on an association  
18 member for a violation of the governing documents.

19 **Comment.** Section 6854 restates Section 1363(j) without substantive change, except that a  
20 reference to “this section” has been replaced with a reference to the disciplinary provision in  
21 Section 1363 that has been continued in this part, the term “board of directors of the association”  
22 has been replaced with the defined term “board,” and the phrase “or rules of the association” has  
23 not been continued. See Section 6530 (“board” defined), 6552 (“governing documents” includes  
24 the operating rules of the association). For further information, see the Law Revision Comment to  
25 Section 6500..

26 **Staff Note.** (1) Section 5855 would continue existing Section 1363(h), which this proposed  
27 legislation would make inapplicable to a nonresidential CID.

28 (2) Existing Section 1363(j) refers to the entirety of Section 1363. Proposed Section 6854  
29 would only refer to the provision of Section 1363 relating to member discipline that is continued  
30 in this part.

31 **Article 4. Civil Actions**

32 **§ 6856 (UNCHANGED). Enforcement of governing documents**

33 6856. (a) The covenants and restrictions in the declaration shall be enforceable  
34 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind  
35 all owners of separate interests in the development. Unless the declaration states  
36 otherwise, these servitudes may be enforced by any owner of a separate interest or  
37 by the association, or by both.

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

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

3 **Comment.** Section 6856 continues Section 1354 without change. For further information, see  
4 the Law Revision Comment to Section 6500.

5 **§ 6858 (NEW). Enforcement of this part**

6 6858. In addition to any other remedy provided by law, a member may bring an  
7 action in superior court to enforce a provision of this part.

8 **Comment.** Section 6858 is new. Relief under this section may include a writ of mandate, an  
9 injunction, or other appropriate relief.

10  **Staff Note.** Proposed Section 6858 would make clear that a member may bring a civil action  
11 to enforce any requirement of this part.

12 **CHAPTER 9. CONSTRUCTION DEFECT LITIGATION**

13 **§ 6870 (REVISED). Actions for damages**

14 6870. (a) Before an association files a complaint for damages against a builder,  
15 developer, or general contractor (“respondent”) of a common interest development  
16 based upon a claim for defects in the design or construction of the common  
17 interest development, all of the requirements of this section shall be satisfied with  
18 respect to the builder, developer, or general contractor.

19 (b) The association shall serve upon the respondent a “Notice of  
20 Commencement of Legal Proceedings.” The notice shall be served by certified  
21 mail to the registered agent of the respondent, or if there is no registered agent,  
22 then to any officer of the respondent. If there are no current officers of the  
23 respondent, service shall be upon the person or entity otherwise authorized by law  
24 to receive service of process. Service upon the general contractor shall be  
25 sufficient to initiate the process set forth in this section with regard to any builder  
26 or developer, if the builder or developer is not amenable to service of process by  
27 the foregoing methods. This notice shall toll all applicable statutes of limitation  
28 and repose, whether contractual or statutory, by and against all potentially  
29 responsible parties, regardless of whether they were named in the notice, including  
30 claims for indemnity applicable to the claim for the period set forth in subdivision

31 (c). The notice shall include all of the following:

- 32 (1) The name and location of the project.
- 33 (2) An initial list of defects sufficient to apprise the respondent of the general  
34 nature of the defects at issue.
- 35 (3) A description of the results of the defects, if known.
- 36 (4) A summary of the results of a survey or questionnaire distributed to  
37 homeowners owners to determine the nature and extent of defects, if a survey has  
38 been conducted or a questionnaire has been distributed.

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

3 (c) Service of the notice shall commence a period, not to exceed 180 days,  
4 during which the association, the respondent, and all other participating parties  
5 shall try to resolve the dispute through the processes set forth in this section. This  
6 180-day period may be extended for one additional period, not to exceed 180 days,  
7 only upon the mutual agreement of the association, the respondent, and any parties  
8 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any  
9 extensions beyond the first extension shall require the agreement of all  
10 participating parties. Unless extended, the dispute resolution process prescribed by  
11 this section shall be deemed completed. All extensions shall continue the tolling  
12 period described in subdivision (b).

