

Memorandum 2011-34

**Common Interest Developments: Commercial and Industrial Associations
(Draft of Recommendation)**

In this study, the Commission has been considering which provisions of the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1378) (hereafter "Davis-Stirling Act") should apply to an exclusively commercial or industrial common interest development ("CID").

A tentative recommendation in the study, *Commercial and Industrial Common Interest Developments* (Feb. 2011), has been distributed, and public comment on the recommendation has been received and considered by the Commission.

This memorandum discusses remaining issues that need to be resolved before a final recommendation in the study can be approved and submitted to the Legislature. Toward that end, the memorandum presents a staff draft of a final recommendation for the Commission's review, incorporating all prior Commission decisions to date, as well as anticipated decisions on issues that are presented in this memorandum.

The Commission needs to decide whether to approve the staff draft, with or without changes, as a final recommendation for printing and submission to the Legislature.

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

RECASTING OF PRELIMINARY PART

The staff recommends that the preliminary part of the tentative recommendation be revised as indicated in the attached staff draft. The revisions would clarify and emphasize various aspects of the recommendation, and add some additional supporting information.

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.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

Revised Emphasis

According to long standing Commission practice, the preliminary part of both the tentative recommendation and the final recommendation in a study provide a narrative summary and explanation of the Commission's recommendation. However, because the two recommendations are intended for different recipients, the preliminary parts sometimes differ.

A tentative recommendation seeks responsive comment from stakeholders and the general public on a recommendation that is still subject to revision, and the preliminary part of that recommendation is written accordingly. The preliminary part of a final recommendation, on the other hand, is intended to explain a finalized Commission recommendation to the Legislature, in a manner relevant and helpful to legislative evaluation. Because of these different objectives, the Commission has at times recast the preliminary part of a tentative recommendation before including it in a final recommendation.

The staff recommends such recasting in this study, in order to clarify and emphasize several aspects of the Commission's recommendation.

First, the recast preliminary part would emphasize that, in addition to discontinuing certain Davis-Stirling Act provisions that presently govern commercial and industrial CIDs, the creation of a separate statute to govern these CIDs would also be an important statutory improvement. The preliminary part would explain that establishment of this separate statute would prevent inadvertent application of future Davis-Stirling Act provisions designed with residential owners in mind, and not necessarily intended for commercial or industrial CIDs. The separate statute would also provide the Legislature a statutory vehicle to independently develop law to specifically govern commercial and industrial CIDs.

The recast preliminary part would also more clearly emphasize that the Commission's recommendation in this study is based solely on an extrapolation of previously expressed legislative policy relating to different statutory governance of commercial and industrial CIDs, and not on any new policy determinations made by the Commission. The preliminary part would explain that the Commission's recommendation represents only an application of the same principles relied upon by the Legislature when enacting Section 1373 to provisions enacted after the enactment of Section 1373.

At the same time, the recast preliminary part would clarify how the Commission considered the Legislature's attribution of greater business

sophistication to owners in a commercial or industrial CID, when evaluating whether or not to continue a Davis-Stirling Act provision. The recast version would note that this attribution may not always be true. However, the preliminary part would point out that, based on the cost of commercial real estate, a business owner that purchases real property for the operation of a business as opposed to leasing is likely to be a more sophisticated actor. The preliminary part would also note multiple other statutory contexts in which the Legislature has recognized a need for less regulatory treatment of owners of commercial property, as compared to residential owners.

Finally, the recast preliminary part would clarify that the decisions the Commission has made to either continue or discontinue a Davis-Stirling Act provision are all severable from the rest of the recommendation. In other words, if the Legislature chooses to do so, the proposed law can be easily amended to either add or delete a Davis-Stirling Act, without affecting the integrity of the remainder of the proposed law.

References to New Information

The recast preliminary part in the staff draft would also add discussion of matter relevant to the Commission's recommendation that was unavailable at the time the tentative recommendation was distributed.

Archived Legislative History

Since the distribution of the tentative recommendation in this study, the staff has obtained copies of additional archived documents relating to the enactment of Section 1373. The staff has added cites to some of these documents as additional support for the Commission's recommendation. See footnotes 5, 7, 8, 13, 22, 23, 26.

New Exemption Added to Section 1373

As will be discussed in more detail in the next section of this memorandum, Section 1373 was amended in 2011 to exempt commercial and industrial CIDs from Section 1360.2, a section added to the Davis-Stirling Act in 2011. This exemption, and its contribution to an understanding of legislative treatment of commercial and industrial CIDs, is briefly discussed in the recast preliminary part on page 6.

Recommendation

The staff recommends that **the Commission approve the recast preliminary part of the attached staff draft recommendation, for inclusion in a final recommendation in this study.**

REVISIONS BASED ON 2011 LEGISLATION

Various bills enacted in 2011 added, amended, and deleted provisions of the Davis-Stirling Act. The Commission needs to decide the extent to which the proposed law in the final recommendation needs to be revised as a result of this legislation.

Assembly Bill 657 (Gordon) (2011 Cal. Stat. ch. 204)

This bill amended Sections 1363.5 and 1363.6 of the Davis-Stirling Act, two sections that are continued in the proposed law.

Section 1363.5

Section 1363.5, which requires certain public filings by an incorporated CID, would be continued in the proposed law as Section 6622.

Section 1363.5 was amended in 2011 as follows:

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

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

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

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

(b) ~~The statement of principal business activity contained in the annual statement~~ filed by an incorporated association with the Secretary of State pursuant to Section ~~1502~~ 8210 of the Corporations Code shall also contain ~~the a statement specified in subdivision (a)~~ identifying the corporation as an association formed to manage a common interest development association under the Davis-Stirling Common Interest Development Act.

The amendments to Section 1363.5 are technical in nature, intended to modernize and enhance the readability of the section, without making any significant substantive change. (Section 8210 of the Corporations Code contains reporting requirements similar to those in Section 1502 of the Corporations Code.) They appear to provide no reason for the Commission to revisit its previous decision to continue Section 1363.5 in the proposed legislation.

The staff does recommend that **the Commission incorporate these amendments to Section 1363.5 by revising proposed Section 6622 as follows:**

§ 6622 (REVISED). Content of articles

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

(1) Identifies the corporation as an association formed to manage a common interest development under the Commercial and Industrial Common Interest Development Act.

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

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

(b) ~~The statement of principal business activity contained in the annual statement~~ filed by an incorporated association with the Secretary of State pursuant to Section ~~1502~~ 8210 of the Corporations Code shall also contain ~~the a~~ a statement specified in subdivision (a) identifying the corporation as an association formed to manage a common interest development association under the Commercial and Industrial Common Interest Development Act.

Comment. With respect to a commercial or industrial common interest development, Section 6622 continues Section 1363.5 without change, except as indicated below.

The following substantive change is made:

- A cross-reference to a statutory definition of "managing agent" is not continued.
- A reference to this act is substituted for a reference to the Davis Stirling Common Interest Development Act.

The following nonsubstantive change is made:

- The words "common interest development association" are replaced with "association."

Section 1363.6

Section 1363.6, which requires a CID to make certain identifying information available to the Secretary of State, would be continued in the proposed law as Section 6760.

Section 1363.6 was amended in 2011 as follows:

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

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

(2) The name of the association.

(3) The street address of the business or corporate office of the association, if any.

~~(3)~~ (4) The street address of the association's onsite office if different from the street address of the business or corporate office, or, if none, or if there is no onsite office, the street address of the responsible officer or managing agent of the association.

~~(4)~~ (5) The name, address, and either the daytime telephone number or e-mail address of the president of the association, other than the address, telephone number, or e-mail address of the association's onsite office or managing agent of the association.

~~(5)~~ (6) The name, street address, and daytime telephone number of the association's managing agent, if any.

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

~~(7)~~ (8) If the development is in an unincorporated area, the city closest in proximity to the development.

~~(8)~~ (9) ~~The nine-digit ZIP Code,~~ front street, and nearest cross street of the physical location of the development.

~~(9)~~ (10) The type of common interest development, as defined in subdivision (c) of Section 1351, managed by the association.

~~(10)~~ (11) The number of separate interests, as defined in subdivision (l) of Section 1351, in the development.

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

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

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

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

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

(e) The statement required by this section may be filed, notwithstanding suspension of the corporate powers, rights, and privileges under this section or under provisions of the Revenue and Taxation Code. Upon the filing of a statement under this section by a corporation that has suffered suspension under this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved from suspension, unless the corporation is held in suspension by the Franchise Tax Board by reason of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

~~(e)~~ (f) The Secretary of State shall make the information submitted pursuant to paragraph ~~(4)~~ (5) of subdivision (a) available only for governmental purposes and only to Members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. The information submitted pursuant to this section shall be made available for governmental or public inspection, as the case may be, on or before July 1, 2004, and thereafter.

(g) Whenever any form is filed pursuant to this section, it supersedes any previously filed form.

(h) The Secretary of State may destroy or otherwise dispose of any form filed pursuant to this section after it has been superseded by the filing of a new form.

2011 Cal. Stat. ch. 204.

Again, these revisions appear to be relatively technical in nature, and suggest no reason why the Commission should revisit its previous decision to continue Section 1363.6 in the proposed law.

The staff recommends that **the amendments to Section 1363.6 be incorporated in the proposed law by revising Section 6760 as follows:**

§ 6760 (REVISED). State registry

6760. (a) To assist with the identification of common interest developments, each association, whether incorporated or unincorporated, shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:

(1) A statement that the association is formed to manage a common interest development under the Commercial and Industrial Common Interest Development Act.

(2) The name of the association.

(3) The street address of the business or corporate office of the association, if any.

~~(3)~~ (4) The street address of the association's onsite office if different from the street address of the business or corporate office ~~, or, if none, or if there is no onsite office, the street address~~ of the responsible officer or managing agent of the association.

~~(4)~~ (5) The name, address, and either the daytime telephone number or e-mail address of the president of the association, other than the address, telephone number, or e-mail address of the association's onsite office or managing agent.

~~(5)~~ (6) The name, street address, and daytime telephone number of the association's managing agent, if any.

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

~~(7)~~ (8) If the development is in an unincorporated area, the city closest in proximity to the development.

~~(8)~~ (9) ~~The nine-digit ZIP Code,~~ front street, and nearest cross street of the physical location of the development.

~~(9)~~ (10) The type of common interest development, as defined in subdivision (c) of Section 1351, managed by the association.

~~(10)~~ (11) The number of separate interests, as defined in Section 6564, in the development.

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

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

(2) By unincorporated associations, in July of 2003, and in that same month biennially thereafter. Upon changing its status to that

of a corporation, the association shall comply with the filing deadlines in paragraph (1).

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

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

(e) The statement required by this section may be filed, notwithstanding suspension of the corporate powers, rights, and privileges under this section or under provisions of the Revenue and Taxation Code. Upon the filing of a statement under this section by a corporation that has suffered suspension under this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved from suspension, unless the corporation is held in suspension by the Franchise Tax Board by reason of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

~~(e)~~ (f) The Secretary of State shall make the information submitted pursuant to paragraph ~~(4)~~ (5) of subdivision (a) available only for governmental purposes and only to Members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. The information submitted pursuant to this section shall be made available for governmental or public inspection.

(g) Whenever any form is filed pursuant to this section, it supersedes any previously filed form.

(h) The Secretary of State may destroy or otherwise dispose of any form filed pursuant to this section after it has been superseded by the filing of a new form.

Comment. With respect to a commercial or industrial common interest development, Section 6760 continues Section 1363.6 without change, except as indicated below.

The following substantive change is made:

- A reference to this act is substituted for a reference to the Davis-Stirling Common Interest Development Act.

The following nonsubstantive changes are made:

- Cross-references are updated to reflect the new location of the referenced provisions.

- The words “of the association” are not continued in subdivision (a)(4).
- Superfluous references to definition sections are not continued.
- Obsolete transitional dates are not continued in subdivisions (d) and (f).
- The words “as the case may be” are not continued in subdivision (f).

Assembly Bill 771 (Butler) (2011 Cal. Stat. ch. 206)

This bill amended Section 1368 of the Davis-Stirling Act, requiring new disclosures to be made to prospective purchasers of an interest in a CID, and added Section 1368.2, which provides a statutory form for the new required disclosures.

Commercial and industrial CIDs are exempted from Section 1368 by Section 1373(a)(8), and the Commission has not continued Section 1368 in the proposed law. This amendment of Section 1368 would therefore appear to require no change to the proposed law.

Further, since newly added Section 1368.2 serves only to provide statutory support for the concurrent amendments to Section 1368, the new section has no statutory relevance to commercial or industrial CIDs.

The staff recommends that **no change be made to the proposed law based on the 2011 amendment of Section 1368, and that Section 1368.2 not be added to the proposed law.**

SB 150 (Correa) (2011 Cal. Stat. ch. 62)

This bill added Section 1360.2 to the Davis-Stirling Act, addressing the right of a CID owner to rent or lease the owner’s separate interest. The section provides that a CID declaration may not preclude an owner from renting or leasing his or her own interest, if the owner had that right when first acquiring the separate interest.

The same bill exempted commercial and industrial CIDs from Section 1360.2, through an amendment to Section 1373.

In light of the recent determination by the Legislature that Section 1360.2 should not apply to commercial and industrial CIDs, the staff recommends that **Section 1360.2 not be added to the proposed law.**

(The staff has already revised the proposed amendment to Section 1373 in the proposed law to reflect the 2011 amendment of the section.)

Senate Bill 209 (Corbett) (2011 Cal. Stat. ch. 121)

Senate Bill 209 added Section 1353.9 to the Davis-Stirling Act. The section provides that the governing documents and CC&Rs of a CID cannot prohibit or unreasonably restrict the installation of an electric vehicle charging station. See Section 1353.9(a). The section also provides that the owner who installs a charging station is responsible for the cost and maintenance of the charging station, including the cost of maintaining liability insurance for damages that might be caused by the charging station. See Section 1353.9(f). The owner must also notify prospective purchasers of the existence of the charging station and of the responsibilities imposed by Section 1353.9 (which are passed on to a successor owner). *Id.*

The section reads as follows:

1353.9. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, and any provision of a governing document, as defined in subdivision (j) of Section 1351, that effectively prohibits or restricts the installation or use of an electric vehicle charging station is void and unenforceable.

(b)(1) This section does not apply to provisions that impose reasonable restrictions on electric vehicle charging stations. However, it is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.

(2) For purposes of this section, “reasonable restrictions” are restrictions that do not significantly increase the cost of the station or significantly decrease its efficiency or specified performance.

(c) An electric vehicle charging station shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(d) For purposes of this section, “electric vehicle charging station” means a station that is designed in compliance with the California Building Standards Code and delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging plug-in electric vehicles.

(e) If approval is required for the installation or use of an electric vehicle charging station, the application for approval shall be processed and approved by the association in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed. The approval or denial of an application shall be in writing. If an application is not denied in writing within 60 days from the date of

receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) If the electric vehicle charging station is to be placed in a common area or an exclusive use common area, as designated in the common interest development's declaration, the following provisions apply:

(1) The homeowner first shall obtain approval from the common interest development to install the electric vehicle charging station and the common interest development shall approve the installation if the homeowner agrees in writing to do all of the following:

(A) Comply with the common interest development's architectural standards for the installation of the station.

(B) Engage a licensed contractor to install the station.

(C) Within 14 days of approval, provide a certificate of insurance that names the common interest development as an additional insured under the homeowner's insurance policy.

(D) Pay for the electricity usage associated with the station.

(2) The homeowner and each successive homeowner of the parking stall on which or near where the electric vehicle charging station is placed shall be responsible for all of the following:

(A) Costs for damage to the station, common areas, exclusive common areas, or adjacent units resulting from the installation, maintenance, repair, removal, or replacement of the station.

(B) Costs for the maintenance, removal, repair, and replacement of the electric vehicle charging station until it has been removed from the common area or exclusive use common area.

(C) The cost of electricity associated with the station.

(D) Disclosing to prospective buyers the existence of any electric vehicle charging station and the related responsibilities of the homeowner.

(3) The homeowner and each successive homeowner, at all times, shall maintain an umbrella liability coverage policy in the amount of one million dollars (\$1,000,000) covering the obligations of the owner under paragraph (2), and shall name the common interest development as an additional insured under the policy with a right to notice of cancellation.

(g) An association that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(h) In any action to enforce compliance with this section, the prevailing plaintiff shall be awarded reasonable attorney's fees.

Application of Section 1353.9

According to its terms, Section 1353.9 applies to “any interest in a common interest development.” See Section 1353.9(a). There is no language in the section or in Section 1373 that would clearly preclude the application of Section 1353.9 to a commercial or industrial CID.

However, the provisions describing the owner’s responsibilities repeatedly use the term “homeowner” to describe the owner. This creates some doubt about whether the Legislature *intended* for Section 1353.9 to apply to commercial and industrial CIDs.

The legislative history of SB 209 reinforces that doubt. Analyses of the bill focus on its benefits to *residential* property owners:

In order for electric vehicles to proliferate, it is important that early consumers have a positive experience. Installing a *home* charging station is one of the key elements to electric vehicle ownership, and according to the author, incidences of CIDs blocking the installation of electric vehicle chargers have arisen. If such prohibitions or restrictions become common, Californians living in CIDs will be shut out of driving clean electric vehicles. This bill seeks to eliminate obstacles that currently impact or will impact electrical vehicle owners in CIDs. By facilitating *home* stations, this bill will also encourage *off-peak charging* for electric vehicles, thereby reducing the impact on the electric grid.

Senate Transportation & Housing Committee Analysis of SB 209 (March 22, 2011) (emphasis added). Two of the main points highlighted in that analysis relate only to charging stations at one’s home: (1) the importance of having a “home” charging station to facilitate ownership of an electric vehicle, and (2) the benefit of off-peak charging of vehicles overnight. Neither benefit is provided if a charging station is installed at one’s place of work.

On the other hand, Section 1353.9 also states a broader purpose: “[I]t is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.”

Note that a similarly broad policy was expressed by the Legislature in 2010, when enacting Streets and Highway Code Section 5899.3 to address the cost of electric vehicle charging stations:

5899.3. (a) The Legislature finds and declares all of the following:
....

(2) *Electric vehicle charging infrastructure is a necessary component to transitioning to increase electric vehicle usage.* Electric vehicles and their electric charging infrastructure also address the issue of global climate change.

(3) The upfront cost of installing electric vehicle charging infrastructure improvements for *residential, commercial, industrial, agricultural, or other real property* prevents many property owners from making those improvements. To make those improvements more affordable and to promote the installation of those improvements, it is necessary to authorize an alternative procedure for authorizing assessments to finance the cost of installing electric vehicle charging infrastructure.

....

(emphasis added).

The application of Section 1353.9 to nonresidential property would serve that broader policy purpose, by widening the infrastructure base for the use of electric vehicles.

Fortunately, we have some additional guidance on whether the Legislature would like Section 1353.9 to apply to nonresidential CIDs. Almost immediately after SB 209 was signed by the Governor, the bill's author, Senator Corbett amended another bill to include proposed changes to Section 1353.9. See SB 880 (Corbett). That bill, which is pending as a two-year bill, would replace the word "homeowner" with "owner" throughout Section 1353.9. (It would also make other changes, which are discussed more fully below.) This makes clear that Senator Corbett intends for the section to apply to nonresidential CIDs.

Of course, SB 880 is currently just a bill and not law. Furthermore, Senator Corbett, while the author of both bills, is just one Legislator and so does not speak for the Legislature as a whole. Nonetheless, the rapid introduction of corrective legislation and the unambiguous import of substituting "owner" for "homeowner" throughout suggests that the Legislature did not originally intend to limit the application of Section 1353.9 to residential CIDs. As discussed below, the "foundational v. operational" analysis employed by the Commission in this study also supports the application of Section 1353.9 to all CIDs.

Foundational v. Operational Analysis

As explained in the attached staff draft, the effect of the original enactment of Section 1373 can be understood as exempting commercial and industrial CIDs from the "operational" provisions of the Davis-Stirling Act, while preserving the application of "foundational" provisions of the act. See attachment at pp. 3-7.

Under that analysis, a “foundational” provision is a provision that enables the existence of a CID and defines its fundamental character. Such provisions benefit commercial and industrial CIDs, without imposing undue burdens, and should therefore apply to all CIDs. Extrapolating from that principle, the Commission has recommended that all foundational provisions apply to commercial and industrial CIDs.

By contrast, an “operational” provision regulates the ongoing operation of a CID and its managing association. Such provisions are not strictly necessary for the existence of a CID and mostly appear to have been added to benefit relatively unsophisticated homeowners, by mandating standard procedures and protections. Operational provisions are not clearly needed by commercial and industrial CIDs and can unduly burden commercial operations. The Commission has generally recommended that the operational provisions of the Davis-Stirling Act not apply to a commercial or industrial CIDs. See, e.g., proposed Sections 6702 (United States flag), 6704 (noncommercial signs), 6706 (pets), 6708 (antenna or satellite dish), 6712 (low water using plants).

While it is true that Section 1353.9 has some important regulatory elements (relating to the maintenance and insurance obligations of the owner of a charging station), those elements appear to be secondary to the main purpose of the provision. The main purpose of Section 1353.9 is to protect the right to install a charging station. It then goes on to qualify that right, so as to avoid imposing an unfair burden on the other owners within the CID.

Based on the foregoing, the staff believes that Section 1353.9 is a foundational provision and therefore recommends that it be added to the proposed law.

Drafting Issues

It would not be appropriate to use all of the existing language of Section 1353.9 in the proposed law, because the term “homeowner” would be confusing and inaccurate. For the most part, that problem could be cured by replacing the term “homeowner” with “owner” (as Senator Corbett has proposed in SB 880). However, there is one provision where this straightforward substitution might be problematic.

Section 1353.9(f)(2) refers to the “homeowner and each successive homeowner *of the parking stall.*” (Emphasis added.) That language appears to be partially defective.

In some CIDs, parking spaces are common area (rather than separate interests or exclusive use common area). Common area is owned collectively, either by the association as an entity or by all members, as tenants in common. See Civ. Code §§ 1351(b), 1351(f), 1351(k)(1), 1351(l), 1351(m), 1358, 1362.

If a parking space is part of the common area, the owner who installed the charging station is *not* the “owner of the parking stall” served by the charging station. Consequently, the responsibilities imposed by Section 1353.9(f)(2) would not clearly apply to the owner of the charging station. If the provision is read literally, the responsibilities would seem to fall onto the association or the membership as a whole (depending on how the common area is owned). That seems plainly contrary to the purpose of the section.

Fortunately, SB 880 again provides useful guidance. It appears that Senator Corbett recognized the drafting problem, because SB 880 would replace “owner of the parking stall” with “owner of the charging station.” That strikes the staff as a reasonable approach, which would be consistent with the apparent purpose of the section to assign responsibilities to the owner who will be using the charging station, rather than to the association.

If the Commission decides to add the substance of Section 1353.9 to the proposed law, the staff recommends that at minimum it do so by (1) substituting the term “owner” in place of all references to the term “homeowner,” (2) substituting the phrase “owner of a charging station” for the phrase “homeowner of the parking stall,” and (3) adding a Commission note along the following lines:

⚡ Note. The language of proposed Section 6730(f)(2) would parallel an amendment of Section 1353.9(f)(2) that is proposed in SB 880 (Corbett) (2011). If that provision of the bill is amended before enactment or is not enacted, the language of proposed Section 6730 will be adjusted accordingly.

Possible Further Revision of Proposed Section

In addition to providing guidance on the issues discussed above, SB 880 would also amend Section 1353.9 to (1) clarify the section’s effect on ownership of common area, and (2) make other minor improvements. Thus:

1353.9. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, and any provision of a governing document, as defined in subdivision (j) of Section 1351, that either effectively

prohibits or restricts the installation or use of an electric vehicle charging station in an owner's designated parking space, including, but not limited to, a deeded parking space, a parking space in an owner's exclusive use common area, or a parking space that is specifically designated for use by a particular owner, or is in conflict with the provisions of this section is void and unenforceable.

(b) (1) This section does not apply to provisions that impose reasonable restrictions on electric vehicle charging stations. However, it is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.

(2) For purposes of this section, "reasonable restrictions" are restrictions that do not significantly increase the cost of the station or significantly decrease its efficiency or specified performance.

(c) An electric vehicle charging station shall meet applicable health and safety standards and requirements imposed by state and local ~~permitting~~ authorities as well as all other applicable zoning, land use or other ordinances, or land use permits.

(d) For purposes of this section, "electric vehicle charging station" means a station that is designed in compliance with the California Building Standards Code and delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging plug-in electric vehicles.

(e) If approval is required for the installation or use of an electric vehicle charging station, the application for approval shall be processed and approved by the association in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed. The approval or denial of an application shall be in writing. If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) If the electric vehicle charging station is to be placed in a common area or an exclusive use common area, as designated in the common interest development's declaration, the following provisions apply:

(1) The ~~homeowner~~ owner first shall obtain approval from the ~~common interest development~~ association to install the electric vehicle charging station and the ~~common interest development~~ association shall approve the installation if the ~~homeowner~~ owner agrees in writing to do all of the following:

(A) Comply with the ~~common interest development's~~ association's architectural standards for the installation of the charging station.

(B) Engage a licensed contractor to install the charging station.

(C) Within 14 days of approval, provide a certificate of insurance that names the ~~common interest development~~ association as an additional insured under the ~~homeowner's~~ owner's insurance policy in the amount set forth in paragraph (3).

(D) Pay for the electricity usage associated with the charging station.

(2) The ~~homeowner~~ owner and each successive ~~homeowner~~ owner of the ~~parking stall on which or near where the electric vehicle charging station is placed~~ shall be responsible for all of the following:

(A) Costs for damage to the charging station, common ~~areas~~ area, exclusive use common ~~areas~~ area, or ~~adjacent units~~ separate interests resulting from the installation, maintenance, repair, removal, or replacement of the charging station.

(B) Costs for the maintenance, ~~removal~~, repair, and replacement of the ~~electric vehicle~~ charging station until it has been removed ~~from the common area or exclusive use common area~~ and for the restoration of the common area after removal.

(C) The cost of electricity associated with the charging station.

(D) Disclosing to prospective buyers the existence of any ~~electric vehicle~~ charging station of the owner and the related responsibilities of the ~~homeowner~~ owner under this section.

(3) The ~~homeowner~~ owner and each successive ~~homeowner~~ owner of the charging station, at all times, shall maintain an umbrella liability coverage policy in the amount of one million dollars (\$1,000,000) covering the obligations of the owner under paragraph (2), and shall name the ~~common interest development~~ association as an additional insured under the policy with a right to notice of cancellation.

(g) Except as provided in subdivision (h), installation of an electric vehicle charging station in a common area, that is not an exclusive use common area, shall be authorized by the association only if installation in the owner's designated parking space that is owned in fee or as an exclusive use easement is impossible or unreasonably expensive. In such cases, the association shall enter into a license agreement with the owner for the use of the space in a common area, and shall comply with all of the requirements in subdivision (f).

(h) The association or owners may install an electric vehicle charging station in the common area for the use of all members of the association and, in that case, the association shall develop appropriate terms of use for the charging station.

(i) An association may create a new parking space where one did not previously exist to facilitate the installation of an electric vehicle charging station.

~~(g)~~ (j) An association that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

~~(h)~~ (k) In any action to enforce compliance with this section, the prevailing plaintiff shall be awarded reasonable attorney's fees.

Those amendments appear to have been made in response to a formal statement of the Governor on signing the bill that added Section 1353.9. It read in part:

This bill, unfortunately, contains language that could permit individual homeowners to unreasonably use or occupy common areas. The author has assured me that she will pursue legislation that clearly protects the right of the common interest developments to establish reasonable rules for any use of common areas for charging stations.

Governor's Signing Statement, SB 209 (Corbett) (July 25, 2011).

In light of the Governor's formally expressed concern, and Senator Corbett's immediate introduction of language to address that concern, it seems very likely that SB 880 will be enacted in 2012 and that Section 1353.9 will be amended along the general lines set out above.

Out of respect for that pending reform effort, the staff recommends that all of the amendments proposed in SB 880 be incorporated into the proposed law (if the Commission decides to include the substance of Section 1353.9 in the proposed law).

If that approach is taken, the staff recommends the use of an alternative Commission note, acknowledging that the proposed language is intended to conform to the Legislature's will with respect to the entire content of Section 1353.9:

Note. The language of proposed Section 6730 would parallel an amendment of Section 1353.9 that is proposed in SB 880 (Corbett) (2011). If that bill is amended before enactment or is not enacted, the language of proposed Section 6730 will be adjusted accordingly.

Proposed Section 6713 has been provisionally added to the proposed law to implement the recommendations made above. If the Commission decides against including Section 1353.9 in the proposed law, or decides to use different language to continue the section, the proposed law will be revised to reflect the Commission's decision.

(The section has been located in Chapter 5 of the proposed law ("Property Use and Maintenance"), within an article that includes the provisions governing the other protected property uses described above. Because Section 6713 relates

to use of common area in a CID, the title of that article has been revised to read “Protected Uses,” rather than “Use of Separate Interest.”)

Senate Bill 563 (Committee on Transportation and Housing) (2011 Cal. Stat. ch. 257)

This bill amends two sections of the Davis-Stirling Act that are *not* continued in the proposed law, Sections 1363.05 (relating to conducting meetings in a CID) and 1365.2 (relating to inspection and copying of CID association records). The bill also deletes a third provision of the Davis-Stirling Act that is not continued in the proposed law, Section 1363(e), which also relates to conducting meetings in a CID.

The amendments to these sections make several technical changes to specific procedures that must be followed by a CID association in conducting meetings or maintaining records, including prohibiting the conducting of meetings electronically through the use of email exchanges. As the Commission has characterized the provisions in the Davis-Stirling Act relating to such procedures as operational provisions that should not be continued in the proposed law, revisions of these procedures would not appear to suggest any need for the Commission to revisit these decisions.

The staff recommends **no change to the proposed law based on the enactment of this bill.**

However, the bill does require technical revision of Comments to Sections 6850 and 6854 of the proposed law. The source provisions for these two sections, which are referenced in their respective Comments, are both subdivisions of Section 1363. These subdivisions were both re-lettered by SB 563 in conjunction with the deletion of Section 1363(e), requiring corresponding changes to the Comment references.

These changes to the two section Comments have already been made in the staff draft.

TECHNICAL REVISIONS

Technical Comment Changes

In readying the proposed legislation for inclusion in a final recommendation, the staff has made a number of non-substantive changes to Comments in the proposed law, to conform to conventional Comment usage, and to correct minor

nonsubstantive omissions. These revisions have already been incorporated in the attached staff draft, but the staff will be prepared to discuss any particular revision at the upcoming Commission meeting, upon request.

In order to maintain the parallelism between the proposed law and the legislation that would implement the Commission's CID recodification recommendation, corresponding Comment changes relating to that legislation will be presented to the Commission for approval at a later time.

Conforming Revisions

The proposed law contains a number of proposed conforming revisions to statutory sections outside the Davis-Stirling Act that contain cross-references to Davis-Stirling Act provisions that have been continued in the proposed law under new section numbers.

Two of these sections containing such cross references, Government Code Sections 12956.1 and 12956.2, were amended by legislation enacted in 2011. 2011 Cal. Stat. ch. 261 (SB 559 (Padilla)). The staff has incorporated the text of the amendments in the proposed conforming revisions of the sections included in the staff draft.

Respectfully submitted,

Steve Cohen
Staff Counsel

CALIFORNIA LAW REVISION COMMISSION

<h2>STAFF DRAFT</h2>

RECOMMENDATION

Commercial and Industrial
Common Interest Developments

November 2011

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
650-494-1335
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SUMMARY OF RECOMMENDATION

A common interest development (“CID”) is a form of real property development, in which ownership of a separate interest is coupled with a shared interest in common area property.

CIDs are governed by the Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”), which authorizes and defines the CID property ownership form and regulates the operation of a CID’s managing association.

The available legislative history indicates that the Davis-Stirling Act was originally intended to govern only residential property, with no expectation that it would apply to commercial or industrial property.

When it later became apparent that the Act also applied to nonresidential developments, Civil Code Section 1373 was enacted to limit that application. Section 1373 generally preserved the application of the foundational provisions of the Davis-Stirling Act (i.e., those that relate to the establishment and definition of the CID property form), while the operational provisions (i.e., those that regulated the ongoing operation of the managing association) were made inapplicable to commercial and industrial CIDs.

Since the enactment of Section 1373 in 1988, the Davis-Stirling Act has more than tripled in size, mostly through the addition of numerous new operational provisions. Many of those provisions appear to have been designed specifically for homeowners. For the most part, the Legislature does not appear to have analyzed whether those new provisions were necessary or beneficial to commercial or industrial property owners.

The Commission has completed such an analysis, based on an extrapolation of the policies supporting the enactment of Section 1373. The Commission makes three general recommendations:

- (1) The law governing commercial and industrial CIDs should be separated from the law governing residential CIDs. This will prevent any new laws enacted to benefit residential owners from being inadvertently applied to commercial and industrial developments.
- (2) The existing foundational provisions of the Davis-Stirling Act should continue to apply to commercial and industrial CIDs. These provisions are necessary for any CID, regardless of type.
- (3) Most of the existing operational provisions of the Davis-Stirling Act should be made inapplicable to commercial and industrial CIDs. These provisions are not strictly necessary for all CIDs. They appear to have been added to the Davis-Stirling Act to benefit residential property owners, without separate consideration of their effect on commercial or industrial property owners.

This recommendation was prepared pursuant to Resolution Chapter 98 of the Statutes of 2009.

ACKNOWLEDGMENTS

Comments from knowledgeable persons are invaluable in the Commission's study process. The Commission would also like to express its appreciation to the many individuals and organizations who have taken the time to participate in this study.

Inclusion of the name of an individual or organization should not be taken as an indication of the individual's opinion or the organization's position on any aspect of this recommendation. The Commission regrets any errors or omissions that may have been made in compiling these acknowledgments.

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COMMERCIAL AND INDUSTRIAL COMMON INTEREST DEVELOPMENTS

1 A common interest development (“CID”) is a real property development that
2 includes all of the following: (1) separate ownership of a lot or unit, coupled with
3 an undivided interest in common property, (2) covenants, conditions, and
4 restrictions that limit use of both the common area and separate ownership
5 interests, and (3) management of common property and enforcement of
6 restrictions by a community association.¹

7 The Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”)²
8 is the main body of statutory law that governs CIDs in California. The Act was
9 enacted in 1985,³ primarily to consolidate and standardize statutory provisions
10 governing different types of CIDs.⁴

11 The available legislative history indicates that the Davis-Stirling Act was
12 originally intended to govern only residential property, with no expectation that it
13 would apply to commercial or industrial property.⁵

14 Two years later, when it became apparent that the Act also applied to
15 commercial and industrial CIDs, a bill was introduced to entirely exempt such
16 developments from the Davis-Stirling Act.⁶ However, persons representing
17 commercial property owners objected to that approach, noting that some
18 provisions of the Act were beneficial for all CIDs, regardless of type.⁷ The bill was
19 then amended to instead exempt commercial and industrial CIDs from selected
20 provisions of the Act that were identified as necessary to protect residential
21 property owners, but unnecessary and burdensome for commercial or industrial

1. Civ. Code §§ 1352, 1363(a); C. Sproul & K. Rosenberry, *Advising California Common Interest Communities*, §§ 1.2, 1.14, 1.15, pp. 3-4, 15-19 (2010).

2. Civ. Code §§ 1350-1378.

3. 1985 Cal. Stat. ch. 874.

4. C. Sproul & K. Rosenberry, *supra* Note 1, at § 1.4, pp. 5-6.

5. See letter from Jerold L. Miles to Michael Krisman (Sept. 16, 1986) (on file with Commission) (“In a recent conversation between my partner Rob Thomson and Assemblyman Davis, Assemblyman Davis assured Mr. Thomson that the act was intended to apply only to residential projects.”); Office of Local Government Affairs, Enrolled Bill Report on AB 2484 (May 23, 1988) (on file with Commission) (“According to the consultant for the Assembly Housing Committee, the Davis-Stirling Act was enacted to benefit residential common interest developments. However, the language of the Davis-Stirling Act *inadvertently* included commercial and industrial developments.”) (emphasis added).

