

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Commercial and Industrial Common Interest Developments

February 2011

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission may consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN April 28, 2011.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

In 1988, the Legislature drew a statutory distinction between (1) residential common interest developments and (2) commercial and industrial common interest developments, declaring that statutes developed for the protection of residential developments may be unnecessary and unduly burdensome for commercial and industrial developments. Civil Code Section 1373 was enacted to exempt commercial and industrial developments from a number of such statutes.

In the 22 years since that enactment, the statutes governing common interest developments have more than tripled in size, without any comprehensive analysis of whether the added provisions should be applied to commercial and industrial developments.

The Law Revision Commission has conducted such an analysis and recommends the broad expansion of the policy expressed by the Legislature in 1988.

The proposed law would establish a separate statute governing commercial and industrial common interest developments, comprised only of those provisions that are necessary and appropriate for such developments.

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

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 Davis-
9 Stirling Act was enacted in 1985,³ primarily to consolidate and standardize
10 statutory provisions governing different types of CIDs.⁴

11 Shortly after enactment of the Davis-Stirling Act, concerns were expressed
12 about the application of the Act to CIDs that are comprised entirely of commercial
13 or industrial units, and do not contain any residences.⁵ In response to those
14 concerns, a bill was introduced to entirely exempt these nonresidential CIDs from
15 the application of the Davis-Stirling Act.⁶

16 A building industry group suggested that the bill be amended to instead follow a
17 more selective approach. While agreeing that the Davis-Stirling Act was
18 “primarily ... enacted for the purpose of regulating residential developments,” the
19 group argued that a number of the Act’s provisions were also necessary for
20 commercial CIDs.⁷ The bill was thereafter amended to add Civil Code Section
21 1373 to the Davis-Stirling Act, and enacted.⁸

22 Section 1373 made several provisions of the Davis-Stirling Act inapplicable to
23 commercial and industrial CIDs.⁹ Section 1373 also included an explanatory
24 statement of legislative findings:

25 The Legislature finds that the [provisions declared inapplicable to commercial
26 or industrial CIDs] may be appropriate to protect purchasers in residential

26

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).

6. AB 2484 (Hauser) (1987).

7. See 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).

8. 1988 Cal. Stat. ch. 123.

9. Civ. Code § 1373(a). The provisions declared inapplicable were Civ. Code §§ 1356, 1363(b), 1365, 1365.5, 1366(b), 1366.1, and 1368. See 1988 Cal. Stat. ch. 123.

1 common interest developments, however, the provisions are not necessary to
2 protect purchasers in commercial or industrial developments since the application
3 of those provisions results in unnecessary burdens and costs for these types of
4 developments.¹⁰

5 In the 22 years since the enactment of Section 1373, the Davis-Stirling Act has
6 more than tripled in size,¹¹ without any comprehensive analysis of whether the
7 added provisions should apply to commercial and industrial CIDs.

8 The Commission has conducted such an analysis, and recommends that the
9 legislative policies reflected in the enactment of Section 1373 be extrapolated to
10 address subsequent changes in the Davis-Stirling Act.

11 This would be achieved by exempting commercial and industrial CIDs from the
12 existing Davis-Stirling Act, and creating a new statute that would govern only
13 those CIDs. The new statute would carry forward all Davis-Stirling Act provisions
14 that should continue to apply to these nonresidential CIDs. However, provisions
15 presently in the Davis-Stirling Act that “are not necessary to protect purchasers in
16 commercial or industrial developments” and would “[result] in unnecessary
17 burdens and costs for these types of developments”¹² would not be carried forward
18 into the new body of law.

19 The establishment of a separate body of law for commercial and industrial CIDs
20 would make it easier for the Legislature to tailor the future development of CID
21 law so that it appropriately reflects important distinctions between residential and
22 commercial or industrial CIDs.

23 **PRIOR LEGISLATIVE POLICY**

24 Examination of the content of the Davis-Stirling Act at the time that Section
25 1373 was added to that Act is helpful in understanding the legislative policy
26 underlying the enactment of Section 1373. At that time, the Davis-Stirling Act
27 consisted of only 25 sections, which mostly governed the establishment and basic
28 structure of a CID, rather than mandating how a CID should conduct its daily
29 affairs.

30 The provisions of the Act that continued to apply to a commercial or industrial
31 CID after the enactment of Section 1373 included all of the following:

31

10. Civ. Code § 1373(b).

11. The Act has grown from 25 code sections in 1986 (spanning 10 pages of the Deering's *Civil Practice Code*), to 89 code sections in 2010 (spanning 46 pages of the equivalent LexisNexis Standard California Codes).

12. Civ. Code § 1373(b).

- 1 • *Definitions and other general provisions.*¹³ These provisions are necessary to
2 the operation of the statute and the definition of the CID property ownership
3 form, and impose no significant burden on the operation of a CID.
- 4 • *Governing document provisions.*¹⁴ These provisions define the character of a
5 CID's founding documents.
- 6 • *Property ownership and transfer provisions.*¹⁵ These provisions provide
7 special rules relevant to the CID form of property ownership.
- 8 • *Basic governance provisions.*¹⁶ These provisions establish the basic
9 governance structure for the management and maintenance of CID common
10 area, and the enforcement of mutual restrictions. They enable governance,
11 without regulating governance operations.

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

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

- 17 • *Provisions regulating fiscal planning and reporting.*¹⁷ These provisions state
18 mandatory requirements governing an association's fiscal planning and
19 reporting.
- 20 • *Judicial override of supermajority amendment requirement.*¹⁸ This provision
21 authorizes a court to approve an amendment of a CID's declaration,
22 notwithstanding a failure to satisfy a supermajority member approval
23 requirement stated in the declaration.
- 24 • *Transfer disclosure requirements.*¹⁹ This provision requires that specified
25 information be provided to a prospective purchaser of a separate interest in a
26 CID, before transfer of title.

26

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

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

15. 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).

16. 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).

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

18. Civ. Code § 1356.

19. Civ. Code § 1368.

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

4 The basis for these conclusions can be found in a legislative analysis of the bill
5 that added Section 1373, which discussed the special character of commercial and
6 industrial CIDs:

- 7 • Commercial and industrial CIDs are “business endeavors in which the parties
8 engage the services of attorneys, accountants, management companies, and
9 developers.”
- 10 • Unlike owners in residential CIDs, owners in commercial and industrial CIDs
11 are “well-informed” and “governed by other provisions of commercial law.”
- 12 • “The operational needs of commercial and industrial CIDs are different than the
13 needs of residential [CIDs].” For example, a commercial or industrial CID may
14 require greater flexibility than a residential CID, in order to address significant
15 business-related changes in the development’s use, facilities, and costs.
- 16 • Regulatory requirements designed to protect residential owners “interfere with
17 commerce, and increase the costs of doing business.”²⁰

18 Taken as a whole, the enactment of Section 1373 suggests the following
19 policy principles:

- 20 • Provisions that define the basic property ownership and governance structure
21 for CIDs are needed by commercial and industrial CIDs and do not unduly
22 burden those CIDs.
- 23 • Provisions that are designed to help homeowners avoid mismanagement, by
24 mandating specific management practices, are unnecessary and unduly
25 burdensome for business owners in commercial and industrial CIDs.
- 26 • Provisions that are designed to help homeowners understand the consequences
27 of purchasing a home in a CID are not needed by purchasers of units in
28 commercial or industrial developments. Business owners purchasing
29 commercial or industrial properties are presumably professionally advised and
30 do not need the same statutory guidance appropriate for homeowners.
- 31 • A provision authorizing the court to circumvent a supermajority approval
32 requirement for amendment of the declaration may be helpful in a residential
33 CID, where homeowner apathy and fractiousness may make it difficult to obtain
34 the approval required for a necessary amendment. By contrast, a business
35 property owner may not need judicial intervention to resolve a dispute about
36 amendment of the declaration. Furthermore, a business owner is likely to have
37 read and relied on a CID’s governing documents before purchasing a unit in a
38 commercial or industrial CID. A judicial override of the declaration could
39 frustrate reasonable expectations.

39

20. Senate Rules Committee Analysis of AB 2484 (May 18, 1988) (on file with Commission).

1 Section 1373 has been amended twice since its enactment. Both amendments are
2 consistent with the principles set out above. They exempted commercial and
3 industrial CIDs from provisions regulating governance operations:

- 4 • In 2003, Section 1373 was amended to exempt commercial and industrial
5 CIDs from new statutory procedures for the adoption of operating rules.²¹
- 6 • In 2004, Section 1373 was amended to exempt commercial and industrial
7 CIDs from new statutory procedures on architectural review
8 decisionmaking.²²

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

- 12 • *Foundational Provisions.* These are provisions that address the fundamental
13 character of the CID property ownership form. They include (1) definitions of
14 key concepts, (2) provisions relating to a CID’s founding documents, (3)
15 provisions on property ownership, transfer, and maintenance, and (4)
16 provisions establishing the governing association and prescribing its necessary
17 powers. Foundational provisions also include provisions necessary for the
18 operation of the statute, such as rules of construction and technical definitions.
19 These provisions are necessary for all CIDs and do not impose operational
20 burdens on CIDs.
- 21 • *Operational Provisions.* These are provisions that impose mandatory
22 procedures for the operation of a CID’s governing association. These
23 provisions may assist and protect unsophisticated homeowners in managing
24 their communities but are not needed by sophisticated commercial property
25 owners. To the extent that they mandate “one-size-fits-all” management
26 practices, they can unduly burden commercial and industrial CIDs.

27 RECOMMENDATION

28 The Commission recommends that the prior legislative policy judgments
29 discussed above be continued and applied to the numerous provisions that have
30 been added to the Davis-Stirling Act since 1988. The proposed law would do so
31 by applying three broad principles:

- 32 • All foundational provisions should remain applicable to commercial and
33 industrial CIDs.
- 34 • Most operational provisions should be made inapplicable to commercial and
35 industrial CIDs.
- 36 • No change should be made to the law governing residential CIDs.

36

21. 2003 Cal. Stat. ch. 557.

22. 2004 Cal. Stat. ch. 346.

1 These policies should be effectuated by exempting commercial and industrial
2 CIDs from the existing Davis-Stirling Act and creating a new statute to govern
3 those CIDs. The creation of separate statutes for residential and commercial or
4 industrial CIDs would preclude the need for any future review and analysis of the
5 type described here. Going forward, any CID reform would need to be made
6 expressly applicable to commercial and industrial CIDs if it was to have that
7 application. This would allow for the independent development of law governing
8 the two distinct categories of CIDs, and would avoid the inadvertent application of
9 residential CID reforms to commercial or industrial CIDs.

10 Exceptions to these general principles are discussed below.

11 **Special Notice Requirement**

12 Civil Code Section 1363(g) requires distribution of a schedule of monetary
13 penalties that may be imposed as punishment for a violation of the governing
14 documents. Although the provision could be characterized as operational, it seems
15 appropriate as an element of a fair disciplinary procedure. The requirement does
16 not appear to impose any significant burden on CID operation.

17 The Commission recommends that the proposed law include this provision.²³

18 **Assessment Collection Provisions**

19 Civil Code Section 1367.1 contains a detailed procedural scheme for the
20 collection of delinquent assessment payments. While the section relates to an
21 operational aspect of CID governance, the Commission tentatively concluded that
22 the well-developed procedure might prove useful, and not unduly burdensome, in
23 a commercial or industrial CID.

24 With the exception of provisions requiring alternate dispute resolution, the
25 Commission recommends that the provisions of Section 1367.1 be continued in
26 the new statute.²⁴

27 **Exemption from Constitutional Interest Rate Limitations**

28 Civil Code Section 1366(f) generally exempts CIDs from interest rate
29 limitations imposed by Article XV of the California Constitution.

30 Although this provision could be characterized as operational, it does not appear
31 to impose any burden on CID operations. To the extent that it facilitates
32 assessment collection, it may provide a benefit to all CIDs, including commercial
33 and industrial CIDs.