13 (d) Within 25 days of the date the association serves the Notice of  
14 Commencement of Legal Proceedings, the respondent may request in writing to  
15 meet and confer with the board. Unless the respondent and the association  
16 otherwise agree, there shall be not more than one meeting, which shall take place  
17 no later than 10 days from the date of the respondent's written request, at a  
18 mutually agreeable time and place. ~~The meeting shall be subject to subdivision (a)~~  
19 ~~of Section 4925 and subdivisions (a) and (b) of Section 4935. Any member of the~~  
20 ~~association may attend the meeting, except if the board adjourns to executive~~  
21 ~~session.~~ The discussions at the meeting are privileged communications and are not  
22 admissible in evidence in any civil action, unless the association and the  
23 respondent consent in writing to their admission.

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

26 (1) The respondent shall provide the association with access to, for inspection  
27 and copying of, all plans and specifications, subcontracts, and other construction  
28 files for the project that are reasonably calculated to lead to the discovery of  
29 admissible evidence regarding the defects claimed. The association shall provide  
30 the respondent with access to, for inspection and copying of, all files reasonably  
31 calculated to lead to the discovery of admissible evidence regarding the defects  
32 claimed, including all reserve studies, maintenance records and any survey  
33 questionnaires, or results of testing to determine the nature and extent of defects.  
34 To the extent any of the above documents are withheld based on privilege, a  
35 privilege log shall be prepared and submitted to all other parties. All other  
36 potentially responsible parties shall have the same rights as the respondent  
37 regarding the production of documents upon receipt of written notice of the claim,  
38 and shall produce all relevant documents within 60 days of receipt of the notice of  
39 the claim.

40 (2) The respondent shall provide written notice by certified mail to all  
41 subcontractors, design professionals, their insurers, and the insurers of any  
42 additional insured whose identities are known to the respondent or readily  
43 ascertainable by review of the project files or other similar sources and whose

1 potential responsibility appears on the face of the notice. This notice to  
2 subcontractors, design professionals, and insurers shall include a copy of the  
3 Notice of Commencement of Legal Proceedings, and shall specify the date and  
4 manner by which the parties shall meet and confer to select a dispute resolution  
5 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its  
6 obligation to participate in the meet and confer or serve a written acknowledgment  
7 of receipt regarding this notice, advise the recipient that it will waive any  
8 challenge to selection of the dispute resolution facilitator if it elects not to  
9 participate in the meet and confer, advise the recipient that it may be bound by any  
10 settlement reached pursuant to subdivision (d) of Section 6872, advise the  
11 recipient that it may be deemed to have waived rights to conduct inspection and  
12 testing pursuant to subdivision (c) of Section 6872, advise the recipient that it may  
13 seek the assistance of an attorney, and advise the recipient that it should contact its  
14 insurer, if any. Any subcontractor or design professional, or insurer for that  
15 subcontractor, design professional, or additional insured, who receives written  
16 notice from the respondent regarding the meet and confer shall, prior to the meet  
17 and confer, serve on the respondent a written acknowledgment of receipt. That  
18 subcontractor or design professional shall, within 10 days of service of the written  
19 acknowledgment of receipt, provide to the association and the respondent a  
20 Statement of Insurance that includes both of the following:

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

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

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

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

26 (2) No later than 10 days prior to the case management meeting, the dispute  
27 resolution facilitator shall disclose to the parties all matters that could cause a  
28 person aware of the facts to reasonably entertain a doubt that the proposed dispute  
29 resolution facilitator would be able to resolve the conflict in a fair manner. The  
30 facilitator's disclosure shall include the existence of any ground specified in  
31 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any  
32 attorney-client relationship the facilitator has or had with any party or lawyer for a  
33 party to the dispute resolution process, and any professional or significant personal  
34 relationship the facilitator or his or her spouse or minor child living in the  
35 household has or had with any party to the dispute resolution process. The  
36 disclosure shall also be provided to any subsequently noticed subcontractor or  
37 design professional within 10 days of the notice.

38 (3) A dispute resolution facilitator shall be disqualified by the court if he or she  
39 fails to comply with this paragraph and any party to the dispute resolution process  
40 serves a notice of disqualification prior to the case management meeting. If the  
41 dispute resolution facilitator complies with this paragraph, he or she shall be  
42 disqualified by the court on the basis of the disclosure if any party to the dispute

1 resolution process serves a notice of disqualification prior to the case management  
2 meeting.