6. AB 2484 (Hauser) (1987).

7. See, e.g., letter from Jeffrey G. Wagner to Assembly Member Daniel Hauser (June 12, 1987) (attached to Commission Staff Memorandum 2008-63 (Dec. 2, 2008), Exhibit pp. 1-2); letter from F. Scott Jackson to Assembly Member Hauser (June 29, 1987) (on file with Commission); Exhibit to letter from Donna L. May to Michael Krisman (May 7, 1987) (on file with Commission).

1 property owners.⁸ Civil Code Section 1373 was enacted in that form,⁹ with an
2 express statement of legislative findings:

3 The Legislature finds that the [provisions declared inapplicable to commercial
4 or industrial CIDs] may be appropriate to protect purchasers in residential
5 common interest developments, however, the provisions are not necessary to
6 protect purchasers in commercial or industrial developments since the application
7 of those provisions results in unnecessary burdens and costs for these types of
8 developments.¹⁰

9 Since the enactment of Section 1373, the Davis-Stirling Act has more than
10 tripled in size.¹¹ However, over that 23 year period, only three additions have been
11 made to the list of exemptions in Section 1373 for commercial and industrial
12 developments.¹²

13 The Commission believes that most of the new provisions of the Davis-Stirling
14 Act have been enacted to solve problems faced by residential property owners,
15 without separate consideration of their effects on nonresidential CIDs.¹³ As a
16 consequence, nearly all of the numerous regulatory provisions of the Davis-

8. See, e.g., Assembly Floor Analysis of AB 2484 (Jan. 19, 1988), p. 1 (specified provisions of Davis-Stirling Act were “enacted to benefit residential common interest developments”); Assembly Committee on Housing and Community Development Analysis of AB 2484 (Jan. 11, 1988), p. 1 (specified provisions of Davis-Stirling Act were “enacted primarily to regulate and benefit residential common interest developments”); Senate Committee on Housing and Urban Affairs Analysis of AB 2484 (May 12, 1987), p. 1 (specified provisions of Davis-Stirling Act were “designed to protect individuals in residential common interest developments”); Committee Statement of Assembly Member Hauser on AB 2484 (on file with Commission) (problems to be solved by Davis-Stirling Act “revolved around residential subdivisions”).

9. 1988 Cal. Stat. ch. 123.

10. See Civ. Code § 1373(b).

11. The Act has grown from 25 code sections in 1986 to 94 code sections in 2011.

12. See 2003 Cal. Stat. ch. 557 (adding Civ. Code §§ 1357.100-1357.150), 2004 Cal. Stat. ch. 346 (adding Civ. Code § 1378), and 2011 Cal. Stat. ch. 62 (adding Civ. Code § 1360.2).

13. Legislative analyses of major recent CID reform bills make no mention of the bills’ effects on nonresidential CIDs, instead expressly focusing on the bills’ effects on “homeowners.” See, e.g., Senate Transportation and Housing Committee Analysis of SB 528 (Feb. 22, 2007), p. 1 (“A common-interest development (CID) is a form of real estate where each *homeowner* has an exclusive interest in a unit or lot and a shared or undivided interest in common area property.”) (emphasis added); Senate Floor Analysis of SB 61 (Sept. 5, 2005), p. 7 (“According to the author’s office, ballots in CID elections are not required by law to be secret. This leaves an opening for potential abuse wherein *homeowners* can be intimidated and disinclined to vote in accordance with their true desires.”) (emphasis added); Senate Floor Analysis of SB 137 (Sept. 7, 2005) (“This bill protects owners’ equity in their *homes*...”) (emphasis added); Assembly Floor Analysis of AB 1098 (Sept. 8, 2005), p. 2 (“The author identifies the purpose of the bill as preserving common interest developments as affordable *housing* by detailing the financial records that are subject to *homeowner* inspection.”) (emphasis added). Note too that bills proposing changes to the Davis-Stirling Act are typically referred to the housing policy committees in each chamber, and are not heard by the policy committees tasked with evaluating new business regulations.

See also the statutory text of Civ. Code §§ 1353.7 (prohibiting a CID from requiring a “homeowner” to install or repair roof in violation of statute) and 1365.2 (referencing records of interior architectural plans for individual “homes”).

1 Stirling Act currently apply to commercial and industrial CIDs, despite having
2 been designed to protect residential property owners. This seems contrary to the
3 Legislature’s intent in enacting Section 1373.

4 The Commission has completed a review of the provisions that were added to
5 the Davis-Stirling Act since 1988, in order to determine whether those provisions
6 should apply to commercial and industrial CIDs. In conducting this study, the
7 Commission attempted to identify the original policy rationale for the enactment
8 of Section 1373 and then apply that rationale to the new provisions of the Act. In
9 other words, the Commission has attempted to extrapolate from established
10 legislative policy, rather than make its own ad hoc judgments about which
11 provisions are appropriate for commercial and industrial CIDs.¹⁴ The
12 Commission’s analysis and recommendations on that issue are discussed below.

13 The Commission also recommends that the law governing commercial and
14 industrial CIDs be separated from the law governing residential CIDs. That would
15 avoid any future inadvertent regulation of commercial and industrial CIDs,
16 through the enactment of new provisions designed to benefit residential property
17 owners. This would not prevent the Legislature from adopting reforms that apply
18 to all types of CIDs, but it would require an affirmative step in order to give a new
19 provision such universal application.

20 PRIOR LEGISLATIVE POLICY

21 In order to better understand the legislative policy rationale for the enactment of
22 Section 1373, it is helpful to examine the content of the Davis-Stirling Act when
23 Section 1373 was added. At that time, the Davis-Stirling Act consisted of only 25
24 sections, most of which governed the establishment and basic structure of a CID,
25 rather than regulating how a CID should conduct its daily affairs.

26 After the enactment of Section 1373, the provisions of the Act that continued to
27 apply to a commercial or industrial CID included all of the following:

- 28 • *Definitions and other general provisions.*¹⁵ These provisions are necessary to
29 the operation of the statute and the definition of the CID property ownership
30 form, and impose no significant burden on the operation of a CID.
- 31 • *Governing document provisions.*¹⁶ These provisions define the character of a
32 CID’s founding documents.
- 33 • *Property ownership and transfer provisions.*¹⁷ These provisions provide
34 special rules relevant to the CID form of property ownership.

14. But see “Exceptions to the General Recommendations,” below.

15. Civ. Code §§ 1350 (short title), 1351 (definitions), 1352 (application of Act).

16. Civ. Code §§ 1353 (content of declaration), 1354 (enforcement of restrictions as equitable servitudes), 1355 and 1357 (amendment of declaration).

- *Basic governance provisions.*¹⁸ These provisions establish the basic governance structure for the management and maintenance of CID common area, and the enforcement of mutual restrictions. They enable governance, without regulating governance operations.

By preserving the application of those types of provisions, the Legislature seems to have concluded that such provisions are necessary for commercial and industrial CIDs, and are not unduly burdensome to their operations.

Significantly, Section 1373 exempted commercial and industrial CIDs from the following types of provisions:

- *Provisions regulating fiscal planning and reporting.*¹⁹ These provisions state mandatory requirements governing an association's fiscal planning and reporting.
- *Judicial override of supermajority amendment requirement.*²⁰ This provision authorizes a court to approve an amendment of a CID's declaration, notwithstanding a failure to satisfy a supermajority member approval requirement stated in the declaration.
- *Transfer disclosure requirements.*²¹ This provision requires that specified information be provided to a prospective purchaser of a separate interest in a CID, before transfer of title.

The exemption of commercial and industrial CIDs from those provisions indicates that the Legislature found them to be unnecessary and unduly burdensome for those types of CIDs.²²

The basis for these conclusions can be found in a legislative analysis of the bill that added Section 1373. The analysis discussed the special character of commercial and industrial CIDs²³:

17. Civ. Code §§ 1358 (transfer of separate interest), 1359 (partition), 1360 (separate interest improvements), 1361 (rights of ingress, egress, and support), 1362 (ownership of common area), 1369 (mechanics liens on common area), 1370 (liberal construction of title documents), 1371 (presumption regarding unit boundaries), 1372 (construction of local zoning ordinances).

18. Civ. Code §§ 1363(a) (existence and powers of association), 1364 (maintenance obligations), 1366(a) (authority to levy assessments), 1366(c) (authority to recover collection costs), 1366(d) (exemption from interest rate limitations), 1367 (authority to lien to collect overdue assessments).

19. Civ. Code §§ 1363(b) and 1365 (mandatory financial statement), 1365.5 (fiscal duties of board), 1366(b) and 1366.1 (limitations on assessment setting).

20. Civ. Code § 1356.

21. Civ. Code § 1368.

22. See, e.g., Civ. Code § 1373(b); Assembly Floor Analysis of AB 2484 (Jan. 19, 1988) (on file with Commission); Assembly Committee on Housing and Community Development Analysis of AB 2484 (Jan. 11, 1988) (on file with Commission); Senate Committee on Housing and Urban Affairs Analysis of AB 2484 (May 12, 1987) (on file with Commission); Committee Statement of Assembly Member Hauser on AB 2484 (on file with Commission).

23. Senate Rules Committee Analysis of AB 2484 (May 18, 1988) (on file with Commission). See also Assembly Floor Analysis of AB 2484 (Jan. 19, 1988) (on file with Commission); Assembly Committee on

- 1 • Commercial and industrial CIDs are “business endeavors in which the parties
2 engage the services of attorneys, accountants, management companies, and
3 developers.”
- 4 • Unlike owners in residential CIDs, owners in commercial and industrial CIDs
5 are “well-informed” and “governed by other provisions of commercial law.”
- 6 • “The operational needs of commercial and industrial CIDs are different than the
7 needs of residential [CIDs].”²⁴
- 8 • Regulatory requirements designed to protect residential owners “interfere with
9 commerce, and increase the costs of doing business.”

10 Taken as a whole, the enactment of Section 1373 suggests the following policy
11 principles:

- 12 • Provisions that define the basic property ownership and governance structure
13 for CIDs are needed by commercial and industrial CIDs and do not unduly
14 burden those CIDs.
- 15 • Provisions that are designed to help homeowners avoid mismanagement, by
16 mandating specific management practices, are unnecessary and unduly
17 burdensome for business owners in commercial and industrial CIDs.²⁵
- 18 • Provisions that are designed to help homeowners understand the consequences
19 of purchasing a home in a CID are not needed by purchasers of units in
20 commercial or industrial developments. Business owners purchasing
21 commercial or industrial properties are presumably professionally advised and
22 do not need the same statutory guidance provided to homeowners.²⁶
- 23 • A provision authorizing the court to circumvent a supermajority approval
24 requirement for amendment of the declaration may be helpful in a residential
25 CID, where homeowner apathy and fractiousness may make it difficult to obtain

Housing and Community Development Analysis of AB 2484 (Jan. 11, 1988) (on file with Commission); Senate Committee on Housing and Urban Affairs Analysis of AB 2484 (May 12, 1987) (on file with Commission); Committee Statement of Assembly Member Hauser on AB 2484 (on file with Commission).

24. For example, a commercial or industrial CID may require greater flexibility than a residential CID, in order to address significant business-related changes in the development’s use, facilities, and costs.

25. The Legislature has expressly recognized the difference between the needs of homeowners and business owners involved in seemingly similar ventures as recently as 2011, when adding procedural protections relating to CID meetings to Civil Code Section 1363.05. 2011 Cal. Stat. ch. 257 (SB 563 (Committee on Transportation and Housing)). As indicated in a legislative committee analysis of SB 563:

Although CIDs, as corporations, are regulated by meeting provisions of Corporations Code, as well as the Davis-Stirling Act, CIDs are not typical business corporations. For example, while shareholders of a business corporation have an obvious economic interest in the actions of the board of directors, the separate interest owners of a CID arguably have a much greater interest in the actions of its board, given that those actions affect not just economic interests, but the rules and regulations affecting day-to-day life within the development.

Assembly Committee On Judiciary Analysis of SB 563 (June 28, 2011).

26. The Legislature has drawn similar distinctions in the statutory treatment of owners of residential real property and owners of nonresidential real property in other contexts as well. See e.g., Bus. & Prof. Code § 11010.3 (inapplicability of Subdivided Lands Act to sale of lots or interests in commercial and industrial subdivisions); Civ. Code § 1102 *et seq* (statutory disclosures required only upon transfer of residential property); Ins. Code § 10101 *et seq* (statutory disclosures required only for residential property insurance).

1 the approval required for a necessary amendment. This problem is less likely to
2 arise in a commercial or industrial CID.²⁷ Furthermore, a business owner may
3 have carefully read and relied on a CID's governing documents before
4 purchasing a unit in a commercial or industrial CID. A judicial override of the
5 declaration could frustrate the owners' reasonable expectations.

6 Section 1373 has been amended three times since its enactment. Each
7 amendment has been consistent with the principles set out above, exempting
8 commercial and industrial CIDs from provisions regulating governance
9 operations:

- 10 • In 2003, Section 1373 was amended to exempt commercial and industrial
11 CIDs from new statutory procedures on association rulemaking.²⁸
- 12 • In 2004, Section 1373 was amended to exempt commercial and industrial
13 CIDs from new statutory procedures on architectural review
14 decisionmaking.²⁹
- 15 • In 2011, Section 1373 was amended to restrict an association's authority to
16 regulate the rental of separate interests.³⁰

17 In summary, in enacting and amending Section 1373, the Legislature seems to
18 have drawn a distinction between two broad classes of Davis-Stirling Act
19 provisions:

- 20 • *Foundational Provisions.* These are enabling provisions that address the
21 fundamental character of the CID property ownership form. They include (1)
22 definitions of key concepts, (2) provisions relating to a CID's founding
23 documents, (3) provisions relating to basic property ownership, transfer, and
24 maintenance, and (4) provisions establishing the governing association and
25 prescribing its necessary powers. Foundational provisions also include
26 provisions necessary for the operation of the statute, such as rules of
27 construction and technical definitions. These provisions are necessary for all
28 CIDs and do not impose operational burdens on CIDs.
- 29 • *Operational Provisions.* These are regulatory provisions that impose mandates
30 or restrictions relating to CID governance. These provisions are designed to
31 assist and protect unsophisticated homeowners in managing their
32 communities, but are not needed by sophisticated commercial property

27. See, e.g., Exhibit to letter from Donna L. May to Michael Krisman (May 6, 1987) (on file with Commission), p. 6 ("Owner apathy in residential projects which makes it difficult to obtain required extra majority consensus for declaration change is uncommon among business owners in commercial projects.").

28. 2003 Cal. Stat. ch. 557. This change to Civil Code Section 1373 related to a Law Revision Commission recommendation. See *2003-2004 Annual Report*, 33 Cal. L. Revision Comm'n Reports 569, 645-47 (2003).

29. 2004 Cal. Stat. ch. 346. This change to Civil Code Section 1373 related to a Law Revision Commission recommendation. See *Common Interest Development Law: Architectural Review and Decisionmaking*, 34 Cal. L. Revision Comm'n Reports 107 (2004).

30. 2011 Cal. Stat. ch. 62 (operative January 1, 2012).

1 owners.³¹ To the extent that they mandate “one-size-fits-all” management
2 practices, they can unduly burden commercial and industrial CIDs.

3 RECOMMENDATION

4 The Commission makes three general recommendations regarding the treatment
5 of commercial and industrial CIDs:

- 6 • The law governing residential CIDs and commercial and industrial CIDs
7 should be divided into two separate bodies of law.
- 8 • The operational provisions of the Davis-Stirling Act should not apply to
9 commercial and industrial CIDs.
- 10 • The foundational provisions of the Davis-Stirling Act should continue to
11 apply to commercial and industrial CIDs.

12 Those recommendations, and a small number of exceptions, are discussed
13 below.

14 **Statutory Separation**

15 The Commission recommends that the law governing commercial and industrial
16 CIDs be separated from the law governing residential CIDs. This would be
17 accomplished by entirely exempting commercial and industrial CIDs from the
18 existing Davis-Stirling Act, and enacting a parallel statute that would be applicable
19 to commercial and industrial CIDs only.

20 This organization would prevent any future inadvertent regulation of
21 commercial and industrial CIDs. Provisions enacted to benefit residential CIDs

31. While the legislative assumption of greater sophistication and resources is likely to be true as a general proposition, it will not be true in every case. Some business owners will be less sophisticated, and some residential property owners will be more sophisticated. However, there is good reason to believe that a business owner who purchases real property for the operation of a business is likely to be a sophisticated actor. As the California Association of Community Managers related in a letter to the Commission in 2007:

The following two demographic facts differentiate the purchaser of a commercial building or unit from the purchaser of a residence:

(1) Approximately 90% of the owners who purchase buildings or commercial units in the associations own them as a corporation, LLC, trust or partnership. Almost all of these, whether they are owned as noted above or as individuals/joint tenants, own and operate an incorporated business within the building or unit. These parties are sophisticated. They have hired legal counsel to form their legal entities and have the legal and financial resources to hire legal counsel when they believe it appropriate to protect their interests.

(2) The typical purchase price, represented as the middle 70% of the building or units sold today, varies between \$1,000,000 - \$4,000,000. The purchase and sale of these buildings and units are typically facilitated by one or more attorneys, who are obligated to protect the interests of their clients through the diligence process. In summary, these are parties who have the sophistication to manage businesses, take advantage of legal and tax opportunities presented to such businesses and to purchase multi-million dollar buildings for the tax and estate benefits provided thereby.

See CLRC Memorandum 2008-63, Exhibit p. 4.

1 would be added to the existing Davis-Stirling Act, where they would have no
2 application to commercial and industrial CIDs. If the Legislature intended for such
3 the new provision to apply to commercial or industrial CIDs as well, a parallel
4 provision would need to be added to the new statute governing commercial and
5 industrial CIDs.

6 In addition, this organization would facilitate future development of the law
7 governing commercial and industrial CIDs, by providing a straightforward way to
8 enact laws appropriate to those types of CIDs, without creating complications for
9 residential CIDs.

10 **Exemption from Operational Regulations**

11 With the exceptions described below, the Commission recommends that the new
12 statute governing commercial and industrial CIDs include the foundational
13 provisions of the Davis-Stirling Act, but not the operational provisions of that Act.

14 This would preserve and extend the policy rationales discussed earlier:

- 15 • The foundational provisions of the Davis-Stirling Act are necessary to
16 define and enable all CIDs. They are appropriately applied to commercial
17 and industrial CIDs.
- 18 • The operational regulations of the Davis-Stirling Act were enacted to benefit
19 residential property owners. They are not needed by business property
20 owners, who have the sophistication to order their own operations and are
21 already adequately regulated by general commercial law. Because the
22 operational needs of business property owners are different from those of
23 residential property owners, the one-size-fits-all procedural mandates of the
24 Davis-Stirling Act may impose undue burdens on commercial operations.

25 *Special Notice Requirement.* Civil Code Section 1363(g) of the Davis-Stirling
26 Act requires distribution of a schedule of monetary penalties that may be imposed
27 as punishment for a violation of the governing documents. Civil Code Section
28 1363(j) is an accompanying disclaimer, providing that nothing in Section 1363(g)
29 shall affect an association's authority to impose those monetary penalties.
30 Although these provisions could be characterized as operational, they seem
31 appropriate as an element of a fair disciplinary procedure. The requirements do not
32 appear to impose any significant burden on CID operations.

33 The Commission recommends that the proposed law include these provisions.³²

34 *Exemption from Constitutional Interest Rate Limitations.* Civil Code Section
35 1366(f) generally exempts CIDs from interest rate limitations imposed by Article
36 XV of the California Constitution.

37 Although this provision could be characterized as operational, it does not appear
38 to impose any burden on CID operations. To the extent that it facilitates

32. See proposed Civ. Code §§ 6850, 6854 *infra*.

1 assessment collection, it may provide a benefit to all CIDs, including commercial
2 and industrial CIDs.

3 The Commission recommends that Section 1366(f) be continued in the new
4 statute.³³

5 *Assessment Collection Provisions.* Civil Code Section 1367.1 contains a detailed
6 procedural scheme for the collection of delinquent assessment payments. While
7 the section relates to an operational aspect of CID governance, the Commission
8 concluded that the well-developed procedure would likely prove useful, and not
9 unduly burdensome, in a commercial or industrial CID.

10 With the exception of severable provisions relating alternate dispute resolution,³⁴
11 calculation of delinquent assessment balances,³⁵ and notice delivery,³⁶ the
12 Commission recommends that the provisions of Section 1367.1 be continued in
13 the new statute.³⁷

14 *Construction Litigation Provisions.* Three sections of the Davis-Stirling Act
15 govern construction defect litigation in a CID.³⁸ Although they might be described
16 as operational provisions, the Commission recommends that they be preserved.³⁹
17 The well-developed procedures provided in those sections relate to a dispute
18 between an association and a builder, a third party who is not involved in CID
19 governance. Those provisions appear to be equally appropriate for the resolution
20 of such disputes in any type of CID, and the Commission recommends that they be
21 continued in the new statute.⁴⁰

22 *Assessment Calculation.* Civil Code Section 1366.4 provides that, with limited
23 exception, assessments in a CID may not be calculated based on the taxable value
24 of a separate interest. The section has an arguable foundational aspect, in that it
25 relates to basic payment obligations of the owners and the total funding available
26 to a CID. However, on balance, the Commission found that this level of
27 micromanagement of business financial matters would unduly interfere with the
28 ability of a business to make its own financial planning decisions.

33. See proposed Civ. Code § 6808(b) *infra*.

34. Civ. Code §§ 1367.1(a)(4)-(6), (c).

35. Civ. Code § 1367.1(b).

36. Civ. Code § 1367.1(k).

37. See proposed Civ. Code §§ 6808(a), 6810, 6812, 6814, 6816, 6818, 6820, 6822, 6824, and 6826
infra.

38. Civ. Code §§ 1368.5, 1375, and 1375.1.

39. A fourth section of the Davis-Stirling Act relating to CID construction defect litigation, Civil Code
Section 1375.05, was repealed by operation of law on January 1, 2011, and is not continued in the proposed
law.

40. See proposed Civ. Code §§ 6870, 6872, 6874, and 6876 *infra*.

1 The Commission therefore recommends that Section 1366.4 not be continued in
2 the new statute.

3 **Severability of Recommendations**

4 The broad elements of this recommendation are severable from one another.
5 There is independent value in establishing a separate statute for commercial and
6 industrial CIDs, even if the Legislature does not choose to follow all of the
7 Commission's recommendations as to its content. Conversely, there is benefit to
8 modernizing the scope of the exemptions provided for commercial and industrial
9 CIDs, even if the Legislature elects to forego the creation of a separate statute.

10 Furthermore, each of the individual recommendations as to which provisions of
11 the Davis-Stirling Act should apply to commercial and industrial CIDs is
12 severable from the rest of those recommendations. Those specific
13 recommendations represent the Commission's best effort to identify the historical
14 policy rationale for the enactment of Civil Code Section 1373 and apply that
15 rationale to subsequently enacted provisions of the Davis-Stirling Act. If the
16 Legislature decides that a particular provision should be handled differently than
17 the Commission has recommended, that decision should not undermine the value
18 of any of the other specific recommendations made in this report.

19 **Source of Statutory Language and Organization**

20 In a separate recommendation, the Commission has proposed the recodification
21 of the Davis-Stirling Act, to make the Act simpler to understand and use, and to
22 make minor substantive improvements.⁴¹ That proposal has been approved by the
23 Assembly and is pending before the Senate.⁴²

24 The proposed new statute governing commercial and industrial CIDs would
25 parallel the language and structure of the pending recodification legislation. This
26 approach has two benefits. It permits the new statute to benefit from the
27 improvements that were implemented in the recodification, and it preserves the
28 parallelism between provisions that would be common to both bodies of law.

29 **Disposition Table**

30 A "disposition table," located after the proposed law, shows the relationship
31 between the existing provisions of the Davis-Stirling Act and the provisions of the
32 proposed law. This table also identifies the provisions of the Davis-Stirling Act
33 that have not been included in the proposed law, by an indication that those
34 provisions are "not continued."

41. See Commission recommendation on *Statutory Clarification and Simplification of CID Law* (June 2011).

42. See AB 805 & 806 (Torres).

1 **Conforming Revisions**

2 There are a number of code sections outside the Davis-Stirling Act that include a
3 cross-reference to a provision of the Davis-Stirling Act. To the extent that such a
4 reference is relevant to commercial or industrial CIDs, a technical amendment of
5 the reference would be included in the “Conforming Revisions” portion of the
6 proposed law.

7 However, conforming revisions have not been recommended for code sections
8 that fall into either of the following two categories:

- 9 • Code sections in which the referenced provision(s) of the Davis-Stirling Act
10 would not be continued in the proposed legislation.⁴³
11 • Code sections that, by virtue of either their plain language or another express
12 statutory provision, do not apply to exclusively commercial or industrial
13 CIDs.⁴⁴
-

43. See, e.g., Civ. Code § 2079.3.

44. See, e.g., Bus. & Prof. Code § 10131.01; see also Bus. & Prof. Code § 11010.10 (read in conjunction with Bus. & Prof. Code § 11010.3).

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1

PROPOSED LEGISLATION

Civ. Code § 1373 (amended). Commercial or industrial common interest development

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

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

~~(1) Section 1356.~~

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

~~(3) Section 1360.2.~~

~~(4) Subdivision (b) of Section 1363.~~

~~(5) Section 1365.~~

~~(6) Section 1365.5.~~

~~(7) Subdivision (b) of Section 1366.~~

~~(8) Section 1366.1.~~

~~(9) Section 1368.~~

~~(10) Section 1378.~~

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

This title does not apply to a commercial or industrial common interest development, as defined in Section 6531.

Comment. Section 1373 is amended to make the provisions of the Davis-Stirling Common Interest Development Act inapplicable to an exclusively commercial or industrial common interest development, as defined in Section 6531. Many provisions of that act are continued and made applicable to exclusively commercial or industrial common interest developments by the Commercial and Industrial Common Interest Development Act, Part 5.5 (commencing with Section 6500) of Division 4. To determine whether that act continues a particular provision of the Davis-Stirling Common Interest Development Act, see *Commercial and Industrial Common Interest Developments*, 40 Cal. L. Revision Comm'n Reports __ (2010).

Civ. Code §§ 6500-6876 (added). Commercial and industrial common interest developments

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

1 PART 5.5. COMMERCIAL
2 AND INDUSTRIAL COMMON INTEREST
3 DEVELOPMENTS

4 CHAPTER 1. GENERAL PROVISIONS

5 Article 1. Preliminary Provisions

6 **§ 6500. Short title**

7 6500. This part shall be known and may be cited as the Commercial and
8 Industrial Common Interest Development Act. In a provision of this part, the part
9 may be referred to as the act.

10 **Comment.** Section 6500 is new.

11 Common interest developments in general are governed by the Davis-Stirling Common Interest
12 Development Act. See Sections 1350-1378. However, common interest developments that are
13 exclusively commercial or industrial are exempted from the provisions of that act by 2011 Cal.
14 Stat. ch. _____. See Section 1373.

15 This part (Sections 6500-6876) establishes a separate body of law, largely based on provisions
16 of the Davis-Stirling Common Interest Development Act, that applies to and governs exclusively
17 commercial or industrial common interest developments.

18 The Comments to the sections of this act identify sections of the Davis-Stirling Common
19 Interest Development Act that are sources of the provisions of this act, and describe how each
20 provision in this act compares with its source.

21 **§ 6502. Effect of headings**

22 6502. Division, part, title, chapter, article, and section headings do not in any
23 manner affect the scope, meaning, or intent of this act.

24 **Comment.** With respect to a commercial or industrial common interest development, Section
25 6502 continues Section 1350.5 without change, except as indicated below.

26 The following nonsubstantive changes are made:

- 27 • “Article” is added to the list of headings.
- 28 • The last word of the sentence is replaced with “act.”

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

31 For further information, see Section 6500 Comment.

32 **§ 6505. Application of act**

33 6505. Nothing in the act that added this part shall be construed to invalidate a
34 document prepared or action taken before January 1, 2014, if the document or
35 action was proper under the law governing common interest developments at the
36 time that the document was prepared or the action was taken. For the purposes of
37 this section, “document” does not include a governing document.

1 **Comment.** Section 6505 is new. It makes clear that any changes to law made by enactment of
2 this act shall not be construed to retroactively invalidate documents prepared or actions taken
3 prior to the operative date of the act.

4 The term “documents” is used to describe notices, forms, and other procedural or transactional
5 instruments. It is not meant to include the governing documents of the association. Governing
6 documents must conform to the law. See Section 6600.

7 See also Sections 6534 (“common interest development”), 6552 (“governing documents”).

8 **§ 6510. Construction of zoning ordinance**

9 6510. Unless a contrary intent is clearly expressed, a local zoning ordinance is
10 construed to treat like structures, lots, parcels, areas, or spaces in like manner
11 regardless of the form of the common interest development.

12 **Comment.** With respect to a commercial or industrial common interest development, Section
13 6510 continues Section 1372 without change, except as indicated below.

14 The following nonsubstantive change is made:

- 15 • A list of all of the types of common interest developments is replaced with general
16 language.

17 For further information, see Section 6500 Comment.

18 See also Section 6534 (“common interest development”).

19 **§ 6512. Delivered to an association**

20 6512. (a) If a provision of this act requires that a document be delivered to an
21 association, the document shall be delivered to the president or secretary of the
22 association.

23 (b) A document delivered pursuant to this section may be delivered by any of
24 the following methods:

25 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
26 overnight delivery by an express service carrier.

27 (2) By e-mail, facsimile, or other electronic means, if the association has
28 assented to that method of delivery.

29 (3) By personal delivery, if the association has assented to that method of
30 delivery. If the association accepts a document by personal delivery it shall
31 provide a written receipt acknowledging delivery of the document.

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

34 See also Section 6528 (“association”).

35 **§ 6514. Individual notice**

36 6514. (a) If a provision of this act requires that an association deliver a
37 document by “individual delivery” or “individual notice,” the document shall be
38 delivered to the member to be notified by one of the following methods:

39 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
40 overnight delivery by an express service carrier. The document shall be addressed
41 to the recipient at the address last shown on the books of the association.

1 (2) E-mail, facsimile, or other electronic means, if the recipient has consented, in
2 writing, to that method of delivery. The consent may be revoked, in writing, by the
3 recipient.

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

7 **Comment.** Section 6514 is new. It specifies acceptable methods for delivery of a notice to an
8 individual member. The methods listed in subdivision (a) are drawn from Section 1350.7(b)(2)-
9 (3).

10 Subdivision (b) is drawn from Section 1350.7(d). It precludes use of electronic delivery
11 methods when the recipient has not consented to use of those methods or has withdrawn such
12 consent.

13 See also Sections 6528 (“association”), 6552 (“governing documents”), 6554 (“member”).

14 **§ 6518. Time and proof of delivery**

15 6518. (a) This section governs the delivery of a document pursuant to this act.

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

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

20 **Comment.** Section 6518 is new. Subdivision (b) is drawn from the second sentence of Section
21 1350.7(b)(2).

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

23 **§ 6522. Approved by majority of all members**

24 6522. If a provision of this act requires that an action be approved by a majority
25 of all members, the action shall be approved or ratified by an affirmative vote of a
26 majority of the votes entitled to be cast.

27 **Comment.** Section 6522 is new. It is added for drafting convenience. This section only
28 governs an election conducted pursuant to a provision of this act (i.e., the Commercial and
29 Industrial Common Interest Development Act). An election that is not required by this act would
30 be governed by the association’s governing documents.

31 See also Section 6554 (“member”).

32 **§ 6524. Approved by majority of quorum of members**

33 6524. If a provision of this act requires that an action be approved by a majority
34 of a quorum of the members, the action shall be approved or ratified by an
35 affirmative vote of a majority of the votes represented and voting at a duly held
36 meeting at which a quorum is present, which affirmative votes also constitute a
37 majority of the required quorum.

38 **Comment.** Section 6524 is new. It is added for drafting convenience. This section only
39 governs an election conducted pursuant to a provision of this act (i.e., the Commercial and
40 Industrial Common Interest Development Act). An election that is not required by this act would
41 be governed by the association’s governing documents.

42 See also Section 6554 (“member”).

Article 2. Definitions

§ 6526. Application of definitions

6526. The definitions in this article govern the construction of this act.

Comment. With respect to a commercial or industrial common interest development, Section 6526 continues the substance of the introductory clause of Section 1351.

For further information, see Section 6500 Comment.

§ 6528. “Association”

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

Comment. With respect to a commercial or industrial common interest development, Section 6528 continues Section 1351(a) without change.

For further information, see Section 6500 Comment.

See also Section 6534 (“common interest development”).

§ 6530. “Board”

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

Comment. Section 6530 is new.

See also Sections 6528 (“association”).

§ 6531. “Commercial or industrial common interest development”

6531. A “commercial or industrial common interest development” means a common interest development that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located.

Comment. Section 6531 is drawn from Section 1373(a). It is added for drafting convenience.

See also Section 6534 (“common interest development”).

§ 6532. “Common area”

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

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

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6532 continues the first two sentences of Section 1351(b) without change.

With respect to a commercial or industrial common interest development, subdivision (b) continues the substance of the third sentence of Section 1351(b), but restates it for clarity.

For further information, see Section 6500 Comment.

See also Sections 6534 (“common interest development”), 6562 (“planned development”), 6564 (“separate interest”).

1 **§ 6534. “Common interest development”**

2 6534. “Common interest development” means any of the following:

- 3 (a) A condominium project.
4 (b) A planned development.
5 (c) A stock cooperative.

6 **Comment.** With respect to a commercial or industrial common interest development, Section
7 6534 continues Section 1351(c) without change, except as indicated below.

8 The following nonsubstantive change is made:

- 9 • The reference to a “community apartment project” is not continued.

10 For further information, see Section 6500 Comment.

11 See also Sections 6542 (“condominium project”), 6562 (“planned development”), 6566 (“stock
12 cooperative”).

13 **§ 6540. “Condominium plan”**

14 6540. “Condominium plan” means a plan described in Section 6624.

15 **Comment.** Section 6540 is new. It is included for drafting convenience.

16 **§ 6542. “Condominium project”**

17 6542. (a) A “condominium project” means a real property development
18 consisting of condominiums.

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

30 (c) The portion or portions of the real property held in undivided interest may be
31 all of the real property, except for the separate interests, or may include a
32 particular three-dimensional portion thereof, the boundaries of which are described
33 on a recorded final map, parcel map, or condominium plan. The area within these
34 boundaries may be filled with air, earth, water, or fixtures, or any combination
35 thereof, and need not be physically attached to land except by easements for
36 access and, if necessary, support.

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

39 **Comment.** With respect to a commercial or industrial common interest development, Section
40 6542 continues Section 1351(f) without change, except as indicated below.

41 The following nonsubstantive changes are made:

- 42 • The section is organized into subdivisions for ease of reference.

- In subdivision (a), the word “development” is replaced with “real property development.”
- Subdivisions (b) and (c) make clear that the contents of the area within the boundaries of a condominium may include “fixtures.”

For further information, see Section 6500 Comment.

See also Sections 6540 (“condominium plan”), 6564 (“separate interest”).

§ 6544. “Declarant”

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

Comment. With respect to a commercial or industrial common interest development, Section 6544 continues Section 1351(g) without change.

For further information, see Section 6500 Comment.

See also Sections 6546 (“declaration”), 6560 (“person”).

§ 6546. “Declaration”

6546. “Declaration” means the document, however denominated, that contains the information required by Section 6614.

Comment. With respect to a commercial or industrial common interest development, Section 6546 continues Section 1351(h) without change, except as indicated below.

The following nonsubstantive changes are made:

- The word “which” is replaced with “that.”
- The statutory cross-reference is updated to reflect the new location of the referenced provision.

For further information, see Section 6500 Comment.

§ 6548. “Director”

6548. “Director” means a natural person who serves on the board.

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

See also Section 6530 (“board”).

§ 6550. “Exclusive use common area”

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

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6550 continues Section 1351(i) without change, except as indicated below.