34 The Commission recommends that Section 1366(f) be continued in the new
35 statute.²⁵

35

23. See proposed Civ. Code § 6850 *infra*.

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

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

1 **Construction Litigation Provisions**

2 Three sections of the Davis-Stirling Act govern construction defect litigation in
3 a CID.²⁶ Although they might be described as operational provisions, the
4 Commission recommends that they be preserved.²⁷ The well-developed procedures
5 provided in those sections relate to a dispute between an association and a builder,
6 a third party who is not involved in CID governance. Those provisions appear to
7 be equally appropriate for the resolution of such disputes in any type of CID.²⁸

8 **Assessment Based on Taxable Value**

9 Civil Code Section 1366.4 provides that, with limited exception, an association
10 may not levy an assessment on a separate interest based on the taxable value of
11 that separate interest, unless on or before December 31, 2009, the association
12 levied assessments on such basis. Although the provision has a foundational aspect
13 (the fundamental financial responsibility of any association), the Commission
14 tentatively concluded that the operational aspect of the provision (the precise
15 manner in which assessments may be calculated) appeared to predominate, and
16 dictated that the provision not be included in the proposed law.²⁹

17 Section 1366.4 was enacted after the Commission had conducted most of its
18 evaluation of the applicability of provisions of the Davis-Stirling Act to
19 exclusively commercial or industrial CIDs.³⁰ **The Commission therefore**
20 **specifically invites comment on whether discontinuing the applicability of**
21 **Section 1366.4 to an exclusively commercial or industrial CID would be**
22 **problematic.**

23 **OVERVIEW OF PROPOSED LEGISLATION**

24 **Application of Proposed Law**

25 The proposed law would only apply to an exclusively commercial or industrial
26 CID.³¹ The application of the proposed law would be defined using the same
27 language that is used to define the scope of existing Civil Code Section 1373,
28 which applies to:

28

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

27. 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.

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

29. The first sentence of Civil Code Section 1366(a), a provision of the Davis-Stirling Act providing an association with general authority to levy assessments, has been continued in the proposed law. See proposed Civ. Code § 6800 *infra*.

30. See 2009 Cal. Stat. ch. 431.

31. See proposed Civ. Code § 6582(a) *infra*.

1 [a] common interest development that is limited to industrial or commercial
2 uses by zoning or by a declaration of covenants, conditions, and restrictions that
3 has been recorded in the official records of each county in which the common
4 interest development is located.³²

5 **Source of Statutory Language and Organization**

6 The purpose of the proposed law is to establish a new statute governing
7 commercial and industrial CIDs, which would include only those provisions that
8 are necessary for such CIDs and are not unduly burdensome to their operations.
9 One way this could be accomplished would be by copying the exact language and
10 organization of the existing Davis-Stirling Act provisions that are to be included in
11 the proposed law.

12 The proposed law would take a different approach. It would instead incorporate
13 statutory language and organization that has been developed as part of a pending
14 Law Revision Commission proposal to simplify and reorganize the existing Davis-
15 Stirling Act, to make it easier to use and understand.³³ That proposal is a mostly
16 nonsubstantive cleanup project, though it does include some noncontroversial
17 substantive improvements as well. It is expected that the proposed recodification
18 of the Davis-Stirling Act will be presented to the Legislature for consideration
19 prior to completion of work on the current study.

20 By incorporating the language and structure of the proposed recodification of
21 the Davis-Stirling Act, the proposed law will include the benefits of improvements
22 made in that separate study. This approach will also maximize the uniformity of
23 language and structure between the law governing residential and commercial or
24 industrial CIDs.

25 Any changes to existing law proposed in the recodification proposal are also
26 included in the proposed law. Sections containing such changes will have the
27 words “NEW” or “REVISED” in their headings. All changes are noted and
28 described in the Comments and Notes following the new or revised provisions.
29 **The Commission specifically invites comment on whether any of those**
30 **changes would be problematic if applied to a commercial or industrial CID.**

31 If further changes are made to the Commission’s recodification proposal before
32 it is finalized, those changes will also be considered for incorporation into the
33 proposed statute on commercial and industrial CIDs.

34 **Disposition Table**

35 A “disposition table” following the proposed law shows the relationship
36 between the existing provisions of the Davis-Stirling Act and the provisions of the
37 proposed law. This table also identifies the provisions of the Davis-Stirling Act

37

32. See proposed Civ. Code § 6556 *infra*.

33. See tentative recommendation on *Statutory Clarification and Simplification of CID Law* (Feb. 2010).

1 that have not been included in the proposed law, by an indication that those
2 provisions are “not continued.”

3 **Conforming Revisions**

4 There are a number of code sections that include a cross-reference to a provision
5 of the Davis-Stirling Act. To the extent that such a reference is relevant to
6 commercial or industrial CIDs, it will need to be revised to include a reference to
7 the corresponding provision of the proposed law. Amendments to accomplish this
8 are included in the “Conforming Revisions” portion of the proposed law.

9 However, conforming revisions have not been proposed for code sections that
10 fall into either of the following two categories:

- 11 • Code sections in which the referenced provision(s) of the Davis-Stirling Act
12 would not be continued in the proposed legislation.³⁴
- 13 • Code sections that, by virtue of either their plain language or another express
14 statutory provision, do not apply to exclusively commercial or industrial
15 CIDs.³⁵

16 In instances in which the Commission believed it unclear whether a code section
17 has any application to an exclusively commercial or industrial CID, a conforming
18 revision of the code section has been proposed, followed by a note soliciting
19 comment on whether the conforming revision is needed.³⁶

20 **REQUEST FOR COMMENT**

21 The Commission requests that interested persons and groups carefully review
22 the proposed legislation, and submit comments on both the inclusion and
23 exclusion of Davis-Stirling Act provisions, as well as on the proposed substantive
24 improvements.

24

34. See, e.g., Civ. Code § 2079.3.

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

36. See Bus. & Prof. Code §§ 11003.2, 11004, Civ. Code §§ 714, 1133, 2924b, Gov’t Code § 66412, 66424, 66452.10, 66475.2, Health & Safety Code § 13132.7, Ins. Code § 790.031, Water Code § 13553.

COMMERCIAL AND INDUSTRIAL COMMON
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PROPOSED LEGISLATION

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

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

3 1373. (a) This title does not apply to a commercial or industrial common interest
4 development, as defined in Section 6531.

5 **Comment.** Section 1373 is amended to make the provisions of the Davis-Stirling Common
6 Interest Development Act inapplicable to an exclusively commercial or industrial common
7 interest development, as defined in Section 6531. Many provisions of that act are continued and
8 made applicable to exclusively commercial or industrial common interest developments by the
9 Commercial and Industrial Common Interest Development Act, Part 5.5 (commencing with
10 Section 6500) of Division 4. To determine whether that act continues a particular provision of the
11 Davis-Stirling Common Interest Development Act, see *Commercial and Industrial Common*
12 *Interest Developments*, __ Cal. L. Revision Comm'n Reports __ (201_).

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

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

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

18 **(UNCHANGED).** A section with this description would continue existing law almost
19 verbatim, to the extent that existing law presently applies to an exclusively commercial or
20 industrial common interest development. Minor technical changes might be made to (1) correct a
21 cross-reference to reflect the new number of the referenced provision, (2) add or modify
22 subdivision or paragraph designators (e.g., unnumbered paragraphs might be designated as
23 subdivisions), or (3) conform to technical stylistic conventions (e.g., to avoid use of the word
24 “such” or the phrase “he or she”). If any of these changes are made, they will be clearly identified
25 in the Comment following the section.

26 **(REVISED).** A section with this description would continue or restate existing law verbatim to
27 the extent that existing law presently applies to an exclusively commercial or industrial common
28 interest development, except as specifically indicated in the Comment and “Note” that follow the
29 section. Changes made to a “(REVISED)” section may include the rewording of ambiguous or
30 confusing language or minor substantive improvements to existing law. Any such changes will be
31 expressly identified.

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

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

4 CHAPTER 1. GENERAL PROVISIONS

5 Article 1. Preliminary Provisions

6 **§ 6500 (NEW). 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 were exempted from the provisions of that act by 2011 Cal.
14 Stat. ch. ____. See Section 1373.

15 This part (Sections 6500-6876) was added to establish a separate body of law, largely based on
16 provisions of the Davis-Stirling Common Interest Development Act, that would apply to and
17 govern exclusively 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 ☞ **Note.** Proposed Section 6500 would provide a short title for this part, to distinguish it from
22 the Davis-Stirling Common Interest Development Act. It would also provide for simplified
23 reference to the part as a whole.

24 **§ 6502 (REVISED). Effect of headings**

25 6502. Division, part, title, chapter, article, and section headings do not in any
26 manner affect the scope, meaning, or intent of this act.

27 **Comment.** With respect to a commercial or industrial common interest development, Section
28 6502 continues Section 1350.5 without change, except as indicated below.

29 The following nonsubstantive changes were made:

- 30 • “Article” has been added to the list of headings.
31 • The last word of the sentence is replaced with “act.”

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

34 For further information, see Section 6500 Comment.

35 ☞ **Note.** Proposed Section 6502 would add “article” to the list of headings in existing Section
36 1350.5. The omission of articles from that list appears to have been inadvertent.

37 **§ 6505 (NEW). Application of act**

38 6505. Nothing in the act that added this part shall be construed to invalidate a
39 document prepared or action taken before January 1, 2014, if the document or

1 action was proper under the law governing common interest developments at the
2 time that the document was prepared or the action was taken.

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

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

7  **Note.** Proposed Section 6505 would make clear that any changes to former law made by
8 enactment of this act are not intended to retroactively invalidate documents prepared or actions
9 taken prior to the operative date of the act.

10 **§ 6510 (REVISED). Construction of zoning ordinance**

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

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6510 continues Section 1372 without change, except as indicated below.

16 The following nonsubstantive change was made:

- 17 • A list of all of the types of common interest developments has been replaced with general
18 language.

19 For further information, see Section 6500 Comment.

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

21 **§ 6512 (NEW). Delivered to an association**

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

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

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

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

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

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

36 See also Section 6528 (“association”).

37  **Note.** Proposed Section 6512 is new. It would provide a clear rule for official communication
38 with the association.

1 § 6514 (NEW). Individual notice

2 6514. (a) If a provision of this act requires that an association deliver a
3 document by “individual delivery” or “individual notice,” the document shall be
4 delivered to the member to be notified by one of the following methods:

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

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

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

14 **Comment.** Section 6514 is new. It specifies acceptable methods for delivery of a notice to an
15 individual member, as distinguished from a notice that is to be delivered to every member. See
16 Section 6516 (general notice). The methods listed in subdivision (a) are drawn from Section
17 1350.7(b)(2)-(3).

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

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

22  **Note.** Proposed Section 6514 is new. It is drawn from and generalizes much of the substance
23 of existing Section 1350.7.

24 § 6516 (NEW). General notice

25 6516. (a) If a provision of this act requires “general delivery” or “general
26 notice,” the document shall be provided by one or more of the following methods:

27 (1) Any method provided for delivery of an individual notice pursuant to Section
28 6514.

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

31 (3) Posting the printed document in a prominent location that is accessible to all
32 members, if the location has been designated for the posting of general notices by
33 the association.

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

37 (b) Notwithstanding subdivision (a), if a member requests to receive general
38 notices by individual delivery, all general notices to that member, given under this
39 section, shall be delivered pursuant to Section 6514.

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

1 Subdivision (b) reserves the right of any member, on request, to receive general notices by the
2 delivery methods provided for delivery of an individual notice. Thus, in an association that posts
3 general notices on a notice board in a prominent location pursuant to subdivision (a)(3),
4 individual members would still have the right, on request, to receive those notices by mail.

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

6 **Note.** Proposed Section 6516 is new. It would enhance efficiency by allowing an association
7 to “broadcast” notices of general interest, while reserving the right of individual members to
8 receive those notices as individual notices on request.

9 **§ 6518 (NEW). Time and proof of delivery**

10 6518. (a) This section governs the delivery of a document pursuant to this act.

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

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

15 **Comment.** Section 6518 is new. Subdivision (b) is drawn from the second sentence of Section
16 1350.7(b)(2).

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

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

21 **§ 6522 (NEW). Approved by majority of all members**

22 6522. If a provision of this act requires that an action be approved by a majority
23 of all members, the action shall be approved or ratified by an affirmative vote of a
24 majority of the votes entitled to be cast.

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

29 See also Section 6554 (“member”).

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

32 **§ 6524 (NEW). 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”).

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

3 Article 2. Definitions

4 **§ 6526 (REVISED). Application of definitions**

5 6526. The definitions in this article govern the construction of this act.

6 **Comment.** With respect to a commercial or industrial common interest development, Section
7 6526 continues the substance of the introductory clause of Section 1351.