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

9 (5) Any subcontractor or design professional who receives notice of the  
10 association's claim without having previously received timely notice of the meet  
11 and confer to select the dispute resolution facilitator shall be notified by the  
12 respondent regarding the name, address, and telephone number of the dispute  
13 resolution facilitator. Any such subcontractor or design professional may serve  
14 upon the parties and the dispute resolution facilitator a written objection to the  
15 dispute resolution facilitator within 15 days of receiving notice of the claim.  
16 Within seven days after service of this objection, the subcontractor or design  
17 professional may petition the superior court to replace the dispute resolution  
18 facilitator. The court may replace the dispute resolution facilitator only upon a  
19 showing of good cause, liberally construed. Failure to satisfy the deadlines set  
20 forth in this subdivision shall constitute a waiver of the right to challenge the  
21 dispute resolution facilitator.

22 (6) The costs of the dispute resolution facilitator shall be apportioned in the  
23 following manner: one-third to be paid by the association; one-third to be paid by  
24 the respondent; and one-third to be paid by the subcontractors and design  
25 professionals, as allocated among them by the dispute resolution facilitator. The  
26 costs of the dispute resolution facilitator shall be recoverable by the prevailing  
27 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil  
28 Procedure, provided however that any nonsettling party may, prior to the filing of  
29 the complaint, petition the facilitator to reallocate the costs of the dispute  
30 resolution facilitator as they apply to any nonsettling party. The determination of  
31 the dispute resolution facilitator with respect to the allocation of these costs shall  
32 be binding in any subsequent litigation. The dispute resolution facilitator shall take  
33 into account all relevant factors and equities between all parties in the dispute  
34 resolution process when reallocating costs.

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

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

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

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

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

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

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

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

17 (1) Establishment of a document depository, located in the county where the  
18 project is located, for deposit of documents, defect lists, demands, and other  
19 information provided for under this section. All documents exchanged by the  
20 parties and all documents created pursuant to this subdivision shall be deposited in  
21 the document depository, which shall be available to all parties throughout the  
22 pre-filing dispute resolution process and in any subsequent litigation. When any  
23 document is deposited in the document depository, the party depositing the  
24 document shall provide written notice identifying the document to all other parties.  
25 The costs of maintaining the document depository shall be apportioned among the  
26 parties in the same manner as the costs of the dispute resolution facilitator.

27 (2) Provision of a more detailed list of defects by the association to the  
28 respondent after the association completes a visual inspection of the project. This  
29 list of defects shall provide sufficient detail for the respondent to ensure that all  
30 potentially responsible subcontractors and design professionals are provided with  
31 notice of the dispute resolution process. If not already completed prior to the case  
32 management meeting, the Notice of Commencement of Legal Proceedings shall be  
33 served by the respondent on all additional subcontractors and design professionals  
34 whose potential responsibility appears on the face of the more detailed list of  
35 defects within seven days of receipt of the more detailed list. The respondent shall  
36 serve a copy of the case management statement, including the name, address, and  
37 telephone number of the dispute resolution facilitator, to all the potentially  
38 responsible subcontractors and design professionals at the same time.

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

41 (4) Invasive testing conducted by the association, if the association deems  
42 appropriate. All parties may observe and photograph any testing conducted by the

1 association pursuant to this paragraph, but may not take samples or direct testing  
2 unless, by mutual agreement, costs of testing are shared by the parties.

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

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

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

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

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

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

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

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

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

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

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

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

1 (C) No less than 10 days after the respondent submits the items required by this  
2 paragraph, the respondent and the board shall meet and confer about the  
3 respondent's settlement offer.

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

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

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

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

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

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

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

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

29 (I) Except for the purpose of in camera review as provided in subdivision (c) of  
30 Section 6872, all defect lists and demands, communications, negotiations, and  
31 settlement offers made in the course of the prelitigation dispute resolution process  
32 provided by this section shall be inadmissible pursuant to Sections 1119 to 1124,  
33 inclusive, of the Evidence Code and all applicable decisional law. This  
34 inadmissibility shall not be extended to any other documents or communications  
35 which would not otherwise be deemed inadmissible.