The following nonsubstantive change is made:

- The phrase “common areas” is singularized.

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6546 (“declaration”), 6564 (“separate interest”).

§ 6552. “Governing documents”

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

Comment. With respect to a commercial or industrial common interest development, Section 6552 continues Section 1351(j) without change, except as indicated below.

The following nonsubstantive change is made:

- The superfluous words “of the association” are not continued.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6534 (“common interest development”), 6546 (“declaration”).

§ 6553. “Individual notice”

6553. “Individual notice” means the delivery of a document pursuant to Section 6514.

Comment. Section 6553 is new. It is added for drafting convenience.

§ 6554. “Member”

6554. “Member” means an owner of a separate interest.

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

See also Section 6564 (“separate interest”).

§ 6560. “Person”

6560. “Person” means a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity.

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

§ 6562. “Planned development”

6562. “Planned development” means a real property development (other than a condominium project, or a stock cooperative) having either or both of the following features:

1 (a) Common area that is owned either by an association or in common by the
2 owners of the separate interests who possess appurtenant rights to the beneficial
3 use and enjoyment of the common area.

4 (b) Common area and an association that maintains the common area with the
5 power to levy assessments that may become a lien upon the separate interests in
6 accordance with Article 2 (commencing with Section 6808) of Chapter 6.

7 **Comment.** With respect to a commercial or industrial common interest development, Section
8 6562 continues the substance of Section 1351(k), except as indicated below.

9 The following nonsubstantive changes are made:

- 10 • In the introductory clause, the word “development” is replaced with “real property
11 development.”
- 12 • A reference to a “community apartment project” is not continued.
- 13 • Subdivision (a) is restated for clarity.
- 14 • Subdivision (b) is restated for clarity and to update a cross-reference.

15 For further information, see Section 6500 Comment.

16 See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium
17 project”), 6564 (“separate interest”), 6566 (“stock cooperative”).

18 **§ 6564. “Separate interest”**

19 6564. (a) “Separate interest” has the following meanings:

20 (1) In a condominium project, “separate interest” means a separately owned
21 unit, as specified in Section 6542.

22 (2) In a planned development, “separate interest” means a separately owned lot,
23 parcel, area, or space.

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

26 (b) Unless the declaration or condominium plan, if any exists, otherwise
27 provides, if walls, floors, or ceilings are designated as boundaries of a separate
28 interest, the interior surfaces of the perimeter walls, floors, ceilings, windows,
29 doors, and outlets located within the separate interest are part of the separate
30 interest and any other portions of the walls, floors, or ceilings are part of the
31 common area.

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

34 **Comment.** With respect to a commercial or industrial common interest development, Section
35 6564 continues Section 1351(l) without change, except as indicated below.

36 The following nonsubstantive changes are made:

- 37 • In subdivision (a)(2), the words “individual unit” are replaced with “separately owned
38 unit.”
- 39 • The last two unnumbered paragraphs of Section 1351(l) are designated as subdivisions
40 (b) and (c).
- 41 • Cross-references are updated to reflect the new location of referenced provisions.
- 42 • The phrase “common areas” is singularized.
- 43 • Section 1351(l)(1), which states the meaning of “separate interest” in a community
44 apartment project, is not continued.

45 For further information, see Section 6500 Comment.

1 See also Sections 6532 (“common area”), 6540 (“condominium plan”), 6542 (“condominium
2 project”), 6546 (“declaration”), 6562 (“planned development”), 6566 (“stock cooperative”).

3 **§ 6566. “Stock cooperative”**

4 6566. “Stock cooperative” means a development in which a corporation is
5 formed or availed of, primarily for the purpose of holding title to, either in fee
6 simple or for a term of years, improved real property, and all or substantially all of
7 the shareholders of the corporation receive a right of exclusive occupancy in a
8 portion of the real property, title to which is held by the corporation. The owners’
9 interest in the corporation, whether evidenced by a share of stock, a certificate of
10 membership, or otherwise, shall be deemed to be an interest in a common interest
11 development and a real estate development for purposes of subdivision (f) of
12 Section 25100 of the Corporations Code.

13 **Comment.** With respect to a commercial or industrial common interest development, Section
14 6566 continues the first paragraph of Section 1351(m) without change.

15 For further information, see Section 6500 Comment.

16 See also Section 6534 (“common interest development”).

17 **CHAPTER 2. APPLICATION OF ACT**

18 **§ 6580. Creation of common interest development**

19 6580. Subject to Section 6582, this act applies and a common interest
20 development is created whenever a separate interest coupled with an interest in the
21 common area or membership in the association is, or has been, conveyed,
22 provided all of the following are recorded:

23 (a) A declaration.

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

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

28 **Comment.** With respect to a commercial or industrial common interest development, Section
29 6580 continues Section 1352 without change, except as indicated below.

30 The following nonsubstantive changes are made:

- 31 • The term “title” is replaced with “act.”
- 32 • A cross-reference is added to refer to Section 6582.

33 For further information, see Section 6500 Comment.

34 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
35 development”), 6540 (“condominium plan”), 6546 (“declaration”), 6564 (“separate interest”).

36 **§ 6582. Application of act**

37 6582. (a) This act applies only to a commercial or industrial common interest
38 development.

39 (b) Nothing in this act may be construed to apply to a real property development
40 that does not contain common area. This subdivision is declaratory of existing law.

Comment. Subdivision (a) of Section 6582 is consistent with Section 1373 as that section provided prior to the enactment of 2012 Cal. Stat. ch. ____, except that the act that added this section makes the following provisions of the Davis-Stirling Common Interest Development Act inapplicable to a commercial or industrial common interest development: Section 1350.7, the second paragraph of Section 1351(d), the provisions of Section 1353 that require notice if a development is within an airport influence area or within the jurisdiction of the San Francisco Bay Conservation and Development Commission, Section 1353.7, a portion of Section 1355(b), a portion of Section 1357(b)-(c), Sections 1363(d), (e), (f), (h), and (i), Section 1363.03, Section 1363.04, Section 1363.05, Section 1363.07, Section 1363.09, Section 1363.1, Sections 1363.810 through 1363.850, Section 1363.2, Section 1365.1, Section 1365.2, Section 1365.2.5, Section 1365.7, the last two sentences of Section 1366(a), Section 1366(d), Section 1366(e), Section 1366.2, Section 1367.1(c), Section 1367.1(n), Section 1367.4, Section 1367.5, Section 1367.6, and Sections 1369.510 through 1369.590.

A common interest development is created as provided in Section 6580.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1374 without change, except as indicated below.

The following nonsubstantive changes are made:

- The word “title” is replaced with “act.”
- The phrase “wherein there does not exist” is restated for clarity.

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6534 (“common interest development”).

CHAPTER 3. GOVERNING DOCUMENTS

Article 1. General Provisions

§ 6600. Document authority

6600. (a) The governing documents may not include a provision that is inconsistent with the law. To the extent of any inconsistency between the governing documents and the law, the law controls.

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

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

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

Comment. Subdivisions (a) and (b) of Section 6600 are new.

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

Subdivision (d) is drawn from Section 1357.110 providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

See also Sections 6546 (“declaration”), 6552 (“governing documents”).

1 **§ 6602. Liberal construction of instruments**

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

8 **Comment.** With respect to a commercial or industrial common interest development, Section
9 6602 continues Section 1370 without change, except as indicated below.

10 The following nonsubstantive changes are made:

- 11 • “This division” is replaced with “Division 2.”
- 12 • The words “of a common interest development” are not continued.

13 For further information, see Section 6500 Comment.

14 See also Sections 6534 (“common interest development”), 6540 (“condominium plan”), 6546
15 (“declaration”), 6552 (“governing documents”).

16 **§ 6604. Boundaries of units**

17 6604. In interpreting deeds and condominium plans, the existing physical
18 boundaries of a unit in a condominium project, when the boundaries of the unit are
19 contained within a building, or of a unit reconstructed in substantial accordance
20 with the original plans thereof, shall be conclusively presumed to be its boundaries
21 rather than the metes and bounds expressed in the deed or condominium plan, if
22 any exists, regardless of settling or lateral movement of the building and
23 regardless of minor variance between boundaries shown on the plan or in the deed
24 and those of the building.

25 **Comment.** With respect to a commercial or industrial common interest development, Section
26 6604 continues Section 1371 without change.

27 For further information, see Section 6500 Comment.

28 See also Sections 6540 (“condominium plan”), 6542 (“condominium project”).

29 **§ 6606. Deletion of unlawful restrictive covenants**

30 6606. (a) No declaration or other governing document shall include a restrictive
31 covenant in violation of Section 12955 of the Government Code.

32 (b) Notwithstanding any other provision of law or provision of the governing
33 documents, the board, without approval of the members, shall amend any
34 declaration or other governing document that includes a restrictive covenant
35 prohibited by this section to delete the restrictive covenant, and shall restate the
36 declaration or other governing document without the restrictive covenant but with
37 no other change to the declaration or governing document.

38 (c) If the declaration is amended under this section, the board shall record the
39 restated declaration in each county in which the common interest development is
40 located. If the articles of incorporation are amended under this section, the board
41 shall file a certificate of amendment with the Secretary of State pursuant to
42 Section 7814 of the Corporations Code.

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

Comment. With respect to a commercial or industrial common interest development, Section 6606 continues Section 1352.5 without change, except as indicated below.

The following nonsubstantive changes are made:

- In subdivision (b), the words "board of directors of an association" are replaced with "board." See Section 6530 ("board" defined).
- In subdivision (b), the word "owners" is replaced with "members." See Section 6554 ("member" defined).
- Subdivision (c) is added.
- Subdivision (d) is revised to include a reference to the provision governing notice to an association (Section 6512).

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6530 ("board"), 6534 ("common interest development"), 6546 ("declaration"), 6552 ("governing documents"), 6560 ("person").

§ 6608. Deletion of declarant provisions in governing documents

6608. (a) Notwithstanding any provision of the governing documents to the contrary, the board may, after the developer has completed construction of the development, has terminated construction activities, and has terminated marketing activities for the sale, lease, or other disposition of separate interests within the development, adopt an amendment deleting from any of the governing documents any provision which is unequivocally designed and intended, or which by its nature can only have been designed or intended, to facilitate the developer in completing the construction or marketing of the development. However, provisions of the governing documents relative to a particular construction or marketing phase of the development may not be deleted under the authorization of this subdivision until that construction or marketing phase has been completed.

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

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

1 deliberations of the board on any action proposed under subdivision (a) shall only
2 be conducted in an open meeting.

3 (d) The board may not amend the governing documents pursuant to this section
4 without the approval of a majority of a quorum of the members, pursuant to
5 Section 6524. For the purposes of this section, “quorum” means more than 50
6 percent of the members who own no more than two separate interests in the
7 development.

8 **Comment.** With respect to a commercial or industrial common interest development, Section
9 6608 continues Section 1355.5 without change, except as indicated below.

10 The following substantive change is made:

- 11 • Subdivision (c) is revised to provide for individual delivery of the specified notice. See
12 Section 6514.

13 The following nonsubstantive changes are made:

- 14 • The words “his or her” are not continued in subdivision (a).
- 15 • The words “of a common interest development” are not continued in subdivision (a).
- 16 • The words “board of directors” and “board of directors of the association” are replaced
17 throughout with “board.” See Section 6530 (“board” defined).
- 18 • Subdivision (b) are revised to use numerals to number the listed items, rather than letters.
- 19 • Subdivisions (c) and (d) are revised to use “member.” See Section 6554 (“member”
20 defined).
- 21 • Subdivision (c) is revised to delete the unnecessary word “such.”
- 22 • Subdivision (c) is revised to replace the word “which” with “that.”
- 23 • Subdivision (d) is revised to use the standard term “approval of a majority of a quorum of
24 the members.” See Section 6524.

25 For further information, see Section 6500 Comment.

26 See also Sections 6530 (“board”), 6532 (“common area”), 6552 (“governing documents”),
27 6564 (“separate interest”).

28 § 6610. Correction of statutory cross-reference

29 6610. (a) Notwithstanding any other provision of law or provision of the
30 governing documents, if the governing documents include a reference to a
31 provision of the Davis Stirling Common Interest Development Act that was
32 continued in a new provision by the act that added this section, the board may
33 amend the governing documents, solely to correct the cross-reference, by adopting
34 a board resolution that shows the correction.

35 (b) A declaration that is corrected under this section may be restated in corrected
36 form and recorded, provided that a copy of the board resolution authorizing the
37 corrections is recorded along with the restated declaration.

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

42 See also Sections 6530 (“board”), 6552 (“governing documents”).

Article 2. Declaration

§ 6614. Content of declaration

6614. (a) A declaration, recorded on or after January 1, 1986, shall contain a legal description of the common interest development, and a statement that the common interest development is a condominium project, planned development, stock cooperative, or combination thereof. The declaration shall additionally set forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.

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

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6614 continues the first two sentences of Section 1353(a)(1) without change, except as indicated below.

The following nonsubstantive change is made:

- A reference to a “community apartment project” is not continued.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1353(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- The word “member” is used in place of “owner.” See Section 6554 (“member”).
- The words “original signator of the declaration” are replaced with “declarant.” See Section 6544 (“declarant”).

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6534 (“common interest development”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6566 (“stock cooperative”).

§ 6616. Amendment authorized

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

Comment. With respect to a commercial or industrial common interest development, Section 6616 continues the first sentence of Section 1355(b) without change, except as indicated below.

The following nonsubstantive change was made:

- The term “which” is replaced with “that.”

For the procedure to amend a declaration, see Section 6620.

For further information, see Section 6500 Comment.

See also Section 6546 (“declaration”).

§ 6618. Amendment to extend term of declaration authorized

6618. (a) The Legislature finds that there are common interest developments that have been created with deed restrictions that do not provide a means for the members to extend the term of the declaration. The Legislature further finds that covenants and restrictions, contained in the declaration, are an appropriate method

1 for protecting the common plan of developments and to provide for a mechanism
2 for financial support for the upkeep of common area including, but not limited to,
3 roofs, roads, heating systems, and recreational facilities. If declarations terminate
4 prematurely, common interest developments may deteriorate and the supply of
5 affordable units could be impacted adversely. The Legislature further finds and
6 declares that it is in the public interest to provide a vehicle for extending the term
7 of the declaration if the extension is approved by a majority of all members,
8 pursuant to Section 6522.

9 (b) A declaration that specifies a termination date, but that contains no provision
10 for extension of the termination date, may be extended, before its termination date,
11 by the approval of members pursuant to Section 6620.

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

15 **Comment.** With respect to a commercial or industrial common interest development,
16 subdivision (a) of Section 6618 continues Section 1357(a) without change, except as indicated
17 below.

18 The following nonsubstantive changes are made:

- 19 • The defined term “member” is used. See Section 6554 (“member”).
- 20 • The phrase “common areas” is singularized.
- 21 • The word “which” is replaced with “that.”
- 22 • A reference to approval by “members having more than 50 percent of the votes in the
- 23 association” is replaced with standard terminology.
- 24 • A reference to “housing” is deleted.

25 With respect to a commercial or industrial common interest development, subdivision (b)
26 continues part of the substance of Section 1357(b), authorizing extension of the termination date
27 of a declaration that does not provide for extension of the termination date, except as indicated
28 below.

29 The following nonsubstantive change is made:

- 30 • Language is added to make clear that the extension must occur before the termination
- 31 date.

32 The procedure for extension of the termination date provided in Section 1357(b)-(c) is not
33 continued. An extension would instead be made pursuant to the general procedure for amendment
34 of a declaration. See Section 6620.

35 With respect to a commercial or industrial common interest development, subdivision (c)
36 continues Section 1357(d) without change.

37 For further information, see Section 6500 Comment.

38 See also Sections 6532 (“common area”), 6534 (“common interest development”), 6546
39 (“declaration”), 6554 (“member”).

40 § 6620. Amendment procedure

41 6620. (a) A declaration may be amended pursuant to the declaration or this act.
42 An amendment is effective after all of the following requirements have been met:

43 (1) The proposed amendment has been delivered by individual notice to all
44 members not less than 15 days and not more than 60 days prior to any approval
45 being solicited.

1 (2) The amendment has been approved by the percentage of members required
2 by the declaration and any other person whose approval is required by the
3 declaration.

4 (3) That fact has been certified in a writing executed and acknowledged by the
5 officer designated in the declaration or by the association for that purpose, or if no
6 one is designated, by the president of the association.

7 (4) The amendment has been recorded in each county in which a portion of the
8 common interest development is located.

9 (b) If the declaration does not specify the percentage of members who must
10 approve an amendment of the declaration, an amendment may be approved by a
11 majority of all members, pursuant to Section 6522.

12 **Comment.** With respect to a commercial or industrial common interest development,
13 subdivision (a) of Section 6620 continues Section 1355(a) without change, except as indicated
14 below.

15 The following substantive changes are made:

- 16 • A notice requirement drawn from Section 1355(b) is added.
- 17 • References to the “governing documents” have been replaced with references to the
18 declaration.
- 19 • Paragraph (a)(2) is revised to recognize that a declaration may require that an amendment
20 be approved of a non-member.

21 The following nonsubstantive changes are made:

- 22 • The first word is replaced with “a.”
- 23 • The word “title” is replaced with “act.”
- 24 • A reference to a statutory exception that is not continued in this act is deleted.
- 25 • The defined term “member” is used. See Section 6554 (“member” defined).
- 26 • The subdivision is divided into paragraphs, with conforming technical adjustments to the
27 language.

28 Subdivision (b) generalizes a rule stated in Sections 1355(b) and 1357.

29 For further information, see Section 6500 Comment.

30 See also Sections 6528 (“association”), 6534 (“common interest development”), 6546
31 (“declaration”), 6553 (“individual notice”), 6554 (“member”).

32 Article 3. Articles of Incorporation

33 § 6622. Content of articles

34 6622. (a) The articles of incorporation of an association filed with the Secretary
35 of State shall include a statement, which shall be in addition to the statement of
36 purposes of the corporation, that does all of the following:

37 (1) Identifies the corporation as an association formed to manage a common
38 interest development under the Commercial and Industrial Common Interest
39 Development Act.

40 (2) States the business or corporate office of the association, if any, and, if the
41 office is not on the site of the common interest development, states the front street
42 and nearest cross street for the physical location of the common interest
43 development.

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

(b) The statement filed by an incorporated association with the Secretary of State pursuant to Section 8210 of the Corporations Code shall also contain a statement identifying the corporation as an association formed to manage a common interest development association under the Commercial and Industrial Common Interest Development Act.

Comment. With respect to a commercial or industrial common interest development, Section 6622 continues Section 1363.5 without change, except as indicated below.

The following substantive change is made:

- A cross-reference to a statutory definition of “managing agent” is not continued.
- A reference to this act is substituted for a reference to the Davis Stirling Common Interest Development Act.

The following nonsubstantive change is made:

- The words “common interest development association” are replaced with “association.”

Article 4. Condominium Plan

§ 6624. “Condominium plan”

6624. A condominium plan shall contain all of the following:

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

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

(c) A certificate consenting to the recordation of the condominium plan pursuant to this act that is signed and acknowledged as provided in Section 6626.

Comment. With respect to a commercial or industrial common interest development, Section 6624 continues Section 1351(e)(1)-(2) and a part of Section 1351(e)(3) without change, except as indicated below.

The following nonsubstantive changes are made:

- The enumerated items are set out as subdivisions.
- The word “title” is replaced with “act.”
- The list of persons who must sign and acknowledge the certificate consenting to recordation of the condominium plan is replaced with a reference to the section governing the creation and recordation of a condominium plan.

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6542 (“condominium project”), 6564 (“separate interest”).

§ 6626. Recordation of condominium plan

6626. (a) The certificate consenting to the recordation of a condominium plan that is required by subdivision (c) of Section 6624 shall be signed and acknowledged by all of the following persons:

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

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

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

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

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6626 continues the substance of Section 1351(e)(3), except as indicated below.

The following nonsubstantive changes are made:

- A reference to a conversion of a community apartment project is not continued.
- The last paragraph of Section 1351(e) is not continued in this section.
- A cross-reference to Section 6624(c) is added to the first paragraph.
- Subdivision (b) is revised to make clear that it states an exception to who must sign the certificate of consent to recordation, rather than the condominium plan itself.

For further information, see Section 6500 Comment.

See also Sections 6540 (“condominium plan”), 6542 (“condominium project”), 6560 (“person”), 6566 (“stock cooperative”).

§ 6628. Amendment or revocation of condominium plan

6628. A condominium plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the persons who, at the time of amendment or revocation, are persons whose signatures are required under Section 6626.

Comment. With respect to a commercial or industrial common interest development, Section 6628 continues the last paragraph of Section 1351(e) without change, except as indicated below.

The following nonsubstantive change is made:

- Language is added to make clear that the persons whose signatures are required for amendment or revocation of a condominium plan are the persons who fall within the groups described in Section 6626 at the time of amendment or revocation.

For further information, see Section 6500 Comment.

See also Sections 6540 (“condominium plan”), 6560 (“person”).

Article 5. Operating Rules

§ 6630. “Operating rule”

6630. For the purposes of this article, “operating rule” means a regulation adopted by the board that applies generally to the management and operation of the common interest development or the conduct of the business and affairs of the association.

Comment. With respect to a commercial or industrial common interest development, Section 6630 continues Section 1357.100(a) without change.

See also Sections 6528 (association), 6534 (common interest development).

§ 6632. Validity and enforceability of operating rule

6632. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

(a) The rule is in writing.

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

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

(d) The rule is reasonable, and is adopted, amended, or repealed in good faith.

Comment. With respect to a commercial or industrial common interest development, Section 6632 continues Section 1357.110(a)-(c), the first part of (d), and (e), without change, except as indicated below.

The following nonsubstantive change is made:

- The term “board of directors of the association” is replaced with the defined term “board.” See Section 6530 (“board”).

See also Sections 6528 (“association”), 6546 (“declaration”), 6630 (“operating rule”).

CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS

Article 1. Ownership Rights and Interests

§ 6650. Ownership of common area

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

Comment. With respect to a commercial or industrial common interest development, Section 6650 continues Section 1362 without change, except as indicated below.

The following nonsubstantive changes are made:

- The phrase “common areas” is singularized.
- The words “unit or lot” are replaced with “separate interest.”

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6564 (“separate interest”).

§ 6652. Appurtenant rights and easements

6652. Unless the declaration otherwise provides:

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6652 continues Section 1361 without change, except as indicated below.

The following nonsubstantive changes are made:

- A reference to a “community apartment project” is not continued.
- The phrase “common areas” is singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6564 (“separate interest”), 6566 (“stock cooperative”).

§ 6654. Access to separate interest property

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

Comment. With respect to a commercial or industrial common interest development, Section 6654 continues Section 1361.5 without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “his or her” are replaced with “the member’s or occupant’s.”
- References to the “owner’s” separate interest are revised to omit the word “owner’s.” This will help to avoid any implication that the reference does not also apply to an “occupant” of a separate interest.
- The word “owner” is replaced with “member” throughout. See Section 6554 (“member”).
- The phrase “common areas” is singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6564 (“separate interest”).

Article 2. Restrictions on Transfers

§ 6656. Partition of condominium project

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

(b) The owner of a separate interest in a condominium project may maintain a partition action as to the entire project as if the owners of all of the separate interests in the project were tenants in common in the entire project in the same proportion as their interests in the common area. The court shall order partition under this subdivision only by sale of the entire condominium project and only upon a showing of one of the following:

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

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

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6656 continues Section 1359 without change, except as indicated below.

The following nonsubstantive changes are made:

- The phrase “common areas” is singularized.
- Subdivision (b)(4) is rephrased to avoid use of “such.”

For further information, see Section 6500 Comment.

See also Sections 6532 (“common area”), 6542 (“condominium project”), 6546 (“declaration”), 6564 (“separate interest”).

§ 6658. Lien for work performed in condominium project

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

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6658 continues Section 1369 without change, except as indicated below.

The following nonsubstantive changes are made:

- The section is divided into subdivisions for ease of reference.
- The words "his or her" are replaced with "owner" throughout.
- The phrase "common areas" is singularized.
- The word "which" is replaced with "that" in subdivision (c).

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6532 ("common area"), 6542 ("condominium project").

Article 3. Transfer of Separate Interest

§ 6662. Condominium project

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

Comment. With respect to a commercial or industrial common interest development, Section 6662 continues Section 1358(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- The phrase "common areas" is singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6532 ("common area"), 6542 ("condominium project"), 6564 ("separate interest").

§ 6664. Planned development

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

Comment. With respect to a commercial or industrial common interest development, Section 6664 continues Section 1358(c) without change, except as indicated below.

The following nonsubstantive change is made:

- The phrase “common areas” is singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6562 (“planned development”), 6564 (“separate interest”).

§ 6666. Stock cooperative

6666. In a stock cooperative, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the ownership interest in the corporation, however evidenced. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner’s entire estate also includes the owner’s membership interest in the association.

Comment. With respect to a commercial or industrial common interest development, Section 6666 continues Section 1358(d) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6564 (“separate interest”), 6566 (“stock cooperative”).

§ 6668. Transfer of exclusive use common area

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

Comment. With respect to a commercial or industrial common interest development, Section 6668 continues the next to last paragraph of Section 1358 without change, except as indicated below.

The following nonsubstantive change is made:

- “Section” is replaced with “article.”

For further information, see Section 6500 Comment.

See also Section 6546 (“declaration”).

§ 6670. Severability of interests

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

Comment. With respect to a commercial or industrial common interest development, Section 6670 continues the last paragraph of Section 1358 without change, except as indicated below.

The following nonsubstantive changes are made:

- A superfluous reference to the “Civil Code” is not continued.
- The cross-reference is updated to reflect the new location of the referenced provision.

For further information, see Section 6500 Comment.

See also Section 6546 (“declaration”).

1 CHAPTER 5. PROPERTY USE AND MAINTENANCE

2 Article 1. Protected Uses

3 § 6700. Application of article

4 6700. This article includes provisions that limit the authority of an association or
5 the governing documents to regulate the use of a member's separate interest.
6 Nothing in this article is intended to affect the application of any other provision
7 that limits the authority of an association to regulate the use of a member's
8 separate interest, including, but not limited to, the following provisions:

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

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

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

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

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

17 See also Sections 6528 ("association"), 6552 ("governing documents"), 6554 ("member"),
18 6564 ("separate interest").

19 § 6702. Display of U.S. flag

20 6702. (a) Except as required for the protection of the public health or safety, no
21 declaration or other governing document shall limit or prohibit, or be construed to
22 limit or prohibit, the display of the flag of the United States by a member on or in
23 the member's separate interest or within the member's exclusive use common
24 area.

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

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

32 **Comment.** With respect to a commercial or industrial common interest development, Section
33 6702 continues Section 1353.5 without change, except as indicated below.

34 The following nonsubstantive changes are made:

- 35 • A superfluous cross-reference to governing definitions is not continued.
36 • The word "owner" is replaced with "member." See Section 6554 ("member").

37 For further information, see Section 6500 Comment.

38 See also Sections 6532 ("common area"), 6546 ("declaration"), 6550 ("exclusive use common
39 area"), 6552 ("governing documents"), 6564 ("separate interest").

1 **§ 6704. Noncommercial sign**

2 6704. (a) The governing documents may not prohibit posting or displaying of
3 noncommercial signs, posters, flags, or banners on or in a member's separate
4 interest, except as required for the protection of public health or safety or if the
5 posting or display would violate a local, state, or federal law.

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

12 (c) An association may prohibit noncommercial signs and posters that are more
13 than nine square feet in size and noncommercial flags or banners that are more
14 than 15 square feet in size.

15 **Comment.** With respect to a commercial or industrial common interest development, Section
16 6704 continues Section 1353.6 without change, except as indicated below.

17 The following nonsubstantive changes are made:

- 18 • The words "including the operating rules" are not continued.
- 19 • The word "owner" is replaced with "member." See Section 6554 ("member").
- 20 • In subdivision (c), the numeral "9" is replaced with "nine" for stylistic reasons.

21 For further information, see Section 6500 Comment.

22 See also Sections 6528 ("association"), 6552 ("governing documents"), 6564 ("separate
23 interest").

24 **§ 6706. Pets**

25 6706. (a) No governing documents shall prohibit the owner of a separate interest
26 within a common interest development from keeping at least one pet within the
27 common interest development, subject to reasonable rules and regulations of the
28 association. This section may not be construed to affect any other rights provided
29 by law to an owner of a separate interest to keep a pet within the development.

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

33 (c) If the association implements a rule or regulation restricting the number of
34 pets an owner may keep, the new rule or regulation shall not apply to prohibit an
35 owner from continuing to keep any pet that the owner currently keeps in the
36 owner's separate interest if the pet otherwise conforms with the previous rules or
37 regulations relating to pets.

38 (d) For the purposes of this section, "governing documents" shall include, but
39 are not limited to, the conditions, covenants, and restrictions of the common
40 interest development, and the bylaws, rules, and regulations of the association.

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

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6704 continues Section 1360.5 without change, except as indicated below.

3 The following nonsubstantive changes are made:

- 4 • A reference to “homeowner” is replaced with “owner” in subdivision (b).
- 5 • “His or her” is replaced with “the owner’s” in subdivision (c).

6 For further information, see Section 6500 Comment.

7 See also Sections 6528 (“association”), 6534 (“common interest development”), 6552
8 (“governing documents”), 6564 (“separate interest”).

9 **§ 6708. Television antenna or satellite dish**

10 6708. (a) Any covenant, condition, or restriction contained in any deed, contract,
11 security instrument, or other instrument affecting the transfer or sale of, or any
12 interest in, a common interest development that effectively prohibits or restricts
13 the installation or use of a video or television antenna, including a satellite dish, or
14 that effectively prohibits or restricts the attachment of that antenna to a structure
15 within that development where the antenna is not visible from any street or
16 common area, except as otherwise prohibited or restricted by law, is void and
17 unenforceable as to its application to the installation or use of a video or television
18 antenna that has a diameter or diagonal measurement of 36 inches or less.

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

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

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

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

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

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6708 continues Section 1376 without change, except as indicated below.

The following nonsubstantive change is made:

- The word "owner" is replaced with "member." See Section 6554 ("member").

For further information, see Section 6500 Comment.

See also 47 C.F.R. § 1.4000.

See also Sections 6528 ("association"), 6532 ("common area"), 6534 ("common interest development"), 6564 ("separate interest").

§ 6710. Marketing restriction

6710. (a) Any provision of a governing document that arbitrarily or unreasonably restricts an owner's ability to market the owner's interest in a common interest development is void.

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

(1) Imposes an assessment or fee in connection with the marketing of an owner's interest in an amount that exceeds the association's actual or direct costs.

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

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6710 continues Section 1368.1 without change, except as indicated below.

The following substantive changes are made:

- The introductory clause is revised to make clear that a void provision does not void the entire governing document that contains it.
- The words "rule or regulation" are replaced with "governing document." This broadens the application of the section so that it governs any provision in the governing documents and not just an operating rule.

The following nonsubstantive changes are made:

- The words "his or her" are replaced with "the owner's" in subdivision (a).
- The phrase "common areas" is singularized.
- The words "of an association" are not continued.
- A reference to a statutory limitation set forth in Section 1366.1, a provision that is not continued in this act, is deleted.

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6532 ("common area"), 6534 ("common interest development"), 6552 ("governing documents"), 6564 ("separate interest").

1 **§ 6712. Low water-using plants**

2 6712. (a) Notwithstanding any other law, a provision of the governing
3 documents shall be void and unenforceable if it does any of the following:

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

6 (2) Has the effect of prohibiting or restricting compliance with either of the
7 following:

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

10 (B) Any regulation or restriction on the use of water adopted pursuant to Section
11 353 or 375 of the Water Code.

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

15 **Comment.** With respect to a commercial or industrial common interest development, Section
16 6712 continues Section 1353.8 without change, except as indicated below.

17 The following nonsubstantive change is made:

- 18 • Surplus language is not continued (i.e., the phrases “of any,” “of a common interest
19 development,” and “and regulations”). The term “governing documents” includes all
20 governing documents of a common interest development. See Section 6552 (“governing
21 documents”).

22 For further information, see Section 6500 Comment.

23 See also Sections 6528 (“association”), 6552 (“governing documents”).

24 **§ 6713. Electric vehicle charging stations**

25 1353.9. (a) Any covenant, restriction, or condition contained in any deed,
26 contract, security instrument, or other instrument affecting the transfer or sale of
27 any interest in a common interest development, and any provision of a governing
28 document, as defined in Section 6552, that either effectively prohibits or restricts
29 the installation or use of an electric vehicle charging station in an owner’s
30 designated parking space, including, but not limited to, a deeded parking space, a
31 parking space in an owner’s exclusive use common area, or a parking space that is
32 specifically designated for use by a particular owner, or is in conflict with the
33 provisions of this section is void and unenforceable.

34 (b) (1) This section does not apply to provisions that impose reasonable
35 restrictions on electric vehicle charging stations. However, it is the policy of the
36 state to promote, encourage, and remove obstacles to the use of electric vehicle
37 charging stations.

38 (2) For purposes of this section, “reasonable restrictions” are restrictions that do
39 not significantly increase the cost of the station or significantly decrease its
40 efficiency or specified performance.

41 (c) An electric vehicle charging station shall meet applicable health and safety
42 standards and requirements imposed by state and local authorities as well as all
43 other applicable zoning, land use or other ordinances, or land use permits.

1 (d) For purposes of this section, “electric vehicle charging station” means a
2 station that is designed in compliance with the California Building Standards Code
3 and delivers electricity from a source outside an electric vehicle into one or more
4 electric vehicles. An electric vehicle charging station may include several charge
5 points simultaneously connecting several electric vehicles to the station and any
6 related equipment needed to facilitate charging plug-in electric vehicles.

7 (e) If approval is required for the installation or use of an electric vehicle
8 charging station, the application for approval shall be processed and approved by
9 the association in the same manner as an application for approval of an
10 architectural modification to the property, and shall not be willfully avoided or
11 delayed. The approval or denial of an application shall be in writing. If an
12 application is not denied in writing within 60 days from the date of receipt of the
13 application, the application shall be deemed approved, unless that delay is the
14 result of a reasonable request for additional information.

15 (f) If the electric vehicle charging station is to be placed in a common area or an
16 exclusive use common area, as designated in the common interest development’s
17 declaration, the following provisions apply:

18 (1) The owner first shall obtain approval from the association to install the
19 electric vehicle charging station and the association shall approve the installation
20 if the owner agrees in writing to do all of the following:

21 (A) Comply with the association’s architectural standards for the installation of
22 the charging station.

23 (B) Engage a licensed contractor to install the charging station.

24 (C) Within 14 days of approval, provide a certificate of insurance that names the
25 association as an additional insured under the owner’s insurance policy in the
26 amount set forth in paragraph (3).

27 (D) Pay for the electricity usage associated with the charging station.

28 (2) The owner and each successive owner of the charging station shall be
29 responsible for all of the following:

30 (A) Costs for damage to the charging station, common area, exclusive use
31 common area, or separate interests resulting from the installation, maintenance,
32 repair, removal, or replacement of the charging station.

33 (B) Costs for the maintenance, repair, and replacement of the charging station
34 until it has been removed and for the restoration of the common area after
35 removal.

36 (C) The cost of electricity associated with the charging station.

37 (D) Disclosing to prospective buyers the existence of any charging station of the
38 owner and the related responsibilities of the owner under this section.

39 (3) The owner and each successive owner of the charging station, at all times,
40 shall maintain an umbrella liability coverage policy in the amount of one million
41 dollars (\$1,000,000) covering the obligations of the owner under paragraph (2),
42 and shall name the association as an additional insured under the policy with a
43 right to notice of cancellation.

(g) Except as provided in subdivision (h), installation of an electric vehicle charging station in a common area, that is not an exclusive use common area, shall be authorized by the association only if installation in the owner's designated parking space that is owned in fee or as an exclusive use easement is impossible or unreasonably expensive. In such cases, the association shall enter into a license agreement with the owner for the use of the space in a common area, and shall comply with all of the requirements in subdivision (f).

(h) The association or owners may install an electric vehicle charging station in the common area for the use of all members of the association and, in that case, the association shall develop appropriate terms of use for the charging station.