8 For further information, see Section 6500 Comment.

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

11 **§ 6528 (UNCHANGED). “Association”**

12 6528. “Association” means a nonprofit corporation or unincorporated
13 association created for the purpose of managing a common interest development.

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6528 continues Section 1351(a) without change.

16 For further information, see Section 6500 Comment.

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

18 **§ 6530 (NEW). “Board”**

19 6530. “Board” means the board of directors of the association.

20 **Comment.** Section 6530 is new.

21 See also Sections 6528 (“association”).

22 **Note.** Proposed Section 6530 is added for drafting convenience.

23 **§ 6531 (NEW). “Commercial or industrial common interest development”**

24 6531. A “commercial or industrial common interest development” means a
25 common interest development that is limited to industrial or commercial uses by
26 zoning or by a declaration of covenants, conditions, and restrictions that has been
27 recorded in the official records of each county in which the common interest
28 development is located.

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

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

31 **Note.** The Commission invites comment as to the adequacy of this definition of commercial
32 or industrial common interest development.

33 **§ 6532 (REVISED). “Common area”**

34 6532. (a) “Common area” means the entire common interest development
35 except the separate interests therein. The estate in the common area may be a fee,
36 a life estate, an estate for years, or any combination of the foregoing.

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

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

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

9 For further information, see Section 6500 Comment.

10 See also Sections 6534 (“common interest development”), 6562 (“planned development”),
11 6564 (“separate interest”).

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

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

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

16 (a) A community apartment project.

17 (b) A condominium project.

18 (c) A planned development.

19 (d) A stock cooperative.

20 **Comment.** With respect to a commercial or industrial common interest development, Section
21 6534 continues Section 1351(c) without change.

22 For further information, see Section 6500 Comment.

23 See also Sections 6536 (“community apartment project”), 6542 (“condominium project”), 6562
24 (“planned development”), 6566 (“stock cooperative”).

25 **§ 6536 (UNCHANGED). “Community apartment project”**

26 6536. “Community apartment project” means a development in which an
27 undivided interest in land is coupled with the right of exclusive occupancy of any
28 apartment located thereon.

29 **Comment.** With respect to a commercial or industrial common interest development, Section
30 6536 continues Section 1351(d) without change.

31 For further information, see Section 6500 Comment.

32 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
33 common interest development may be organized as a community apartment project.

34 **§ 6540 (NEW). “Condominium plan”**

35 6540. “Condominium plan” means a plan described in Section 6624.

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

37 **Note.** Proposed Section 6540 is added for drafting convenience.

38 **§ 6542 (REVISED). “Condominium project”**

39 6542. (a) A “condominium project” means a real property development
40 consisting of condominiums.

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

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

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

21 **Comment.** With respect to a commercial or industrial common interest development, Section
22 6542 continues Section 1351(f) without change, except as indicated below.

23 The following nonsubstantive changes were made:

- 24 • The section has been organized into subdivisions for ease of reference.
- 25 • In subdivision (a), a reference to a “development” is revised to refer to a “real property
26 development.”
- 27 • Subdivisions (b) and (c) make clear that the contents of the area within the boundaries of
28 a condominium may include “fixtures.”

29 For further information, see Section 6500 Comment.

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

31 **§ 6544 (UNCHANGED). “Declarant”**

32 6544. “Declarant” means the person or group of persons designated in the
33 declaration as declarant, or if no declarant is designated, the person or group of
34 persons who sign the original declaration or who succeed to special rights,
35 preferences, or privileges designated in the declaration as belonging to the signator
36 of the original declaration.

37 **Comment.** With respect to a commercial or industrial common interest development, Section
38 6544 continues Section 1351(g) without change.

39 For further information, see Section 6500 Comment.

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

41 **§ 6546 (REVISED). “Declaration”**

42 6546. “Declaration” means the document, however denominated, that contains
43 the information required by Section 6614.

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6546 continues Section 1351(h) without change, except as indicated below.

3 The following nonsubstantive changes were made:

- 4 • The word “which” has been replaced with “that.”
- 5 • The cross-reference has been updated to reflect the new location of the referenced
6 provision.

7 For further information, see Section 6500 Comment.

8 **§ 6548 (NEW). “Director”**

9 6548. “Director” means a natural person who serves on the board.

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

11 See also Section 6530 (“board”).

12  **Note.** Proposed Section 6548 is added for drafting convenience.

13 **§ 6550 (REVISED). “Exclusive use common area”**

14 6550. (a) “Exclusive use common area” means a portion of the common area
15 designated by the declaration for the exclusive use of one or more, but fewer than
16 all, of the owners of the separate interests and which is or will be appurtenant to
17 the separate interest or interests.

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

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

28 **Comment.** With respect to a commercial or industrial common interest development, Section
29 6550 continues Section 1351(i) without change, except as indicated below.

30 The following nonsubstantive change was made:

- 31 • Several references to “common areas” are singularized.

32 For further information, see Section 6500 Comment.

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

34 **§ 6551 (NEW). “General notice”**

35 6551. “General notice” means the delivery of a document pursuant to Section
36 6516.

37 **Comment.** Section 6551 is new. It is added for drafting convenience.

38  **Note.** Proposed Section 6551 is added for drafting convenience.

1 § 6552 (REVISED). “Governing documents”

2 6552. “Governing documents” means the declaration and any other documents,
3 such as bylaws, operating rules, articles of incorporation, or articles of association,
4 which govern the operation of the common interest development or association.

5 **Comment.** With respect to a commercial or industrial common interest development, Section
6 6552 continues Section 1351(j) without change, except as indicated below.

7 The following nonsubstantive change was made:

- 8 • The superfluous words “of the association” have not been continued.

9 For further information, see Section 6500 Comment.

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

12 § 6553 (NEW). “Individual notice”

13 6553. “Individual notice” means the delivery of a document pursuant to Section
14 6514.

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

16  **Note.** Proposed Section 6553 is added for drafting convenience.

17 § 6554 (NEW). “Member”

18 6554. “Member” means an owner of a separate interest.

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

20 See also Section 6564 (“separate interest”).

21  **Note.** Proposed Section 6554 is added for drafting convenience.

22 § 6560 (NEW). “Person”

23 6560. “Person” means a natural person, corporation, government or
24 governmental subdivision or agency, business trust, estate, trust, partnership,
25 limited liability company, association, or other entity.

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

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

29 § 6562 (REVISED). “Planned development”

30 6562. “Planned development” means a real property development (other than a
31 community apartment project, a condominium project, or a stock cooperative)
32 having either or both of the following features:

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

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

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6562 continues the substance of Section 1351(k), except as indicated below.

3 The following nonsubstantive changes were made:

- 4 • In the introductory clause, the term “development” has been revised to read “real
5 property development.”
- 6 • Subdivision (a) has been restated for clarity.
- 7 • Subdivision (b) has been restated for clarity and to update a cross-reference.

8 For further information, see Section 6500 Comment.

9 See also Sections 6528 (“association”), 6532 (“common area”), 6536 (“community apartment
10 project”), 6542 (“condominium project”), 6564 (“separate interest”), 6566 (“stock cooperative”).

11 **Note.** Proposed Section 6562(b) replaces the existing reference in Section 1351(k) to
12 “Section 1367 or 1367.1” with a reference to “Article 2 (commencing with Section 6808) of
13 Chapter 6.” That reference encompasses all of the provisions of Sections 1367 and 1367.1 that
14 this act makes applicable to an exclusively commercial or industrial common interest
15 development under which an “assessment ... may become a lien.”

16 **§ 6564 (REVISED). “Separate interest”**

17 6564. (a) “Separate interest” has the following meanings:

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

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

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

24 (4) 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 were made:

- 37 • In subdivision (a)(2), the term “individual unit” is replaced with “separately owned unit.”
- 38 • The last two unnumbered paragraphs of former Section 1351(l) are designated as
39 subdivisions (b) and (c).
- 40 • Cross-references are updated to reflect the new location of referenced provisions.
- 41 • A reference to “common areas” is singularized.

42 For further information, see Section 6500 Comment.

43 See also Sections 6532 (“common area”), 6536 (“community apartment project”), 6540
44 (“condominium plan”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned
45 development”), 6566 (“stock cooperative”).

1 § 6566 (UNCHANGED). “Stock cooperative”

2 6566. “Stock cooperative” means a development in which a corporation is
3 formed or availed of, primarily for the purpose of holding title to, either in fee
4 simple or for a term of years, improved real property, and all or substantially all of
5 the shareholders of the corporation receive a right of exclusive occupancy in a
6 portion of the real property, title to which is held by the corporation. The owners’
7 interest in the corporation, whether evidenced by a share of stock, a certificate of
8 membership, or otherwise, shall be deemed to be an interest in a common interest
9 development and a real estate development for purposes of subdivision (f) of
10 Section 25100 of the Corporations Code.

11 **Comment.** With respect to a commercial or industrial common interest development, Section
12 6566 continues the first paragraph of Section 1351(m) without change.

13 For further information, see Section 6500 Comment.

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

15  **Note.** The Commission invites comment on whether an exclusively commercial or industrial
16 common interest development may be organized as a stock cooperative.

17 CHAPTER 2. APPLICATION OF ACT

18 § 6580 (REVISED). **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 were 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 (REVISED). **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.

1 **Comment.** Subdivision (a) of Section 6582 is consistent with Section 1373 as that section
2 provided prior to the enactment of 2012 Cal. Stat. ch. _____, except that the act that added this
3 section makes the following provisions of the Davis-Stirling Common Interest Development Act
4 inapplicable to a commercial or industrial common interest development: Section 1350.7, the
5 second paragraph of Section 1351(d), the provisions of Section 1353 that require notice if a
6 development is within an airport influence area or within the jurisdiction of the San Francisco
7 Bay Conservation and Development Commission, Section 1353.7, a portion of Section 1355(b), a
8 portion of Section 1357(b)-(c), Sections 1363(d), (e), (f), (h), and (i), Section 1363.03, Section
9 1363.04, Section 1363.05, Section 1363.07, Section 1363.09, Section 1363.1, Sections 1363.810
10 through 1363.850, Section 1363.2, Section 1365.1, Section 1365.2, Section 1365.2.5, Section
11 1365.7, the last two sentences of Section 1366(a), Section 1366(d), Section 1366(e), Section
12 1366.2, Section 1367.1(c), Section 1367.1(n), Section 1367.4, Section 1367.5, Section 1367.6,
13 and Sections 1369.510 through 1369.590.

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

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

17 The following nonsubstantive changes were made:

- 18 • The term “title” is replaced with “act.”
- 19 • The phrase “wherein there does not exist” has been restated for clarity.

20 For further information, see Section 6500 Comment.

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

22 **Note.** This proposed legislation is intended to apply only to a CID that is exclusively
23 commercial or industrial (i.e., that does not contain any residential separate interests). Mixed use
24 developments would continue to be governed by the existing Davis-Stirling act. That rule is
25 expressed in proposed Section 6582(a) and in proposed Section 6531, which defines “commercial
26 or industrial common interest development” using language drawn from existing Section 1373.

27 The Commission invites comment on whether there are any problems with that approach. For
28 example, are there any scenarios in which the proposed definition of “commercial or industrial
29 common interest development” might include a development that has one or more residential
30 separate interests? If so, suggestions for how to eliminate that possibility are invited.

31 CHAPTER 3. GOVERNING DOCUMENTS

32 Article 1. General Provisions

33 § 6600 (NEW). Document authority

34 6600. (a) The governing documents may not include a provision that is
35 inconsistent with the law. To the extent of any inconsistency between the
36 governing documents and the law, the law controls.

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

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

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

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

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

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

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

11 **Note.** Proposed Section 6600 is new. Subdivision (a) would make clear that an association’s
12 governing documents are subordinate to the law and are not enforceable to the extent they are
13 contradicted by the law. Subdivisions (b), (c), and (d) would provide guidance in resolving
14 conflicts between different governing documents.

15 **§ 6602 (REVISED). Liberal construction of instruments**

16 6602. Any deed, declaration, or condominium plan for a common interest
17 development shall be liberally construed to facilitate the operation of the common
18 interest development, and its provisions shall be presumed to be independent and
19 severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of
20 Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the
21 governing documents.

22 **Comment.** With respect to a commercial or industrial common interest development, Section
23 6602 continues Section 1370 without change, except as indicated below.

24 The following nonsubstantive changes were made:

- 25 • “This division” has been replaced with “Division 2.”
- 26 • The phrase “of a common interest development” has not been continued.