36 (m) Any subcontractor or design professional may, at any time, petition the  
37 dispute resolution facilitator to release that party from the dispute resolution  
38 process upon a showing that the subcontractor or design professional is not  
39 potentially responsible for the defect claims at issue. The petition shall be served  
40 contemporaneously on all other parties, who shall have 15 days from the date of  
41 service to object. If a subcontractor or design professional is released, and it later  
42 appears to the dispute resolution facilitator that it may be a responsible party in  
43 light of the current defect list or demand, the respondent shall renounce the party as

1 provided by paragraph (2) of subdivision (e), provide a copy of the current defect  
2 list or demand, and direct the party to attend a dispute resolution session at a stated  
3 time and location. A party who subsequently appears after having been released by  
4 the dispute resolution facilitator shall not be prejudiced by its absence from the  
5 dispute resolution process as the result of having been previously released by the  
6 dispute resolution facilitator.

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

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

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

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

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

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

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

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

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

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

43 (p) As used in this section:

1 (1) “Association” shall have the same meaning as defined in Section 6528.

2 (2) “Builder” means the declarant, as defined in Section 6544.

3 (3) “Common interest development” shall have the same meaning as in Section  
4 6534, except that it shall not include developments or projects with less than 20  
5 units.

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

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

11 (s) This section shall become inoperative on July 1, 2017, and, as of January 1,  
12 2018, is repealed, unless a later added statute, that becomes operative on or before  
13 January 1, 2018, deletes or extends the dates on which it becomes inoperative and  
14 is repealed.

15 **Comment.** Section 6870 continues Section 1375 without change, with the following  
16 exceptions: (1) Cross-references are updated to reflect the new location of the referenced  
17 provisions. (2) A reference to “homeowner” in paragraph (4) of subdivision (b) has been changed  
18 to “owner.” (3) The terms “board of directors” and “board of directors of the association” have  
19 been replaced throughout with the defined term “board.” See Section 6530 (“board” defined). (4)  
20 A reference in Section 1375(d) to a meeting subject to Section 1363.05(b) has been replaced with  
21 the relevant substance of Section 1363.05(b). Section 1363.05 is not continued in this part.

22 For further information, see the Law Revision Comment to Section 6500.

23 **Staff Note.** Proposed Section 6870(d) would replace a provision requiring that a referenced  
24 meeting be “subject to subdivision (b) of Section 1363.05” with a provision substantively  
25 describing the manner in which the referenced meeting is to be conducted. Section 1363.05(b) is  
26 not continued in this part. The Commission invites comment on whether this change would  
27 materially affect the operation of any provision of this section.

28 **§ 6872 (UNCHANGED). Action following pre-filing dispute resolution**

29 6872. (a) Upon the completion of the mandatory pre-filing dispute resolution  
30 process described in Section 6870, if the parties have not settled the matter, the  
31 association or its assignee may file a complaint in the superior court in the county  
32 in which the project is located. Those matters shall be given trial priority.

33 (b) In assigning trial priority, the court shall assign the earliest possible trial  
34 date, taking into consideration the pretrial preparation completed pursuant to  
35 Section 6870, and shall deem the complaint to have been filed on the date of  
36 service of the Notice of Commencement of Legal Proceedings described under  
37 Section 6870.

38 (c) Any respondent, subcontractor, or design professional who received timely  
39 prior notice of the inspections and testing conducted under Section 6870 shall be  
40 prohibited from engaging in additional inspection or testing, except if all of the  
41 following specific conditions are met, upon motion to the court:

42 (1) There is an insurer for a subcontractor or design professional, that did not  
43 have timely notice that legal proceedings were commenced under Section 6870 at

1 least 30 days prior to the commencement of inspections or testing pursuant to  
2 paragraph (6) of subdivision (h) of Section 6870.

3 (2) The insurer's insured did not participate in any inspections or testing  
4 conducted under the provisions of paragraph (6) of subdivision (h) of Section  
5 6870.

6 (3) The insurer has, after receiving notice of a complaint filed in superior court  
7 under subdivision (a), retained separate counsel, who did not participate in the  
8 Section 6870 dispute resolution process, to defend its insured as to the allegations  
9 in the complaint.