(i) An association may create a new parking space where one did not previously exist to facilitate the installation of an electric vehicle charging station.

(j) An association that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(k) In any action to enforce compliance with this section, the prevailing plaintiff shall be awarded reasonable attorney's fees.


Comment. With respect to a commercial or industrial common interest development, Section 6713 continues Section 1353.9 without change, except as indicated below.

The following nonsubstantive change is made:

- A cross-reference in subdivision (a) is updated to reflect the new location of the referenced provision.

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6532 ("common area"), 6534 ("common interest development"), 6550 ("exclusive use common area"), 6552 ("governing documents"), 6564 ("separate interest").

 **Note.** The language of proposed Section 6713 would parallel an amendment of Section 1353.9 that is proposed in SB 880 (Corbett) (2011). If that bill is amended before enactment or is not enacted, the language of proposed Section 6713 will be adjusted accordingly.

Article 2. Modification of Separate Interest

§ 6714. Improvements to separate interest

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

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

(2) Modify the member's separate interest, at the member's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the separate interest for the purposes of this paragraph if the separate

1 interest is on the ground floor or already accessible by an existing ramp or
2 elevator. The right granted by this paragraph is subject to the following conditions:

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

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

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

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

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

18 **Comment.** With respect to a commercial or industrial common interest development, Section
19 6714 continues Section 1360 without change, except as indicated below.

20 The following substantive change is made:

- 21 • The scope of the provision is broadened to apply to any separate interest, and not just a
22 unit in a condominium project.

23 The following nonsubstantive changes are made:

- 24 • The words “his or her” are not continued in subdivision (a)(2)(D).
- 25 • The word “owner” is replaced with “member” throughout. See Section 6554 (“member”
26 defined).

27 For further information, see Section 6500 Comment.

28 See also Sections 6528 (“association”), 6534 (“common interest development”), 6552
29 (“governing documents”), 6564 (“separate interest”).

30 Article 3. Maintenance

31 § 6716. Maintenance responsibility generally

32 6716. (a) Unless otherwise provided in the declaration of a common interest
33 development, the association is responsible for repairing, replacing, or maintaining
34 the common area, other than exclusive use common area, and the owner of each
35 separate interest is responsible for maintaining that separate interest and any
36 exclusive use common area appurtenant to the separate interest.

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

40 **Comment.** With respect to a commercial or industrial common interest development,
41 subdivision (a) of Section 6716 continues Section 1364(a) without change, except as indicated
42 below.

1 The following nonsubstantive change is made:

- 2 • The phrase “common areas” is singularized.

3 With respect to a commercial or industrial common interest development, subdivision (b)
4 continues Section 1364(c) without change.

5 For further information, see Section 6500 Comment.

6 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
7 development”), 6546 (“declaration”), 6550 (“exclusive use common area”), 6564 (“separate
8 interest”).

9 **§ 6718. Wood-destroying pests or organisms**

10 6718. (a) In a condominium project or stock cooperative, unless otherwise
11 provided in the declaration, the association is responsible for the repair and
12 maintenance of the common area occasioned by the presence of wood-destroying
13 pests or organisms.

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

21 **Comment.** With respect to a commercial or industrial common interest development,
22 subdivision (a) of Section 6718 continues Section 1364(b)(1) without change, except as indicated
23 below.

24 The following nonsubstantive changes are made:

- 25 • A reference to a “community apartment project” is not continued.
26 • A superfluous cross-reference to governing definitions is not continued.

27 With respect to a commercial or industrial common interest development, subdivision (b)
28 continues Section 1364(b)(2) without change, except as indicated below.

29 The following nonsubstantive changes are made:

- 30 • A superfluous cross-reference to a governing definition is not continued.
31 • A cross-reference to Section 6522 is added.
32 • The last sentence is revised to avoid use of the word “such.”

33 For further information, see Section 6500 Comment.

34 See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium
35 project”), 6546 (“declaration”), 6554 (“member”), 6562 (“planned development”), 6564
36 (“separate interest”), 6566 (“stock cooperative”).

37 **§ 6720. Temporary removal of occupant to perform treatment of wood-destroying pests**

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

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

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

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

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

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

11 (d) For purposes of this section, “occupant” means an owner, resident, guest,
12 invitee, tenant, lessee, sublessee, or other person in possession on the separate
13 interest.

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6720 continues Section 1364(d)-(e) without change, except as indicated below.

16 The following substantive change is made:

- 17 • The provision is revised to incorporate the “individual delivery” notice procedure.

18 The following nonsubstantive change is made:

- 19 • Subdivision (c) is revised to improve its clarity.

20 For further information, see Section 6500 Comment.

21 See also Sections 6528 (“association”), 6534 (“common interest development”), 6564
22 (“separate interest”).

23 § 6722. Exclusive use communication wiring

24 6722. Notwithstanding the provisions of the declaration, a member is entitled to
25 reasonable access to the common area for the purpose of maintaining the internal
26 and external telephone wiring made part of the exclusive use common area of the
27 member’s separate interest pursuant to subdivision (c) of Section 6550. The access
28 shall be subject to the consent of the association, whose approval shall not be
29 unreasonably withheld, and which may include the association’s approval of
30 telephone wiring upon the exterior of the common area, and other conditions as
31 the association determines reasonable.

32 **Comment.** With respect to a commercial or industrial common interest development,
33 subdivision (a) of Section 6722 continues Section 1364(f) without change, except as indicated
34 below.

35 The following nonsubstantive changes are made:

- 36 • A cross-reference is updated to reflect the new location of the referenced provision.
- 37 • The word “owner” is replaced with “member.” See Section 6554 (“member”).
- 38 • The phrase “common areas” is singularized.

39 For further information, see Section 6500 Comment.

40 See also Sections 6528 (“association”), 6532 (“common area”), 6546 (“declaration”), 6550
41 (“exclusive use common area”), 6564 (“separate interest”).

1 CHAPTER 6. ASSOCIATION GOVERNANCE

2 Article 1. Association Existence and Powers

3 § 6750. Association

4 6750. A common interest development shall be managed by an association that
5 may be incorporated or unincorporated. The association may be referred to as an
6 owners' association or a community association.

7 **Comment.** With respect to a commercial or industrial common interest development, Section
8 6750 continues Section 1363(a) without change, except as indicated below.

9 The following nonsubstantive changes are made:

- 10 • Use of the term "owners' association" to describe the association is expressly authorized.

11 For further information, see Section 6500 Comment.

12 See also Sections 6528 ("association"), 6534 ("common interest development").

13 § 6752. Association powers

14 6752. (a) Unless the governing documents provide otherwise, and regardless of
15 whether the association is incorporated or unincorporated, the association may
16 exercise the powers granted to a nonprofit mutual benefit corporation, as
17 enumerated in Section 7140 of the Corporations Code, except that an
18 unincorporated association may not adopt or use a corporate seal or issue
19 membership certificates in accordance with Section 7313 of the Corporations
20 Code.

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

23 **Comment.** With respect to a commercial or industrial common interest development, Section
24 6752 continues Section 1363(c) without change, except as indicated below.

25 The following nonsubstantive changes are made:

- 26 • The provision is divided into subdivisions for ease of reference.
27 • The word "title" is replaced with "act."

28 For further information, see Section 6500 Comment.

29 See also Sections 6528 ("association"), 6552 ("governing documents").

30 Article 2. Record Keeping

31 § 6756. Mailing-related requests

32 6756. To be effective, any of the following requests shall be delivered in writing
33 to the association, pursuant to Section 6512:

34 (a) A request to change the member's information in the association
35 membership list.

36 (b) A request to add or remove a second address for delivery of documents to
37 the member pursuant to Section 6814.

38 **Comment.** Section 6756 is new. It requires that the specified requests be written and delivered
39 to the association pursuant to Section 6512.

1 See also Sections 6528 (“association”), 6554 (“member”).

2 Article 3. Conflict of Interest

3 **§ 6758. Interested director**

4 6758. (a) Notwithstanding any other law, and regardless of whether an
5 association is incorporated or unincorporated, the provisions of Sections 7223 and
6 7224 of the Corporations Code shall apply to any contract or other transaction
7 authorized, approved, or ratified by the board or a committee of the board.

8 (b) A director or member of a committee shall not vote on any of the following
9 matters:

10 (1) Discipline of the director or committee member.

11 (2) An assessment against the director or committee member for damage to the
12 common area or facilities.

13 (3) A request, by the director or committee member, for a payment plan for
14 overdue assessments.

15 (4) A decision whether to foreclose on a lien on the separate interest of the
16 director or committee member.

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

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

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

22 **Comment.** With respect to a commercial or industrial common interest development,
23 subdivision (a) of Section 6758 continues the substance of Section 1365.6, except as indicated
24 below.

25 The following nonsubstantive change is made:

- 26 • The reference to Corporations Code Section 310, which governs the General Corporation
27 Law, is replaced with a reference to Corporations Code Sections 7233 and 7234, which
28 state equivalent rules for nonprofit mutual benefit corporations.

29 Subdivisions (b) and (c) are new. The “discipline” referenced in subdivision (b)(1) may include
30 discipline for a violation of the governing documents, this act, or a fiduciary duty.

31 For further information, see Section 6500 Comment.

32 See also Sections 6528 (“association”), 6530 (“board”), 6532 (“common area”), 6548
33 (“director”), 6550 (“exclusive use common area”), 6552 (“governing documents”), 6564
34 (“separate interest”).

35 Article 4. Government Assistance

36 **§ 6760. State registry**

37 6760. (a) To assist with the identification of common interest developments,
38 each association, whether incorporated or unincorporated, shall submit to the
39 Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that

1 the Secretary of State shall prescribe, the following information concerning the
2 association and the development that it manages:

3 (1) A statement that the association is formed to manage a common interest
4 development under the Commercial and Industrial Common Interest Development
5 Act.

6 (2) The name of the association.

7 (3) The street address of the business or corporate office of the association, if
8 any.

9 (4) The street address of the association's onsite office if different from the
10 street address of the business or corporate office, or if there is no onsite office, the
11 street address of the responsible officer or managing agent of the association.

12 (5) The name, address, and either the daytime telephone number or e-mail
13 address of the president of the association, other than the address, telephone
14 number, or e-mail address of the association's onsite office or managing agent.

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

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

20 (8) If the development is in an unincorporated area, the city closest in proximity
21 to the development.

22 (9) The front street and nearest cross street of the physical location of the
23 development.

24 (10) The type of common interest development managed by the association.

25 (11) The number of separate interests in the development.

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

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

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

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

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

(e) The statement required by this section may be filed, notwithstanding suspension of the corporate powers, rights, and privileges under this section or under provisions of the Revenue and Taxation Code. Upon the filing of a statement under this section by a corporation that has suffered suspension under this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved from suspension, unless the corporation is held in suspension by the Franchise Tax Board by reason of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

(f) The Secretary of State shall make the information submitted pursuant to paragraph (5) of subdivision (a) available only for governmental purposes and only to Members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. The information submitted pursuant to this section shall be made available for governmental or public inspection.

(g) Whenever any form is filed pursuant to this section, it supersedes any previously filed form.

(h) The Secretary of State may destroy or otherwise dispose of any form filed pursuant to this section after it has been superseded by the filing of a new form.

Comment. With respect to a commercial or industrial common interest development, Section 6760 continues Section 1363.6 without change, except as indicated below.

The following substantive change is made:

- A reference to this act is substituted for a reference to the Davis-Stirling Common Interest Development Act.

The following nonsubstantive changes are made:

- The words “of the association” at the end of Section 1363.6(a)(5) are not continued.
- Superfluous references to definition sections are not continued.
- Obsolete transitional dates are not continued in subdivisions (d) and (f).
- The words “as the case may be” are not continued in subdivision (f).

CHAPTER 7. ASSESSMENTS AND ASSESSMENT COLLECTION

Article 1. Establishment and Imposition of Assessments

§ 6800. Levy of assessment

6800. The association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this act.

Comment. With respect to a commercial or industrial common interest development, Section 6800 continues the first sentence of Section 1366(a) without change, except as indicated below.

The following nonsubstantive changes are made:

- The word “title” is replaced with “act.”
- A superfluous reference to the remainder of Section 1366 is deleted.

1 For further information, see Section 6500 Comment.

2 See also Sections 6528 (“association”), 6552 (“governing documents”).

3 **§ 6804. Exemption from execution**

4 6804. (a) Regular assessments imposed or collected to perform the obligations
5 of an association under the governing documents or this act shall be exempt from
6 execution by a judgment creditor of the association only to the extent necessary
7 for the association to perform essential services, such as paying for utilities and
8 insurance. In determining the appropriateness of an exemption, a court shall
9 ensure that only essential services are protected under this subdivision.

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

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6804 continues Section 1366(c) without change, except as indicated below.

16 The following nonsubstantive changes are made:

- 17 • The provision is divided into subdivisions for ease of reference.
- 18 • A reference to approval of a majority of members casting a vote at a meeting at which a
19 quorum is established is replaced with a reference to the standard provision on approval
20 by a majority of a quorum of members (Section 4070).
- 21 • Quorum-related language from Section 1366(b)-(c) is not continued.
- 22 • The word “title” is replaced with “act.”

23 For further information, see Section 6500 Comment.

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

26 **Article 2. Assessment Payment and Delinquency**

27 **§ 6808. Assessment debt and delinquency**

28 6808. (a) A regular or special assessment and any late charges, reasonable fees
29 and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as
30 determined in accordance with subdivision (b), shall be a debt of the owner of the
31 separate interest at the time the assessment or other sums are levied.

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

34 **Comment.** With respect to a commercial or industrial common interest development,
35 subdivision (a) of Section 6808 continues the first sentence of Section 1367.1(a) without change,
36 except as indicated below.

37 The following nonsubstantive change is made:

- 38 • A cross-reference is updated to reflect the new location of the referenced provision.

39 With respect to a commercial or industrial common interest development, subdivision (b)
40 continues Section 1366(f) without change.

41 For further information, see Section 6500 Comment.

42 See also Sections 6528 (“association”), 6564 (“separate interest”).

1 **§ 6810. Payments**

2 6810. (a) When an owner of a separate interest makes a payment toward an
3 assessment, the owner may request a receipt and the association shall provide it.
4 The receipt shall indicate the date of payment and the person who received it.

5 (b) The association shall provide a mailing address for overnight payment of
6 assessments.

7 **Comment.** With respect to a commercial or industrial common interest development, Section
8 6810 continues the substance of Section 1367.1(b), except as indicated below.

9 The following substantive change is made:

- 10 • The first sentence of Section 1367.1(b) is not continued.

11 The following nonsubstantive change is made:

- 12 • The provision is divided into subdivisions for ease of reference.

13 For further information, see Section 6500 Comment.

14 See also Sections 6528 (“association”), 6564 (“separate interest”).

15 **§ 6812. Pre-lien notice**

16 6812. At least 30 days prior to recording a lien upon the separate interest of the
17 owner of record to collect a debt that is past due under Section 6808, the
18 association shall notify the owner of record in writing by certified mail of the
19 following:

20 (a) A general description of the collection and lien enforcement procedures of
21 the association and the method of calculation of the amount, a statement that the
22 owner of the separate interest has the right to inspect the association records
23 pursuant to Section 8333 of the Corporations Code, and the following statement in
24 14-point boldface type, if printed, or in capital letters, if typed:

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

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

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

35 **Comment.** With respect to a commercial or industrial common interest development, Section
36 6812 continues the second sentence of Section 1367.1(a), and paragraphs (1) to (3) of that
37 provision, inclusive, without change, except as indicated below.

38 The following nonsubstantive change is made:

- 39 • A cross-reference is updated to reflect the new location of the referenced provision.

40 For further information, see Section 6500 Comment.

41 See also Sections 6528 (“association”), 6564 (“separate interest”).

1 **§ 6814. Notice of delinquent assessment**

2 6814. (a) The amount of the assessment, plus any costs of collection, late
3 charges, and interest assessed in accordance with subdivision (b) of Section 6808,
4 shall be a lien on the owner's separate interest in the common interest
5 development from and after the time the association causes to be recorded with the
6 county recorder of the county in which the separate interest is located, a notice of
7 delinquent assessment, which shall state the amount of the assessment and other
8 sums imposed in accordance with subdivision (b) of Section 6808, a legal
9 description of the owner's separate interest in the common interest development
10 against which the assessment and other sums are levied, and the name of the
11 record owner of the separate interest in the common interest development against
12 which the lien is imposed.

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

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

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

22 (e) A copy of the recorded notice of delinquent assessment shall be mailed by
23 certified mail to every person whose name is shown as an owner of the separate
24 interest in the association's records, and the notice shall be mailed no later than 10
25 calendar days after recordation.

26 **Comment.** With respect to a commercial or industrial common interest development, Section
27 6814 continue the first five sentences of Section 1367.1(d) without change, except as indicated
28 below.

29 The following nonsubstantive change is made:

- 30 • Cross-references are updated to reflect the new location of the referenced provisions.

31 For further information, see Section 6500 Comment.

32 See also Sections 6528 ("association"), 6534 ("common interest development"), 6546
33 ("declaration"), 6560 ("person"), 6564 ("separate interest").

34 **§ 6816. Lien priority**

35 6816. A lien created pursuant to Section 6814 shall be prior to all other liens
36 recorded subsequent to the notice of delinquent assessment, except that the
37 declaration may provide for the subordination thereof to any other liens and
38 encumbrances.

39 **Comment.** With respect to a commercial or industrial common interest development, Section
40 6816 continues Section 1367.1(f) without change, except as indicated below.

41 The following nonsubstantive changes are made:

- 42 • The words "notice of assessment" are replaced with the more specific "notice of
43 delinquent assessment."

- A cross-reference is updated to reflect the new location of the referenced provision.
- For further information, see Section 6500 Comment.
See also Section 6546 (“declaration”).

§ 6818. Lien release

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

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

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6818 continues the sixth sentence of Section 1367.1(d) without change.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1367.1(i) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6564 (“separate interest”).

§ 6819. Procedural noncompliance

6819. An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

Comment. With respect to a commercial or industrial common interest development, Section 6819 continues Section 1367.1(l) without change, except as indicated below.

The following nonsubstantive change is made:

- The word “section” is replaced with “article.”

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6564 (“separate interest”).

Article 3. Assessment Collection

§ 6820. Collection generally

6820. (a) Except as otherwise provided in this article, after the expiration of 30 days following the recording of a lien created pursuant to Section 6814, the lien may be enforced in any manner permitted by law, including sale by the court, sale

1 by the trustee designated in the notice of delinquent assessment, or sale by a
2 trustee substituted pursuant to Section 2934a.

3 (b) Nothing in Article 2 (commencing with Section 6808) or in subdivision (a)
4 of Section 726 of the Code of Civil Procedure prohibits actions against the owner
5 of a separate interest to recover sums for which a lien is created pursuant to Article
6 2 (commencing with Section 6808) or prohibits an association from taking a deed
7 in lieu of foreclosure.

8 **Comment.** With respect to a commercial or industrial common interest development,
9 subdivision (a) of Section 6820 continues the substance of the second sentence of Section
10 1367.1(g), except as indicated below.

11 The following nonsubstantive changes are made:

- 12 • The introductory clause is broadened to recognize the application of all restrictions on
13 collection that are provided in this article. See, e.g., Section 6826 (limitation on
14 assignment).
- 15 • Cross-references are updated to reflect the new location of the referenced provisions.

16 With respect to a commercial or industrial common interest development, subdivision (b)
17 continues Section 1367.1(h) without change, except as indicated below.

18 The following nonsubstantive change is made:

- 19 • Cross-references are updated to reflect the new location of the referenced provisions.

20 For further information, see Section 6500 Comment.

21 See also Sections 6528 (“association”), 6564 (“separate interest”).

22 § 6822. Foreclosure

23 6822. (a) Any sale by the trustee shall be conducted in accordance with Sections
24 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages
25 and deeds of trust.

26 (b) In addition to the requirements of Section 2924, the association shall serve a
27 notice of default on the person named as the owner of the separate interest in the
28 association’s records or, if that person has designated a legal representative
29 pursuant to this subdivision, on that legal representative. Service shall be in
30 accordance with the manner of service of summons in Article 3 (commencing with
31 Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.
32 An owner may designate a legal representative in a writing that is mailed to the
33 association in a manner that indicates that the association has received it.

34 (c) The fees of a trustee may not exceed the amounts prescribed in Sections
35 2924c and 2924d, plus the cost of service for the notice of default pursuant to
36 subdivision (b).

37 **Comment.** With respect to a commercial or industrial common interest development,
38 subdivision (a) of Section 6822 continues the third sentence of Section 1367.1(g) without change.

39 With respect to a commercial or industrial common interest development, subdivision (b)
40 continues the substance of Section 1367.1(j).

41 With respect to a commercial or industrial common interest development, subdivision (c)
42 continues the fourth sentence and paragraph (1) of Section 1367.1(g), without change.

43 For further information, see Section 6500 Comment.

44 See also Sections 6528 (“association”), 6564 (“separate interest”).

1 **§ 6824. Limitations on authority to foreclose liens for monetary penalties and damage to the**
2 **common area**

3 6824. (a) A monetary charge imposed by the association as a means of
4 reimbursing the association for costs incurred by the association in the repair of
5 damage to common area and facilities caused by a member or the member's guest
6 or tenant may become a lien against the member's separate interest enforceable by
7 the sale of the interest under Sections 2924, 2924b, and 2924c, provided the
8 authority to impose a lien is set forth in the governing documents. It is the intent of
9 the Legislature not to contravene Section 2792.26 of Title 10 of the California
10 Code of Regulations, as that section appeared on January 1, 1996, for associations
11 of subdivisions that are being sold under authority of a subdivision public report,
12 pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business
13 and Professions Code.

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

19 **Comment.** With respect to a commercial or industrial common interest development,
20 subdivision (a) of Section 6824 continues the seventh and eighth sentences of Section 1367.1(d)
21 without change, except as indicated below.

22 The following nonsubstantive change was made:

- 23 • The phrase "common areas" is singularized.

24 With respect to a commercial or industrial common interest development, subdivision (b)
25 continues Section 1367.1(e) without change, except as indicated below.

26 The following nonsubstantive changes are made:

- 27 • The introductory clause "except as indicated in subdivision (d)" is not continued.
28 • The words "governing instruments" are replaced with "governing documents."
29 • The words "subdivision separate interest" are replaced with "separate interest."

30 For further information, see Section 6500 Comment.

31 See also Sections 6528 ("association"), 6532 ("common area"), 6552 ("governing
32 documents"), 6554 ("member"), 6564 ("separate interest").

33 **§ 6826. Assignment or pledge**

34 6826. (a) An association may not voluntarily assign or pledge the association's
35 right to collect payments or assessments, or to enforce or foreclose a lien to a third
36 party, except when the assignment or pledge is made to a financial institution or
37 lender chartered or licensed under federal or state law, when acting within the
38 scope of that charter or license, as security for a loan obtained by the association.

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

42 **Comment.** With respect to a commercial or industrial common interest development, Section
43 6826 continues the first sentence of Section 1367.1(g) without change, except as indicated below.

44 The following nonsubstantive changes are made:

- The provision is divided into subdivisions for ease of reference.
- An introductory clause is added in subdivision (b) to make the relationship between the two provisions clearer.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6554 (“member”).

§ 6828. Application of article

6828. (a) Except as otherwise provided, this article applies to a lien created on or after January 1, 2014.

(b) A lien created before January 1, 2014, is governed by the law in existence at the time the lien was created.

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

CHAPTER 8. INSURANCE AND LIABILITY

§ 6840. Limitation of member liability

6840. (a) It is the intent of the Legislature to offer civil liability protection to owners of the separate interests in a common interest development that have common area owned in tenancy-in-common if the association carries a certain level of prescribed insurance that covers a cause of action in tort.

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

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

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

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6840 continues Section 1365.9 without change, except as indicated below.

The following nonsubstantive changes are made:

- A superfluous cross-reference to a governing definition is not continued.
- The phrase “common areas” is singularized.
- In subdivision (b)(1), the word “which” is replaced with “that.”

For further information, see Section 6500 Comment.

1 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
2 development”), 6564 (“separate interest”).

3 CHAPTER 9. DISPUTE RESOLUTION AND ENFORCEMENT

4 Article 1. Disciplinary Action

5 § 6850. Schedule of monetary penalties

6 6850. (a) If an association adopts or has adopted a policy imposing any
7 monetary penalty, including any fee, on any association member for a violation of
8 the governing documents, including any monetary penalty relating to the activities
9 of a guest or tenant of the member, the board shall adopt and distribute to each
10 member, by individual notice, a schedule of the monetary penalties that may be
11 assessed for those violations, which shall be in accordance with authorization for
12 member discipline contained in the governing documents.

13 (b) Any new or revised monetary penalty that is adopted after complying with
14 subdivision (a) may be included in a supplement that is delivered to the members
15 individually, pursuant to Section 6553.

16 (c) A monetary penalty for a violation of the governing documents shall not
17 exceed the monetary penalty stated in the schedule of monetary penalties or
18 supplement that is in effect at the time of the violation.

19 (d) An association shall provide a copy of the most recently distributed schedule
20 of monetary penalties, along with any applicable supplements to that schedule, to
21 any member on request.

22 **Comment.** With respect to a commercial or industrial common interest development,
23 subdivision (a) of Section 6850 continues the first sentence of Section 1363(f) without change,
24 except as indicated below.

25 The following substantive changes are made:

- 26 • A reference to delivery by personal delivery or first class mail is changed to incorporate
27 the “individual notice” procedure.
- 28 • The term “invitee” is replaced with “tenant,” to make clear that the provision applies to
29 tenants.

30 The following nonsubstantive changes are made:

- 31 • A reference to the “rules of the association” is superfluous and is not continued. The term
32 “governing documents” encompasses rules. See Section 6552.
- 33 • The words “board of directors” are replaced with “board.” See Section 6530 (“board”).

34 Subdivisions (b)-(d) are new.

35 For further information, see Section 6500 Comment.

36 See also Sections 6528 (“association”), 6552 (“governing documents”), 6553 (“individual
37 notice”), 6554 (“member”).

38 § 6854. No effect on authority of board

39 6854. Nothing in Section 6850 shall be construed to create, expand, or reduce
40 the authority of the board to impose monetary penalties on a member for a
41 violation of the governing documents.

Comment. With respect to a commercial or industrial common interest development, Section 6854 continues the substance of Section 1363(i) without substantive change, except as indicated below.

The following nonsubstantive changes are made:

- The words “board of directors of the association” are replaced with “board. See Section 6530 (“board”).
- The words “or rules of the association” are not continued.
- The words “an association member” are replaced with “member.” See Section 6554 (“member”).
- The reference to Section 6850 is narrower than the reference to “this section” in Section 1363(i), which encompasses the entirety of Section 1363.

For further information, see Section 6500 Comment.

See also Section 6552 (“governing documents” includes the operating rules of the association).

Article 2. Civil Actions

§ 6856. Enforcement of governing documents

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6856 continues Section 1354(a) and (b) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6546 (“declaration”), 6552 (“governing documents”), 6564 (“separate interest”).

§ 6858. Standing

6858. An association 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. With respect to a commercial or industrial common interest development, Section 6858 continues Section 1368.3 without change, except as indicated below.

The following nonsubstantive changes are made:

- The word “owner” is replaced with “member.” See Section 6554 (“member”).
- The words “established to manage a common interest development” are not continued.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing documents”), 6564 (“separate interest”).

§ 6860. Comparative fault

6860. (a) In an action maintained by an association pursuant to subdivision (b), (c), or (d) of Section 6858, the amount of damages recovered by the association shall be reduced by the amount of damages allocated to the association or its managing agents in direct proportion to their percentage of fault based upon principles of comparative fault. The comparative fault of the association or its managing agents may be raised by way of defense, but shall not be the basis for a cross-action or separate action against the association or its managing agents for contribution or implied indemnity, where the only damage was sustained by the association or its members. It is the intent of the Legislature in enacting this subdivision to require that comparative fault be pleaded as an affirmative defense, rather than a separate cause of action, where the only damage was sustained by the association or its members.

(b) In an action involving damages described in subdivision (b), (c), or (d) of Section 6858, the defendant or cross-defendant may allege and prove the comparative fault of the association or its managing agents as a setoff to the liability of the defendant or cross-defendant even if the association is not a party to the litigation or is no longer a party whether by reason of settlement, dismissal, or otherwise.

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6860 continues Section 1368.4 without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6554 (“member”), 6560 (“person”).

CHAPTER 10. CONSTRUCTION DEFECT LITIGATION

§ 6870. Actions for damages

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

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

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

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

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

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

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

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

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

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

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

15 (2) The respondent shall provide written notice by certified mail to all
16 subcontractors, design professionals, their insurers, and the insurers of any
17 additional insured whose identities are known to the respondent or readily
18 ascertainable by review of the project files or other similar sources and whose
19 potential responsibility appears on the face of the notice. This notice to
20 subcontractors, design professionals, and insurers shall include a copy of the
21 Notice of Commencement of Legal Proceedings, and shall specify the date and
22 manner by which the parties shall meet and confer to select a dispute resolution
23 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its
24 obligation to participate in the meet and confer or serve a written acknowledgment
25 of receipt regarding this notice, advise the recipient that it may seek the assistance
26 of an attorney, and advise the recipient that it should contact its insurer, if any.
27 Any subcontractor or design professional, or insurer for that subcontractor, design
28 professional, or additional insured, who receives written notice from the
29 respondent regarding the meet and confer shall, prior to the meet and confer, serve
30 on the respondent a written acknowledgment of receipt. That subcontractor or
31 design professional shall, within 10 days of service of the written acknowledgment
32 of receipt, provide to the association and the respondent a Statement of Insurance
33 that includes both of the following:

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

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

40 (3) Any subcontractor or design professional, or insurer for that subcontractor,
41 design professional, or additional insured, who so chooses, may, at any time, make
42 a written request to the dispute resolution facilitator for designation as a peripheral
43 party. That request shall be served contemporaneously on the association and the

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

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

38 (2) No later than 10 days prior to the case management meeting, the dispute
39 resolution facilitator shall disclose to the parties all matters that could cause a
40 person aware of the facts to reasonably entertain a doubt that the proposed dispute
41 resolution facilitator would be able to resolve the conflict in a fair manner. The
42 facilitator's disclosure shall include the existence of any ground specified in
43 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any

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

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

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

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

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

1 into account all relevant factors and equities between all parties in the dispute
2 resolution process when reallocating costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (I) All defect lists and demands, communications, negotiations, and settlement
38 offers made in the course of the prelitigation dispute resolution process provided
39 by this section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive,
40 of the Evidence Code and all applicable decisional law. This inadmissibility shall
41 not be extended to any other documents or communications which would not
42 otherwise be deemed inadmissible.

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

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

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

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

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

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

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

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

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

41 (o)(1) A petition filed pursuant to subdivision (n) shall be filed in the superior
42 court in the county in which the project is located. The court shall hear and decide
43 the petition within 10 days after filing. The petitioning party shall serve the

petition on all parties, including the date, time, and location of the hearing no later than five business days prior to the hearing. Any responsive papers shall be filed and served no later than three business days prior to the hearing. Any petition or response filed under this section shall be no more than three pages in length.

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

(p) As used in this section:

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

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

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

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

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6870 continues Section 1375 without change, except as indicated below.

The following substantive change is made:

- A reference in Section 1375(d) to a meeting subject to Section 1363.05(b) is replaced with the relevant substance of Section 1363.05(b). Section 1363.05 is not continued in this act.

The following nonsubstantive changes are made:

- Cross-references are updated to reflect the new location of the referenced provisions.
- A reference to “homeowner” in paragraph (4) of subdivision (b) is changed to “owner.”
- The words “board of directors” and “board of directors of the association” are replaced throughout with the defined term “board.” See Section 6530 (“board”).
- Subdivision (e)(2) is revised to delete references to former Section 1375.05, which was repealed by its own terms on January 1, 2011.
- Subdivision (f)(3) is revised to correct erroneous references to “this paragraph.” The revised provision refers to “this subdivision.”
- Subdivision (l) is revised to delete a reference to former Section 1375.05, which was repealed by its own terms on January 1, 2011.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6534 (“common interest development”), 6554 (“member”), 6560 (“person”).

§ 6874. Notice of resolution

6874. (a) As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been

1 resolved regarding alleged defects in the common areas, alleged defects in the
2 separate interests that the association is obligated to maintain or repair, or alleged
3 defects in the separate interests that arise out of, or are integrally related to, defects
4 in the common areas or separate interests that the association is obligated to
5 maintain or repair, where the defects giving rise to the dispute have not been
6 corrected, the association shall, in writing, inform only the members of the
7 association whose names appear on the records of the association that the matter
8 has been resolved, by settlement agreement or other means, and disclose all of the
9 following:

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

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

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

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

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

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

28 **Comment.** With respect to a commercial or industrial common interest development, Section
29 6874 continues Section 1375.1 without change.

30 For further information, see Section 6500 Comment.

31 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
32 development”), 6554 (“member”), 6564 (“separate interest”).

33 § 6876. Notice of civil action

34 6876. (a) Not later than 30 days prior to the filing of any civil action by the
35 association against the declarant or other developer of a common interest
36 development for alleged damage to the common areas, alleged damage to the
37 separate interests that the association is obligated to maintain or repair, or alleged
38 damage to the separate interests that arises out of, or is integrally related to,
39 damage to the common areas or separate interests that the association is obligated
40 to maintain or repair, the board shall provide a written notice to each member of
41 the association who appears on the records of the association when the notice is
42 provided. This notice shall specify all of the following:

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

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

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

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

10 **Comment.** With respect to a commercial or industrial common interest development, Section
11 6876 continues Section 1368.5 without change, except as indicated below.

12 The following nonsubstantive change is made:

- 13 • The words “board of directors of the association” are replaced with “board.” See Section
14 6530 (“board”).

15 For further information, see Section 6500 Comment.

16 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
17 development”), 6544 (“declarant”), 6554 (“member”), 6564 (“separate interest”).

18 **Uncodified (added). Operative date**

19 This act becomes operative on January 1, 2014.

CONFORMING REVISIONS

BUSINESS AND PROFESSIONS CODE

1 **Bus. & Prof. Code § 10153.2 (amended). Course requirements for real estate broker license**

2 SEC. _____. Section 10153.2 of the Business and Professions Code is amended to
3 read:

4 10153.2. (a) An applicant to take the examination for an original real estate
5 broker license shall also submit evidence, satisfactory to the commissioner, of
6 successful completion, at an accredited institution, of:

7 (1) A three-semester unit course, or the quarter equivalent thereof, in each of the
8 following:

9 (A) Real estate practice.

10 (B) Legal aspects of real estate.

11 (C) Real estate appraisal.

12 (D) Real estate financing.

13 (E) Real estate economics or accounting.

14 (2) A three-semester unit course, or the quarter equivalent thereof, in three of the
15 following:

16 (A) Advanced legal aspects of real estate.

17 (B) Advanced real estate finance.

18 (C) Advanced real estate appraisal.

19 (D) Business law.

20 (E) Escrows.

21 (F) Real estate principles.

22 (G) Property management.

23 (H) Real estate office administration.

24 (I) Mortgage loan brokering and lending.

25 (J) Computer applications in real estate.

26 (K) On and after July 1, 2004, California law that relates to common interest
27 developments, including, but not limited to, topics addressed in the Davis-Stirling
28 Common Interest Development Act (Title 6 (commencing with Section 1350) of
29 Part 4 of Division 2 of the Civil Code) and in the Commercial and Industrial
30 Common Interest Development Act (Part 5.5 (commencing with Section 6500) of
31 Division 4 of the Civil Code).

32 (b) The commissioner shall waive the requirements of this section for an
33 applicant who is a member of the State Bar of California and shall waive the
34 requirements for which an applicant has successfully completed an equivalent
35 course of study as determined under Section 10153.5.

36 (c) The commissioner shall extend credit under this section for any course
37 completed to satisfy requirements of Section 10153.3 or 10153.4.