27 For further information, see Section 6500 Comment.

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

30 **§ 6604 (UNCHANGED). Boundaries of units**

31 6604. In interpreting deeds and condominium plans, the existing physical
32 boundaries of a unit in a condominium project, when the boundaries of the unit are
33 contained within a building, or of a unit reconstructed in substantial accordance
34 with the original plans thereof, shall be conclusively presumed to be its boundaries
35 rather than the metes and bounds expressed in the deed or condominium plan, if
36 any exists, regardless of settling or lateral movement of the building and
37 regardless of minor variance between boundaries shown on the plan or in the deed
38 and those of the building.

39 **Comment.** With respect to a commercial or industrial common interest development, Section
40 6604 continues Section 1371 without change.

41 For further information, see Section 6500 Comment.

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

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

5 **§ 6606 (REVISED). Deletion of unlawful restrictive covenants**

6 6606. (a) No declaration or other governing document shall include a restrictive
7 covenant in violation of Section 12955 of the Government Code.

8 (b) Notwithstanding any other provision of law or provision of the governing
9 documents, the board, without approval of the members, shall amend any
10 declaration or other governing document that includes a restrictive covenant
11 prohibited by this section to delete the restrictive covenant, and shall restate the
12 declaration or other governing document without the restrictive covenant but with
13 no other change to the declaration or governing document.

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

19 (d) If after providing written notice to an association, pursuant to Section 6512,
20 requesting that the association delete a restrictive covenant that violates
21 subdivision (a), and the association fails to delete the restrictive covenant within
22 30 days of receiving the notice, the Department of Fair Employment and Housing,
23 a city or county in which a common interest development is located, or any person
24 may bring an action against the association for injunctive relief to enforce
25 subdivision (a). The court may award attorney's fees to the prevailing party.

26 **Comment.** With respect to a commercial or industrial common interest development, Section
27 6606 continues Section 1352.5 without change, except as indicated below.

28 The following nonsubstantive changes were made:

- 29 • Subdivision (b) is revised to replace the term “board of directors of an association” with
30 the defined term “board.” See Section 6530 (“board” defined).
- 31 • Subdivision (b) is revised to replace “owners” with “members.” See Section 6554
32 (“member” defined).
- 33 • Subdivision (c) is added.
- 34 • Subdivision (d) is revised to include a reference to the provision governing notice to an
35 association (Section 6512).

36 For further information, see Section 6500 Comment.

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

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

41 **§ 6608 (REVISED). Deletion of declarant provisions in governing documents**

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

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

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

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

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

29 **Comment.** With respect to a commercial or industrial common interest development, Section
30 6608 continues Section 1355.5 without change, except as indicated below.

31 The following substantive change was made:

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

34 The following nonsubstantive changes were made:

- 35 • The phrase “his or her” is not continued in subdivision (a).
- 36 • The phrase “of a common interest development” has not been continued in subdivision
37 (a).
- 38 • The terms “board of directors” and “board of directors of the association” are replaced
39 throughout with the defined term “board.” See Section 6530 (“board” defined).
- 40 • Subdivision (b) has been revised to use numerals to number the listed items, rather than
41 letters.
- 42 • Subdivisions (c) and (d) are revised to use the defined term “member.” See Section 6554
43 (“member” defined).
- 44 • Subdivision (c) is revised to delete the unnecessary word “such.”
- 45 • Subdivision (c) is revised to replace “which” with “that.”

- Subdivision (d) is revised to use the standard term “approval of a majority of a quorum of the members.” See Section 6524.

For further information, see Section 6500 Comment.

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

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

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

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

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

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

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

Article 2. Declaration

§ 6614 (REVISED). 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 community apartment project, 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.

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 were made:

- The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

- The defined term “declarant” is used in place of “original signator of the declaration.” See Section 6544 (“declarant”).

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6534 (“common interest development”), 6536 (“community apartment project”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6566 (“stock cooperative”).

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

§ 6616 (REVISED). 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 further information, see Section 6500 Comment.

See also Section 6546 (“declaration”).

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

§ 6618 (REVISED). 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 for protecting the common plan of developments and to provide for a mechanism for financial support for the upkeep of common area including, but not limited to, roofs, roads, heating systems, and recreational facilities. If declarations terminate prematurely, common interest developments may deteriorate and the supply of affordable units could be impacted adversely. The Legislature further finds and declares that it is in the public interest to provide a vehicle for extending the term of the declaration if the extension is approved by a majority of all members, pursuant to Section 6522.

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

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

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

10 The following nonsubstantive changes were made:

- 11 • The defined term “member” is used. See Section 6554 (“member”).
- 12 • A reference to “common areas” is singularized.
- 13 • The term “which” is replaced with “that.”
- 14 • A reference to approval by “members having more than 50 percent of the votes in the
15 association” is replaced with standard terminology.
- 16 • A reference to “housing” is deleted.

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

21 The following nonsubstantive change was made:

- 22 • Language has been added to make clear that the extension must occur before the
23 termination date.

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

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

29 For further information, see Section 6500 Comment.

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

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

36 **§ 6620 (REVISED). Amendment procedure**

37 6620. (a) A declaration may be amended pursuant to the declaration or this act.
38 An amendment is effective after all of the following requirements have been met:

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

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

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

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

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

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

12 The following substantive changes were made:

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

18 The following nonsubstantive changes were made:

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

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

26 For further information, see Section 6500 Comment.

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

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

32 Article 3. Articles of Incorporation

33 § 6622 (REVISED). Content of articles

34 6622. (a) The articles of incorporation of an association filed with the Secretary
35 of State on or after January 1, 1995, shall include a statement, which shall be in
36 addition to the statement of purposes of the corporation, that does all of the
37 following:

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

41 (2) States the business or corporate office of the association, if any, and, if the
42 office is not on the site of the common interest development, states the nine-digit

1 ZIP Code, front street, and nearest cross street for the physical location of the
2 common interest development.

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

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

8 **Comment.** With respect to a commercial or industrial common interest development, Section
9 6622 continues Section 1363.5 without change, except as indicated below.

10 The following substantive change was made:

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

13 The following nonsubstantive changes were made:

- 14 • A cross-reference to the definition of “managing agent” has not been continued.
- 15 • The term “common interest development association” is replaced with “association.”

16 For further information, see Section 6500 Comment.

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

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

21 Article 4. Condominium Plan

22 § 6624 (REVISED). “Condominium plan”

23 6624. A condominium plan shall contain all of the following:

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

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

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

32 **Comment.** With respect to a commercial or industrial common interest development, Section
33 6624 continues Section 1351(e)(1)-(2) and a part of Section 1351(e)(3) without change, except as
34 indicated below.

35 The following nonsubstantive changes were made:

- 36 • The enumerated items are set out as subdivisions.
- 37 • A reference to “this title” has been changed to “this act.”
- 38 • The list of persons who must sign and acknowledge the certificate consenting to
39 recordation of the condominium plan has been replaced with a reference to the section
40 governing the creation and recordation of a condominium plan.

41 For further information, see Section 6500 Comment.

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

1 **§ 6626 (REVISED). Recordation of condominium plan**

2 6626. (a) The certificate consenting to the recordation of a condominium plan
3 that is required by subdivision (c) of Section 6624 shall be signed and
4 acknowledged by all of the following persons:

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

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

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

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

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

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

20 **Comment.** With respect to a commercial or industrial common interest development, Section
21 6626 continues the substance of Section 1351(e)(3), except as indicated below.

22 The following nonsubstantive changes were made:

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

27 For further information, see Section 6500 Comment.

28 See also Sections 6536 (“community apartment project”), 6540 (“condominium plan”), 6542
29 (“condominium project”), 6560 (“person”), 6566 (“stock cooperative”).

30 **Note.** Proposed Section 6626 would restate the procedural provisions of existing Section
31 1351(e)(3). Doing so necessitates a number of minor nonsubstantive language revisions.

32 **§ 6628 (REVISED). Amendment or revocation of condominium plan**

33 6628. A condominium plan may be amended or revoked by a recorded
34 instrument that is acknowledged and signed by all the persons who, at the time of
35 amendment or revocation, are persons whose signatures are required under Section
36 6626.

37 **Comment.** With respect to a commercial or industrial common interest development, Section
38 6628 continues the last paragraph of Section 1351(e) without change, except as indicated below.

39 The following nonsubstantive change was made:

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

43 For further information, see Section 6500 Comment.

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

Note. Proposed Section 6628 is revised to make its meaning more clear, as described in the Comment following the section.

CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS

Article 1. Ownership Rights and Interests

§ 6650 (REVISED). 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 were made:

- The references to “common areas” are singularized.
- The phrase “unit or lot” is replaced with the defined term “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 (REVISED). Appurtenant rights and easements

6652. Unless the declaration otherwise provides:

(a) In a community apartment project and 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 change was made:

- The references to “common areas” are singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6536 (“community apartment project”), 6542 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6564 (“separate interest”), 6566 (“stock cooperative”).

§ 6654 (REVISED). 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

1 member or occupant physical access to the member’s or occupant’s separate
2 interest, either by restricting access through the common area to the separate
3 interest, or by restricting access solely to the separate interest.

4 **Comment.** With respect to a commercial or industrial common interest development, Section
5 6654 continues Section 1361.5 without change, except as indicated below.

6 The following nonsubstantive changes were made:

- 7 • The phrase “his or her” has been replaced with “the member’s or occupant’s.”
- 8 • References to the “owner’s” separate interest have been revised to omit the word
9 “owner’s.” This will help to avoid any implication that the reference does not also apply
10 to an “occupant” of a separate interest.
- 11 • The defined term “member” is used in place of “owner” throughout. See Section 6554
12 (“member”).
- 13 • The references to “common areas” is singularized.

14 For further information, see Section 6500 Comment.

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

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

23 Article 2. Restrictions on Transfers

24 § 6656 (REVISED). Partition of condominium project

25 6656. (a) Except as provided in this section, the common area in a condominium
26 project shall remain undivided, and there shall be no judicial partition thereof.
27 Nothing in this section shall be deemed to prohibit partition of a cotenancy in a
28 condominium.

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

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

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

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

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

6 **Comment.** With respect to a commercial or industrial common interest development, Section
7 6656 continues Section 1359 without change, except as indicated below.

8 The following nonsubstantive changes were made:

- 9 • References to “common areas” are singularized.
- 10 • Subdivision (b)(4) is rephrased to avoid use of “such.”

11 For further information, see Section 6500 Comment.

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

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

18 **§ 6658 (REVISED). Lien for work performed in condominium project**

19 6658. (a) In a condominium project, no labor performed or services or materials
20 furnished with the consent of, or at the request of, an owner in the condominium
21 project or the owners’ agent or contractor shall be the basis for the filing of a lien
22 against any other property of any other owner in the condominium project unless
23 that other owner has expressly consented to or requested the performance of the
24 labor or furnishing of the materials or services. However, express consent shall be
25 deemed to have been given by the owner of any condominium in the case of
26 emergency repairs thereto.

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

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

34 **Comment.** With respect to a commercial or industrial common interest development, Section
35 6658 continues Section 1369 without change, except as indicated below.

36 The following nonsubstantive changes were made:

- 37 • Subdivisions are added.
- 38 • The phrase “his or her” is replaced with references to the “owner” throughout.
- 39 • A reference to “common areas” is singularized.
- 40 • The word “which” is replaced with “that” in subdivision (c).

41 For further information, see Section 6500 Comment.

42 See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium
43 project”).

Article 3. Transfer of Separate Interest

§ 6660 (UNCHANGED). Community apartment project

6660. In a community apartment project, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the community apartment project. 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 6660 continues Section 1358(a) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6536 (“community apartment project”), 6564 (“separate interest”).

Note. The Commission invites comment on whether an exclusively commercial or industrial common interest development may be organized as a community apartment project, or whether this provision is unnecessary.

§ 6662 (REVISED). 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 were made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- References to “common areas” are singularized.

For further information, see Section 6500 Comment.

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

§ 6664 (REVISED). 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 was made:

- A reference to “common areas” is singularized.

For further information, see Section 6500 Comment.

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

3 **§ 6666 (UNCHANGED). Stock cooperative**

4 6666. In a stock cooperative, any conveyance, judicial sale, or other voluntary or
5 involuntary transfer of the separate interest includes the ownership interest in the
6 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary
7 or involuntary transfer of the owner’s entire estate also includes the owner’s
8 membership interest in the association.