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

12 (5) The information obtainable through the proposed additional inspections or  
13 testing is not available through any reasonable alternative sources.

14 If the court permits additional inspections or testing upon finding that these  
15 requirements are met, any additional inspections or testing shall be limited to the  
16 extent reasonably necessary to avoid the likelihood of prejudice and shall be  
17 coordinated among all similarly situated parties to ensure that they occur without  
18 unnecessary duplication. For purposes of providing notice to an insurer prior to  
19 inspections or testing under paragraph (6) of subdivision (h) of Section 6870, if  
20 notice of the proceedings was not provided by the insurer's insured, notice may be  
21 made via certified mail either by the subcontractor, design professional,  
22 association, or respondent to the address specified in the Statement of Insurance  
23 provided under paragraph (2) of subdivision (e) of Section 6870. Nothing herein  
24 shall affect the rights of an intervenor who files a complaint in intervention. If the  
25 association alleges defects that were not specified in the prefiling dispute  
26 resolution process under Section 6870, the respondent, subcontractor, and design  
27 professionals shall be permitted to engage in testing or inspection necessary to  
28 respond to the additional claims. A party who seeks additional inspections or  
29 testing based upon the amendment of claims shall apply to the court for leave to  
30 conduct those inspections or that testing. If the court determines that it must  
31 review the defect claims alleged by the association in the prefiling dispute  
32 resolution process in order to determine whether the association alleges new or  
33 additional defects, this review shall be conducted in camera. Upon objection of  
34 any party, the court shall refer the matter to a judge other than the assigned trial  
35 judge to determine if the claim has been amended in a way that requires additional  
36 testing or inspection.

37 (d) Any subcontractor or design professional who had notice of the facilitated  
38 dispute resolution conducted under Section 6870 but failed to attend, or attended  
39 without settlement authority, shall be bound by the amount of any settlement  
40 reached in the facilitated dispute resolution in any subsequent trial, although the  
41 affected party may introduce evidence as to the allocation of the settlement. Any  
42 party who failed to participate in the facilitated dispute resolution because the  
43 party did not receive timely notice of the mediation shall be relieved of any

1 obligation to participate in the settlement. Notwithstanding any privilege  
2 applicable to the pre-filing dispute resolution process provided by Section 6870,  
3 evidence may be introduced by any party to show whether a subcontractor or  
4 design professional failed to attend or attended without settlement authority. The  
5 binding effect of this subdivision shall in no way diminish or reduce a nonsettling  
6 subcontractor or design professional's right to defend itself or assert all available  
7 defenses relevant to its liability in any subsequent trial. For purposes of this  
8 subdivision, a subcontractor or design professional shall not be deemed to have  
9 attended without settlement authority because it asserted defenses to its potential  
10 liability.

11 (e) Notice of the facilitated dispute resolution conducted under Section 6870  
12 must be mailed by the respondent no later than 20 days prior to the date of the first  
13 facilitated dispute resolution session to all parties. Notice shall also be mailed to  
14 each of these parties' known insurance carriers. Mailing of this notice shall be by  
15 certified mail. Any subsequent facilitated dispute resolution notices shall be served  
16 by any means reasonably calculated to provide those parties actual notice.

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

27 (g)(1) The only method of seeking judicial relief for the failure of the  
28 association or the respondent to complete the dispute resolution process under  
29 Section 6870 shall be the assertion, as provided for in this subdivision, of a  
30 procedural deficiency to an action for damages by the association against the  
31 respondent after that action has been filed. A verified application asserting a  
32 procedural deficiency shall be filed with the court no later than 90 days after the  
33 answer to the plaintiff's complaint has been served, unless the court finds that  
34 extraordinary conditions exist.

35 (2) Upon the verified application of the association or the respondent alleging  
36 substantial noncompliance with Section 6870, the court shall schedule a hearing  
37 within 21 days of the application to determine whether the association or  
38 respondent has substantially complied with this section. The issue may be  
39 determined upon affidavits or upon oral testimony, in the discretion of the court.

