

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.

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). 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.

Jeffrey G. Wagner
Law Office of Jeffrey Wagner
1777 N. California Blvd., Suite 200
Walnut Creek, CA 94596
Tel (925) 952-9021

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(b) (1st sent.).....	6616	1363.1.....	not continued
1355(b)(1).....	6620(a)(1)	1363.2.....	not continued
1355(b)(2).....	6620(a)(2), 6620(b)	1363.5.....	6622
1355(b)(3).....	6620(a)(3)	1363.6.....	6762
1355.5.....	6608	1363.810.....	not continued
1356.....	not continued	1363.820.....	not continued
1357(a).....	6618(a)	1363.830.....	not continued
1357(b) (1st sent.).....	6618(b), 6620	1363.840.....	not continued
1357(c).....	not continued	1363.850.....	not continued
1357(d).....	6618(c)	1364(a).....	6716(a)
1357.100.....	not continued	1364(b).....	6718
1357.110.....	not continued	1364(c).....	6716(b)
1357.120.....	not continued	1364(d)-(e).....	6720
		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