9 **Comment.** With respect to a commercial or industrial common interest development, Section
10 6666 continues Section 1358(d) without change.

11 For further information, see Section 6500 Comment.

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

13 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
14 common interest development may be organized as a stock cooperative, or whether this provision
15 is unnecessary.

16 **§ 6668 (REVISED). Transfer of exclusive use common area**

17 6668. Nothing in this article prohibits the transfer of exclusive use areas,
18 independent of any other interest in a common interest subdivision, if
19 authorization to separately transfer exclusive use areas is expressly stated in the
20 declaration and the transfer occurs in accordance with the terms of the declaration.

21 **Comment.** With respect to a commercial or industrial common interest development, Section
22 6668 continues the next to last paragraph of Section 1358 without change, except as indicated
23 below.

24 The following nonsubstantive change was made:

- 25 • The term “section” is replaced with “article.”

26 For further information, see Section 6500 Comment.

27 See also Section 6546 (“declaration”).

28 **§ 6670 (REVISED). Severability of interests**

29 6670. Any restrictions upon the severability of the component interests in real
30 property which are contained in the declaration shall not be deemed conditions
31 repugnant to the interest created within the meaning of Section 711. However,
32 these restrictions shall not extend beyond the period in which the right to partition
33 a project is suspended under Section 6656.

34 **Comment.** With respect to a commercial or industrial common interest development, Section
35 6670 continues the last paragraph of Section 1358 without change, except as indicated below.

36 The following nonsubstantive changes were made:

- 37 • A superfluous reference to the “Civil Code” is omitted.
- 38 • The cross-reference is updated to reflect the new location of the referenced provision.

39 For further information, see Section 6500 Comment.

40 See also Section 6546 (“declaration”).

1 CHAPTER 4. PROPERTY USE AND MAINTENANCE

2 Article 1. Use of Separate Interest

3 § 6700 (NEW). 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  **Note.** Proposed Section 6700 is new. It introduces the article and lists other provisions that
20 protect separate interest use rights.

21 § 6702 (REVISED). Display of U.S. flag

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

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

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

34 **Comment.** With respect to a commercial or industrial common interest development, Section
35 6702 continues Section 1353.5 without change, except as indicated below.

36 The following nonsubstantive changes were made:

- 37 • A superfluous cross-reference to governing definitions is omitted.
- 38 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

39 For further information, see Section 6500 Comment.

40 See also Sections 6532 (“common area”), 6546 (“declaration”), 6550 (“exclusive use common
41 area”), 6552 (“governing documents”), 6564 (“separate interest”).

1 **§ 6704 (REVISED). 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 were made:

- 18 • The redundant phrase "including the operating rules" is not continued.
- 19 • The defined term "member" is used in place of "owner." See Section 6554 ("member").
- 20 • In subdivision (c), the numeral "9" was 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 (REVISED). 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 were made:

- 4 • A reference to “homeowner” has been replaced with “owner” in subdivision (b).
- 5 • The words “his or her” have been 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 (REVISED). 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.

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

3 **Comment.** With respect to a commercial or industrial common interest development, Section
4 6708 continues Section 1376 without change, except as indicated below.

5 The following nonsubstantive change was made:

- 6 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).

7 For further information, see Section 6500 Comment.

8 See also 47 C.F.R. § 1.4000.

9 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
10 development”), 6564 (“separate interest”).

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

14 **§ 6710 (REVISED). Marketing restriction**

15 6710. (a) Any provision of a governing document that arbitrarily or
16 unreasonably restricts an owner’s ability to market the owner’s interest in a
17 common interest development is void.

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

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

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

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

30 (d) This section does not apply to rules or regulations made pursuant to Section
31 712 or 713 regarding real estate signs.

32 **Comment.** With respect to a commercial or industrial common interest development, Section
33 6710 continues Section 1368.1 without change, except as indicated below.

34 The following substantive changes were made:

- 35 • The introductory clause is revised to make clear that a void provision does not void the
36 entire governing document that contains it.
- 37 • The phrase “rule or regulation” is replaced with “governing document.” This broadens
38 the application of the section so that it governs any provision in the governing documents
39 and not just an operating rule.

40 The following nonsubstantive changes were made:

- 41 • The phrase “his or her” is replaced with “the owner’s” in subdivision (a).
- 42 • A reference to “common areas” is singularized.
- 43 • The superfluous words “of an association” are omitted.
- 44 • A reference to a statutory limitation set forth in Section 1366.1, a provision that is not
45 continued in this act, is deleted.

1 For further information, see Section 6500 Comment.

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

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

6 **§ 6712 (REVISED). Low water-using plants**

7 6712. (a) Notwithstanding any other law, a provision of the governing
8 documents shall be void and unenforceable if it does any of the following:

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

11 (2) Has the effect of prohibiting or restricting compliance with either of the
12 following:

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

15 (B) Any regulation or restriction on the use of water adopted pursuant to Section
16 353 or 375 of the Water Code.

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

20 **Comment.** With respect to a commercial or industrial common interest development, Section
21 6712 continues Section 1353.8 without change, except as indicated below.

22 The following nonsubstantive change was made:

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

27 For further information, see Section 6500 Comment.

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

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

30 **§ 6714 (REVISED). Improvements to separate interest**

31 6714. (a) Subject to the governing documents and applicable law, a member
32 may do the following:

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

36 (2) Modify the member’s separate interest, at the member’s expense, to facilitate
37 access for persons who are blind, visually handicapped, deaf, or physically
38 disabled, or to alter conditions which could be hazardous to these persons. These
39 modifications may also include modifications of the route from the public way to
40 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 was 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 were made:

- 24 • The phrase “his or her” is not continued in subdivision (a)(2)(D).
- 25 • The defined term “member” is used in place of “owner” throughout. See Section 6554
26 (“member” 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 **Note.** Proposed Section 6714 would broaden the scope of Section 1360 to include all CIDs,
31 and not just condominiums. References to “units” are replaced with references to “separate
32 interests.” References to condominium associations are changed to refer to associations generally.

33 Article 3. Maintenance

34 § 6716 (REVISED). Maintenance responsibility generally

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

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

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

7 The following nonsubstantive change was made:

- 8 • References to “common areas” are singularized.

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

11 For further information, see Section 6500 Comment.

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

15 **§ 6718 (REVISED). Wood-destroying pests or organisms**

16 6718. (a) In a community apartment project, condominium project, or stock
17 cooperative, unless otherwise provided in the declaration, the association is
18 responsible for the repair and maintenance of the common area occasioned by the
19 presence of wood-destroying pests or organisms.

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

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

30 The following nonsubstantive change was made:

- 31 • A superfluous cross-reference to governing definitions has not been continued.

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

34 The following nonsubstantive changes were made:

- 35 • A superfluous cross-reference to a governing definition has not been continued.
- 36 • A cross-reference to Section 6522 is added.
- 37 • The last sentence is revised to avoid use of the word “such.”

38 For further information, see Section 6500 Comment.

39 See also Sections 6528 (“association”), 6532 (“common area”), 6536 (“community apartment
40 project”), 6542 (“condominium project”), 6546 (“declaration”), 6554 (“member”), 6562
41 (“planned development”), 6564 (“separate interest”), 6566 (“stock cooperative”).

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

1 **§ 6720 (REVISED). Temporary removal of occupant to perform treatment of wood-**
2 **destroying pests**

3 6720. (a) The association may cause the temporary, summary removal of any
4 occupant of a common interest development for such periods and at such times as
5 may be necessary for prompt, effective treatment of wood-destroying pests or
6 organisms.

7 (b) The association shall give notice of the need to temporarily vacate a separate
8 interest to the occupants and to the owners, not less than 15 days nor more than 30
9 days prior to the date of the temporary relocation. The notice shall state the reason
10 for the temporary relocation, the date and time of the beginning of treatment, the
11 anticipated date and time of termination of treatment, and that the occupants will
12 be responsible for their own accommodations during the temporary relocation.

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

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

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

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

23 **Comment.** With respect to a commercial or industrial common interest development, Section
24 6720 continues Section 1364(d)-(e) without change, except as indicated below.

25 The following substantive change was made:

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

27 The following nonsubstantive change was made:

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

29 For further information, see Section 6500 Comment.

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

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

34 **§ 6722 (REVISED). Exclusive use communication wiring**

35 6722. Notwithstanding the provisions of the declaration, a member is entitled to
36 reasonable access to the common area for the purpose of maintaining the internal
37 and external telephone wiring made part of the exclusive use common area of the
38 member’s separate interest pursuant to subdivision (c) of Section 6550. The access
39 shall be subject to the consent of the association, whose approval shall not be
40 unreasonably withheld, and which may include the association’s approval of
41 telephone wiring upon the exterior of the common area, and other conditions as
42 the association determines reasonable.

Article 2. Record Keeping

§ 6756 (NEW). Mailing-related requests

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

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

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

(c) A request for individual delivery of general notices to the member, pursuant to subdivision (b) of Section 6516, or a request to cancel a prior request for individual delivery of general notices.

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

See also Sections 6528 ("association"), 6554 ("member").

Note. Proposed Section 6756 would require that certain mailing-related requests be submitted in writing, by the method specified for delivery of notices to the association..

Article 3. Conflict of Interest

§ 6758 (REVISED). Interested director

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

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

(1) Discipline of the director or committee member.

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

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

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

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

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

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

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

The following nonsubstantive change was made:

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

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

For further information, see Section 6500 Comment.

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

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

(2) Subdivision (b) is added to provide simplified guidance to association board members on impermissible conflicts.

(3) Subdivision (c) makes clear that the section is not intended as a complete codification of the law governing director conflicts of interest.

Article 4. Government Assistance

§ 6760 (REVISED). Director training course

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

Comment. With respect to a commercial or industrial common interest development, Section 6760 continues the substance of Section 1363.001, except as indicated below.

The following nonsubstantive changes were made:

- The term “board of directors” has been replaced with the defined term “board.” See Section 6530 (“board”).
- The defined term “director” is used in place of “board member.” See Section 6548 (“director”).
- “On-line” was replaced with “online” to reflect modern usage.

For further information, see Section 6500 Comment.

§ 6762 (REVISED). State registry

6762. (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.

1 (3) The street address of the association's onsite office, or, if none, of the
2 responsible officer or managing agent of the association.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 1 of the Government Code. The information submitted pursuant to this section
2 shall be made available for governmental or public inspection.

3 **Comment.** With respect to a commercial or industrial common interest development, Section
4 6762 continues Section 1363.6 without change, except as indicated below.

5 The following substantive change was made:

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

8 The following nonsubstantive changes were made:

- 9 • Cross-references are updated to reflect the new location of the referenced provisions.
- 10 • The redundant phrase “of the association” is omitted in subdivision (a)(4).
- 11 • Superfluous references to definition sections are not continued.
- 12 • Obsolete transitional dates are omitted in subdivisions (d) and (e).

13 For further information, see Section 6500 Comment.

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

16 CHAPTER 6. ASSESSMENTS AND ASSESSMENT COLLECTION

17 Article 1. Establishment and Imposition of Assessments

18 § 6800 (REVISED). Levy of assessment

19 6800. The association shall levy regular and special assessments sufficient to
20 perform its obligations under the governing documents and this act.

21 **Comment.** With respect to a commercial or industrial common interest development, Section
22 6800 continues the first sentence of Section 1366(a) without change, except as indicated below.

23 The following nonsubstantive changes were made:

- 24 • The term “title” is changed to “act.”
- 25 • A superfluous reference to the remainder of Section 1366 is deleted.

26 For further information, see Section 6500 Comment.

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

28 § 6804 (REVISED). Exemption from execution

29 6804. (a) Regular assessments imposed or collected to perform the obligations
30 of an association under the governing documents or this act shall be exempt from
31 execution by a judgment creditor of the association only to the extent necessary
32 for the association to perform essential services, such as paying for utilities and
33 insurance. In determining the appropriateness of an exemption, a court shall
34 ensure that only essential services are protected under this subdivision.

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

39 **Comment.** With respect to a commercial or industrial common interest development, Section
40 6804 continues Section 1366(c) without change, except as indicated below.

1 The following nonsubstantive changes were made:

- 2 • Subdivisions are added.
- 3 • A reference to approval of a majority of members casting a vote at a meeting at which a
- 4 quorum is established has been replaced with a reference to the standard provision on
- 5 approval by a majority of a quorum of members (Section 4070).
- 6 • Quorum-related language from former Section 1366(b)-(c) is not continued.
- 7 • A reference to “title” is changed to “act.”