40 (3)(A) If the court finds that the association or the respondent did not  
41 substantially comply with this paragraph, the court shall stay the action for up to  
42 90 days to allow the noncomplying party to establish substantial compliance. The  
43 court shall set a hearing within 90 days to determine substantial compliance. At

1 any time, the court may, for good cause shown, extend the period of the stay upon  
2 application of the noncomplying party.

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

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

13 (i) This section shall become inoperative on July 1, 2010, and, as of January 1,  
14 2011, is repealed, unless a later added statute that is added before January 1, 2011,  
15 deletes or extends the dates on which it becomes inoperative and is repealed.

16 **Comment.** Section 6872 continues Section 1375.05 without change, except that cross-  
17 references are updated to reflect the new location of the referenced provisions. For further  
18 information, see the Law Revision Comment to Section 6500.

19 **§ 6874 (UNCHANGED). Notice of resolution**

20 6874. (a) As soon as is reasonably practicable after the association and the  
21 builder have entered into a settlement agreement or the matter has otherwise been  
22 resolved regarding alleged defects in the common areas, alleged defects in the  
23 separate interests that the association is obligated to maintain or repair, or alleged  
24 defects in the separate interests that arise out of, or are integrally related to, defects  
25 in the common areas or separate interests that the association is obligated to  
26 maintain or repair, where the defects giving rise to the dispute have not been  
27 corrected, the association shall, in writing, inform only the members of the  
28 association whose names appear on the records of the association that the matter  
29 has been resolved, by settlement agreement or other means, and disclose all of the  
30 following:

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

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

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

40 (b) Nothing in this section shall preclude an association from amending the  
41 disclosures required pursuant to subdivision (a), and any amendments shall

1 supersede any prior conflicting information disclosed to the members of the  
2 association and shall retain any privilege attached to the original disclosures.

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

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

8 **Comment.** Section 6874 continues Section 1375.1 without change. For further information,  
9 see the Law Revision Comment to Section 6500.

10 **§ 6876 (UNCHANGED). Notice of civil action**

11 6876. (a) Not later than 30 days prior to the filing of any civil action by the  
12 association against the declarant or other developer of a common interest  
13 development for alleged damage to the common areas, alleged damage to the  
14 separate interests that the association is obligated to maintain or repair, or alleged  
15 damage to the separate interests that arises out of, or is integrally related to,  
16 damage to the common areas or separate interests that the association is obligated  
17 to maintain or repair, the board shall provide a written notice to each member of  
18 the association who appears on the records of the association when the notice is  
19 provided. This notice shall specify all of the following:

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

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

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

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

29 **Comment.** Section 6876 continues Section 1368.5 without change, except that the term “board  
30 of directors of the association” has been replaced with the defined term “board.” See Section  
31 6530 (“board” defined). For further information, see the Law Revision Comment to Section 6500.

32 **Uncodified (added). Operative date**

33 This act becomes operative on January 1, 2013.

DISPOSITION OF EXISTING LAW

The table below shows the disposition of each provision of the existing Davis-Stirling Common Interest Development Act in the proposed law.