1 **Comment.** Section 10153.2 is amended to add a cross-reference to Part 5.5 (commencing with
2 Section 6500) of Division 4 of the Civil Code, reflecting the enactment of the Commercial and
3 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

4 **Bus. & Prof. Code § 11003 (amended). “Planned development”**

5 SEC. _____. Section 11003 of the Business and Professions Code is amended to
6 read:

7 11003. “Planned development” has the same meaning as specified in
8 subdivision (k) of Section 1351 or in Section 6562 of the Civil Code.

9 **Comment.** Section 11003 is amended to add a cross-reference to Civil Code Section 6562,
10 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
11 (Civ. Code §§ 6500-6876).

12 **Bus. & Prof. Code § 11003.2 (amended). “Stock cooperative”**

13 SEC. _____. Section 11003.2 of the Business and Professions Code is amended to
14 read:

15 11003.2. “Stock cooperative” has the same meaning as specified in subdivision
16 (m) of Section 1351 or in Section 6566 of the Civil Code, except that, as used in
17 this chapter, a “stock cooperative” does not include a limited-equity housing
18 cooperative.

19 **Comment.** Section 11003.2 is amended to add a cross-reference to Civil Code Section 6566,
20 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
21 (Civ. Code §§ 6500-6876).

22 **Bus. & Prof. Code § 11004.5 (amended). Further definition of “subdivided lands” and**
23 **“subdivision”**

24 SEC. _____. Section 11004.5 of the Business and Professions Code is amended to
25 read:

26 11004.5. In addition to any provisions of Section 11000, the reference in this
27 code to “subdivided lands” and “subdivision” shall include all of the following:

28 (a) Any planned development, as defined in Section 11003, containing five or
29 more lots.

30 (b) Any community apartment project, as defined by Section 11004, containing
31 five or more apartments.

32 (c) Any condominium project containing five or more condominiums, as defined
33 in Section 783 of the Civil Code.

34 (d) Any stock cooperative as defined in Section 11003.2, including any legal or
35 beneficial interests therein, having or intended to have five or more shareholders.

36 (e) Any limited-equity housing cooperative, as defined in Section 11003.4.

37 (f) In addition, the following interests shall be subject to this chapter and the
38 regulations of the commissioner adopted pursuant thereto:

39 (1) Any accompanying memberships or other rights or privileges created in, or
40 in connection with, any of the forms of development referred to in subdivision (a),
41 (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments,

1 declarations of restrictions, articles of incorporation, bylaws, or contracts
2 applicable thereto.

3 (2) Any interests or memberships in any owners' association as defined in
4 Section 1351 or 6528 of the Civil Code, created in connection with any of the
5 forms of the development referred to in subdivision (a), (b), (c), (d), or (e).

6 (g) Notwithstanding this section, time-share plans, exchange programs,
7 incidental benefits, and short-term product subject to Chapter 2 (commencing with
8 Section 11210) are not "subdivisions" or "subdivided lands" subject to this
9 chapter.

10 **Comment.** Section 11004.5 is amended to add a cross-reference to Civil Code Section 6528,
11 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
12 (Civ. Code §§ 6500-6876).

13 **Bus. & Prof. Code § 23426.5 (amended). Tennis club**

14 SEC. _____. Section 23426.5 of the Business and Professions Code is amended to
15 read:

16 23426.5. (a) For purposes of this article, "club" also means any tennis club that
17 maintains not less than four regulation tennis courts, together with the necessary
18 facilities and clubhouse, has members paying regular monthly dues, has been in
19 existence for not less than 45 years, and is not associated with a common interest
20 development as defined in Section 1351 or 6534 of the Civil Code, a community
21 apartment project as defined in Section 11004 of this code, a project consisting of
22 condominiums as defined in Section 783 of the Civil Code, or a mobilehome park
23 as defined in Section 18214 of the Health and Safety Code.

24 (b) It shall be unlawful for any club licensed pursuant to this section to make
25 any discrimination, distinction, or restriction against any person on account of age
26 or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the
27 Civil Code.

28 **Comment.** Section 23426.5 is amended to add a cross-reference to Civil Code Section 6534,
29 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
30 (Civ. Code §§ 6500-6876).

31 **Bus. & Prof. Code § 23428.20 (amended). Further definition of "club"**

32 SEC. _____. Section 23428.20 of the Business and Professions Code is amended
33 to read:

34 23428.20. (a) For the purposes of this article, "club" also means any bona fide
35 nonprofit corporation that has been in existence for not less than nine years, has
36 more than 8,500 memberships issued and outstanding to owners of condominiums
37 and owners of memberships in stock cooperatives, and owns, leases, operates, or
38 maintains recreational facilities for its members.

39 (b) For the purposes of this article, "club" also means any bona fide nonprofit
40 corporation that was formed as a condominium homeowners' association, has at
41 least 250 members, has served daily meals to its members and guests for a period
42 of not less than 12 years, owns or leases, operates, and maintains a clubroom or

rooms for its membership, has an annual fee of not less than nine hundred dollars (\$900) per year per member, and has as a condition of membership that one member of each household be at least 54 years old.

(c) Section 23399 and the numerical limitation of Section 23430 shall not apply to a club defined in this section.

(d) No license shall be issued pursuant to this section to any club that withholds membership or denies facilities or services to any person on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(e) Notwithstanding subdivision (d), with respect to familial status, subdivision (d) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (d).

Comment. Section 23428.20 is amended to add a cross-reference to Civil Code Section 6714, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

CIVIL CODE

Civ. Code § 714 (amended). Unenforceability of restrictions on use of solar energy system

SEC. _____. Section 714 of the Civil Code is amended to read:

714. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document, as defined in subdivision (j) of Section 1351 or in Section 6552, that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c)(1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

1 (2) A solar energy system for heating water shall be certified by the Solar Rating
2 Certification Corporation (SRCC) or other nationally recognized certification
3 agencies. SRCC is a nonprofit third party supported by the United States
4 Department of Energy. The certification shall be for the entire solar energy system
5 and installation.

6 (3) A solar energy system for producing electricity shall also meet all applicable
7 safety and performance standards established by the National Electrical Code, the
8 Institute of Electrical and Electronics Engineers, and accredited testing
9 laboratories such as Underwriters Laboratories and, where applicable, rules of the
10 Public Utilities Commission regarding safety and reliability.

11 (d) For the purposes of this section:

12 (1)(A) For solar domestic water heating systems or solar swimming pool heating
13 systems that comply with state and federal law, “significantly” means an amount
14 exceeding 20 percent of the cost of the system or decreasing the efficiency of the
15 solar energy system by an amount exceeding 20 percent, as originally specified
16 and proposed.

17 (B) For photovoltaic systems that comply with state and federal law,
18 “significantly” means an amount not to exceed two thousand dollars (\$2,000) over
19 the system cost as originally specified and proposed, or a decrease in system
20 efficiency of an amount exceeding 20 percent as originally specified and proposed.

21 (2) “Solar energy system” has the same meaning as defined in paragraphs (1)
22 and (2) of subdivision (a) of Section 801.5.

23 (e)(1) Whenever approval is required for the installation or use of a solar energy
24 system, the application for approval shall be processed and approved by the
25 appropriate approving entity in the same manner as an application for approval of
26 an architectural modification to the property, and shall not be willfully avoided or
27 delayed.

28 (2) For an approving entity that is ~~a homeowners’~~ an association, as defined in
29 subdivision (a) of Section 1351 or in Section 6528, and that is not a public entity,
30 both of the following shall apply:

31 (A) The approval or denial of an application shall be in writing.

32 (B) If an application is not denied in writing within 60 days from the date of
33 receipt of the application, the application shall be deemed approved, unless that
34 delay is the result of a reasonable request for additional information.

35 (f) Any entity, other than a public entity, that willfully violates this section shall
36 be liable to the applicant or other party for actual damages occasioned thereby, and
37 shall pay a civil penalty to the applicant or other party in an amount not to exceed
38 one thousand dollars (\$1,000).

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

41 (h)(1) A public entity that fails to comply with this section may not receive
42 funds from a state-sponsored grant or loan program for solar energy. A public

1 entity shall certify its compliance with the requirements of this section when
2 applying for funds from a state-sponsored grant or loan program.

3 (2) A local public entity may not exempt residents in its jurisdiction from the
4 requirements of this section.

5 **Comment.** Subdivision (a) of Section 714 is amended to add a cross-reference to Section 6552,
6 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
7 (Civ. Code §§ 6500-6876).

8 Paragraph (2) of subdivision (e) is amended to add a cross-reference to Section 6528, and to
9 make a conforming terminological change, for the same reason.

10 **Civ. Code § 714.1 (amended). Permissible restrictions by common interest development**
11 **association**

12 SEC. _____. Section 714.1 of the Civil Code is amended to read:

13 714.1. Notwithstanding Section 714, any association, as defined in Section 1351
14 or 6528, may impose reasonable provisions which:

15 (a) Restrict the installation of solar energy systems installed in common areas, as
16 defined in Section 1351 or 6532, to those systems approved by the association.

17 (b) Require the owner of a separate interest, as defined in Section 1351 or 6564,
18 to obtain the approval of the association for the installation of a solar energy
19 system in a separate interest owned by another.

20 (c) Provide for the maintenance, repair, or replacement of roofs or other building
21 components.

22 (d) Require installers of solar energy systems to indemnify or reimburse the
23 association or its members for loss or damage caused by the installation,
24 maintenance, or use of the solar energy system.

25 **Comment.** Section 714.1 is amended to add cross-references to Sections 6528, 6532, and
26 6534, reflecting the enactment of the Commercial and Industrial Common Interest Development
27 Act (Civ. Code §§ 6500-6876).

28 **Civ. Code § 782 (amended). Discriminatory provision in deed of real property**

29 SEC. _____. Section 782 of the Civil Code is amended to read:

30 782. (a) Any provision in any deed of real property in California, whether
31 executed before or after the effective date of this section, that purports to restrict
32 the right of any persons to sell, lease, rent, use or occupy the property to persons
33 having any characteristic listed in subdivision (a) or (d) of Section 12955 of the
34 Government Code, as those bases are defined in Sections 12926, 12926.1,
35 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section
36 12955.2 of the Government Code, by providing for payment of a penalty,
37 forfeiture, reverter, or otherwise, is void.

38 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
39 (a) shall not be construed to apply to housing for older persons, as defined in
40 Section 12955.9 of the Government Code. With respect to familial status, nothing
41 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
42 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section

1 ~~51, and Section~~ Sections 1351 and 6714 of this code, and subdivisions (n), (o), and
2 (p) of Section 12955 of the Government Code shall apply to subdivision (a).

3 **Comment.** Section 782 is amended to add a cross-reference to Section 6714, reflecting the
4 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
5 6500-6876).

6 **Civ. Code § 782.5 (amended). Revision of instrument to omit provision that restricts rights**
7 **based on race or color**

8 SEC. _____. Section 782.5 of the Civil Code is amended to read:

9 782.5. (a) Any deed or other written instrument that relates to title to real
10 property, or any written covenant, condition, or restriction annexed or made a part
11 of, by reference or otherwise, any ~~such~~ deed or instrument that relates to title to
12 real property, ~~that which~~ contains any provision that purports to forbid, restrict, or
13 condition the right of any person or persons to sell, buy, lease, rent, use, or occupy
14 the property on account of any basis listed in subdivision (a) or (d) of Section
15 12955 of the Government Code, as those bases are defined in Sections 12926,
16 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
17 and Section 12955.2 of the Government Code, with respect to any person or
18 persons, shall be deemed to be revised to omit that provision.

19 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
20 (a) shall not be construed to apply to housing for older persons, as defined in
21 Section 12955.9 of the Government Code. With respect to familial status, nothing
22 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
23 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
24 ~~51, and Section~~ Sections 1351 and 6714 of this code, and subdivisions (n), (o), and
25 (p) of Section 12955 of the Government Code shall apply to subdivision (a).

26 (c) This section shall not be construed to limit or expand the powers of a court to
27 reform a deed or other written instrument.

28 **Comment.** Subdivision (a) of Section 782.5 is amended to make stylistic revisions, reflecting
29 the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code
30 §§ 6500-6876).

31 Subdivision (b) is amended to add a cross-reference to Section 6714, for the same reason.

32 **Civ. Code § 783 (amended). “Condominium”**

33 SEC. _____. Section 783 of the Civil Code is amended to read:

34 783. A condominium is an estate in real property described in subdivision (f) of
35 Section 1351 or in Section 6542. A condominium may, with respect to the
36 duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate,
37 (2) an estate for life, (3) an estate for years, such as a leasehold or a subleasehold,
38 or (4) any combination of the foregoing.

39 **Comment.** Section 783 is amended to add a cross-reference to Section 6542, reflecting the
40 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
41 6500-6876).

1 **Civ. Code § 783.1 (amended). Separate and correlative interests as interests in real property**

2 SEC. _____. Section 783.1 of the Civil Code is amended to read:

3 783.1. In a stock cooperative, as defined in subdivision (m) of Section 1351 or
4 in Section 6566, both the separate interest, as defined in paragraph (4) of
5 subdivision (l) of Section 1351 or in paragraph (4) of subdivision (a) of Section
6 6564, and the correlative interest in the stock cooperative corporation, however
7 designated, are interests in real property.

8 **Comment.** Section 783.1 is amended to add cross-references to Sections 6564(a)(4) and 6566,
9 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
10 (Civ. Code §§ 6500-6876).

11 **Civ. Code § 1098 (amended). Transfer fee defined**

12 SEC. _____. Section 1098 of the Civil Code is amended to read:

13 1098. A “transfer fee” is any fee payment requirement imposed within a
14 covenant, restriction, or condition contained in any deed, contract, security
15 instrument, or other document affecting the transfer or sale of, or any interest in,
16 real property that requires a fee be paid upon transfer of the real property. A
17 transfer fee does not include any of the following:

18 (a) Fees or taxes imposed by a governmental entity.

19 (b) Fees pursuant to mechanics’ liens.

20 (c) Fees pursuant to court-ordered transfers, payments, or judgments.

21 (d) Fees pursuant to property agreements in connection with a legal separation
22 or dissolution of marriage.

23 (e) Fees, charges, or payments in connection with the administration of estates
24 or trusts pursuant to Division 7 (commencing with Section 7000), Division 8
25 (commencing with Section 13000), or Division 9 (commencing with Section
26 15000) of the Probate Code.

27 (f) Fees, charges, or payments imposed by lenders or purchasers of loans, as
28 these entities are described in subdivision (c) of Section 10232 of the Business and
29 Professions Code.

30 (g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling
31 Common Interest Development Act (Title 6 (commencing with Section 1350) of
32 Part 4 of Division 2) or by the Commercial and Industrial Common Interest
33 Development Act (Part 5.5 (commencing with Section 6500) of Division 4).

34 (h) Fees, charges, or payments for failing to comply with, or for transferring the
35 real property prior to satisfying, an obligation to construct residential
36 improvements on the real property.

37 (i) Any fee reflected in a document recorded against the property on or before
38 December 31, 2007, that is separate from any covenants, conditions, and
39 restrictions, and that substantially complies with subdivision (a) of Section 1098.5
40 by providing a prospective transferee notice of the following:

41 (1) Payment of a transfer fee is required.

42 (2) The amount or method of calculation of the fee.

(3) The date or circumstances under which the transfer fee payment requirement expires, if any.

(4) The entity to which the fee will be paid.

(5) The general purposes for which the fee will be used.

Comment. Subdivision (g) of Section 1098 is amended to add a cross-reference to Part 5.5 (commencing with Section 6500) of Division 4, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

Civ. Code § 1133 (amended). Sale or lease of subdivision lot subject to blanket encumbrance

SEC. _____. Section 1133 of the Civil Code is amended to read:

1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket encumbrance, as defined in Section 11013 of the Business and Professions Code, but is exempt from a requirement of compliance with Section 11013.2 of the Business and Professions Code, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor cause it to be sold, or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a true copy of the following notice:

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined in subdivision (f) of Section 1351 or in Section 6542, a community apartment project, as defined in subdivision (d) of Section 1351, a stock cooperative, as defined in subdivision (m) of Section 1351 or in Section 6566, and a limited equity housing cooperative, as defined in subdivision (m) of Section 1351.

(c) The failure of the buyer or lessee to sign the notice shall not invalidate any grant, conveyance, lease, or encumbrance.

(d) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a lot or unit which is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars (\$500). In an action to enforce ~~such~~ the liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

Comment. Subdivision (b) of Section 1133 is amended to add cross-references to Sections 6542 and 6566, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

Subdivision (d) is amended to make a stylistic revision.

Civ. Code § 1633.3 (amended). Transactions governed by title

SEC. _____. Section 1633.3 of the Civil Code is amended to read:

1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to transactions subject to the following laws:

1 (1) A law governing the creation and execution of wills, codicils, or
2 testamentary trusts.

3 (2) Division 1 (commencing with Section 1101) of the Uniform Commercial
4 Code, except Sections 1107 and 1206.

5 (3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section
6 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9
7 (commencing with Section 9101), and 11 (commencing with Section 11101) of the
8 Uniform Commercial Code.

9 (4) A law that requires that specifically identifiable text or disclosures in a
10 record or a portion of a record be separately signed, including initialed, from the
11 record. However, this paragraph does not apply to Section 1677 or 1678 of this
12 code or Section 1298 of the Code of Civil Procedure.

13 (c) This title does not apply to any specific transaction described in Section
14 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14,
15 1133, or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or
16 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of
17 Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of,
18 Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of,
19 Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b,
20 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with
21 Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or
22 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with
23 Section 2985.7) of Title 14 of Part 4 of Division 3 of, ~~or~~ Section 3071.5 of, or Part
24 5.5 (commencing with Section 6500) of Division 4 of, the Civil Code, subdivision
25 (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15,
26 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section
27 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7,
28 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4,
29 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or
30 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code.
31 An electronic record may not be substituted for any notice that is required to be
32 sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this
33 subdivision shall be construed to prohibit the recordation of any document with a
34 county recorder by electronic means.

35 (d) This title applies to an electronic record or electronic signature otherwise
36 excluded from the application of this title under subdivision (b) when used for a
37 transaction subject to a law other than those specified in subdivision (b).

38 (e) A transaction subject to this title is also subject to other applicable
39 substantive law.

40 (f) The exclusion of a transaction from the application of this title under
41 subdivision (b) or (c) shall be construed only to exclude the transaction from the
42 application of this title, but shall not be construed to prohibit the transaction from


1 being conducted by electronic means if the transaction may be conducted by
2 electronic means under any other applicable law.

3 **Comment.** Subdivision (c) of Section 1633.3 is amended to add a cross-reference to Part 5.5
4 (commencing with Section 6500) of Division 4, reflecting the enactment of the Commercial and
5 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

6 **Civ. Code § 2924b (amended). Request for copy of notice of default or sale**

7 SEC. _____. Section 2924b of the Civil Code is amended to read:

8 2924b. (a) Any person desiring a copy of any notice of default and of any notice
9 of sale under any deed of trust or mortgage with power of sale upon real property
10 or an estate for years therein, as to which deed of trust or mortgage the power of
11 sale cannot be exercised until these notices are given for the time and in the
12 manner provided in Section 2924 may, at any time subsequent to recordation of
13 the deed of trust or mortgage and prior to recordation of notice of default
14 thereunder, cause to be filed for record in the office of the recorder of any county
15 in which any part or parcel of the real property is situated, a duly acknowledged
16 request for a copy of the notice of default and of sale. This request shall be signed
17 and acknowledged by the person making the request, specifying the name and
18 address of the person to whom the notice is to be mailed, shall identify the deed of
19 trust or mortgage by stating the names of the parties thereto, the date of
20 recordation thereof, and the book and page where the deed of trust or mortgage is
21 recorded or the recorder's number, and shall be in substantially the following
22 form:

23  **Note.** A table has been omitted to conserve resources.

24 Upon the filing for record of the request, the recorder shall index in the general
25 index of grantors the names of the trustors (or mortgagor) recited therein and the
26 names of persons requesting copies.

27 (b) The mortgagee, trustee, or other person authorized to record the notice of
28 default or the notice of sale shall do each of the following:

29 (1) Within 10 business days following recordation of the notice of default,
30 deposit or cause to be deposited in the United States mail an envelope, sent by
31 registered or certified mail with postage prepaid, containing a copy of the notice
32 with the recording date shown thereon, addressed to each person whose name and
33 address are set forth in a duly recorded request therefor, directed to the address
34 designated in the request and to each trustor or mortgagor at his or her last known
35 address if different than the address specified in the deed of trust or mortgage with
36 power of sale.

37 (2) At least 20 days before the date of sale, deposit or cause to be deposited in
38 the United States mail an envelope, sent by registered or certified mail with
39 postage prepaid, containing a copy of the notice of the time and place of sale,
40 addressed to each person whose name and address are set forth in a duly recorded
41 request therefor, directed to the address designated in the request and to each

1 trustor or mortgagor at his or her last known address if different than the address
2 specified in the deed of trust or mortgage with power of sale.

3 (3) As used in paragraphs (1) and (2), the “last known address” of each trustor or
4 mortgagor means the last business or residence physical address actually known
5 by the mortgagee, beneficiary, trustee, or other person authorized to record the
6 notice of default. For the purposes of this subdivision, an address is “actually
7 known” if it is contained in the original deed of trust or mortgage, or in any
8 subsequent written notification of a change of physical address from the trustor or
9 mortgagor pursuant to the deed of trust or mortgage. For the purposes of this
10 subdivision, “physical address” does not include an e-mail or any form of
11 electronic address for a trustor or mortgagor. The beneficiary shall inform the
12 trustee of the trustor’s last address actually known by the beneficiary. However,
13 the trustee shall incur no liability for failing to send any notice to the last address
14 unless the trustee has actual knowledge of it.

15 (4) A “person authorized to record the notice of default or the notice of sale”
16 shall include an agent for the mortgagee or beneficiary, an agent of the named
17 trustee, any person designated in an executed substitution of trustee, or an agent of
18 that substituted trustee.

19 (c) The mortgagee, trustee, or other person authorized to record the notice of
20 default or the notice of sale shall do the following:

21 (1) Within one month following recordation of the notice of default, deposit or
22 cause to be deposited in the United States mail an envelope, sent by registered or
23 certified mail with postage prepaid, containing a copy of the notice with the
24 recording date shown thereon, addressed to each person set forth in paragraph (2),
25 provided that the estate or interest of any person entitled to receive notice under
26 this subdivision is acquired by an instrument sufficient to impart constructive
27 notice of the estate or interest in the land or portion thereof that is subject to the
28 deed of trust or mortgage being foreclosed, and provided the instrument is
29 recorded in the office of the county recorder so as to impart that constructive
30 notice prior to the recording date of the notice of default and provided the
31 instrument as so recorded sets forth a mailing address that the county recorder
32 shall use, as instructed within the instrument, for the return of the instrument after
33 recording, and which address shall be the address used for the purposes of mailing
34 notices herein.

35 (2) The persons to whom notice shall be mailed under this subdivision are:

36 (A) The successor in interest, as of the recording date of the notice of default, of
37 the estate or interest or any portion thereof of the trustor or mortgagor of the deed
38 of trust or mortgage being foreclosed.

39 (B) The beneficiary or mortgagee of any deed of trust or mortgage recorded
40 subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to
41 or concurrently with the deed of trust or mortgage being foreclosed but subject to a
42 recorded agreement or a recorded statement of subordination to the deed of trust or
43 mortgage being foreclosed.

1 (C) The assignee of any interest of the beneficiary or mortgagee described in
2 subparagraph (B), as of the recording date of the notice of default.

3 (D) The vendee of any contract of sale, or the lessee of any lease, of the estate or
4 interest being foreclosed that is recorded subsequent to the deed of trust or
5 mortgage being foreclosed, or recorded prior to or concurrently with the deed of
6 trust or mortgage being foreclosed but subject to a recorded agreement or
7 statement of subordination to the deed of trust or mortgage being foreclosed.

8 (E) The successor in interest to the vendee or lessee described in subparagraph
9 (D), as of the recording date of the notice of default.

10 (F) The office of the Controller, Sacramento, California, where, as of the
11 recording date of the notice of default, a “Notice of Lien for Postponed Property
12 Taxes” has been recorded against the real property to which the notice of default
13 applies.

14 (3) At least 20 days before the date of sale, deposit or cause to be deposited in
15 the United States mail an envelope, sent by registered or certified mail with
16 postage prepaid, containing a copy of the notice of the time and place of sale
17 addressed to each person to whom a copy of the notice of default is to be mailed as
18 provided in paragraphs (1) and (2), and addressed to the office of any state taxing
19 agency, Sacramento, California, that has recorded, subsequent to the deed of trust
20 or mortgage being foreclosed, a notice of tax lien prior to the recording date of the
21 notice of default against the real property to which the notice of default applies.

22 (4) Provide a copy of the notice of sale to the Internal Revenue Service, in
23 accordance with Section 7425 of the Internal Revenue Code and any applicable
24 federal regulation, if a “Notice of Federal Tax Lien under Internal Revenue Laws”
25 has been recorded, subsequent to the deed of trust or mortgage being foreclosed,
26 against the real property to which the notice of sale applies. The failure to provide
27 the Internal Revenue Service with a copy of the notice of sale pursuant to this
28 paragraph shall be sufficient cause to rescind the trustee’s sale and invalidate the
29 trustee’s deed, at the option of either the successful bidder at the trustee’s sale or
30 the trustee, and in either case with the consent of the beneficiary. Any option to
31 rescind the trustee’s sale pursuant to this paragraph shall be exercised prior to any
32 transfer of the property by the successful bidder to a bona fide purchaser for value.
33 A recision of the trustee’s sale pursuant to this paragraph may be recorded in a
34 notice of recision pursuant to Section 1058.5.

35 (5) The mailing of notices in the manner set forth in paragraph (1) shall not
36 impose upon any licensed attorney, agent, or employee of any person entitled to
37 receive notices as herein set forth any duty to communicate the notice to the
38 entitled person from the fact that the mailing address used by the county recorder
39 is the address of the attorney, agent, or employee.

40 (d) Any deed of trust or mortgage with power of sale hereafter executed upon
41 real property or an estate for years therein may contain a request that a copy of any
42 notice of default and a copy of any notice of sale thereunder shall be mailed to any
43 person or party thereto at the address of the person given therein, and a copy of

1 any notice of default and of any notice of sale shall be mailed to each of these at
2 the same time and in the same manner required as though a separate request
3 therefor had been filed by each of these persons as herein authorized. If any deed
4 of trust or mortgage with power of sale executed after September 19, 1939, except
5 a deed of trust or mortgage of any of the classes excepted from the provisions of
6 Section 2924, does not contain a mailing address of the trustor or mortgagor
7 therein named, and if no request for special notice by the trustor or mortgagor in
8 substantially the form set forth in this section has subsequently been recorded, a
9 copy of the notice of default shall be published once a week for at least four weeks
10 in a newspaper of general circulation in the county in which the property is
11 situated, the publication to commence within 10 business days after the filing of
12 the notice of default. In lieu of publication, a copy of the notice of default may be
13 delivered personally to the trustor or mortgagor within the 10 business days or at
14 any time before publication is completed, or by posting the notice of default in a
15 conspicuous place on the property and mailing the notice to the last known address
16 of the trustor or mortgagor.

17 (e) Any person required to mail a copy of a notice of default or notice of sale to
18 each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or
19 certified mail shall simultaneously cause to be deposited in the United States mail,
20 with postage prepaid and mailed by first-class mail, an envelope containing an
21 additional copy of the required notice addressed to each trustor or mortgagor at the
22 same address to which the notice is sent by registered or certified mail pursuant to
23 subdivision (b) or (c). The person shall execute and retain an affidavit identifying
24 the notice mailed, showing the name and residence or business address of that
25 person, that he or she is over the age of 18 years, the date of deposit in the mail,
26 the name and address of the trustor or mortgagor to whom sent, and that the
27 envelope was sealed and deposited in the mail with postage fully prepaid. In the
28 absence of fraud, the affidavit required by this subdivision shall establish a
29 conclusive presumption of mailing.

30 (f)(1) Notwithstanding subdivision (a), with respect to separate interests
31 governed by an association, as defined in subdivision (a) of Section 1351 or in
32 Section 6528, the association may cause to be filed in the office of the recorder in
33 the county in which the separate interests are situated a request that a mortgagee,
34 trustee, or other person authorized to record a notice of default regarding any of
35 those separate interests mail to the association a copy of any trustee's deed upon
36 sale concerning a separate interest. The request shall include a legal description or
37 the assessor's parcel number of all the separate interests. A request recorded
38 pursuant to this subdivision shall include the name and address of the association
39 and a statement that it is ~~a homeowners'~~ an association as defined in subdivision
40 (a) of Section 1351 or in Section 6528. Subsequent requests of an association shall
41 supersede prior requests. A request pursuant to this subdivision shall be recorded
42 before the filing of a notice of default. The mortgagee, trustee, or other authorized
43 person shall mail the requested information to the association within 15 business

1 days following the date the trustee's deed is recorded. Failure to mail the request,
2 pursuant to this subdivision, shall not affect the title to real property.

3 (g) No request for a copy of any notice filed for record pursuant to this section,
4 no statement or allegation in the request, and no record thereof shall affect the title
5 to real property or be deemed notice to any person that any person requesting
6 copies of notice has or claims any right, title, or interest in, or lien or charge upon
7 the property described in the deed of trust or mortgage referred to therein.

8 (h) "Business day," as used in this section, has the meaning specified in Section
9 9.

10 **Comment.** Subdivision (f) of Section 2924b is amended to add a cross-reference to Section
11 6528, and to make a conforming terminological change, reflecting the enactment of the
12 Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

13 **Civ. Code § 2955.1 (amended). Disclosures regarding earthquake insurance requirements**

14 SEC. ____ . Section 2955.1 of the Civil Code is amended to read:

15 2955.1. (a) Any lender originating a loan secured by the borrower's separate
16 interest in a condominium project, as defined in subdivision (f) of Section 1351 or
17 in Section 6542, which requires earthquake insurance or imposes a fee or any
18 other condition in lieu thereof pursuant to an underwriting requirement imposed
19 by an institutional third-party purchaser shall disclose all of the following to the
20 potential borrower:

21 (1) That the lender or the institutional third party in question requires earthquake
22 insurance or imposes a fee or any other condition in lieu thereof pursuant to an
23 underwriting requirement imposed by an institutional third party purchaser.

24 (2) That not all lenders or institutional third parties require earthquake insurance
25 or impose a fee or any other condition in lieu thereof pursuant to an underwriting
26 requirement imposed by an institutional third party purchaser.

27 (3) Earthquake insurance may be required on the entire condominium project.

28 (4) That lenders or institutional third parties may also require that a
29 condominium project maintain, or demonstrate an ability to maintain, financial
30 reserves in the amount of the earthquake insurance deductible.

31 (b) For the purposes of this section, "institutional third party" means the Federal
32 Home Loan Mortgage Corporation, the Federal National Mortgage Association,
33 the Government National Mortgage Association, and other substantially similar
34 institutions, whether public or private.

35 (c) The disclosure required by this section shall be made in writing by the lender
36 as soon as reasonably practicable.

37 **Comment.** Section 2955.1 is amended to add a cross-reference to Section 6542, reflecting the
38 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
39 6500-6876).

CODE OF CIVIL PROCEDURE

1 **Code Civ. Proc. § 86, as it reads in 2010 Cal. Stat. ch. 697, § 21 (amended). Specific cases**
2 **and proceedings that are limited civil cases**

3 SEC. _____. Section 86 of the Code of Civil Procedure, as it reads in Section 21 of
4 Chapter 697 of the Statutes of 2010, is amended to read:

5 86. (a) The following civil cases and proceedings are limited civil cases:

6 (1) A case at law in which the demand, exclusive of interest, or the value of the
7 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less.
8 This paragraph does not apply to a case that involves the legality of any tax,
9 impost, assessment, toll, or municipal fine, except an action to enforce payment of
10 delinquent unsecured personal property taxes if the legality of the tax is not
11 contested by the defendant.

12 (2) An action for dissolution of partnership where the total assets of the
13 partnership do not exceed twenty-five thousand dollars (\$25,000); an action of
14 interpleader where the amount of money or the value of the property involved
15 does not exceed twenty-five thousand dollars (\$25,000).

16 (3) An action to cancel or rescind a contract when the relief is sought in
17 connection with an action to recover money not exceeding twenty-five thousand
18 dollars (\$25,000) or property of a value not exceeding twenty-five thousand
19 dollars (\$25,000), paid or delivered under, or in consideration of, the contract; an
20 action to revise a contract where the relief is sought in an action upon the contract
21 if the action otherwise is a limited civil case.

22 (4) A proceeding in forcible entry or forcible or unlawful detainer where the
23 whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or
24 less.

25 (5) An action to enforce and foreclose a lien on personal property where the
26 amount of the lien is twenty-five thousand dollars (\$25,000) or less.

27 (6) An action to enforce and foreclose, or a petition to release, a lien arising
28 under the provisions of Chapter 4 (commencing with Section 8400) of Title 2 of
29 Part 6 of Division 4 of the Civil Code, or to enforce and foreclose an assessment
30 lien on a common interest development as defined in Section 1351 or 6534 of the
31 Civil Code, where the amount of the liens is twenty-five thousand dollars
32 (\$25,000) or less. However, if an action to enforce the lien affects property that is
33 also affected by a similar pending action that is not a limited civil case, or if the
34 total amount of liens sought to be foreclosed against the same property aggregates
35 an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a
36 limited civil case.

37 (7) An action for declaratory relief when brought pursuant to either of the
38 following:

39 (A) By way of cross-complaint as to a right of indemnity with respect to the
40 relief demanded in the complaint or a cross-complaint in an action or proceeding
41 that is otherwise a limited civil case.

1 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
2 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
3 Division 3 of the Business and Professions Code, where the amount in controversy
4 is twenty-five thousand dollars (\$25,000) or less.

5 (8) An action to issue a temporary restraining order or preliminary injunction; to
6 take an account, where necessary to preserve the property or rights of any party to
7 a limited civil case; to make any order or perform any act, pursuant to Title 9
8 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a
9 limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil
10 case; to determine title to personal property seized in a limited civil case.

11 (9) An action under Article 3 (commencing with Section 708.210) of Chapter 6
12 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal
13 property or to enforce the liability of the debtor of a judgment debtor where the
14 interest claimed adversely is of a value not exceeding twenty-five thousand dollars
15 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars
16 (\$25,000).

17 (10) An arbitration-related petition filed pursuant to either of the following:

18 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
19 except for uninsured motorist arbitration proceedings in accordance with Section
20 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
21 becomes final and the matter to be resolved by arbitration is a limited civil case
22 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
23 after the arbitration award becomes final and the amount of the award and all other
24 rulings, pronouncements, and decisions made in the award are within paragraphs
25 (1) to (9), inclusive, of subdivision (a).

26 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
27 and client that is binding or has become binding, pursuant to Article 13
28 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
29 Professions Code, where the arbitration award is twenty-five thousand dollars
30 (\$25,000) or less.

31 (b) The following cases in equity are limited civil cases:

32 (1) A case to try title to personal property when the amount involved is not more
33 than twenty-five thousand dollars (\$25,000).

34 (2) A case when equity is pleaded as a defensive matter in any case that is
35 otherwise a limited civil case.

36 (3) A case to vacate a judgment or order of the court obtained in a limited civil
37 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

38 **Comment.** Paragraph (6) of subdivision (a) of Section 86 is amended to add a cross-reference
39 to Civil Code Section 6534, reflecting the enactment of the Commercial and Industrial Common
40 Interest Development Act (Civ. Code §§ 6500-6876).

1 **Code Civ. Proc. § 116.540 (amended). Participation by individuals other than plaintiff and**
2 **defendant**

3 SEC. _____. Section 116.540 of the Code of Civil Procedure is amended to read:

4 116.540. (a) Except as permitted by this section, no individual other than the
5 plaintiff and the defendant may take part in the conduct or defense of a small
6 claims action.

7 (b) Except as additionally provided in subdivision (i), a corporation may appear
8 and participate in a small claims action only through a regular employee, or a duly
9 appointed or elected officer or director, who is employed, appointed, or elected for
10 purposes other than solely representing the corporation in small claims court.