8 For further information, see Section 6500 Comment.

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

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

20 Article 2. Assessment Payment and Delinquency

21 § 6808 (REVISED). Assessment debt and delinquency

22 6808. (a) A regular or special assessment and any late charges, reasonable fees
23 and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as
24 determined in accordance with subdivision (b), shall be a debt of the owner of the
25 separate interest at the time the assessment or other sums are levied.

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

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

31 The following nonsubstantive change was made:

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

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

35 For further information, see Section 6500 Comment.

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

37 § 6810 (REVISED). Payments

38 6810. (a) Any payments made by the owner of a separate interest toward
39 assessments shall first be applied to the assessments owed, and, only after the
40 assessments owed are paid in full shall the payments be applied to the fees and
41 costs of collection, attorney’s fees, late charges, or interest.

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

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

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

8 The following nonsubstantive changes were made:

- 9 • A superfluous reference to assessment debt “set forth, as required in subdivision (a)” is
10 deleted to make the meaning of the provision clearer.
- 11 • Subdivisions are added.

12 For further information, see Section 6500 Comment.

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

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

21 **§ 6812 (REVISED). Pre-lien notice**

22 6812. At least 30 days prior to recording a lien upon the separate interest of the
23 owner of record to collect a debt that is past due under Section 6808, the
24 association shall notify the owner of record in writing by certified mail of the
25 following:

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

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

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

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

41 **Comment.** With respect to a commercial or industrial common interest development, Section
42 6812 continues the second sentence of Section 1367.1(a), and paragraphs (1) to (3) of that
43 provision, inclusive, without change, except as indicated below.

1 The following nonsubstantive change was made:

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

3 For further information, see Section 6500 Comment.

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

5 **§ 6814 (UNCHANGED). Notice of delinquent assessment**

6 6814. (a) The amount of the assessment, plus any costs of collection, late
7 charges, and interest assessed in accordance with subdivision (b) of Section 6808,
8 shall be a lien on the owner’s separate interest in the common interest
9 development from and after the time the association causes to be recorded with the
10 county recorder of the county in which the separate interest is located, a notice of
11 delinquent assessment, which shall state the amount of the assessment and other
12 sums imposed in accordance with subdivision (b) of Section 6808, a legal
13 description of the owner’s separate interest in the common interest development
14 against which the assessment and other sums are levied, and the name of the
15 record owner of the separate interest in the common interest development against
16 which the lien is imposed.

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

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

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

26 (e) A copy of the recorded notice of delinquent assessment shall be mailed by
27 certified mail to every person whose name is shown as an owner of the separate
28 interest in the association’s records, and the notice shall be mailed no later than 10
29 calendar days after recordation.

30 (f) Upon receipt of a written request by an owner, delivered pursuant to Section
31 6512, identifying a secondary address for purposes of collection notices, the
32 association shall send additional copies of any notices required by this article or by
33 Section 6822 to the secondary address provided. The association shall notify
34 owners of their right to submit secondary addresses to the association. The owner
35 may identify or change a secondary address at any time.

36 **Comment.** With respect to a commercial or industrial common interest development,
37 subdivisions (a)-(e) of Section 6814 continue the first five sentences of Section 1367.1(d) without
38 change, except as indicated below.

39 The following nonsubstantive change was made:

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

41 With respect to a commercial or industrial common interest development, subdivision (f)
42 continues Section 1367.1(k) without change, except as indicated below.

43 The following substantive change was made:

- The provision is revised to incorporate a standardized procedure for delivery of a document to an association. See Section 6512.

The following nonsubstantive changes were made:

- A cross-reference is added to reflect the new location of a referenced provision.
- Superfluous language relating to the identifying or changing of a secondary address during the collection process is deleted. Under subdivision (f), the association's obligation to send notices to a secondary address as requested by a member in all cases turns on the receipt of the request by the association.
- A requirement that a specified notification to owners be included in the annual budget has been deleted.

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6534 ("common interest development"), 6546 ("declaration"), 6560 ("person"), 6564 ("separate interest").

§ 6816 (REVISED). Lien priority

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

Comment. With respect to a commercial or industrial common interest development, Section 6816 continues Section 1367.1(f) without change, except as indicated below.

The following nonsubstantive changes were made:

- The phrase "notice of assessment" is replaced with the more specific "notice of 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").

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

§ 6818 (UNCHANGED). 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.

1 **Comment.** With respect to a commercial or industrial common interest development,
2 subdivision (a) of Section 6818 continues the sixth sentence of Section 1367.1(d) without change.

3 With respect to a commercial or industrial common interest development, subdivision (b)
4 continues Section 1367.1(i) without change.

5 For further information, see Section 6500 Comment.

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

7 **§ 6819 (REVISED). Procedural noncompliance**

8 6819. An association that fails to comply with the procedures set forth in this
9 section shall, prior to recording a lien, recommence the required notice process.
10 Any costs associated with recommencing the notice process shall be borne by the
11 association and not by the owner of a separate interest.

12 **Comment.** With respect to a commercial or industrial common interest development, Section
13 6819 continues former Section 1367.1(l) without change, except as indicated below.

14 The following nonsubstantive change was made:

- 15 • A reference to “this section” is changed to “this article.”

16 For further information, see Section 6500 Comment.

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

18 **Article 3. Assessment Collection**

19 **§ 6820 (REVISED). Collection generally**

20 6820. (a) Except as otherwise provided in this article, after the expiration of 30
21 days following the recording of a lien created pursuant to Section 6814, the lien
22 may be enforced in any manner permitted by law, including sale by the court, sale
23 by the trustee designated in the notice of delinquent assessment, or sale by a
24 trustee substituted pursuant to Section 2934a.

25 (b) Nothing in Article 2 (commencing with Section 6808) or in subdivision (a)
26 of Section 726 of the Code of Civil Procedure prohibits actions against the owner
27 of a separate interest to recover sums for which a lien is created pursuant to Article
28 2 (commencing with Section 6808) or prohibits an association from taking a deed
29 in lieu of foreclosure.

30 **Comment.** With respect to a commercial or industrial common interest development,
31 subdivision (a) of Section 6820 continues the substance of the second sentence of Section
32 1367.1(g), except as indicated below.

33 The following nonsubstantive changes were made:

- 34 • The introductory clause has been broadened to recognize the application of all restrictions
35 on collection that are provided in this article. See, e.g., Section 6826 (limitation on
36 assignment).
- 37 • Cross-references are updated to reflect the new location of the referenced provisions.

38 With respect to a commercial or industrial common interest development, subdivision (b)
39 continues Section 1367.1(h) without change, except as indicated below.

40 The following nonsubstantive change was made:

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

42 For further information, see Section 6500 Comment.

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

1 **§ 6822 (REVISED). Foreclosure**

2 6822. (a) Any sale by the trustee shall be conducted in accordance with Sections
3 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages
4 and deeds of trust.

5 (b) In addition to the requirements of Section 2924, the association shall serve a
6 notice of default on the person named as the owner of the separate interest in the
7 association's records or, if that person has designated a legal representative
8 pursuant to this subdivision, on that legal representative. Service shall be in
9 accordance with the manner of service of summons in Article 3 (commencing with
10 Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.
11 An owner may designate a legal representative in a writing that is mailed to the
12 association in a manner that indicates that the association has received it.

13 (c) The fees of a trustee may not exceed the amounts prescribed in Sections
14 2924c and 2924d, plus the cost of service for the notice of default pursuant to
15 subdivision (b).

16 **Comment.** With respect to a commercial or industrial common interest development,
17 subdivision (a) of Section 6822 continues the third sentence of Section 1367.1(g) without change.

18 With respect to a commercial or industrial common interest development, subdivision (b)
19 continues the substance of Section 1367.1(j).

20 With respect to a commercial or industrial common interest development, subdivision (c)
21 continues the fourth sentence and paragraph (1) of Section 1367.1(g), without change.

22 For further information, see Section 6500 Comment.

23 See also Sections 6528 ("association"), 6564 ("separate interest").

24 **§ 6824 (REVISED). Limitations on authority to foreclose liens for monetary penalties and**
25 **damage to the common area**

26 6824. (a) A monetary charge imposed by the association as a means of
27 reimbursing the association for costs incurred by the association in the repair of
28 damage to common area and facilities caused by a member or the member's guest
29 or tenant may become a lien against the member's separate interest enforceable by
30 the sale of the interest under Sections 2924, 2924b, and 2924c, provided the
31 authority to impose a lien is set forth in the governing documents. It is the intent of
32 the Legislature not to contravene Section 2792.26 of Title 10 of the California
33 Code of Regulations, as that section appeared on January 1, 1996, for associations
34 of subdivisions that are being sold under authority of a subdivision public report,
35 pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business
36 and Professions Code.

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

42 **Comment.** With respect to a commercial or industrial common interest development,
43 subdivision (a) of Section 6824 continues the seventh and eighth sentences of Section 1367.1(d)
44 without change, except as indicated below.

1 The following nonsubstantive change was made:

- 2 • A reference to “common areas” is singularized.

3 With respect to a commercial or industrial common interest development, subdivision (b)
4 continues Section 1367.1(e) without change, except as indicated below.

5 The following nonsubstantive changes were made:

- 6 • The introductory clause “except as indicated in subdivision (d)” is not continued.
- 7 • The undefined term “governing instruments” is replaced with the defined term
8 “governing documents.”
- 9 • The undefined term “subdivision separate interest” is replaced with the defined term
10 “separate interest.”

11 For further information, see Section 6500 Comment.

12 See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing
13 documents”), 6554 (“member”), 6564 (“separate interest”).

14 **Notes.** (1) Proposed Section 6824(b) would omit the introductory clause of Section
15 1367.1(e): “Except as indicated in subdivision (d)...” The staff sees nothing in Section 1367.1(d)
16 that would operate as an exception to the rule stated in Section 1367.1(e).

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

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

21 **§ 6826 (REVISED). Assignment or pledge**

22 6826. (a) An association may not voluntarily assign or pledge the association’s
23 right to collect payments or assessments, or to enforce or foreclose a lien to a third
24 party, except when the assignment or pledge is made to a financial institution or
25 lender chartered or licensed under federal or state law, when acting within the
26 scope of that charter or license, as security for a loan obtained by the association.

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

30 **Comment.** With respect to a commercial or industrial common interest development, Section
31 6826 continues the first sentence of Section 1367.1(g) without change, except as indicated below.

32 The following nonsubstantive changes were made:

- 33 • The provision is divided into subdivisions.
- 34 • An introductory clause is added in subdivision (b) to make the relationship between the
35 two provisions clearer.

36 For further information, see Section 6500 Comment.

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

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

42 **§ 6828 (NEW). Application of article**

43 6828. (a) Except as otherwise provided, this article applies to a lien created on or
44 after January 1, 2014.

1 (b) A lien created before January 1, 2014, is governed by the law in existence at
2 the time the lien was created.

3 **Comment.** Section 6828 is new. A lien created on or after January 1, 1986, and before January
4 1, 2003, is governed by Section 1367. A lien created on or after January 1, 2003 and before the
5 operative date of the act that added this section, is governed by Section 1367.1 and Section
6 1367.4.

7 **Note.** Under existing law, Section 1367 governs liens recorded on or after January 1, 1986,
8 but before January 1, 2003. Liens that are recorded on or after January 1, 2003, are governed by
9 Section 1367.1 (except that inconsistent provisions of Section 1367.4 govern debts for
10 assessments that arise on or after January 1, 2006). However, as this proposed legislation would
11 make a portion of Section 1367.1 and the entirety of Section 1367.4 inapplicable to an
12 exclusively commercial or industrial CID, for those CIDs the relevant date in this provision
13 would be the operative date of this legislation.

14 CHAPTER 7. INSURANCE AND LIABILITY

15 § 6840 (REVISED). Limitation of member liability

16 6840. (a) It is the intent of the Legislature to offer civil liability protection to
17 owners of the separate interests in a common interest development that have
18 common area owned in tenancy-in-common if the association carries a certain
19 level of prescribed insurance that covers a cause of action in tort.

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

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

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

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

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

34 **Comment.** With respect to a commercial or industrial common interest development, Section
35 6840 continues Section 1365.9 without change, except as indicated below.