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1350.....	not continued	1357.130.....	not continued
1350.5.....	6502	1357.140.....	not continued
1350.7.....	not continued	1357.150.....	not continued
1351 (intro.).....	6526	1358(a).....	6660
1351(a).....	6528	1358(b).....	6662
1351(b).....	6532	1358(c).....	6664
1351(c).....	6534	1358(d).....	6666
1351(d).....	6536	1358 (last ¶).....	6670
1351(e)(1)-(2).....	6540	1358 (next to last ¶).....	6668
1351(e)(3) (except last ¶).....	6624	1359.....	6656
1351(e)(3) (last ¶).....	6626	1360.....	6714
1351(f).....	6542	1360.5.....	6706
1351(g).....	6544	1361.....	6652
1351(h).....	6546	1361.5.....	6654
1351(i).....	6550	1362.....	6650
1351(j).....	6552	1363(a).....	6750
1351(k).....	6562	1363(b).....	not continued
1351(l).....	6564	1363(c).....	6752
1351(m).....	6566	1363(d).....	not continued
1352.....	6508(a)	1363(e).....	not continued
1352.5.....	6606(a)-(b), (d)	1363(f).....	not continued
1353(a)(1) (1st & 2d sent.).....	6614(a)	1363(g) (1st sent.).....	6850
1353(a)(1)-(4) (except 1st & 2d sent.).....	not continued	1363(g) (2d sent.).....	not continued
1353(b).....	6614(b)	1363(h).....	not continued
1353.5.....	6702	1363(i).....	not continued
1353.6.....	6704	1363(j).....	6854
1353.7.....	not continued (but see 6612)	1363.001.....	6760
1353.8.....	6712	1363.005.....	not continued
1354.....	6856	1363.03.....	not continued
1355(a) (1st sent.).....	6620(a) (1st sent.)	1363.04.....	not continued
1355(a)(1).....	6620(a)(2)	1363.05.....	not continued
1355(a)(2).....	6620(a)(3)	1363.07.....	not continued
1355(a)(3).....	6620(a)(4)	1363.09.....	not continued
1355(a)(4).....	6620(a)(4)	1363.1.....	not continued
1355(b) (1st sent.).....	6616	1363.2.....	not continued
1355(b)(1).....	6620(a)(1)	1363.5.....	6622
1355(b)(2).....	6620(a)(2), 6620(b)	1363.6.....	6762
1355(b)(3).....	6620(a)(3)	1363.810.....	not continued
1355.5.....	6608	1363.820.....	not continued
1356.....	not continued	1363.830.....	not continued
1357(a).....	6618(a)	1363.840.....	not continued
1357(b) (1st sent.).....	6618(b), 6620	1363.850.....	not continued
1357(c).....	not continued	1364(a).....	6716(a)
1357(d).....	6618(c)	1364(b).....	6718
1357.100.....	not continued	1364(c).....	6716(b)
1357.110.....	not continued	1364(d)-(e).....	6720
1357.120.....	not continued	1364(f).....	6722

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1365.....	not continued	1367.1(h).....	6820(b)
1365.1.....	not continued	1367.1(i).....	6818(b)
1365.2.....	not continued	1367.1(j).....	6822(b)
1365.2.5.....	not continued	1367.1(k).....	6814(f)
1365.3.....	6800	1367.1(l).....	6814(g)
1365.5.....	not continued	1367.1(m).....	not continued (but see 6828)
1365.6.....	6758(a)	1367.1(n).....	not continued
1365.7.....	not continued	1367.4.....	not continued
1365.9.....	6840	1367.5.....	not continued
1366(a) (1st sent. only).....	6802	1367.6.....	not continued
1366(a) (except 1st sent.).....	not continued	1368.....	not continued
1366(b).....	not continued	1368.1.....	6710
1366(c).....	6804	1368.3.....	6754
1366(d).....	not continued	1368.4.....	6756
1366(e).....	not continued	1368.5.....	6150
1366(f).....	6808(c)	1369.....	6658
1366.1.....	not continued	1369.510.....	not continued
1366.2.....	not continued	1369.520.....	not continued
1366.4.....	6806	1369.530.....	not continued
1367.....	not continued (but see 6828)	1369.540.....	not continued
1367.1(a) (1st sent.).....	6808(a)	1369.550.....	not continued
1367.1(a) (2d sent.).....	6812 (intro.)	1369.560.....	not continued
1367.1(a)(1)-(6).....	6812(a)-(f)	1369.570.....	not continued
1367.1(b).....	6810	1369.580.....	not continued
1367.1(c).....	not continued	1369.590.....	not continued
1367.1(d) (1st - 5th sent.).....	6814(a)-(e)	1370.....	6602
1367.1(d) (6th sent.).....	6818(a)	1371.....	6604
1367.1(d) (7th & 8th sent.).....	6824(a)	1372.....	6510
1367.1(e).....	6824(b)	1373.....	6506(a), 6566
1367.1(f).....	6816	1374.....	6506(b)
1367.1(g) (1st sent.).....	6826	1375.....	6000
1367.1(g) (2d sent.).....	6820(a)	1375.05.....	6050
1367.1(g) (3d sent.).....	6822(a)	1375.1.....	6100
1367.1(g) (4th sent.).....	6822(c) (intro.)	1376.....	6708
1367.1(g)(1)-(2).....	6822(c)(1)-(2)	1378.....	not continued