11 (c) A party who is not a corporation or a natural person may appear and
12 participate in a small claims action only through a regular employee, or a duly
13 appointed or elected officer or director, or in the case of a partnership, a partner,
14 engaged for purposes other than solely representing the party in small claims
15 court.

16 (d) If a party is an individual doing business as a sole proprietorship, the party
17 may appear and participate in a small claims action by a representative and
18 without personally appearing if both of the following conditions are met:

19 (1) The claim can be proved or disputed by evidence of an account that
20 constitutes a business record as defined in Section 1271 of the Evidence Code, and
21 there is no other issue of fact in the case.

22 (2) The representative is a regular employee of the party for purposes other than
23 solely representing the party in small claims actions and is qualified to testify to
24 the identity and mode of preparation of the business record.

25 (e) A plaintiff is not required to personally appear, and may submit declarations
26 to serve as evidence supporting his or her claim or allow another individual to
27 appear and participate on his or her behalf, if (1) the plaintiff is serving on active
28 duty in the United States Armed Forces outside this state, (2) the plaintiff was
29 assigned to his or her duty station after his or her claim arose, (3) the assignment is
30 for more than six months, (4) the representative is serving without compensation,
31 and (5) the representative has appeared in small claims actions on behalf of others
32 no more than four times during the calendar year. The defendant may file a claim
33 in the same action in an amount not to exceed the jurisdictional limits stated in
34 Sections 116.220, 116.221, and 116.231.

35 (f) A party incarcerated in a county jail, a Department of Corrections and
36 Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to
37 personally appear, and may submit declarations to serve as evidence supporting
38 his or her claim, or may authorize another individual to appear and participate on
39 his or her behalf if that individual is serving without compensation and has
40 appeared in small claims actions on behalf of others no more than four times
41 during the calendar year.

42 (g) A defendant who is a nonresident owner of real property may defend against
43 a claim relating to that property without personally appearing by (1) submitting

1 written declarations to serve as evidence supporting his or her defense, (2)
2 allowing another individual to appear and participate on his or her behalf if that
3 individual is serving without compensation and has appeared in small claims
4 actions on behalf of others no more than four times during the calendar year, or (3)
5 taking the action described in both (1) and (2).

6 (h) A party who is an owner of rental real property may appear and participate in
7 a small claims action through a property agent under contract with the owner to
8 manage the rental of that property, if (1) the owner has retained the property agent
9 principally to manage the rental of that property and not principally to represent
10 the owner in small claims court, and (2) the claim relates to the rental property.

11 (i) A party that is an association created to manage a common interest
12 development, as defined in Section 1351, or in Sections 6528 and 6534, of the
13 Civil Code, may appear and participate in a small claims action through an agent,
14 a management company representative, or bookkeeper who appears on behalf of
15 that association.

16 (j) At the hearing of a small claims action, the court shall require any individual
17 who is appearing as a representative of a party under subdivisions (b) to (i),
18 inclusive, to file a declaration stating (1) that the individual is authorized to appear
19 for the party, and (2) the basis for that authorization. If the representative is
20 appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state
21 that the individual is not employed solely to represent the party in small claims
22 court. If the representative is appearing under subdivision (e), (f), or (g), the
23 declaration also shall state that the representative is serving without compensation,
24 and has appeared in small claims actions on behalf of others no more than four
25 times during the calendar year.

26 (k) A husband or wife who sues or who is sued with his or her spouse may
27 appear and participate on behalf of his or her spouse if (1) the claim is a joint
28 claim, (2) the represented spouse has given his or her consent, and (3) the court
29 determines that the interests of justice would be served.

30 (l) If the court determines that a party cannot properly present his or her claim or
31 defense and needs assistance, the court may in its discretion allow another
32 individual to assist that party.

33 (m) Nothing in this section shall operate or be construed to authorize an attorney
34 to participate in a small claims action except as expressly provided in Section
35 116.530.

36 **Comment.** Subdivision (i) of Section 116.540 is amended to add cross-references to Civil
37 Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial
38 Common Interest Development Act (Civ. Code §§ 6500-6876).

GOVERNMENT CODE

Gov't Code § 12191 (amended). Miscellaneous business entity filing fees

SEC. _____. Section 12191 of the Government Code is amended to read:

12191. The miscellaneous business entity filing fees are the following:

(a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations Code:

(1) Filing the statement and designation upon the qualification of a foreign association pursuant to Section 2105 of the Corporations Code: One hundred dollars (\$100).

(2) Filing an amended statement and designation by a foreign association pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

(3) Filing a certificate showing the surrender of the right of a foreign association to transact intrastate business pursuant to Section 2112 of the Corporations Code: No fee.

(b) Unincorporated Associations:

(1) Filing a statement in accordance with Section 24003 of the Corporations Code as to principal place of office or place for sending notices or designating agent for service: Twenty-five dollars (\$25).

(2) Insignia Registrations: Ten dollars (\$10).

(c) Community Associations and Common Interest Developments:

(1) Filing a statement by a community association in accordance with Section 1363.6 or 6760 of the Civil Code to register the common interest development that it manages: An amount not to exceed thirty dollars (\$30).

(2) Filing an amended statement by a community association in accordance with Section 1363.6 or 6760 of the Civil Code: No fee.

Comment. Section 12191 is amended to add cross-references to Civil Code Section 6760, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

Gov't Code § 12956.1 (amended). Restrictive covenant based on discriminatory grounds

SEC. _____. Section 12956.1 of the Government Code is amended to read:

12956.1. (a) As used in this section, "association," "governing documents," and "declaration" have the same meanings as set forth in Section 1351, or in Sections 6528, 6546, and 6552, of the Civil Code.

(b)(1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14-point boldface type, the following:

"If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955,

1 or ancestry, that restriction violates state and federal fair housing laws and is void,
2 and may be removed pursuant to Section 12956.2 of the Government Code.
3 Lawful restrictions under state and federal law on the age of occupants in senior
4 housing or housing for older persons shall not be construed as restrictions based
5 on familial status.”

6 (2) The requirements set forth in paragraph (1) shall not apply to documents
7 being submitted for recordation to a county recorder.

8 (c) Any person who records a document for the express purpose of adding a
9 racially restrictive covenant is guilty of a misdemeanor. The county recorder shall
10 not incur any liability for recording the document. Notwithstanding any other
11 provision of law, a prosecution for a violation of this subdivision shall commence
12 within three years after the discovery of the recording of the document.

13 **Comment.** Section 12956.1 is amended to add cross-references to Civil Code Sections 6528,
14 6546, and 6552, reflecting the enactment of the Commercial and Industrial Common Interest
15 Development Act (Civ. Code §§ 6500-6876).

16 **Gov’t Code § 12956.2 (amended). Restrictive Covenant Modification**

17 SEC. _____. Section 12956.2 of the Government Code is amended to read:

18 12956.2. (a) A person who holds an ownership interest of record in property that
19 he or she believes is the subject of an unlawfully restrictive covenant in violation
20 of subdivision (l) of Section 12955 may record a document titled Restrictive
21 Covenant Modification. The county recorder may choose to waive the fee
22 prescribed for recording and indexing instruments pursuant to Section 27361 in
23 the case of the modification document provided for in this section. The
24 modification document shall include a complete copy of the original document
25 containing the unlawfully restrictive language with the unlawfully restrictive
26 language stricken.

27 (b) Before recording the modification document, the county recorder shall
28 submit the modification document and the original document to the county
29 counsel who shall determine whether the original document contains an unlawful
30 restriction based on race, color, religion, sex, sexual orientation, familial status,
31 marital status, disability, genetic information, national origin, source of income as
32 defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall
33 return the documents and inform the county recorder of its determination. The
34 county recorder shall refuse to record the modification document if the county
35 counsel finds that the original document does not contain an unlawful restriction
36 as specified in this paragraph.

37 (c) The modification document shall be indexed in the same manner as the
38 original document being modified. It shall contain a recording reference to the
39 original document in the form of a book and page or instrument number, and date
40 of the recording.

41 (d) Subject to covenants, conditions, and restrictions that were recorded after the
42 recording of the original document that contains the unlawfully restrictive

1 language and subject to covenants, conditions, and restrictions that will be
2 recorded after the Restrictive Covenant Modification, the restrictions in the
3 Restrictive Covenant Modification, once recorded, are the only restrictions having
4 effect on the property. The effective date of the terms and conditions of the
5 modification document shall be the same as the effective date of the original
6 document.

7 (e) The county recorder shall make available to the public Restrictive Covenant
8 Modification forms.

9 (f) If the holder of an ownership interest of record in property causes to be
10 recorded a modified document pursuant to this section that contains modifications
11 not authorized by this section, the county recorder shall not incur liability for
12 recording the document. The liability that may result from the unauthorized
13 recordation is the sole responsibility of the holder of the ownership interest of
14 record who caused the modified recordation.

15 (g) This section does not apply to persons holding an ownership interest in
16 property that is part of a common interest development as defined in subdivision
17 (c) of Section 1351 or in Section 6534 of the Civil Code if the board of directors
18 of that common interest development is subject to the requirements of subdivision
19 (b) of Section 1352.5 or of Section 6606 of the Civil Code.

20 **Comment.** Subdivision (g) of Section 12956.2 is amended to add cross-references to Civil
21 Code Sections 6534 and 6606, reflecting the enactment of the Commercial and Industrial
22 Common Interest Development Act (Civ. Code §§ 6500-6876).

23 **Gov't Code § 53341.5 (amended). Lot, parcel, or unit of subdivision subject to special tax**

24 SEC. _____. Section 53341.5 of the Government Code is amended to read:

25 53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax
26 levied pursuant to this chapter, the subdivider, his or her agent, or representative,
27 shall not sell, or lease for a term exceeding five years, or permit a prospective
28 purchaser or lessor to sign a contract of purchase or a deposit receipt or any
29 substantially equivalent document in the event of a lease with respect to the lot,
30 parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until
31 the prospective purchaser or lessee of the lot, parcel, or unit has been furnished
32 with and has signed a written notice as provided in this section. The notice shall
33 contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-
34 point type, and shall be in substantially the following form. The form may be
35 modified as needed to clearly and accurately describe the tax structure and other
36 characteristics of districts created before January 1, 1993, or to clearly and
37 accurately consolidate information about the tax structure and other characteristics
38 of two or more districts that levy or are authorized to levy special taxes with
39 respect to the lot, parcel, or unit:

40 (b) "Subdivision," as used in subdivision (a), means improved or unimproved
41 land that is divided or proposed to be divided for the purpose of sale, lease, or
42 financing, whether immediate or future, into two or more lots, parcels, or units and

1 includes a condominium project, as defined by ~~Section 1350~~ subdivision (f) of
2 Section 1351 or by Section 6542 of the Civil Code, a community apartment
3 project, a stock cooperative, and a limited-equity housing cooperative, as defined
4 in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and
5 Professions Code.

6 (c) The buyer shall have three days after delivery in person or five days after
7 delivery by deposit in the mail of any notice required by this section, to terminate
8 his or her agreement by delivery of written notice of that termination to the owner,
9 subdivider, or agent.

10 (d) The failure to furnish the notice to the buyer or lessee, and failure of the
11 buyer or lessee to sign the notice of a special tax, shall not invalidate any grant,
12 conveyance, lease, or encumbrance.

13 (e) Any person or entity who willfully violates the provisions of this section
14 shall be liable to the purchaser of a lot or unit that is subject to the provisions of
15 this section, for actual damages, and in addition thereto, shall be guilty of a public
16 offense punishable by a fine in an amount not to exceed five hundred dollars
17 (\$500). In an action to enforce a liability or fine, the prevailing party shall be
18 awarded reasonable attorney's fees.

19 **Comment.** Subdivision (b) of Section 53341.5 is amended to add a cross-reference to Civil
20 Code Section 6542, reflecting the enactment of the Commercial and Industrial Common Interest
21 Development Act (Civ. Code §§ 6500-6876), and to correct a technical error.

22 **Gov't Code § 65008 (amended). Invalidity of discriminatory act**

23 SEC. _____. Section 65008 of the Government Code is amended to read:

24 65008. (a) Any action pursuant to this title by any city, county, city and county,
25 or other local governmental agency in this state is null and void if it denies to any
26 individual or group of individuals the enjoyment of residence, landownership,
27 tenancy, or any other land use in this state because of any of the following reasons:

28 (1)(A) The lawful occupation, age, or any characteristic of the individual or
29 group of individuals listed in subdivision (a) or (d) of Section 12955, as those
30 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
31 of subdivision (p) of Section 12955 and Section 12955.2.

32 (B) Notwithstanding subparagraph (A), with respect to familial status,
33 subparagraph (A) shall not be construed to apply to housing for older persons, as
34 defined in Section 12955.9. With respect to familial status, nothing in
35 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
36 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
37 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
38 Code, and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply
39 to subparagraph (A).

40 (2) The method of financing of any residential development of the individual or
41 group of individuals.

1 (3) The intended occupancy of any residential development by persons or
2 families of very low, low, moderate, or middle income.

3 (b)(1) No city, county, city and county, or other local governmental agency
4 shall, in the enactment or administration of ordinances pursuant to any law,
5 including this title, prohibit or discriminate against any residential development or
6 emergency shelter for any of the following reasons:

7 (A) Because of the method of financing.

8 (B)(i) Because of the lawful occupation, age, or any characteristic listed in
9 subdivision (a) or (d) of Section 12955, as those characteristics are defined in
10 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
11 Section 12955, and Section 12955.2 of the owners or intended occupants of the
12 residential development or emergency shelter.

13 (ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not
14 be construed to apply to housing for older persons, as defined in Section 12955.9.
15 With respect to familial status, nothing in clause (i) shall be construed to affect
16 Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to
17 housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections
18 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section
19 12955 of this code shall apply to clause (i).

20 (C) Because the development or shelter is intended for occupancy by persons
21 and families of very low, low, or moderate income, as defined in Section 50093 of
22 the Health and Safety Code, or persons and families of middle income.

23 (D) Because the development consists of a multifamily residential project that is
24 consistent with both the jurisdiction's zoning ordinance and general plan as they
25 existed on the date the application was deemed complete, except that a project
26 shall not be deemed to be inconsistent with the zoning designation for the site if
27 that zoning designation is inconsistent with the general plan only because the
28 project site has not been rezoned to conform with a more recently adopted general
29 plan.

30 (2) The discrimination prohibited by this subdivision includes the denial or
31 conditioning of a residential development or shelter because of, in whole or in
32 part, either of the following:

33 (A) The method of financing.

34 (B) The occupancy of the development by persons protected by this subdivision,
35 including, but not limited to, persons and families of very low, low, or moderate
36 income.

37 (3) A city, county, city and county, or other local government agency may not,
38 pursuant to subdivision (d) of Section 65589.5, disapprove a housing development
39 project or condition approval of a housing development project in a manner that
40 renders the project infeasible if the basis for the disapproval or conditional
41 approval includes any of the reasons prohibited in paragraph (1) or (2).

1 (c) For the purposes of this section, “persons and families of middle income”
2 means persons and families whose income does not exceed 150 percent of the
3 median income for the county in which the persons or families reside.

4 (d)(1) No city, county, city and county, or other local governmental agency may
5 impose different requirements on a residential development or emergency shelter
6 that is subsidized, financed, insured, or otherwise assisted by the federal or state
7 government or by a local public entity, as defined in Section 50079 of the Health
8 and Safety Code, than those imposed on nonassisted developments, except as
9 provided in subdivision (e). The discrimination prohibited by this subdivision
10 includes the denial or conditioning of a residential development or emergency
11 shelter based in whole or in part on the fact that the development is subsidized,
12 financed, insured, or otherwise assisted as described in this paragraph.

13 (2)(A) No city, county, city and county, or other local governmental agency
14 may, because of the lawful occupation age, or any characteristic of the intended
15 occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics
16 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
17 subdivision (p) of Section 12955, and Section 12955.2 or because the development
18 is intended for occupancy by persons and families of very low, low, moderate, or
19 middle income, impose different requirements on these residential developments
20 than those imposed on developments generally, except as provided in subdivision
21 (e).

22 (B) Notwithstanding subparagraph (A), with respect to familial status,
23 subparagraph (A) shall not be construed to apply to housing for older persons, as
24 defined in Section 12955.9. With respect to familial status, nothing in
25 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
26 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
27 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
28 Code, and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply
29 to subparagraph (A).

30 (e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title
31 do not prohibit either of the following:

32 (1) The County of Riverside from enacting and enforcing zoning to provide
33 housing for older persons, in accordance with state or federal law, if that zoning
34 was enacted prior to January 1, 1995.

35 (2) Any city, county, or city and county from extending preferential treatment to
36 residential developments or emergency shelters assisted by the federal or state
37 government or by a local public entity, as defined in Section 50079 of the Health
38 and Safety Code, or other residential developments or emergency shelters intended
39 for occupancy by persons and families of low and moderate income, as defined in
40 Section 50093 of the Health and Safety Code, or persons and families of middle
41 income, or agricultural employees, as defined in subdivision (b) of Section 1140.4
42 of the Labor Code, and their families. This preferential treatment may include, but
43 need not be limited to, reduction or waiver of fees or changes in architectural

1 requirements, site development and property line requirements, building setback
2 requirements, or vehicle parking requirements that reduce development costs of
3 these developments.

4 (f) “Residential development,” as used in this section, means a single-family
5 residence or a multifamily residence, including manufactured homes, as defined in
6 Section 18007 of the Health and Safety Code.

7 (g) This section shall apply to chartered cities.

8 (h) The Legislature finds and declares that discriminatory practices that inhibit
9 the development of housing for persons and families of very low, low, moderate,
10 and middle income, or emergency shelters for the homeless, are a matter of
11 statewide concern.

12 **Comment.** Section 65008 is amended to add cross-references to Civil Code Section 6714,
13 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
14 (Civ. Code §§ 6500-6876).

15 **Gov’t Code § 66411 (amended). Local control of common interest developments and**
16 **subdivision design and improvement**

17 SEC. _____. Section 66411 of the Government Code is amended to read:

18 66411. Regulation and control of the design and improvement of subdivisions
19 are vested in the legislative bodies of local agencies. Each local agency shall, by
20 ordinance, regulate and control the initial design and improvement of common
21 interest developments as defined in Section 1351 or 6534 of the Civil Code and
22 subdivisions for which this division requires a tentative and final or parcel map. In
23 the development, adoption, revision, and application of ~~such~~ this type of
24 ordinance, the local agency shall comply with the provisions of Section 65913.2.
25 The ordinance shall specifically provide for proper grading and erosion control,
26 including the prevention of sedimentation or damage to offsite property. Each
27 local agency may by ordinance regulate and control other subdivisions, provided
28 that the regulations are not more restrictive than the regulations for those
29 subdivisions for which a tentative and final or parcel map are required by this
30 division, and provided further that the regulations shall not be applied to short-
31 term leases (terminable by either party on not more than 30 days’ notice in
32 writing) of a portion of the operating right-of-way of a railroad corporation as
33 defined by Section 230 of the Public Utilities Code unless a showing is made in
34 individual cases, under substantial evidence, that public policy necessitates the
35 application of the regulations to those short-term leases in individual cases.

36 **Comment.** Section 66411 is amended to add a cross-reference to Civil Code Section 6534,
37 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
38 (Civ. Code §§ 6500-6876), and to make a stylistic revision.

39 **Gov’t Code § 66412 (amended). Application of Subdivision Map Act**

40 66412. This division shall be inapplicable to any of the following:

1 (a) The financing or leasing of apartments, offices, stores, or similar space
2 within apartment buildings, industrial buildings, commercial buildings,
3 mobilehome parks, or trailer parks.

4 (b) Mineral, oil, or gas leases.

5 (c) Land dedicated for cemetery purposes under the Health and Safety Code.

6 (d) A lot line adjustment between four or fewer existing adjoining parcels,
7 where the land taken from one parcel is added to an adjoining parcel, and where a
8 greater number of parcels than originally existed is not thereby created, if the lot
9 line adjustment is approved by the local agency, or advisory agency. A local
10 agency or advisory agency shall limit its review and approval to a determination of
11 whether or not the parcels resulting from the lot line adjustment will conform to
12 the local general plan, any applicable specific plan, any applicable coastal plan,
13 and zoning and building ordinances. An advisory agency or local agency shall not
14 impose conditions or exactions on its approval of a lot line adjustment except to
15 conform to the local general plan, any applicable specific plan, any applicable
16 coastal plan, and zoning and building ordinances, to require the prepayment of real
17 property taxes prior to the approval of the lot line adjustment, or to facilitate the
18 relocation of existing utilities, infrastructure, or easements. No tentative map,
19 parcel map, or final map shall be required as a condition to the approval of a lot
20 line adjustment. The lot line adjustment shall be reflected in a deed, which shall be
21 recorded. No record of survey shall be required for a lot line adjustment unless
22 required by Section 8762 of the Business and Professions Code. A local agency
23 shall approve or disapprove a lot line adjustment pursuant to the Permit
24 Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

25 (e) Boundary line or exchange agreements to which the State Lands
26 Commission or a local agency holding a trust grant of tide and submerged lands is
27 a party.

28 (f) Any separate assessment under Section 2188.7 of the Revenue and Taxation
29 Code.

30 (g) The conversion of a community apartment project, as defined in Section
31 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil
32 Code, but only if all of the following requirements are met:

33 (1) The property was subdivided before January 1, 1982, as evidenced by a
34 recorded deed creating the community apartment project.

35 (2) Subject to compliance with subdivision (e) of Section 1351 of the Civil
36 Code, all conveyances and other documents necessary to effectuate the conversion
37 shall be executed by the required number of owners in the project as specified in
38 the bylaws or other organizational documents. If the bylaws or other
39 organizational documents do not expressly specify the number of owners
40 necessary to execute the conveyances and other documents, a majority of owners
41 in the project shall be required to execute the conveyances or other documents.
42 Conveyances and other documents executed under the foregoing provisions shall
43 be binding upon and affect the interests of all parties in the project.

1 (3) If subdivision, as defined in Section 66424, of the property occurred after
2 January 1, 1964, both of the following requirements are met:

3 (A) A final or parcel map of that subdivision was approved by the local agency
4 and recorded, with all of the conditions of that map remaining in effect after the
5 conversion.

6 (B) No more than 49 percent of the units in the project were owned by any one
7 person as defined in Section 17, including an incorporator or director of the
8 community apartment project, on January 1, 1982.

9 (4) The local agency certifies that the above requirements were satisfied if the
10 local agency, by ordinance, provides for that certification.

11 (h) The conversion of a stock cooperative, as defined in Section 1351 or 6566 of
12 the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but
13 only if all of the following requirements are met:

14 (1) The property was subdivided before January 1, 1982, as evidenced by a
15 recorded deed creating the stock cooperative, an assignment of lease, or issuance
16 of shares to a stockholder.

17 (2) A person renting a unit in a cooperative shall be entitled at the time of
18 conversion to all tenant rights in state or local law, including, but not limited to,
19 rights respecting first refusal, notice, and displacement and relocation benefits.

20 (3) Subject to compliance with subdivision (e) of Section 1351, or with Sections
21 6626 and 6628, of the Civil Code, all conveyances and other documents necessary
22 to effectuate the conversion shall be executed by the required number of owners in
23 the cooperative as specified in the bylaws or other organizational documents. If
24 the bylaws or other organizational documents do not expressly specify the number
25 of owners necessary to execute the conveyances and other documents, a majority
26 of owners in the cooperative shall be required to execute the conveyances or other
27 documents. Conveyances and other documents executed under the foregoing
28 provisions shall be binding upon and affect the interests of all parties in the
29 cooperative.

30 (4) If subdivision, as defined in Section 66424, of the property occurred after
31 January 1, 1980, both of the following requirements are met:

32 (A) A final or parcel map of that subdivision was approved by the local agency
33 and recorded, with all of the conditions of that map remaining in effect after the
34 conversion.

35 (B) No more than 49 percent of the shares in the project were owned by any one
36 person as defined in Section 17, including an incorporator or director of the
37 cooperative, on January 1, 1982.

38 (5) The local agency certifies that the above requirements were satisfied if the
39 local agency, by ordinance, provides for that certification.

40 (i) The leasing of, or the granting of an easement to, a parcel of land, or any
41 portion or portions thereof, in conjunction with the financing, erection, and sale or
42 lease of a windpowered electrical generation device on the land, if the project is
43 subject to discretionary action by the advisory agency or legislative body.

(j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, “agricultural purposes” means the cultivation of food or fiber, or the grazing or pasturing of livestock.

(l) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a solar electrical generation device on the land, if the project is subject to review under other local agency ordinances regulating design and improvement or, if the project is subject to other discretionary action by the advisory agency or legislative body.

(m) The leasing of, or the granting of an easement to, a parcel of land or any portion or portions of the land in conjunction with a biogas project that uses, as part of its operation, agricultural waste or byproducts from the land where the project is located and reduces overall emissions of greenhouse gases from agricultural operations on the land if the project is subject to review under other local agency ordinances regulating design and improvement or if the project is subject to discretionary action by the advisory agency or legislative body.

Comment. Subdivisions (g) and (h) of Section 66412 are amended to add cross-references to Civil Code Sections 6566, 6626, and 6628, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

Gov’t Code § 66424 (amended). Subdivision

SEC. _____. Section 66424 of the Government Code is amended to read:

66424. “Subdivision” means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. “Subdivision” includes a condominium project, as defined in subdivision (f) of Section 1351 or in Section 6542 of the Civil Code, a community apartment project, as defined in subdivision (d) of Section 1351 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section 1351 or in Section 6566 of the Civil Code.

Comment. Section 66424 is amended to add cross-references to Civil Code Sections 6542 and 6566, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

1 **Gov't Code § 66427 (amended). Map of condominium, community apartment project, or**
2 **stock cooperative project**

3 SEC. ____ . Section 66427 of the Government Code is amended to read:

4 66427. (a) A map of a condominium project, a community apartment project, or
5 of the conversion of five or more existing dwelling units to a stock cooperative
6 project need not show the buildings or the manner in which the buildings or the
7 airspace above the property shown on the map are to be divided, nor shall the
8 governing body have the right to refuse approval of a parcel, tentative, or final
9 map of the project on account of the design or the location of buildings on the
10 property shown on the map that are not violative of local ordinances or on account
11 of the manner in which airspace is to be divided in conveying the condominium.

12 (b) A map need not include a condominium plan or plans, as defined in
13 subdivision (e) of Section 1351 or in Section 6540 of the Civil Code, and the
14 governing body may not refuse approval of a parcel, tentative, or final map of the
15 project on account of the absence of a condominium plan.

16 (c) Fees and lot design requirements shall be computed and imposed with
17 respect to those maps on the basis of parcels or lots of the surface of the land
18 shown thereon as included in the project.

19 (d) Nothing herein shall be deemed to limit the power of the legislative body to
20 regulate the design or location of buildings in a project by or pursuant to local
21 ordinances.

22 (e) If the governing body has approved a parcel map or final map for the
23 establishment of condominiums on property pursuant to the requirements of this
24 division, the separation of a three-dimensional portion or portions of the property
25 from the remainder of the property or the division of that three-dimensional
26 portion or portions into condominiums shall not constitute a further subdivision as
27 defined in Section 66424, provided each of the following conditions has been
28 satisfied:

29 (1) The total number of condominiums established is not increased above the
30 number authorized by the local agency in approving the parcel map or final map.

31 (2) A perpetual estate or an estate for years in the remainder of the property is
32 held by the condominium owners in undivided interests in common, or by an
33 association as defined in subdivision (a) of Section 1351 or in Section 6528 of the
34 Civil Code, and the duration of the estate in the remainder of the property is the
35 same as the duration of the estate in the condominiums.

36 (3) The three-dimensional portion or portions of property are described on a
37 condominium plan or plans, as defined in subdivision (e) of Section 1351 or in
38 Section 6540 of the Civil Code.

39 **Comment.** Section 66427 is amended to add cross-references to Civil Code Sections 6528 and
40 6540, reflecting the enactment of the Commercial and Industrial Common Interest Development
41 Act (Civ. Code §§ 6500-6876).

1 **Gov't Code § 66452.10 (amended). Stock cooperative or community apartment project**

2 SEC. _____. Section 66452.10 of the Government Code is amended to read:

3 66452.10. A stock cooperative, as defined in Section 11003.2 of the Business
4 and Professions Code, or a community apartment project, as defined in Section
5 11004 of the Business and Professions Code, shall not be converted to a
6 condominium, as defined in Section 783 of the Civil Code, unless the required
7 number of (1) owners and (2) trustees or beneficiaries of each recorded deed of
8 trust and mortgagees of each recorded mortgage in the cooperative or project, as
9 specified in the bylaws, or other organizational documents, have voted in favor of
10 the conversion. If the bylaws or other organizational documents do not expressly
11 specify the number of votes required to approve the conversion, a majority vote of
12 the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and
13 mortgagees of each recorded mortgage in the cooperative or project shall be
14 required. Upon approval of the conversion as set forth above and in compliance
15 with subdivision (e) of Section 1351, or with Sections 6626 and 6628, of the Civil
16 Code, all conveyances and other documents necessary to effectuate the conversion
17 shall be executed by the required number of owners in the cooperative or project
18 as specified in the bylaws or other organizational documents. If the bylaws or
19 other organizational documents do not expressly specify the number of owners
20 necessary to execute the conveyances or other documents, a majority of owners in
21 the cooperative or project shall be required to execute the conveyances and other
22 documents. Conveyances and other documents executed under the foregoing
23 provisions shall be binding upon and affect the interests of all parties in the
24 cooperative or project. The provisions of Section 66499.31 shall not apply to a
25 violation of this section.

26 **Comment.** Section 66452.10 is amended to add cross-references to Civil Code Sections 6626
27 and 6628, reflecting the enactment of the Commercial and Industrial Common Interest
28 Development Act (Civ. Code §§ 6500-6876).

29 **Gov't Code § 66475.2 (amended). Local transit facilities**

30 SEC. _____. Section 66475.2 of the Government Code is amended to read:

31 66475.2. (a) There may be imposed by local ordinance a requirement of a
32 dedication or an irrevocable offer of dedication of land within the subdivision for
33 local transit facilities such as bus turnouts, benches, shelters, landing pads and
34 similar items that directly benefit the residents of a subdivision. The irrevocable
35 offers may be terminated as provided in subdivisions (c) and (d) of Section
36 66477.2.

37 (b) Only the payment of fees in lieu of the dedication of land may be required in
38 subdivisions that consist of the subdivision of airspace in existing buildings into
39 condominium projects, stock cooperatives, or community apartment projects, as
40 those terms are defined in Section 1351, or in Sections 6542 and 6566, of the Civil
41 Code.

1 **Comment.** Section 66475.2 is amended to add cross-references to Civil Code Sections 6542
2 and 6566, reflecting the enactment of the Commercial and Industrial Common Interest
3 Development Act (Civ. Code §§ 6500-6876).

HEALTH AND SAFETY CODE

4 **Health & Safety Code § 13132.7 (amended). Fire retardant roof covering that meets** 5 **building standards**

6 SEC. _____. Section 13132.7 of the Health and Safety Code is amended to read:

7 13132.7. (a) Within a very high fire hazard severity zone designated by the
8 Director of Forestry and Fire Protection pursuant to Article 9 (commencing with
9 Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code
10 and within a very high hazard severity zone designated by a local agency pursuant
11 to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5
12 of the Government Code, the entire roof covering of every existing structure
13 where more than 50 percent of the total roof area is replaced within any one-year
14 period, every new structure, and any roof covering applied in the alteration, repair,
15 or replacement of the roof of every existing structure, shall be a fire retardant roof
16 covering that is at least class B as defined in the Uniform Building Code, as
17 adopted and amended by the State Building Standards Commission.

18 (b) In all other areas, the entire roof covering of every existing structure where
19 more than 50 percent of the total roof area is replaced within any one-year period,
20 every new structure, and any roof covering applied in the alteration, repair, or
21 replacement of the roof of every existing structure, shall be a fire retardant roof
22 covering that is at least class C as defined in the Uniform Building Code, as
23 adopted and amended by the State Building Standards Commission.

24 (c) Notwithstanding subdivision (b), within state responsibility areas classified
25 by the State Board of Forestry and Fire Protection pursuant to Article 3
26 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public
27 Resources Code, except for those state responsibility areas designated as moderate
28 fire hazard responsibility zones, the entire roof covering of every existing structure
29 where more than 50 percent of the total roof area is replaced within any one-year
30 period, every new structure, and any roof covering applied in the alteration, repair,
31 or replacement of the roof of every existing structure, shall be a fire retardant roof
32 covering that is at least class B as defined in the Uniform Building Code, as
33 adopted and amended by the State Building Standards Commission.

34 (d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard
35 severity zones designated by the Director of Forestry and Fire Protection pursuant
36 to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4
37 of the Public Resources Code or by a local agency pursuant to Chapter 6.8
38 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the
39 Government Code, the entire roof covering of every existing structure where more
40 than 50 percent of the total roof area is replaced within any one-year period, every

1 new structure, and any roof covering applied in the alteration, repair, or
2 replacement of the roof of every existing structure, shall be a fire retardant roof
3 covering that is at least class A as defined in the Uniform Building Code, as
4 adopted and amended by the State Building Standards Commission.

5 (2) Paragraph (1) does not apply to any jurisdiction containing a very high fire
6 hazard severity zone if the jurisdiction fulfills both of the following requirements:

7 (A) Adopts the model ordinance approved by the State Fire Marshal pursuant to
8 Section 51189 of the Government Code or an ordinance that substantially
9 conforms to the model ordinance of the State Fire Marshal.

10 (B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

11 (e) The State Building Standards Commission shall incorporate the requirements
12 set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to
13 the California Building Standards Code in accordance with Chapter 4
14 (commencing with Section 18935) of Part 2.5 of Division 13.

15 (f) Nothing in this section shall limit the authority of a city, county, city and
16 county, or fire protection district in establishing more restrictive requirements, in
17 accordance with current law, than those specified in this section.

18 (g) This section shall not affect the validity of an ordinance, adopted prior to the
19 effective date for the relevant roofing standard specified in subdivisions (a) and
20 (b), by a city, county, city and county, or fire protection district, unless the
21 ordinance mandates a standard that is less stringent than the standards set forth in
22 subdivision (a), in which case the ordinance shall not be valid on or after the
23 effective date for the relevant roofing standard specified in subdivisions (a) and
24 (b).

25 (h) Any qualified historical building or structure as defined in Section 18955
26 may, on a case-by-case basis, utilize alternative roof constructions as provided by
27 the State Historical Building Code.

28 (i) The installer of the roof covering shall provide certification of the roof
29 covering classification, as provided by the manufacturer or supplier, to the
30 building owner and, when requested, to the agency responsible for enforcement of
31 this part. The installer shall also install the roof covering in accordance with the
32 manufacturer's listing.

33 (j) No wood roof covering materials shall be sold or applied in this state unless
34 both of the following conditions are met:

35 (1) The materials have been approved and listed by the State Fire Marshal as
36 complying with the requirements of this section.

37 (2) The materials have passed at least five years of the 10-year natural
38 weathering test. The 10-year natural weathering test required by this subdivision
39 shall be conducted in accordance with standard 15-2 of the 1994 edition of the
40 Uniform Building Code at a testing facility recognized by the State Fire Marshal.

41 (k) The Insurance Commissioner shall accept the use of fire retardant wood roof
42 covering material that complies with the requirements of this section, used in the
43 partial repair or replacement of nonfire retardant wood roof covering material, as

1 complying with the requirement in Section 2695.9 of Title 10 of the California
2 Code of Regulations relative to matching replacement items in quality, color, and
3 size.

4 (l) No common interest development, as defined in Section 1351 or 6534 of the
5 Civil Code, may require ~~a homeowner~~ an owner to install or repair a roof in a
6 manner that is in violation of this section. The governing documents, as defined in
7 Section 1351 or 6552 of the Civil Code, of a common interest development within
8 a very high fire severity zone shall allow for at least one type of fire retardant roof
9 covering material that meets the requirements of this section.

10 **Comment.** Subdivision (l) of Section 13132.7 is amended to add cross-references to Civil
11 Code Sections 6534 and 6552, and to make a conforming terminological change, reflecting the
12 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
13 6500-6876).