36 The following nonsubstantive changes were made:

- 37 • A superfluous cross-reference to a governing definition is not continued.
38 • A reference to “common areas” is singularized.
39 • Subdivision (b)(1) is revised to replace “which” with “that.”

40 For further information, see Section 6500 Comment.

41 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
42 development”), 6564 (“separate interest”).

1 CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT

2 Article 1. Disciplinary Action

3 **§ 6850 (REVISED). Schedule of monetary penalties**

4 6850. (a) If an association adopts or has adopted a policy imposing any
5 monetary penalty, including any fee, on any association member for a violation of
6 the governing documents, including any monetary penalty relating to the activities
7 of a guest or tenant of the member, the board shall adopt and distribute to each
8 member, by individual notice, a schedule of the monetary penalties that may be
9 assessed for those violations, which shall be in accordance with authorization for
10 member discipline contained in the governing documents.

11 (b) A monetary penalty assessed against a member for a violation of the
12 governing documents shall not exceed the monetary penalty stated in the schedule
13 of monetary penalties that was most recently distributed to that member.

14 (c) An association shall provide a copy of the most recently distributed schedule
15 of monetary penalties to any member on request.

16 **Comment.** With respect to a commercial or industrial common interest development,
17 subdivision (a) of Section 6850 continues the first sentence of Section 1363(g) without change,
18 except as indicated below.

19 The following substantive changes were made:

- 20 • A reference to delivery by personal delivery or first class mail has been changed to
21 incorporate the “individual notice” procedure.
22 • The term “invitee” was replaced with “tenant,” to make clear that the provision applies to
23 tenants.

24 The following nonsubstantive changes were made:

- 25 • A reference to the “rules of the association” is superfluous and is not continued. The term
26 “governing documents” encompasses rules. See Section 6552.
27 • The term “board of directors” has been replaced with the defined term “board.” See
28 Section 6530 (“board”).

29 Subdivision (b) and (c) are new.

30 For further information, see Section 6500 Comment.

31 See also Sections 6528 (“association”), 6552 (“governing documents”), 6553 (“individual
32 notice”), 6554 (“member”).

33 **Notes.** (1) Subdivision (b) of proposed Section 6850 would provide that a monetary penalty
34 assessed against a member for a violation of the governing documents may not exceed the penalty
35 stated in whatever schedule of penalties was most recently distributed to that member.

36 (2) Subdivision (c) would require an association to provide a copy of the most recently
37 distributed schedule of monetary penalties to any member that requested a copy.

38 **§ 6854 (REVISED). 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.

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6854 continues the substance of Section 1363(j) without substantive change, except as indicated
3 below.

4 The following nonsubstantive changes were made:

- 5 • The term “board of directors of the association” has been replaced with the defined term
6 “board. See Section 6530 (“board”).
- 7 • The phrase “or rules of the association” has not been continued.
- 8 • The phrase “an association member” was replaced with the defined term “member.” See
9 Section 6554 (“member”).
- 10 • The reference to Section 6850 is narrower than the reference to “this section” in Section
11 1363(j), which encompassed the entirety of former Section 1363.

12 For further information, see Section 6500 Comment.

13 See also Section 6552 (“governing documents” includes the operating rules of the association).

14 **Note.** Existing Section 1363(j) refers to the entirety of Section 1363. Proposed Section 6854
15 would only refer to the provision of Section 1363 relating to member discipline that is continued
16 in this act.

17 Article 2. Civil Actions

18 § 6856 (UNCHANGED). Enforcement of governing documents

19 6856. (a) The covenants and restrictions in the declaration shall be enforceable
20 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind
21 all owners of separate interests in the development. Unless the declaration states
22 otherwise, these servitudes may be enforced by any owner of a separate interest or
23 by the association, or by both.

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

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

29 **Comment.** With respect to a commercial or industrial common interest development, Section
30 6856 continues Section 1354 without change.

31 For further information, see Section 6500 Comment.

32 See also Sections 6528 (“association”), 6546 (“declaration”), 6552 (“governing documents”),
33 6564 (“separate interest”).

34 § 6858 (REVISED). Standing

35 6858. An association has standing to institute, defend, settle, or intervene in
36 litigation, arbitration, mediation, or administrative proceedings in its own name as
37 the real party in interest and without joining with it the members, in matters
38 pertaining to the following:

39 (a) Enforcement of the governing documents.

40 (b) Damage to the common area.

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

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

4 **Comment.** With respect to a commercial or industrial common interest development, Section
5 6858 continues Section 1368.3 without change, except as indicated below.

6 The following nonsubstantive changes were made:

- 7 • The defined term “member” is used in place of “owner.” See Section 6554 (“member”).
- 8 • The superfluous phrase “established to manage a common interest development” is
9 omitted.

10 For further information, see Section 6500 Comment.

11 See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing
12 documents”), 6564 (“separate interest”).

13 **§ 6860 (UNCHANGED). Comparative fault**

14 6860. (a) In an action maintained by an association pursuant to subdivision (b),
15 (c), or (d) of Section 6858, the amount of damages recovered by the association
16 shall be reduced by the amount of damages allocated to the association or its
17 managing agents in direct proportion to their percentage of fault based upon
18 principles of comparative fault. The comparative fault of the association or its
19 managing agents may be raised by way of defense, but shall not be the basis for a
20 cross-action or separate action against the association or its managing agents for
21 contribution or implied indemnity, where the only damage was sustained by the
22 association or its members. It is the intent of the Legislature in enacting this
23 subdivision to require that comparative fault be pleaded as an affirmative defense,
24 rather than a separate cause of action, where the only damage was sustained by the
25 association or its members.

26 (b) In an action involving damages described in subdivision (b), (c), or (d) of
27 Section 6858, the defendant or cross-defendant may allege and prove the
28 comparative fault of the association or its managing agents as a setoff to the
29 liability of the defendant or cross-defendant even if the association is not a party to
30 the litigation or is no longer a party whether by reason of settlement, dismissal, or
31 otherwise.

32 (c) Subdivisions (a) and (b) apply to actions commenced on or after January 1,
33 1993.

34 (d) Nothing in this section affects a person’s liability under Section 1431, or the
35 liability of the association or its managing agent for an act or omission that causes
36 damages to another.

37 **Comment.** With respect to a commercial or industrial common interest development, Section
38 6860 continues Section 1368.4 without change.

39 For further information, see Section 6500 Comment.

40 See also Sections 6528 (“association”), 6554 (“member”), 6560 (“person”).

1 CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

2 **§ 6870 (REVISED). Actions for damages**

3 6870. (a) Before an association files a complaint for damages against a builder,
4 developer, or general contractor (“respondent”) of a common interest development
5 based upon a claim for defects in the design or construction of the common
6 interest development, all of the requirements of this section shall be satisfied with
7 respect to the builder, developer, or general contractor.

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

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

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

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

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

25 (4) A summary of the results of a survey or questionnaire distributed to owners
26 to determine the nature and extent of defects, if a survey has been conducted or a
27 questionnaire has been distributed.

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

30 (c) Service of the notice shall commence a period, not to exceed 180 days,
31 during which the association, the respondent, and all other participating parties
32 shall try to resolve the dispute through the processes set forth in this section. This
33 180-day period may be extended for one additional period, not to exceed 180 days,
34 only upon the mutual agreement of the association, the respondent, and any parties
35 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any
36 extensions beyond the first extension shall require the agreement of all
37 participating parties. Unless extended, the dispute resolution process prescribed by
38 this section shall be deemed completed. All extensions shall continue the tolling
39 period described in subdivision (b).

40 (d) Within 25 days of the date the association serves the Notice of
41 Commencement of Legal Proceedings, the respondent may request in writing to
42 meet and confer with the board. Unless the respondent and the association

1 otherwise agree, there shall be not more than one meeting, which shall take place
2 no later than 10 days from the date of the respondent's written request, at a
3 mutually agreeable time and place. The meeting may be conducted in executive
4 session, excluding the association's members. The discussions at the meeting are
5 privileged communications and are not admissible in evidence in any civil action,
6 unless the association and the respondent consent in writing to their admission.

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

9 (1) The respondent shall provide the association with access to, for inspection
10 and copying of, all plans and specifications, subcontracts, and other construction
11 files for the project that are reasonably calculated to lead to the discovery of
12 admissible evidence regarding the defects claimed. The association shall provide
13 the respondent with access to, for inspection and copying of, all files reasonably
14 calculated to lead to the discovery of admissible evidence regarding the defects
15 claimed, including all reserve studies, maintenance records and any survey
16 questionnaires, or results of testing to determine the nature and extent of defects.
17 To the extent any of the above documents are withheld based on privilege, a
18 privilege log shall be prepared and submitted to all other parties. All other
19 potentially responsible parties shall have the same rights as the respondent
20 regarding the production of documents upon receipt of written notice of the claim,
21 and shall produce all relevant documents within 60 days of receipt of the notice of
22 the claim.

23 (2) The respondent shall provide written notice by certified mail to all
24 subcontractors, design professionals, their insurers, and the insurers of any
25 additional insured whose identities are known to the respondent or readily
26 ascertainable by review of the project files or other similar sources and whose
27 potential responsibility appears on the face of the notice. This notice to
28 subcontractors, design professionals, and insurers shall include a copy of the
29 Notice of Commencement of Legal Proceedings, and shall specify the date and
30 manner by which the parties shall meet and confer to select a dispute resolution
31 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its
32 obligation to participate in the meet and confer or serve a written acknowledgment
33 of receipt regarding this notice, advise the recipient that it may seek the assistance
34 of an attorney, and advise the recipient that it should contact its insurer, if any.
35 Any subcontractor or design professional, or insurer for that subcontractor, design
36 professional, or additional insured, who receives written notice from the
37 respondent regarding the meet and confer shall, prior to the meet and confer, serve
38 on the respondent a written acknowledgment of receipt. That subcontractor or
39 design professional shall, within 10 days of service of the written acknowledgment
40 of receipt, provide to the association and the respondent a Statement of Insurance
41 that includes both of the following:

42 (A) The names, addresses, and contact persons, if known, of all insurance
43 carriers, whether primary or excess and regardless of whether a deductible or self-

1 insured retention applies, whose policies were in effect from the commencement
2 of construction of the subject project to the present and which potentially cover the
3 subject claims.

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

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

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

1 dispute resolution facilitator in consultation with the respondent shall maintain a
2 contact list of the participating parties.

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

15 (3) A dispute resolution facilitator shall be disqualified by the court if he or she
16 fails to comply with this subdivision and any party to the dispute resolution
17 process serves a notice of disqualification prior to the case management meeting.
18 If the dispute resolution facilitator complies with this subdivision, he or she shall
19 be disqualified by the court on the basis of the disclosure if any party to the
20 dispute resolution process serves a notice of disqualification prior to the case
21 management meeting.

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

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

41 (6) The costs of the dispute resolution facilitator shall be apportioned in the
42 following manner: one-third to be paid by the association; one-third to be paid by
43 the respondent; and one-third to be paid by the subcontractors and design

1 professionals, as allocated among them by the dispute resolution facilitator. The
2 costs of the dispute resolution facilitator shall be recoverable by the prevailing
3 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil
4 Procedure, provided however that any nonsettling party may, prior to the filing of
5 the complaint, petition the facilitator to reallocate the costs of the dispute
6 resolution facilitator as they apply to any nonsettling party. The determination of
7 the dispute resolution facilitator with respect to the allocation of these costs shall
8 be binding in any subsequent litigation. The dispute resolution facilitator shall take
9 into account all relevant factors and equities between all parties in the dispute
10 resolution process when reallocating costs.

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

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

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

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

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

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

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

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

35 (1) Establishment of a document depository, located in the county where the
36 project is located, for deposit of documents, defect lists, demands, and other
37 information provided for under this section. All documents exchanged by the
38 parties and all documents created pursuant to this subdivision shall be deposited in
39 the document depository, which shall be available to all parties throughout the
40 prefiling dispute resolution process and in any subsequent litigation. When any
41 document is deposited in the document depository, the party depositing the
42 document shall provide written notice identifying the document to all other parties.

1 The costs of maintaining the document depository shall be apportioned among the
2 parties in the same manner as the costs of the dispute resolution facilitator.