14 **Health & Safety Code § 19850 (amended). Filing of building plans**

15 SEC. _____. Section 19850 of the Health and Safety Code is amended to read:

16 19850. The building department of every city or county shall maintain an
17 official copy, which may be on microfilm or other type of photographic copy, of
18 the plans of every building, during the life of the building, for which the
19 department issued a building permit.

20 “Building department” means the department, bureau, or officer charged with
21 the enforcement of laws or ordinances regulating the erection, construction, or
22 alteration of buildings.

23 Except for plans of a common interest development as defined in Section 1351
24 or 6534 of the Civil Code, plans need not be filed for:

25 (a) Single or multiple dwellings not more than two stories and basement in
26 height.

27 (b) Garages and other structures appurtenant to buildings described under
28 subdivision (a).

29 (c) Farm or ranch buildings.

30 (d) Any one-story building where the span between bearing walls does not
31 exceed 25 feet. The exemption in this subdivision does not, however, apply to a
32 steel frame or concrete building.

33 **Comment.** Section 19850 is amended to add a cross-reference to Civil Code Section 6534,
34 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
35 (Civ. Code §§ 6500-6876).

36 **Health & Safety Code § 25400.22 (amended). Lien placed on contaminated property**

37 SEC. _____. Section 25400.22 of the Health and Safety Code is amended to read:

38 25400.22. (a) No later than 10 working days after the date when a local health
39 officer determines that property is contaminated pursuant to subdivision (b) of
40 Section 25400.20, the local health officer shall do all of the following:

1 (1) Except as provided in paragraph (2), if the property is real property, record
2 with the county recorder a lien on the property. The lien shall specify all of the
3 following:

4 (A) The name of the agency on whose behalf the lien is imposed.

5 (B) The date on which the property is determined to be contaminated.

6 (C) The legal description of the real property and the assessor's parcel number.

7 (D) The record owner of the property.

8 (E) The amount of the lien, which shall be the greater of two hundred dollars
9 (\$200) or the costs incurred by the local health officer in compliance with this
10 chapter, including, but not limited to, the cost of inspection performed pursuant to
11 Section 25400.19 and the county recorder's fee.

12 (2)(A) If the property is a mobilehome or manufactured home specified in
13 paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record
14 with a restraint on the mobilehome, or manufactured home with the Department of
15 Housing and Community Development, in the form prescribed by that department,
16 providing notice of the determination that the property is contaminated.

17 (B) If the property is a recreational vehicle specified in paragraph (2) of
18 subdivision (t) of Section 25400.11, perfect by filing with the Department of
19 Motor Vehicles a vehicle license stop on the recreational vehicle in the form
20 prescribed by that department, providing notice of the determination that the
21 property is contaminated.

22 (C) If the property is a mobilehome or manufactured home, not subject to
23 paragraph (2) of subdivision (t) of Section 25400.11, is located on real property,
24 and is not attached to that real property, the local health officer shall record a lien
25 for the real property with the county recorder, and the Department of Housing and
26 Community Development shall amend the permanent record with a restraint for
27 the mobilehome or manufactured home, in the form and with the contents
28 prescribed by that department.

29 (3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall
30 specify all of the following:

31 (A) The name of the agency on whose behalf the lien, restraint, or vehicle
32 license stop is imposed.

33 (B) The date on which the property is determined to be contaminated.

34 (C) The legal description of the real property and the assessor's parcel number,
35 and the mailing and street address or space number of the manufactured home,
36 mobilehome, or recreational vehicle or the vehicle identification number of the
37 recreational vehicle, if applicable.

38 (D) The registered owner of the mobilehome, manufactured home, or
39 recreational vehicle, if applicable, or the name of the owner of the real property as
40 indicated in the official county records.

41 (E) The amount of the lien, if applicable, which shall be the greater of two
42 hundred dollars (\$200) or the costs incurred by the local health officer in
43 compliance with this chapter, including, but not limited to, the cost of inspection

1 performed pursuant to Section 25400.19 and the fee charged by the Department of
2 Housing and Community Development and the Department of Motor Vehicles
3 pursuant to paragraph (2) of subdivision (b).

4 (F) Other information required by the county recorder for the lien, the
5 Department of Housing and Community Development for the restraint, or the
6 Department of Motor Vehicles for the vehicle license stop.

7 (4) Issue to persons specified in subdivisions (d), (e), and (f) an order
8 prohibiting the use or occupancy of the contaminated portions of the property.

9 (b)(1) The county recorder's fees for recording and indexing documents
10 provided for in this section shall be in the amount specified in Article 5
11 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the
12 Government Code.

13 (2) The Department of Housing and Community Development and the
14 Department of Motor Vehicles may charge a fee to cover its administrative costs
15 for recording and indexing documents provided for in paragraph (2) of subdivision
16 (a).

17 (c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect,
18 and priority of a judgment lien. The restraint amending the permanent record
19 pursuant to subdivision (a) shall be displayed on any manufactured home or
20 mobilehome title search until the restraint is released. The vehicle license stop
21 shall remain in effect until it is released.

22 (2) The local health officer shall not authorize the release of a lien, restraint, or
23 vehicle license stop made pursuant to subdivision (a), until one of the following
24 occurs:

25 (A) The property owner satisfies the real property lien, or the contamination in
26 the mobilehome, manufactured home, or recreational vehicle is abated to the
27 satisfaction of the local health officer consistent with the notice in the restraint, or
28 vehicle license stop and the local health officer issues a release pursuant to Section
29 25400.27.

30 (B) For a manufactured home or mobilehome, the local health officer determines
31 that the unit will be destroyed or permanently salvaged. For the purposes of this
32 paragraph, the unit shall not be reregistered after this determination is made unless
33 the local health officer issues a release pursuant to Section 25400.27.

34 (C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in
35 a foreclosure sale.

36 (d) Except as otherwise specified in this section, an order issued pursuant to this
37 section shall be served, either personally or by certified mail, return receipt
38 requested in the following manner:

39 (1) For real property, to all known occupants of the property and to all persons
40 who have an interest in the property, as contained in the records of the recorder's
41 office of the county in which the property is located.

42 (2) In the case of a mobilehome or manufactured home, the order shall be served
43 to the legal owner, as defined in Section 18005.8, each junior lienholder, as

1 defined in Section 18005.3, and the registered owner, as defined in Section
2 18009.5.

3 (3) In the case of a recreational vehicle, the order shall be served on the legal
4 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
5 defined in Section 505 of the Vehicle Code.

6 (e) If the whereabouts of the person described in subdivision (d) are unknown
7 and cannot be ascertained by the local health officer, in the exercise of reasonable
8 diligence, and the local health officer makes an affidavit to that effect, the local
9 health officer shall serve the order by personal service or by mailing a copy of the
10 order by certified mail, postage prepaid, return receipt requested, as follows:

11 (1) The order related to real property shall be served to each person at the
12 address appearing on the last equalized tax assessment roll of the county where the
13 property is located, and to all occupants of the affected unit.

14 (2) In the case of a mobilehome or manufactured home, the order shall be served
15 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
16 defined in Section 18005.3, and the registered owner, as defined in Section
17 18009.5, at the address appearing on the permanent record and all occupants of the
18 affected unit at the mobilehome park space.

19 (3) In the case of a recreational vehicle, the order shall be served on the legal
20 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
21 defined in Section 505 of the Vehicle Code, at the address appearing on the
22 permanent record and all occupants of the affected vehicle at the mobilehome park
23 or special occupancy park space.

24 (f)(1) The local health officer shall also mail a copy of the order required by this
25 section to the address of each person or party having a recorded right, title, estate,
26 lien, or interest in the property and to the association of a common interest
27 development, as defined in Section 1351, or in Sections 6528 and 6534, of the
28 Civil Code.

29 (2) In addition to the requirements of paragraph (1), if the affected property is a
30 mobilehome, manufactured home, or recreational vehicle, specified in paragraph
31 (2) of subdivision (t) of Section 25400.11, the order issued by the local health
32 officer shall also be served, either personally or by certified mail, return receipt
33 requested, to the owner of the mobilehome park or special occupancy park.

34 (g) The order issued pursuant to this section shall include all of the following
35 information:

36 (1) A description of the property.

37 (2) The parcel identification number, address, or space number, if applicable.

38 (3) The vehicle identification number, if applicable.

39 (4) A description of the local health officer's intended course of action.

40 (5) A specification of the penalties for noncompliance with the order.

41 (6) A prohibition on the use of all or portions of the property that are
42 contaminated.

1 (7) A description of the measures the property owner is required to take to
2 decontaminate the property.

3 (8) An indication of the potential health hazards involved.

4 (9) A statement that a property owner who fails to provide a notice or disclosure
5 that is required by this chapter is subject to a civil penalty of up to five thousand
6 dollars (\$5,000).

7 (h) The local health officer shall provide a copy of the order to the local building
8 or code enforcement agency or other appropriate agency responsible for the
9 enforcement of the State Housing Law (Part 1.5 (commencing with Section
10 17910) of Division 13).

11 (i) The local health officer shall post the order in a conspicuous place on the
12 property within one working day of the date that the order is issued.

13 **Comment.** Subdivision (f) of Section 25400.22 is amended to add cross-references to Civil
14 Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial
15 Common Interest Development Act (Civ. Code §§ 6500-6876).

16 **Health & Safety Code § 25915.2 (amended). Publication and mailing of notice**

17 SEC. _____. Section 25915.2 of the Health and Safety Code is amended to read:

18 25915.2. (a) Notice provided pursuant to this chapter shall be provided in
19 writing to each individual employee, and shall be mailed to other owners
20 designated to receive the notice pursuant to subdivision (a) of Section 25915.5,
21 within 15 days of the first receipt by the owner of information identifying the
22 presence or location of asbestos-containing construction materials in the building.
23 This notice shall be provided annually thereafter. In addition, if new information
24 regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision
25 (a) of Section 25915 has been obtained within 90 days after the notice required by
26 this subdivision is provided or any subsequent 90-day period, then a supplemental
27 notice shall be provided within 15 days of the close of that 90-day period.

28 (b) Notice provided pursuant to this chapter shall be provided to new employees
29 within 15 days of commencement of work in the building.

30 (c) Notice provided pursuant to this chapter shall be mailed to any new owner
31 designated to receive the notice pursuant to subdivision (a) of Section 25915.5
32 within 15 days of the effective date of the agreement under which a person
33 becomes a new owner.

34 (d) Subdivisions (a) and (c) shall not be construed to require owners of a
35 building or part of a building within a residential common interest development to
36 mail written notification to other owners of a building or part of a building within
37 the residential common interest development, if all the following conditions are
38 met:

39 (1) The association conspicuously posts, in each building or part of a building
40 known to contain asbestos-containing materials, a large sign in a prominent
41 location that fully informs persons entering each building or part of a building

1 within the common interest development that the association knows the building
2 contains asbestos-containing materials.

3 The sign shall also inform persons of the location where further information, as
4 required by this chapter, is available about the asbestos-containing materials
5 known to be located in the building.

6 (2) The owners or association disclose, as soon as practicable before the transfer
7 of title of a separate interest in the common interest development, to a transferee
8 the existence of asbestos-containing material in a building or part of a building
9 within the common interest development.

10 Failure to comply with this section shall not invalidate the transfer of title of real
11 property. This paragraph shall only apply to transfers of title of separate interests
12 in the common interest development of which the owners have knowledge. As
13 used in this section, “association” and “common interest development” are defined
14 in Section 1351, or Sections 6528 and 6534, of the Civil Code.

15 (e) If a person contracting with an owner receives notice pursuant to this
16 chapter, that contractor shall provide a copy of the notice to his or her employees
17 or contractors working within the building.

18 (f) If the asbestos-containing construction material in the building is limited to
19 an area or areas within the building that meet all the following criteria:

20 (1) Are unique and physically defined.

21 (2) Contain asbestos-containing construction materials in structural, mechanical,
22 or building materials which are not replicated throughout the building.

23 (3) Are not connected to other areas through a common ventilation system; then,
24 an owner required to give notice to his or her employees pursuant to subdivision
25 (a) of Section 25915 or 25915.1 may provide that notice only to the employees
26 working within or entering that area or those areas of the building meeting the
27 conditions above.

28 (g) If the asbestos-containing construction material in the building is limited to
29 an area or areas within the building that meet all the following criteria:

30 (1) Are accessed only by building maintenance employees or contractors and are
31 not accessed by tenants or employees in the building, other than on an incidental
32 basis.

33 (2) Contain asbestos-containing construction materials in structural, mechanical,
34 or building materials which are not replicated in areas of the building which are
35 accessed by tenants and employees.

36 (3) The owner knows that no asbestos fibers are being released or have the
37 reasonable possibility to be released from the material; then, as to that asbestos-
38 containing construction material, an owner required to give notice to his or her
39 employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may
40 provide that notice only to its building maintenance employees and contractors
41 who have access to that area or those areas of the building meeting the conditions
42 above.

(h) In those areas of a building where the asbestos-containing construction material is composed only of asbestos fibers which are completely encapsulated, if the owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from that material in its present condition and has no knowledge that other asbestos-containing material is present, then an owner required to give notice pursuant to subdivision (a) of Section 25915 shall provide the information required in paragraph (2) of subdivision (a) of Section 25915 and may substitute the following notice for the requirements of paragraphs (1), (3), (4), and (5) of subdivision (a) of Section 25915:

(1) The existence of, conclusions from, and a description or list of the contents of, that portion of any survey conducted to determine the existence and location of asbestos-containing construction materials within the building that refers to the asbestos materials described in this subdivision, and information describing when and where the results of the survey are available pursuant to Section 25917.

(2) Information to convey that moving, drilling, boring, or otherwise disturbing the asbestos-containing construction material identified may present a health risk and, consequently, should not be attempted by an unqualified employee. The notice shall identify the appropriate person the employee is required to contact if the condition of the asbestos-containing construction material deteriorates.

Comment. Paragraph (2) of subdivision (d) of Section 25915.2 is amended to add cross-references to Civil Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

Health & Safety Code § 33050 (amended). Legislative declaration of policy in undertaking community redevelopment projects

SEC. _____. Section 33050 of the Health and Safety Code is amended to read:

33050. (a) It is hereby declared to be the policy of the state that in undertaking community redevelopment projects under this part there shall be no discrimination because of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Section 33050 is amended to add a cross-reference to Civil Code Section 6714, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

1 **Health & Safety Code § 33435 (amended). Obligation of lessees and purchasers to refrain**
2 **from discrimination**

3 SEC. _____. Section 33435 of the Health and Safety Code is amended to read:

4 33435. (a) Agencies shall obligate lessees and purchasers of real property
5 acquired in redevelopment projects and owners of property improved as a part of a
6 redevelopment project to refrain from restricting the rental, sale, or lease of the
7 property on any basis listed in subdivision (a) or (d) of Section 12955 of the
8 Government Code, as those bases are defined in Sections 12926, 12926.1,
9 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
10 Section 12955.2 of the Government Code. All deeds, leases, or contracts for the
11 sale, lease, sublease, or other transfer of any land in a redevelopment project shall
12 contain or be subject to the nondiscrimination or nonsegregation clauses hereafter
13 prescribed.

14 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
15 (a) shall not be construed to apply to housing for older persons, as defined in
16 Section 12955.9 of the Government Code. With respect to familial status, nothing
17 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
18 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
19 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
20 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
21 shall apply to subdivision (a).

22 **Comment.** Section 33435 is amended to add a cross-reference to Civil Code Section 6714,
23 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
24 (Civ. Code §§ 6500-6876).

25 **Health & Safety Code § 33436 (amended). Nondiscrimination and nonsegregation clauses**

26 SEC. _____. Section 33436 of the Health and Safety Code is amended to read:

27 33436. Express provisions shall be included in all deeds, leases, and contracts
28 that the agency proposes to enter into with respect to the sale, lease, sublease,
29 transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment
30 project in substantially the following form:

31 (a)(1) In deeds the following language shall appear-- "The grantee herein
32 covenants by and for himself or herself, his or her heirs, executors, administrators,
33 and assigns, and all persons claiming under or through them, that there shall be no
34 discrimination against or segregation of, any person or group of persons on
35 account of any basis listed in subdivision (a) or (d) of Section 12955 of the
36 Government Code, as those bases are defined in Sections 12926, 12926.1,
37 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
38 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer,
39 use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall
40 the grantee or any person claiming under or through him or her, establish or permit
41 any practice or practices of discrimination or segregation with reference to the
42 selection, location, number, use or occupancy of tenants, lessees, subtenants,

1 sublessees, or vendees in the premises herein conveyed. The foregoing covenants
2 shall run with the land.”

3 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
4 shall not be construed to apply to housing for older persons, as defined in Section
5 12955.9 of the Government Code. With respect to familial status, nothing in
6 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
7 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
8 of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and
9 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
10 apply to paragraph (1).

11 (b)(1) In leases the following language shall appear-- “The lessee herein
12 covenants by and for himself or herself, his or her heirs, executors, administrators,
13 and assigns, and all persons claiming under or through him or her, and this lease is
14 made and accepted upon and subject to the following conditions:

15 That there shall be no discrimination against or segregation of any person or
16 group of persons, on account of any basis listed in subdivision (a) or (d) of Section
17 12955 of the Government Code, as those bases are defined in Sections 12926,
18 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
19 and Section 12955.2 of the Government Code, in the leasing, subleasing,
20 transferring, use, occupancy, tenure, or enjoyment of the premises herein leased
21 nor shall the lessee himself or herself, or any person claiming under or through
22 him or her, establish or permit any such practice or practices of discrimination or
23 segregation with reference to the selection, location, number, use, or occupancy, of
24 tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

25 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
26 shall not be construed to apply to housing for older persons, as defined in Section
27 12955.9 of the Government Code. With respect to familial status, nothing in
28 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
29 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
30 of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and
31 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
32 apply to paragraph (1).

33 (c) In contracts entered into by the agency relating to the sale, transfer, or
34 leasing of land or any interest therein acquired by the agency within any survey
35 area or redevelopment project the foregoing provisions in substantially the forms
36 set forth shall be included and the contracts shall further provide that the foregoing
37 provisions shall be binding upon and shall obligate the contracting party or parties
38 and any subcontracting party or parties, or other transferees under the instrument.

39 **Comment.** Section 33436 is amended to add cross-references to Civil Code Section 6714,
40 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
41 (Civ. Code §§ 6500-6876).

1 **Health & Safety Code § 35811 (amended). Consideration of ethnicity, religion, sex, marital**
2 **status, or national origin**

3 SEC. _____. Section 35811 of the Health and Safety Code is amended to read:

4 35811. (a) No financial institution shall discriminate in the availability of, or in
5 the provision of, financial assistance for the purpose of purchasing, constructing,
6 rehabilitating, improving, or refinancing housing accommodations due, in whole
7 or in part, to the consideration of any basis listed in subdivision (a) or (d) of
8 Section 12955 of the Government Code, as those bases are defined in Sections
9 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
10 12955, and Section 12955.2 of the Government Code.

11 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
12 (a) shall not be construed to apply to housing for older persons, as defined in
13 Section 12955.9 of the Government Code. With respect to familial status, nothing
14 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
15 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
16 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
17 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
18 shall apply to subdivision (a).

19 **Comment.** Section 35811 is amended to add a cross-reference to Civil Code Section 6714,
20 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
21 (Civ. Code §§ 6500-6876).

22 **Health & Safety Code § 37630 (amended). Equal opportunity**

23 SEC. _____. Section 37630 of the Health and Safety Code is amended to read:

24 37630. (a) The local agency shall require that any property that is rehabilitated
25 with financing obtained under this part shall be open, upon sale or rental of any
26 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of
27 Section 12955 of the Government Code, as those bases are defined in Sections
28 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
29 12955, and Section 12955.2 of the Government Code. The local agency shall also
30 require that contractors and subcontractors engaged in historical rehabilitation
31 financed under this part provide equal opportunity for employment, without
32 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
33 Government Code, as those bases are defined in Sections 12926 and 12926.1 of
34 the Government Code, and except as otherwise provided in Section 12940 of the
35 Government Code. All contracts and subcontracts for historical rehabilitation
36 financed under this part shall be let without discrimination as to any basis listed in
37 subdivision (a) of Section 12940 of the Government Code, as those bases are
38 defined in Sections 12926 and 12926.1 of the Government Code, and except as
39 otherwise provided in Section 12940 of the Government Code.

40 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
41 (a) shall not be construed to apply to housing for older persons, as defined in
42 Section 12955.9 of the Government Code. With respect to familial status, nothing

1 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
2 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
3 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
4 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
5 shall apply to subdivision (a).

6 **Comment.** Section 37630 is amended to add a cross-reference to Civil Code Section 6714,
7 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
8 (Civ. Code §§ 6500-6876).

9 **Health & Safety Code § 50955 (amended). Civil rights and equal employment opportunity**

10 SEC. _____. Section 50955 of the Health and Safety Code is amended to read:

11 50955. (a) The agency and every housing sponsor shall require that occupancy
12 of housing developments assisted under this part shall be open to all regardless of
13 any basis listed in subdivision (a) or (d) of Section 12955 of the Government
14 Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and
15 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
16 Government Code, that contractors and subcontractors engaged in the construction
17 of housing developments shall provide an equal opportunity for employment,
18 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
19 the Government Code, as those bases are defined in Sections 12926 and 12926.1
20 of the Government Code, and except as otherwise provided in Section 12940 of
21 the Government Code, and that contractors and subcontractors shall submit and
22 receive approval of an affirmative action program prior to the commencement of
23 construction or rehabilitation. Affirmative action requirements respecting
24 apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070)
25 of Division 3 of the Labor Code.

26 All contracts for the management, construction, or rehabilitation of housing
27 developments, and contracts let by housing sponsors, contractors, and
28 subcontractors in the performance of management, construction or rehabilitation,
29 shall be let without discrimination as to any basis listed in subdivision (a) of
30 Section 12940 of the Government Code, as those bases are defined in Sections
31 12926 and 12926.1 of the Government Code, except as otherwise provided in
32 Section 12940 of the Government Code, and pursuant to an affirmative action
33 program, which shall be at not less than the Federal Housing Administration
34 affirmative action standards unless the board makes a specific finding that the
35 particular requirement would be unworkable. The agency shall periodically review
36 implementation of affirmative action programs required by this section.

37 It shall be the policy of the agency and housing sponsors to encourage
38 participation with respect to all projects by minority developers, builders, and
39 entrepreneurs in all levels of construction, planning, financing, and management
40 of housing developments. In areas of minority concentration the agency shall
41 require significant participation of minorities in the sponsorship, construction,
42 planning, financing, and management of housing developments. The agency shall

(1) require that, to the greatest extent feasible, opportunities for training and employment arising in connection with the planning, construction, rehabilitation, and operation of housing developments financed pursuant to this part be given to persons of low income residing in the area of that housing, and (2) determine and implement means to secure the participation of small businesses in the performance of contracts for work on housing developments and to develop the capabilities of these small businesses to more efficiently and competently participate in the economic mainstream. In order to achieve this participation by small businesses, the agency may, among other things, waive retention requirements otherwise imposed on contractors or subcontractors by regulation of the agency and may authorize or make advance payments for work to be performed. The agency shall develop relevant selection criteria for the participation of small businesses to ensure that, to the greatest extent feasible, the participants possess the necessary nonfinancial capabilities. The agency may, with respect to these small businesses, waive bond requirements otherwise imposed upon contractors or subcontractors by regulation of the agency, but the agency shall in that case substantially reduce the risk through (1) a pooled-risk bonding program, (2) a bond program in cooperation with other federal or state agencies, or (3) development of a self-insured bonding program with adequate reserves.

The agency shall adopt rules and regulations to implement this section.

Prior to commitment of a mortgage loan, the agency shall require each housing sponsor, except with respect to mutual self-help housing, to submit an affirmative marketing program that meets standards set forth in regulations of the agency. The agency shall require ~~such a~~ each housing sponsor to conduct the affirmative marketing program so approved. Additionally, the agency shall supplement the efforts of individual housing sponsors by conducting affirmative marketing programs with respect to housing at the state level.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (a) of Section 50955 is amended to make a stylistic revision.

Subdivision (b) is amended to add a cross-reference to Civil Code Section 6714, reflecting the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

Health & Safety Code § 51602 (amended). Nondiscrimination in occupancy of housing

SEC. _____. Section 51602 of the Health and Safety Code is amended to read:

1 51602. (a) The agency shall require that occupancy of housing for which a loan
2 is insured pursuant to this part shall be open to all regardless of any basis listed in
3 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
4 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
5 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,
6 and that contractors and subcontractors engaged in the construction or
7 rehabilitation of housing funded by a loan insured pursuant to this part shall
8 provide an equal opportunity for employment without discrimination as to any
9 basis listed in subdivision (a) of Section 12940 of the Government Code, as those
10 bases are defined in Sections 12926 and 12926.1 of the Government Code, and
11 except as otherwise provided in Section 12940 of the Government Code.

12 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
13 (a) shall not be construed to apply to housing for older persons, as defined in
14 Section 12955.9 of the Government Code. With respect to familial status, nothing
15 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
16 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
17 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
18 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
19 shall apply to subdivision (a).

20 (c) A qualified developer shall certify compliance with this section and Section
21 50955 according to requirements specified by the pertinent criteria of the agency.

22 **Comment.** Section 51602 is amended to add a cross-reference to Civil Code Section 6714,
23 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
24 (Civ. Code §§ 6500-6876).

25 **Health & Safety Code § 116048 (amended). Public swimming pool in common interest**
26 **development**

27 SEC. _____. Section 116048 of the Health and Safety Code is amended to read:
28 116048. (a) On or after January 1, 1987, for public swimming pools in any
29 common interest development, as defined in Section 1351 or 6534 of the Civil
30 Code, that consists of fewer than 25 separate interests, as defined in subdivision (l)
31 of Section 1351 or in Section 6564 of the Civil Code, the person operating each
32 ~~such~~ pool open for use shall be required to keep a record of the information
33 required by subdivision (a) of Section 65523 of Title 22 of the California
34 Administrative Code, except that the information shall be recorded at least two
35 times per week and at intervals no greater than four days apart.

36 (b) On or after January 1, 1987, any rule or regulation of the department that is
37 in conflict with subdivision (a) is invalid.

38 **Comment.** Section 116048 is amended to add cross-references to Civil Code Sections 6534
39 and 6564, reflecting the enactment of the Commercial and Industrial Common Interest
40 Development Act (Civ. Code §§ 6500-6876).

41 The section is also amended to make a stylistic revision.

INSURANCE CODE

1 **Ins. Code § 790.031 (amended). Application of Sections 790.034, 2071.1 and 10082.3**

2 SEC. _____. Section 790.031 of the Insurance Code is amended to read:

3 790.031. The requirements of subdivision (b) of Section 790.034, and Sections
4 2071.1 and 10082.3 shall apply only to policies of residential property insurance
5 as defined in Section 10087, policies and endorsements containing those
6 coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1
7 of Division 2, policies issued by the California Earthquake Authority pursuant to
8 Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies
9 and endorsements that insure against property damage and are issued to common
10 interest developments or to associations managing common interest developments,
11 as those terms are defined in Section 1351, or in Sections 6528 and 6534, of the
12 Civil Code, and to policies issued pursuant to Section 120 that insure against
13 property damage to residential units or contents thereof owned by one or more
14 persons located in this state.

15 **Comment.** Section 790.031 is amended to add cross-references to Civil Code Sections 6528
16 and 6534, reflecting the enactment of the Commercial and Industrial Common Interest
17 Development Act (Civ. Code §§ 6500-6876).

REVENUE AND TAXATION CODE

18 **Rev. & Tax. Code § 2188.6 (amended). Separate assessment of property divided into**
19 **condominiums**

20 SEC. _____. Section 2188.6 of the Revenue and Taxation Code is amended to
21 read:

22 2188.6. (a) Unless a request for exemption has been recorded pursuant to
23 subdivision (d), prior to the creation of a condominium as defined in Section 783
24 of the Civil Code, the county assessor may separately assess each individual unit
25 which is shown on the condominium plan of a proposed condominium project
26 when all of the following documents have been recorded as required by law:

27 (1) A subdivision final map or parcel map, as described in Sections 66434 and
28 66445, respectively, of the Government Code.

29 (2) A condominium plan, as defined in subdivision (e) of Section 1351 or in
30 Section 6540 of the Civil Code.

31 (3) A declaration, as defined in subdivision (h) of Section 1351 or in Section
32 6546 of the Civil Code.

33 (b) The tax due on each individual unit shall constitute a lien solely on that unit.

34 (c) The lien created pursuant to this section shall be a lien on an undivided
35 interest in a portion of real property coupled with a separate interest in space
36 called a unit as described in subdivision (f) of Section 1351 or in subdivision (b)
37 of Section 6542 of the Civil Code.

1 (d) The record owner of the real property may record with the condominium
2 plan a request that the real property be exempt from separate assessment pursuant
3 to this section. If a request for exemption is recorded, separate assessment of a
4 condominium unit shall be made only in accordance with Section 2188.3.

5 (e) This section shall become operative on January 1, 1990, and shall apply to
6 condominium projects for which a condominium plan is recorded after that date.

7 **Comment.** Section 2188.6 is amended to add cross-references to Civil Code Sections 6540,
8 6542, and 6546, reflecting the enactment of the Commercial and Industrial Common Interest
9 Development Act (Civ. Code §§ 6500-6876).

VEHICLE CODE

10 Veh. Code § 21107.7 (amended). Private road not open to public use

11 SEC. ____ . Section 21107.7 of the Vehicle Code is amended to read:

12 21107.7. (a) Any city or county may, by ordinance or resolution, find and
13 declare that there are privately owned and maintained roads as described in the
14 ordinance or resolution within the city or county that are not generally held open
15 for use of the public for purposes of vehicular travel but, by reason of their
16 proximity to or connection with highways, the interests of any residents residing
17 along the roads and the motoring public will best be served by application of the
18 provisions of this code to those roads. No ordinance or resolution shall be enacted
19 unless there is first filed with the city or county a petition requesting it by a
20 majority of the owners of any privately owned and maintained road, or by at least
21 a majority of the board of directors of a common interest development, as defined
22 by Section 1351 or 6534 of the Civil Code, that is responsible for maintaining the
23 road, and without a public hearing thereon and 10 days' prior written notice to all
24 owners of the road or all of the owners in the development. Upon enactment of the
25 ordinance or resolution, the provisions of this code shall apply to the privately
26 owned and maintained road if appropriate signs are erected at the entrance to the
27 road of the size, shape, and color as to be readily legible during daylight hours
28 from a distance of 100 feet, to the effect that the road is subject to the provisions
29 of this code. The city or county may impose reasonable conditions and may
30 authorize the owners, or board of directors of the common interest development, to
31 erect traffic signs, signals, markings, and devices which conform to the uniform
32 standards and specifications adopted by the Department of Transportation.

33 (b) The department shall not be required to provide patrol or enforce any
34 provisions of this code on any privately owned and maintained road subjected to
35 the provisions of this code under this section, except those provisions applicable to
36 private property other than by action under this section.

37 (c) As used in this section, "privately owned and maintained roads" includes
38 roads owned and maintained by a city, county or district that are not dedicated to

1 use by the public or are not generally held open for use of the public for purposes
2 of vehicular travel.

3 **Comment.** Section 21107.7 is amended to add a cross-reference to Civil Code Section 6534,
4 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
5 (Civ. Code §§ 6500-6876).

6 **Veh. Code § 22651 (amended). Circumstances in which removal of vehicle is permitted**

7 SEC. _____. Section 22651 of the Vehicle Code is amended to read:

8 22651. A peace officer, as defined in Chapter 4.5 (commencing with Section
9 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried
10 employee, who is engaged in directing traffic or enforcing parking laws and
11 regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is
12 located, may remove a vehicle located within the territorial limits in which the
13 officer or employee may act, under the following circumstances:

14 (a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a
15 tube or tunnel where the vehicle constitutes an obstruction to traffic.

16 (b) When a vehicle is parked or left standing upon a highway in a position so as
17 to obstruct the normal movement of traffic or in a condition so as to create a
18 hazard to other traffic upon the highway.

19 (c) When a vehicle is found upon a highway or public land and a report has
20 previously been made that the vehicle is stolen or a complaint has been filed and a
21 warrant thereon is issued charging that the vehicle was embezzled.

22 (d) When a vehicle is illegally parked so as to block the entrance to a private
23 driveway and it is impractical to move the vehicle from in front of the driveway to
24 another point on the highway.

25 (e) When a vehicle is illegally parked so as to prevent access by firefighting
26 equipment to a fire hydrant and it is impracticable to move the vehicle from in
27 front of the fire hydrant to another point on the highway.

28 (f) When a vehicle, except highway maintenance or construction equipment, is
29 stopped, parked, or left standing for more than four hours upon the right-of-way of
30 a freeway that has full control of access and no crossings at grade and the driver, if
31 present, cannot move the vehicle under its own power.

32 (g) When the person in charge of a vehicle upon a highway or public land is, by
33 reason of physical injuries or illness, incapacitated to an extent so as to be unable
34 to provide for its custody or removal.

35 (h)(1) When an officer arrests a person driving or in control of a vehicle for an
36 alleged offense and the officer is, by this code or other law, required or permitted
37 to take, and does take, the person into custody.

38 (2) When an officer serves a notice of an order of suspension or revocation
39 pursuant to Section 13388 or 13389.

40 (i)(1) When a vehicle, other than a rented vehicle, is found upon a highway or
41 public land, or is removed pursuant to this code, and it is known that the vehicle
42 has been issued five or more notices of parking violations to which the owner or

1 person in control of the vehicle has not responded within 21 calendar days of
2 notice of citation issuance or citation issuance or 14 calendar days of the mailing
3 of a notice of delinquent parking violation to the agency responsible for processing
4 notices of parking violations, or the registered owner of the vehicle is known to
5 have been issued five or more notices for failure to pay or failure to appear in
6 court for traffic violations for which a certificate has not been issued by the
7 magistrate or clerk of the court hearing the case showing that the case has been
8 adjudicated or concerning which the registered owner's record has not been
9 cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17,
10 the vehicle may be impounded until that person furnishes to the impounding law
11 enforcement agency all of the following:

12 (A) Evidence of his or her identity.

13 (B) An address within this state at which he or she can be located.

14 (C) Satisfactory evidence that all parking penalties due for the vehicle and all
15 other vehicles registered to the registered owner of the impounded vehicle, and all
16 traffic violations of the registered owner, have been cleared.

17 (2) The requirements in subparagraph (C) of paragraph (1) shall be fully
18 enforced by the impounding law enforcement agency on and after the time that the
19 Department of Motor Vehicles is able to provide access to the necessary records.

20 (3) A notice of parking violation issued for an unlawfully parked vehicle shall
21 be accompanied by a warning that repeated violations may result in the
22 impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full
23 amount of parking penalties or bail has been deposited, that person may demand to
24 be taken without unnecessary delay before a magistrate, for traffic offenses, or a
25 hearing examiner, for parking offenses, within the county in which the offenses
26 charged are alleged to have been committed and who has jurisdiction of the
27 offenses and is nearest or most accessible with reference to the place where the
28 vehicle is impounded. Evidence of current registration shall be produced after a
29 vehicle has been impounded, or, at the discretion of the impounding law
30 enforcement agency, a notice to appear for violation of subdivision (a) of Section
31 4000 shall be issued to that person.

32 (4) A vehicle shall be released to the legal owner, as defined in Section 370, if
33 the legal owner does all of the following:

34 (A) Pays the cost of towing and storing the vehicle.

35 (B) Submits evidence of payment of fees as provided in Section 9561.

36 (C) Completes an affidavit in a form acceptable to the impounding law
37 enforcement agency stating that the vehicle was not in possession of the legal
38 owner at the time of occurrence of the offenses relating to standing or parking. A
39 vehicle released to a legal owner under this subdivision is a repossessed vehicle
40 for purposes of disposition or sale. The impounding agency shall have a lien on
41 any surplus that remains upon sale of the vehicle to which the registered owner is
42 or may be entitled, as security for the full amount of the parking penalties for all
43 notices of parking violations issued for the vehicle and for all local administrative

1 charges imposed pursuant to Section 22850.5. The legal owner shall promptly
2 remit to, and deposit with, the agency responsible for processing notices of
3 parking violations from that surplus, on receipt of that surplus, the full amount of
4 the parking penalties for all notices of parking violations issued for the vehicle and
5 for all local administrative charges imposed pursuant to Section 22850.5.

6 (5) The impounding agency that has a lien on the surplus that remains upon the
7 sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4)
8 has a deficiency claim against the registered owner for the full amount of the
9 parking penalties for all notices of parking violations issued for the vehicle and for
10 all local administrative charges imposed pursuant to Section 22850.5, less the
11 amount received from the sale of the vehicle.

12 (j) When a vehicle is found illegally parked and there are no license plates or
13 other evidence of registration displayed, the vehicle may be impounded until the
14 owner or person in control of the vehicle furnishes the impounding law
15 enforcement agency evidence of his or her identity and an address within this state
16 at which he or she can be located.

17 (k) When a vehicle is parked or left standing upon a highway for 72 or more
18 consecutive hours in violation of a local ordinance authorizing removal.

19 (l) When a vehicle is illegally parked on a highway in violation of a local
20 ordinance forbidding standing or parking and the use of a highway, or a portion
21 thereof, is necessary for the cleaning, repair, or construction of the highway, or for
22 the installation of underground utilities, and signs giving notice that the vehicle
23 may be removed are erected or placed at least 24 hours prior to the removal by a
24 local authority pursuant to the ordinance.

25 (m) When the use of the highway, or a portion of the highway, is authorized by a
26 local authority for a purpose other than the normal flow of traffic or for the
27 movement of equipment, articles, or structures of unusual size, and the parking of
28 a vehicle would prohibit or interfere with that use or movement, and signs giving
29 notice that the vehicle may be removed are erected or placed at least 24 hours
30 prior to the removal by a local authority pursuant to the ordinance.

31 (n) Whenever a vehicle is parked or left standing where local authorities, by
32 resolution or ordinance, have prohibited parking and have authorized the removal
33 of vehicles. Except as provided in subdivision (v), a vehicle shall not be removed
34 unless signs are posted giving notice of the removal.

35 (o)(1) When a vehicle is found or operated upon a highway, public land, or an
36 offstreet parking facility under the following circumstances:

37 (A) With a registration expiration date in excess of six months before the date it
38 is found or operated on the highway, public lands, or the offstreet parking facility.

39 (B) Displaying in, or upon, the vehicle, a registration card, identification card,
40 temporary receipt, license plate, special plate, registration sticker, device issued
41 pursuant to Section 4853, or permit that was not issued for that vehicle, or is not
42 otherwise lawfully used on that vehicle under this code.

1 (C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or
2 falsified registration card, identification card, temporary receipt, license plate,
3 special plate, registration sticker, device issued pursuant to Section 4853, or
4 permit.

5 (2) When a vehicle described in paragraph (1) is occupied, only a peace officer,
6 as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of
7 the Penal Code, may remove the vehicle.

8 (3) For the purposes of this subdivision, the vehicle shall be released to the
9 owner or person in control of the vehicle only after the owner or person furnishes
10 the storing law enforcement agency with proof of current registration and a
11 currently valid driver's license to operate the vehicle.

12 (4) As used in this subdivision, "offstreet parking facility" means an offstreet
13 facility held open for use by the public for parking vehicles and includes a publicly
14 owned facility for offstreet parking, and a privately owned facility for offstreet
15 parking if a fee is not charged for the privilege to park and it is held open for the
16 common public use of retail customers.

17 (p) When the peace officer issues the driver of a vehicle a notice to appear for a
18 violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5,
19 or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle
20 so removed from the highway or public land, or from private property after having
21 been on a highway or public land, shall not be released to the registered owner or
22 his or her agent, except upon presentation of the registered owner's or his or her
23 agent's currently valid driver's license to operate the vehicle and proof of current
24 vehicle registration, or upon order of a court.

25 (q) When a vehicle is parked for more than 24 hours on a portion of highway
26 that is located within the boundaries of a common interest development, as defined
27 in subdivision (c) of Section 1351 or in Section 6534 of the Civil Code, and signs,
28 as required by paragraph (1) of subdivision (a) of Section 22658 of this code, have
29 been posted on that portion of highway providing notice to drivers that vehicles
30 parked thereon for more than 24 hours will be removed at the owner's expense,
31 pursuant to a resolution or ordinance adopted by the local authority.

32 (r) When a vehicle is illegally parked and blocks the movement of a legally
33 parked vehicle.

34 (s)(1) When a vehicle, except highway maintenance or construction equipment,
35 an authorized emergency vehicle, or a vehicle that is properly permitted or
36 otherwise authorized by the Department of Transportation, is stopped, parked, or
37 left standing for more than eight hours within a roadside rest area or viewpoint.

38 (2) Notwithstanding paragraph (1), when a commercial motor vehicle, as
39 defined in paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or
40 left standing for more than 10 hours within a roadside rest area or viewpoint.

41 (3) For purposes of this subdivision, a roadside rest area or viewpoint is a
42 publicly maintained vehicle parking area, adjacent to a highway, utilized for the
43 convenient, safe stopping of a vehicle to enable motorists to rest or to view the

1 scenery. If two or more roadside rest areas are located on opposite sides of the
2 highway, or upon the center divider, within seven miles of each other, then that
3 combination of rest areas is considered to be the same rest area.

4 (t) When a peace officer issues a notice to appear for a violation of Section
5 25279.

6 (u) When a peace officer issues a citation for a violation of Section 11700 and
7 the vehicle is being offered for sale.

8 (v)(1) When a vehicle is a mobile billboard advertising display, as defined in
9 Section 395.5, and is parked or left standing in violation of a local resolution or
10 ordinance adopted pursuant to subdivision (m) of Section 21100, if the registered
11 owner of the vehicle was previously issued a warning citation for the same
12 offense, pursuant to paragraph (2).

13 (2) Notwithstanding subdivision (a) of Section 22507, a city or county, in lieu of
14 posting signs noticing a local ordinance prohibiting mobile billboard advertising
15 displays adopted pursuant to subdivision (m) of Section 21100, may provide
16 notice by issuing a warning citation advising the registered owner of the vehicle
17 that he or she may be subject to penalties upon a subsequent violation of the
18 ordinance, that may include the removal of the vehicle as provided in paragraph
19 (1). A city or county is not required to provide further notice for a subsequent
20 violation prior to the enforcement of penalties for a violation of the ordinance.

21 **Comment.** Subdivision (q) of Section 22651 is amended to add a cross-reference to Civil Code
22 Section 6534, reflecting the enactment of the Commercial and Industrial Common Interest
23 Development Act (Civ. Code §§ 6500-6876).

24 **Veh. Code § 22651.05 (amended). Removal of vehicle by trained volunteer in specified**
25 **circumstances**

26 SEC. _____. Section 22651.05 of the Vehicle Code is amended to read:

27 22651.05. (a) A trained volunteer of a state or local law enforcement agency,
28 who is engaged in directing traffic or enforcing parking laws and regulations, of a
29 city, county, or jurisdiction of a state agency in which a vehicle is located, may
30 remove or authorize the removal of a vehicle located within the territorial limits in
31 which an officer or employee of that agency may act, under any of the following
32 circumstances:

33 (1) When a vehicle is parked or left standing upon a highway for 72 or more
34 consecutive hours in violation of a local ordinance authorizing the removal.

35 (2) When a vehicle is illegally parked or left standing on a highway in violation
36 of a local ordinance forbidding standing or parking and the use of a highway, or a
37 portion thereof, is necessary for the cleaning, repair, or construction of the
38 highway, or for the installation of underground utilities, and signs giving notice
39 that the vehicle may be removed are erected or placed at least 24 hours prior to the
40 removal by local authorities pursuant to the ordinance.

41 (3) Wherever the use of the highway, or a portion thereof, is authorized by local
42 authorities for a purpose other than the normal flow of traffic or for the movement

1 of equipment, articles, or structures of unusual size, and the parking of a vehicle
2 would prohibit or interfere with that use or movement, and signs giving notice that
3 the vehicle may be removed are erected or placed at least 24 hours prior to the
4 removal by local authorities pursuant to the ordinance.

5 (4) Whenever a vehicle is parked or left standing where local authorities, by
6 resolution or ordinance, have prohibited parking and have authorized the removal
7 of vehicles. A vehicle may not be removed unless signs are posted giving notice of
8 the removal.

9 (5) Whenever a vehicle is parked for more than 24 hours on a portion of
10 highway that is located within the boundaries of a common interest development,
11 as defined in subdivision (c) of Section 1351 or in Section 6534 of the Civil Code,
12 and signs, as required by Section 22658.2, have been posted on that portion of
13 highway providing notice to drivers that vehicles parked thereon for more than 24
14 hours will be removed at the owner's expense, pursuant to a resolution or
15 ordinance adopted by the local authority.

16 (b) The provisions of this chapter that apply to a vehicle removed pursuant to
17 Section 22651 apply to a vehicle removed pursuant to subdivision (a).

18 (c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his
19 or her own free will, provides services, without any financial gain, to a local or
20 state law enforcement agency, and who is duly trained and certified to remove a
21 vehicle by a local or state law enforcement agency.

22 **Comment.** Section 22651.05 is amended to add a cross-reference to Civil Code Section 6534,
23 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
24 (Civ. Code §§ 6500-6876).

25 **Veh. Code § 22658 (amended). Removal of vehicle from private property by property owner**

26 SEC. _____. Section 22658 of the Vehicle Code is amended to read:

27 22658. (a) The owner or person in lawful possession of private property,
28 including an association of a common interest development as defined in Section
29 1351, or in Sections 6528 and 6534, of the Civil Code, may cause the removal of a
30 vehicle parked on the property to a storage facility that meets the requirements of
31 subdivision (n) under any of the following circumstances:

32 (1) There is displayed, in plain view at all entrances to the property, a sign not
33 less than 17 inches by 22 inches in size, with lettering not less than one inch in
34 height, prohibiting public parking and indicating that vehicles will be removed at
35 the owner's expense, and containing the telephone number of the local traffic law
36 enforcement agency and the name and telephone number of each towing company
37 that is a party to a written general towing authorization agreement with the owner
38 or person in lawful possession of the property. The sign may also indicate that a
39 citation may also be issued for the violation.

40 (2) The vehicle has been issued a notice of parking violation, and 96 hours have
41 elapsed since the issuance of that notice.

1 (3) The vehicle is on private property and lacks an engine, transmission, wheels,
2 tires, doors, windshield, or any other major part or equipment necessary to operate
3 safely on the highways, the owner or person in lawful possession of the private
4 property has notified the local traffic law enforcement agency, and 24 hours have
5 elapsed since that notification.

6 (4) The lot or parcel upon which the vehicle is parked is improved with a single-
7 family dwelling.

8 (b) The tow truck operator removing the vehicle, if the operator knows or is able
9 to ascertain from the property owner, person in lawful possession of the property,
10 or the registration records of the Department of Motor Vehicles the name and
11 address of the registered and legal owner of the vehicle, shall immediately give, or
12 cause to be given, notice in writing to the registered and legal owner of the fact of
13 the removal, the grounds for the removal, and indicate the place to which the
14 vehicle has been removed. If the vehicle is stored in a storage facility, a copy of
15 the notice shall be given to the proprietor of the storage facility. The notice
16 provided for in this section shall include the amount of mileage on the vehicle at
17 the time of removal and the time of the removal from the property. If the tow truck
18 operator does not know and is not able to ascertain the name of the owner or for
19 any other reason is unable to give the notice to the owner as provided in this
20 section, the tow truck operator shall comply with the requirements of subdivision
21 (c) of Section 22853 relating to notice in the same manner as applicable to an
22 officer removing a vehicle from private property.

23 (c) This section does not limit or affect any right or remedy that the owner or
24 person in lawful possession of private property may have by virtue of other
25 provisions of law authorizing the removal of a vehicle parked upon private
26 property.

27 (d) The owner of a vehicle removed from private property pursuant to
28 subdivision (a) may recover for any damage to the vehicle resulting from any
29 intentional or negligent act of a person causing the removal of, or removing, the
30 vehicle.

31 (e)(1) An owner or person in lawful possession of private property, or an
32 association of a common interest development, causing the removal of a vehicle
33 parked on that property is liable for double the storage or towing charges
34 whenever there has been a failure to comply with paragraph (1), (2), or (3) of
35 subdivision (a) or to state the grounds for the removal of the vehicle if requested
36 by the legal or registered owner of the vehicle as required by subdivision (f).

37 (2) A property owner or owner's agent or lessee who causes the removal of a
38 vehicle parked on that property pursuant to the exemption set forth in
39 subparagraph (A) of paragraph (1) of subdivision (1) and fails to comply with that
40 subdivision is guilty of an infraction, punishable by a fine of one thousand dollars
41 (\$1,000).

42 (f) An owner or person in lawful possession of private property, or an
43 association of a common interest development, causing the removal of a vehicle

1 parked on that property shall notify by telephone or, if impractical, by the most
2 expeditious means available, the local traffic law enforcement agency within one
3 hour after authorizing the tow. An owner or person in lawful possession of private
4 property, an association of a common interest development, causing the removal
5 of a vehicle parked on that property, or the tow truck operator who removes the
6 vehicle, shall state the grounds for the removal of the vehicle if requested by the
7 legal or registered owner of that vehicle. A towing company that removes a
8 vehicle from private property in compliance with subdivision (I) is not responsible
9 in a situation relating to the validity of the removal. A towing company that
10 removes the vehicle under this section shall be responsible for the following:

11 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

12 (2) The removal of a vehicle other than the vehicle specified by the owner or
13 other person in lawful possession of the private property.

14 (g)(1)(A) Possession of a vehicle under this section shall be deemed to arise
15 when a vehicle is removed from private property and is in transit.

16 (B) Upon the request of the owner of the vehicle or that owner's agent, the
17 towing company or its driver shall immediately and unconditionally release a
18 vehicle that is not yet removed from the private property and in transit.

19 (C) A person failing to comply with subparagraph (B) is guilty of a
20 misdemeanor.

21 (2) If a vehicle is released to a person in compliance with subparagraph (B) of
22 paragraph (1), the vehicle owner or authorized agent shall immediately move that
23 vehicle to a lawful location.

24 (h) A towing company may impose a charge of not more than one-half of the
25 regular towing charge for the towing of a vehicle at the request of the owner, the
26 owner's agent, or the person in lawful possession of the private property pursuant
27 to this section if the owner of the vehicle or the vehicle owner's agent returns to
28 the vehicle after the vehicle is coupled to the tow truck by means of a regular
29 hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by
30 means of a conventional trailer, and before it is removed from the private property.
31 The regular towing charge may only be imposed after the vehicle has been
32 removed from the property and is in transit.

33 (i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section
34 is excessive if the charge exceeds the greater of the following:

35 (i) That which would have been charged for that towing or storage, or both,
36 made at the request of a law enforcement agency under an agreement between a
37 towing company and the law enforcement agency that exercises primary
38 jurisdiction in the city in which is located the private property from which the
39 vehicle was, or was attempted to be, removed, or if the private property is not
40 located within a city, then the law enforcement agency that exercises primary
41 jurisdiction in the county in which the private property is located.

42 (ii) That which would have been charged for that towing or storage, or both,
43 under the rate approved for that towing operator by the California Highway Patrol

1 for the jurisdiction in which the private property is located and from which the
2 vehicle was, or was attempted to be, removed.

3 (B) A towing operator shall make available for inspection and copying his or her
4 rate approved by the California Highway Patrol, if any, within 24 hours of a
5 request without a warrant to law enforcement, the Attorney General, district
6 attorney, or city attorney.

7 (2) If a vehicle is released within 24 hours from the time the vehicle is brought
8 into the storage facility, regardless of the calendar date, the storage charge shall be
9 for only one day. Not more than one day's storage charge may be required for a
10 vehicle released the same day that it is stored.

11 (3) If a request to release a vehicle is made and the appropriate fees are tendered
12 and documentation establishing that the person requesting release is entitled to
13 possession of the vehicle, or is the owner's insurance representative, is presented
14 within the initial 24 hours of storage, and the storage facility fails to comply with
15 the request to release the vehicle or is not open for business during normal
16 business hours, then only one day's storage charge may be required to be paid
17 until after the first business day. A business day is any day in which the lienholder
18 is open for business to the public for at least eight hours. If a request is made more
19 than 24 hours after the vehicle is placed in storage, charges may be imposed on a
20 full calendar day basis for each day, or part thereof, that the vehicle is in storage.

21 (j)(1) A person who charges a vehicle owner a towing, service, or storage charge
22 at an excessive rate, as described in subdivision (h) or (i), is civilly liable to the
23 vehicle owner for four times the amount charged.

24 (2) A person who knowingly charges a vehicle owner a towing, service, or
25 storage charge at an excessive rate, as described in subdivision (h) or (i), or who
26 fails to make available his or her rate as required in subparagraph (B) of paragraph
27 (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more
28 than two thousand five hundred dollars (\$2,500), or by imprisonment in the county
29 jail for not more than three months, or by both that fine and imprisonment.

30 (k)(1) A person operating or in charge of a storage facility where vehicles are
31 stored pursuant to this section shall accept a valid bank credit card or cash for
32 payment of towing and storage by a registered owner, the legal owner, or the
33 owner's agent claiming the vehicle. A credit card shall be in the name of the
34 person presenting the card. "Credit card" means "credit card" as defined in
35 subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of
36 this section, credit card does not include a credit card issued by a retail seller.

37 (2) A person described in paragraph (1) shall conspicuously display, in that
38 portion of the storage facility office where business is conducted with the public, a
39 notice advising that all valid credit cards and cash are acceptable means of
40 payment.

41 (3) A person operating or in charge of a storage facility who refuses to accept a
42 valid credit card or who fails to post the required notice under paragraph (2) is
43 guilty of a misdemeanor, punishable by a fine of not more than two thousand five

1 hundred dollars (\$2,500), or by imprisonment in the county jail for not more than
2 three months, or by both that fine and imprisonment.

3 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is
4 civilly liable to the registered owner of the vehicle or the person who tendered the
5 fees for four times the amount of the towing and storage charges.

6 (5) A person operating or in charge of the storage facility shall have sufficient
7 moneys on the premises of the primary storage facility during normal business
8 hours to accommodate, and make change in, a reasonable monetary transaction.

9 (6) Credit charges for towing and storage services shall comply with Section
10 1748.1 of the Civil Code. Law enforcement agencies may include the costs of
11 providing for payment by credit when making agreements with towing companies
12 as described in subdivision (i).

13 (l)(1)(A) A towing company shall not remove or commence the removal of a
14 vehicle from private property without first obtaining the written authorization from
15 the property owner or lessee, including an association of a common interest
16 development, or an employee or agent thereof, who shall be present at the time of
17 removal and verify the alleged violation, except that presence and verification is
18 not required if the person authorizing the tow is the property owner, or the owner's
19 agent who is not a tow operator, of a residential rental property of 15 or fewer
20 units that does not have an onsite owner, owner's agent or employee, and the
21 tenant has verified the violation, requested the tow from that tenant's assigned
22 parking space, and provided a signed request or electronic mail, or has called and
23 provides a signed request or electronic mail within 24 hours, to the property owner
24 or owner's agent, which the owner or agent shall provide to the towing company
25 within 48 hours of authorizing the tow. The signed request or electronic mail shall
26 contain the name and address of the tenant, and the date and time the tenant
27 requested the tow. A towing company shall obtain, within 48 hours of receiving
28 the written authorization to tow, a copy of a tenant request required pursuant to
29 this subparagraph. For the purpose of this subparagraph, a person providing the
30 written authorization who is required to be present on the private property at the
31 time of the tow does not have to be physically present at the specified location of
32 where the vehicle to be removed is located on the private property.

33 (B) The written authorization under subparagraph (A) shall include all of the
34 following:

35 (i) The make, model, vehicle identification number, and license plate number of
36 the removed vehicle.

37 (ii) The name, signature, job title, residential or business address and working
38 telephone number of the person, described in subparagraph (A), authorizing the
39 removal of the vehicle.

40 (iii) The grounds for the removal of the vehicle.

41 (iv) The time when the vehicle was first observed parked at the private property.

42 (v) The time that authorization to tow the vehicle was given.

1 (C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing
2 company prior to payment of a towing or storage charge shall provide a photocopy
3 of the written authorization to the vehicle owner or the agent.

4 (ii) If the vehicle was towed from a residential property, the towing company
5 shall redact the information specified in clause (ii) of subparagraph (B) in the
6 photocopy of the written authorization provided to the vehicle owner or the agent
7 pursuant to clause (i).

8 (iii) The towing company shall also provide to the vehicle owner or the agent a
9 separate notice that provides the telephone number of the appropriate local law
10 enforcement or prosecuting agency by stating “If you believe that you have been
11 wrongfully towed, please contact the local law enforcement or prosecuting agency
12 at [insert appropriate telephone number].” The notice shall be in English and in the
13 most populous language, other than English, that is spoken in the jurisdiction.

14 (D) A towing company shall not remove or commence the removal of a vehicle
15 from private property described in subdivision (a) of Section 22953 unless the
16 towing company has made a good faith inquiry to determine that the owner or the
17 property owner’s agent complied with Section 22953.

18 (E)(i) General authorization to remove or commence removal of a vehicle at the
19 towing company’s discretion shall not be delegated to a towing company or its
20 affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire
21 hydrant or in a fire lane, or in a manner which interferes with an entrance to, or
22 exit from, the private property.

23 (ii) In those cases in which general authorization is granted to a towing company
24 or its affiliate to undertake the removal or commence the removal of a vehicle that
25 is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that
26 interferes with an entrance to, or exit from, private property, the towing company
27 and the property owner, or owner’s agent, or person in lawful possession of the
28 private property shall have a written agreement granting that general authorization.

29 (2) If a towing company removes a vehicle under a general authorization
30 described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully
31 parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that
32 interferes with an entrance to, or exit from, the private property, the towing
33 company shall take, prior to the removal of that vehicle, a photograph of the
34 vehicle that clearly indicates that parking violation. Prior to accepting payment,
35 the towing company shall keep one copy of the photograph taken pursuant to this
36 paragraph, and shall present that photograph and provide, without charge, a
37 photocopy to the owner or an agent of the owner, when that person claims the
38 vehicle.

39 (3) A towing company shall maintain the original written authorization, or the
40 general authorization described in subparagraph (E) of paragraph (1) and the
41 photograph of the violation, required pursuant to this section, and any written
42 requests from a tenant to the property owner or owner’s agent required by
43 subparagraph (A) of paragraph (1), for a period of three years and shall make them

1 available for inspection and copying within 24 hours of a request without a
2 warrant to law enforcement, the Attorney General, district attorney, or city
3 attorney.

4 (4) A person who violates this subdivision is guilty of a misdemeanor,
5 punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
6 or by imprisonment in the county jail for not more than three months, or by both
7 that fine and imprisonment.

8 (5) A person who violates this subdivision is civilly liable to the owner of the
9 vehicle or his or her agent for four times the amount of the towing and storage
10 charges.

11 (m)(1) A towing company that removes a vehicle from private property under
12 this section shall notify the local law enforcement agency of that tow after the
13 vehicle is removed from the private property and is in transit.

14 (2) A towing company is guilty of a misdemeanor if the towing company fails to
15 provide the notification required under paragraph (1) within 60 minutes after the
16 vehicle is removed from the private property and is in transit or 15 minutes after
17 arriving at the storage facility, whichever time is less.

18 (3) A towing company that does not provide the notification under paragraph (1)
19 within 30 minutes after the vehicle is removed from the private property and is in
20 transit is civilly liable to the registered owner of the vehicle, or the person who
21 tenders the fees, for three times the amount of the towing and storage charges.

22 (4) If notification is impracticable, the times for notification, as required
23 pursuant to paragraphs (2) and (3), shall be tolled for the time period that
24 notification is impracticable. This paragraph is an affirmative defense.

25 (n) A vehicle removed from private property pursuant to this section shall be
26 stored in a facility that meets all of the following requirements:

27 (1)(A) Is located within a 10-mile radius of the property from where the vehicle
28 was removed.

29 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a
30 towing company has prior general written approval from the law enforcement
31 agency that exercises primary jurisdiction in the city in which is located the
32 private property from which the vehicle was removed, or if the private property is
33 not located within a city, then the law enforcement agency that exercises primary
34 jurisdiction in the county in which is located the private property.

35 (2)(A) Remains open during normal business hours and releases vehicles after
36 normal business hours.

37 (B) A gate fee may be charged for releasing a vehicle after normal business
38 hours, weekends, and state holidays. However, the maximum hourly charge for
39 releasing a vehicle after normal business hours shall be one-half of the hourly tow
40 rate charged for initially towing the vehicle, or less.

41 (C) Notwithstanding any other provision of law and for purposes of this
42 paragraph, "normal business hours" are Monday to Friday, inclusive, from 8 a.m.
43 to 5 p.m., inclusive, except state holidays.

1 (3) Has a public pay telephone in the office area that is open and accessible to
2 the public.

3 (o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to
4 assist vehicle owners or their agents by, among other things, allowing payment by
5 credit cards for towing and storage services, thereby expediting the recovery of
6 towed vehicles and concurrently promoting the safety and welfare of the public.

7 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further
8 the safety of the general public by ensuring that a private property owner or lessee
9 has provided his or her authorization for the removal of a vehicle from his or her
10 property, thereby promoting the safety of those persons involved in ordering the
11 removal of the vehicle as well as those persons removing, towing, and storing the
12 vehicle.

13 (3) It is the intent of the Legislature in the adoption of subdivision (g) to
14 promote the safety of the general public by requiring towing companies to
15 unconditionally release a vehicle that is not lawfully in their possession, thereby
16 avoiding the likelihood of dangerous and violent confrontation and physical injury
17 to vehicle owners and towing operators, the stranding of vehicle owners and their
18 passengers at a dangerous time and location, and impeding expedited vehicle
19 recovery, without wasting law enforcement's limited resources.

20 (p) The remedies, sanctions, restrictions, and procedures provided in this section
21 are not exclusive and are in addition to other remedies, sanctions, restrictions, or
22 procedures that may be provided in other provisions of law, including, but not
23 limited to, those that are provided in Sections 12110 and 34660.

24 (q) A vehicle removed and stored pursuant to this section shall be released by
25 the law enforcement agency, impounding agency, or person in possession of the
26 vehicle, or any person acting on behalf of them, to the legal owner or the legal
27 owner's agent upon presentation of the assignment, as defined in subdivision (b)
28 of Section 7500.1 of the Business and Professions Code; a release from the one
29 responsible governmental agency, only if required by the agency; a government-
30 issued photographic identification card; and any one of the following as
31 determined by the legal owner or the legal owner's agent: a certificate of
32 repossession for the vehicle, a security agreement for the vehicle, or title, whether
33 paper or electronic, showing proof of legal ownership for the vehicle. Any
34 documents presented may be originals, photocopies, or facsimile copies, or may be
35 transmitted electronically. The storage facility shall not require any documents to
36 be notarized. The storage facility may require the agent of the legal owner to
37 produce a photocopy or facsimile copy of its repossession agency license or
38 registration issued pursuant to Chapter 11 (commencing with Section 7500) of
39 Division 3 of the Business and Professions Code, or to demonstrate, to the
40 satisfaction of the storage facility, that the agent is exempt from licensure pursuant
41 to Section 7500.2 or 7500.3 of the Business and Professions Code.

1 **Comment.** Subdivision (a) of Section 22658 is amended to add cross-references to Civil Code
2 Section 6528 and 6534, reflecting the enactment of the Commercial and Industrial Common
3 Interest Development Act (Civ. Code §§ 6500-6876).

WATER CODE

4 **Water Code § 13553 (amended). Recycled water**

5 SEC. _____. Section 13553 of the Water Code is amended to read:

6 13553. (a) The Legislature hereby finds and declares that the use of potable
7 domestic water for toilet and urinal flushing in structures is a waste or an
8 unreasonable use of water within the meaning of Section 2 of Article X of the
9 California Constitution if recycled water, for these uses, is available to the user
10 and meets the requirements set forth in Section 13550, as determined by the state
11 board after notice and a hearing.

12 (b) The state board may require a public agency or person subject to this section
13 to furnish any information that may be relevant to making the determination
14 required in subdivision (a).

15 (c) For purposes of this section and Section 13554, “structure” or “structures”
16 means commercial, retail, and office buildings, theaters, auditoriums,
17 condominium projects, schools, hotels, apartments, barracks, dormitories, jails,
18 prisons, and reformatories, and other structures as determined by the State
19 Department of Public Health.

20 (d) Recycled water may be used in condominium projects, as defined in Section
21 1351 or 6542 of the Civil Code, subject to all of the following conditions:

22 (1) Prior to the indoor use of recycled water in any condominium project, the
23 agency delivering the recycled water to the condominium project shall file a report
24 with, and receive written approval of the report from, the State Department of
25 Public Health. The report shall be consistent with the provisions of Title 22 of the
26 California Code of Regulations generally applicable to dual-plumbed structures
27 and shall include all the following:

28 (A) That potable water service to each condominium project will be provided
29 with a backflow protection device approved by the State Department of Public
30 Health to protect the agency’s public water system, as defined in Section 116275
31 of the Health and Safety Code. The backflow protection device approved by the
32 State Department of Public Health shall be inspected and tested annually by a
33 person certified in the inspection of backflow prevention devices.

34 (B) That any plumbing modifications in the condominium unit or any physical
35 alteration of the structure will be done in compliance with state and local
36 plumbing codes.

37 (C) That each condominium project will be tested by the recycled water agency
38 or the responsible local agency at least once every four years to ensure that there
39 are no indications of a possible cross connection between the condominium’s
40 potable and nonpotable systems.

1 (D) That recycled water lines will be color coded consistent with current statutes
2 and regulations.

3 (2) The recycled water agency or the responsible local agency shall maintain
4 records of all tests and annual inspections conducted.

5 (3) The condominium's declaration, as defined in Section 1351 or 6546 of the
6 Civil Code, shall provide that the laws and regulations governing recycled water
7 apply, shall not permit any exceptions to those laws and regulations, shall
8 incorporate the report described in paragraph (1), and shall contain the following
9 statement:

10 "NOTICE OF USE OF RECYCLED WATER

11 This property is approved by the State Department of Public Health for the use
12 of recycled water for toilet and urinal flushing. This water is not potable, is not
13 suitable for indoor purposes other than toilet and urinal flushing purposes, and
14 requires dual plumbing. Alterations and modifications to the plumbing system
15 require a permit and are prohibited without first consulting with the appropriate
16 local building code enforcement agency and your property management company
17 or ~~homeowners'~~ owners' association to ensure that the recycled water is not mixed
18 with the drinking water."

19 (e) The State Department of Public Health may adopt regulations as necessary to
20 assist in the implementation of this section.

21 (f) This section shall only apply to condominium projects that are created,
22 within the meaning of Section 1352 or 6580 of the Civil Code, on or after January
23 1, 2008.

24 (g) This section and Section 13554 do not apply to a pilot program adopted
25 pursuant to Section 13553.1.

26 **Comment.** Subdivision (d) of Section 13553 is amended to add cross-references to Civil Code
27 Sections 6542 and 6546, and to make a terminological change, reflecting the enactment of the
28 Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

29 Subdivision (f) is amended to add a cross-reference to Civil Code Section 6580, for the same
30 reason.

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	1357.110.....	not continued
1350.5.....	6502	1357.120.....	not continued
1350.7.....	not continued	1357.130.....	not continued
1351 (intro.).....	6526	1357.140.....	not continued
1351(a).....	6528	1357.150.....	not continued
1351(b).....	6532	1358(a).....	not continued
1351(c).....	6534	1358(b).....	6662
1351(d).....	not continued	1358(c).....	6664
1351(e)(1).....	6624	1358(d).....	6666
1351(e)(3).....	6624, 6626(a)	1358 (last ¶).....	6670
1351(e) (next to last ¶).....	6626(b)-(c)	1358 (next to last ¶).....	6668
1351(e) (last ¶).....	6628	1359.....	6656
1351(f).....	6542	1360.....	6714
1351(g).....	6544	1360.2.....	not continued
1351(h).....	6546	1360.5.....	6706
1351(i).....	6550	1361.....	6652
1351(j).....	6552	1361.5.....	6654
1351(k).....	6562	1362.....	6650
1351(l).....	6564	1363(a).....	6750
1351(m).....	6566	1363(b).....	not continued
1352.....	6580	1363(c).....	6752
1352.5.....	6606(a)-(b), (d)	1363(d).....	not continued
1353(a)(1) (1st & 2d sent.).....	6614(a)	1363(e).....	not continued
1353(a)(1)-(4) (except 1st & 2d sent.).....	not continued	1363(f) (1st sent.).....	6850
1353(b).....	6614(b)	1363(f) (2nd sent.).....	not continued
1353.5.....	6702	1363(g).....	not continued
1353.6.....	6704	1363(h).....	not continued
1353.7.....	not continued (but see 6600(a))	1363(i).....	6854
1353.8.....	6712	1363.001.....	not continued
1353.9.....	6713	1363.005.....	not continued
1354(a)-(b).....	6856	1363.03.....	not continued
1354(c).....	not continued	1363.04.....	not continued
1355(a) (1st sent.).....	6620(a) (1st sent.)	1363.05.....	not continued
1355(a)(1).....	6620(a)(2)	1363.07.....	not continued
1355(a)(2).....	6620(a)(3)	1363.09.....	not continued
1355(a)(3).....	6620(a)(4)	1363.1.....	not continued
1355(b) (1st sent.).....	6616	1363.2.....	not continued
1355(b)(1).....	6620(a)(1)	1363.5.....	6622
1355(b)(2).....	6620(a)(2), 6620(b)	1363.6.....	6760
1355(b)(3).....	6620(a)(3)	1363.810.....	not continued
1355.5.....	6608	1363.820.....	not continued
1356.....	not continued	1363.830.....	not continued
1357(a).....	6618(a)	1363.840.....	not continued
1357(b) (1st sent.).....	6618(b), 6620	1363.850.....	not continued
1357(c).....	not continued	1364(a).....	6716(a)
1357(d).....	6618(c)	1364(b).....	6718
1357.100.....	not continued	1364(c).....	6716(b)
		1364(d)-(e).....	6720

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1364(f).....	6722	1367.1(g)(1)-(2)	6822(c)(1)-(2)
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)	not continued
1365.3.....	not continued	1367.1(l)	6819
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.).....	6800	1367.6	not continued
1366(a) (except 1st sent.)	not continued	1368	not continued
1366(b).....	not continued	1368.1	6710
1366(c)	6804	1368.2	not continued
1366(d).....	not continued	1368.3	6858
1366(e)	not continued	1368.4	6860
1366(f).....	6808(b)	1368.5	6876
1366.1.....	not continued	1369	6658
1366.2.....	not continued	1369.510	not continued
1366.4.....	not continued	1369.520	not continued
1367.....	not continued (but see 6828)	1369.530	not continued
1367.1(a) (1st sent.)	6808(a)	1369.540	not continued
1367.1(a) (2d sent.)	6812 (intro.)	1369.550	not continued
1367.1(a)(1)-(3)	6812(a)-(c)	1369.560	not continued
1367.1(a)(4)-(6)	not continued	1369.570	not continued
1367.1(b) (1st sent.)	not continued	1369.580	not continued
1367.1(b) (2nd - 4th sent.)	6810	1369.590	not continued
1367.1(c).....	not continued	1370	6602
1367.1(d) (1st - 5th sent.)	6814(a)-(e)	1371	6604
1367.1(d) (6th sent.).....	6818(a)	1372	6510
1367.1(d) (7th & 8th sent.)	6824(a)	1373	6582(a), 6531
1367.1(e)	6824(b)	1374	6582(b)
1367.1(f)	6816	1375	6870
1367.1(g) (1st sent.)	6826	1375.1	6874
1367.1(g) (2d sent.)	6820(a)	1376	6708
1367.1(g) (3d sent.)	6822(a)	1378	not continued
1367.1(g) (4th sent.)	6822(c) (intro.)		