3 (2) Provision of a more detailed list of defects by the association to the
4 respondent after the association completes a visual inspection of the project. This
5 list of defects shall provide sufficient detail for the respondent to ensure that all
6 potentially responsible subcontractors and design professionals are provided with
7 notice of the dispute resolution process. If not already completed prior to the case
8 management meeting, the Notice of Commencement of Legal Proceedings shall be
9 served by the respondent on all additional subcontractors and design professionals
10 whose potential responsibility appears on the face of the more detailed list of
11 defects within seven days of receipt of the more detailed list. The respondent shall
12 serve a copy of the case management statement, including the name, address, and
13 telephone number of the dispute resolution facilitator, to all the potentially
14 responsible subcontractors and design professionals at the same time.

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

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

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

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

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

29 (8) Facilitated dispute resolution of the claim, with all parties, including
30 peripheral parties, as appropriate, and insurers, if any, present and having
31 settlement authority. The dispute resolution facilitators shall endeavor to set
32 specific times for the attendance of specific parties at dispute resolution sessions.
33 If the dispute resolution facilitator does not set specific times for the attendance of
34 parties at dispute resolution sessions, the dispute resolution facilitator shall permit
35 those parties to participate in dispute resolution sessions by telephone.

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

42 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the
43 time the case management statement is established, set deadlines for the

1 occurrence of each event set forth in the case management statement, taking into
2 account such factors as the size and complexity of the case, and the requirement of
3 this section that this dispute resolution process not exceed 180 days absent
4 agreement of the parties to an extension of time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (I) All defect lists and demands, communications, negotiations, and settlement
4 offers made in the course of the prelitigation dispute resolution process provided
5 by this section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive,
6 of the Evidence Code and all applicable decisional law. This inadmissibility shall
7 not be extended to any other documents or communications which would not
8 otherwise be deemed inadmissible.

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

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

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

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

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

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

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

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

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

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

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

16 (p) As used in this section:

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

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

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

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

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

27 (s) This section shall become inoperative on July 1, 2017, and, as of January 1,
28 2018, is repealed, unless a later added statute, that becomes operative on or before
29 January 1, 2018, deletes or extends the dates on which it becomes inoperative and
30 is repealed.

31 **Comment.** With respect to a commercial or industrial common interest development, Section
32 6870 continues Section 1375 without change, except as indicated below.

33 The following substantive change was made:

- 34 • A reference in Section 1375(d) to a meeting subject to Section 1363.05(b) has been
35 replaced with the relevant substance of Section 1363.05(b). Section 1363.05 is not
36 continued in this act.

37 The following nonsubstantive changes were made:

- 38 • Cross-references are updated to reflect the new location of the referenced provisions.
39 • A reference to “homeowner” in paragraph (4) of subdivision (b) has been changed to
40 “owner.”
41 • The terms “board of directors” and “board of directors of the association” have been
42 replaced throughout with the defined term “board.” See Section 6530 (“board”).
43 • Subdivision (e)(2) is revised to delete references to former Section 1375.05, which was
44 repealed by its own terms on January 1, 2011.

- 1 • Subdivision (f)(3) is revised to correct erroneous references to “this paragraph.” The
- 2 revised provision refers to “this subdivision.”
- 3 • Subdivision (l) is revised to delete a reference to former Section 1375.05, which was
- 4 repealed by its own terms on January 1, 2011.

5 For further information, see Section 6500 Comment.

6 See also Sections 6528 (“association”), 6534 (“common interest development”), 6554

7 (“member”), 6560 (“person”).

8 **Note.** Proposed Section 6870(d) would replace a provision requiring that a referenced

9 meeting be “subject to subdivision (b) of Section 1363.05” with a provision substantively

10 describing the manner in which the referenced meeting is to be conducted. Section 1363.05(b) is

11 not continued in this act. The Commission invites comment on whether this change would

12 materially affect the operation of any provision of this section.

13 **§ 6874 (UNCHANGED). Notice of resolution**

14 6874. (a) As soon as is reasonably practicable after the association and the

15 builder have entered into a settlement agreement or the matter has otherwise been

16 resolved regarding alleged defects in the common areas, alleged defects in the

17 separate interests that the association is obligated to maintain or repair, or alleged

18 defects in the separate interests that arise out of, or are integrally related to, defects

19 in the common areas or separate interests that the association is obligated to

20 maintain or repair, where the defects giving rise to the dispute have not been

21 corrected, the association shall, in writing, inform only the members of the

22 association whose names appear on the records of the association that the matter

23 has been resolved, by settlement agreement or other means, and disclose all of the

24 following:

25 (1) A general description of the defects that the association reasonably believes,

26 as of the date of the disclosure, will be corrected or replaced.

27 (2) A good faith estimate, as of the date of the disclosure, of when the

28 association believes that the defects identified in paragraph (1) will be corrected or

29 replaced. The association may state that the estimate may be modified.

30 (3) The status of the claims for defects in the design or construction of the

31 common interest development that were not identified in paragraph (1) whether

32 expressed in a preliminary list of defects sent to each member of the association or

33 otherwise claimed and disclosed to the members of the association.

34 (b) Nothing in this section shall preclude an association from amending the

35 disclosures required pursuant to subdivision (a), and any amendments shall

36 supersede any prior conflicting information disclosed to the members of the

37 association and shall retain any privilege attached to the original disclosures.

38 (c) Disclosure of the information required pursuant to subdivision (a) or

39 authorized by subdivision (b) shall not waive any privilege attached to the

40 information.

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

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

43 **Comment.** With respect to a commercial or industrial common interest development, Section

44 6874 continues Section 1375.1 without change.

1 For further information, see Section 6500 Comment.

2 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
3 development”), 6554 (“member”), 6564 (“separate interest”).

4 **§ 6876 (REVISED). Notice of civil action**

5 6876. (a) Not later than 30 days prior to the filing of any civil action by the
6 association against the declarant or other developer of a common interest
7 development for alleged damage to the common areas, alleged damage to the
8 separate interests that the association is obligated to maintain or repair, or alleged
9 damage to the separate interests that arises out of, or is integrally related to,
10 damage to the common areas or separate interests that the association is obligated
11 to maintain or repair, the board shall provide a written notice to each member of
12 the association who appears on the records of the association when the notice is
13 provided. This notice shall specify all of the following:

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

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

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

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

23 **Comment.** With respect to a commercial or industrial common interest development, Section
24 6876 continues Section 1368.5 without change, except as indicated below.

25 The following nonsubstantive change was made:

- 26 • The term “board of directors of the association” has been replaced with the defined term
27 “board.” See Section 6530 (“board”).

28 For further information, see Section 6500 Comment.

29 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
30 development”), 6544 (“declarant”), 6554 (“member”), 6564 (“separate interest”).

31 **Uncodified (added). Operative date**

32 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 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
23 common interest development may be organized as a stock cooperative, arguably making this
24 conforming revision unnecessary.

25 **Bus. & Prof. Code § 11004 (amended). “Community apartment project”**

26 SEC. _____. Section 11004 of the Business and Professions Code is amended to
27 read:

28 11004. “Community apartment project” has the same meaning as specified in
29 subdivision (d) of Section 1351 or in Section 6536 of the Civil Code.

30 **Comment.** Section 11004 is amended to add a cross-reference to Civil Code Section 6536,
31 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
32 (Civ. Code §§ 6500-6876).

33 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
34 common interest development may be organized as a community apartment project, arguably
35 making this conforming revision unnecessary.

36 **Bus. & Prof. Code § 11004.5 (amended). Further definition of “subdivided lands” and
37 “subdivision”**

38 SEC. _____. Section 11004.5 of the Business and Professions Code is amended to
39 read:

40 11004.5. In addition to any provisions of Section 11000, the reference in this
41 code to “subdivided lands” and “subdivision” shall include all of the following:

1 (a) Any planned development, as defined in Section 11003, containing five or
2 more lots.

3 (b) Any community apartment project, as defined by Section 11004, containing
4 five or more apartments.

5 (c) Any condominium project containing five or more condominiums, as defined
6 in Section 783 of the Civil Code.

7 (d) Any stock cooperative as defined in Section 11003.2, including any legal or
8 beneficial interests therein, having or intended to have five or more shareholders.

9 (e) Any limited-equity housing cooperative, as defined in Section 11003.4.

10 (f) In addition, the following interests shall be subject to this chapter and the
11 regulations of the commissioner adopted pursuant thereto:

12 (1) Any accompanying memberships or other rights or privileges created in, or
13 in connection with, any of the forms of development referred to in subdivision (a),
14 (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments,
15 declarations of restrictions, articles of incorporation, bylaws, or contracts
16 applicable thereto.

17 (2) Any interests or memberships in any owners' association as defined in
18 Section 1351 or 6528 of the Civil Code, created in connection with any of the
19 forms of the development referred to in subdivision (a), (b), (c), (d), or (e).

20 (g) Notwithstanding this section, time-share plans, exchange programs,
21 incidental benefits, and short-term product subject to Chapter 2 (commencing with
22 Section 11210) are not "subdivisions" or "subdivided lands" subject to this
23 chapter.

24 **Comment.** Section 11004.5 is amended to add a cross-reference to Civil Code Section 6528,
25 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
26 (Civ. Code §§ 6500-6876).

27 **Bus. & Prof. Code § 23426.5 (amended). Tennis club**

28 SEC. ____ . Section 23426.5 of the Business and Professions Code is amended to
29 read:

30 23426.5. (a) For purposes of this article, "club" also means any tennis club that
31 maintains not less than four regulation tennis courts, together with the necessary
32 facilities and clubhouse, has members paying regular monthly dues, has been in
33 existence for not less than 45 years, and is not associated with a common interest
34 development as defined in Section 1351 or 6534 of the Civil Code, a community
35 apartment project as defined in Section 11004 of this code, a project consisting of
36 condominiums as defined in Section 783 of the Civil Code, or a mobilehome park
37 as defined in Section 18214 of the Health and Safety Code.

38 (b) It shall be unlawful for any club licensed pursuant to this section to make
39 any discrimination, distinction, or restriction against any person on account of age
40 or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the
41 Civil Code.

1 **Comment.** Section 23426.5 is amended to add a cross-reference to Civil Code Section 6534,
2 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
3 (Civ. Code §§ 6500-6876).

4 **Bus. & Prof. Code § 23428.20 (amended). Further definition of “club”**

5 SEC. _____. Section 23428.20 of the Business and Professions Code is amended
6 to read:

7 23428.20. (a) For the purposes of this article, “club” also means any bona fide
8 nonprofit corporation that has been in existence for not less than nine years, has
9 more than 8,500 memberships issued and outstanding to owners of condominiums
10 and owners of memberships in stock cooperatives, and owns, leases, operates, or
11 maintains recreational facilities for its members.

12 (b) For the purposes of this article, “club” also means any bona fide nonprofit
13 corporation that was formed as a condominium homeowners’ association, has at
14 least 250 members, has served daily meals to its members and guests for a period
15 of not less than 12 years, owns or leases, operates, and maintains a clubroom or
16 rooms for its membership, has an annual fee of not less than nine hundred dollars
17 (\$900) per year per member, and has as a condition of membership that one
18 member of each household be at least 54 years old.

19 (c) Section 23399 and the numerical limitation of Section 23430 shall not apply
20 to a club defined in this section.

21 (d) No license shall be issued pursuant to this section to any club that withholds
22 membership or denies facilities or services to any person on account of any basis
23 listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those
24 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
25 of subdivision (p) of Section 12955, and Section 12955.2 of the Government
26 Code.

27 (e) Notwithstanding subdivision (d), with respect to familial status, subdivision
28 (d) shall not be construed to apply to housing for older persons, as defined in
29 Section 12955.9 of the Government Code. With respect to familial status, nothing
30 in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
31 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
32 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
33 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
34 shall apply to subdivision (d).

35 **Comment.** Section 23428.20 is amended to add a cross-reference to Civil Code Section 6714,
36 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
37 (Civ. Code §§ 6500-6876).

CIVIL CODE

38 **Civ. Code § 714 (amended). Unenforceability of restrictions on use of solar energy system**

39 SEC. _____. Section 714 of the Civil Code is amended to read:

1 714. (a) Any covenant, restriction, or condition contained in any deed, contract,
2 security instrument, or other instrument affecting the transfer or sale of, or any
3 interest in, real property, and any provision of a governing document, as defined in
4 subdivision (j) of Section 1351 or in Section 6552, that effectively prohibits or
5 restricts the installation or use of a solar energy system is void and unenforceable.

6 (b) This section does not apply to provisions that impose reasonable restrictions
7 on solar energy systems. However, it is the policy of the state to promote and
8 encourage the use of solar energy systems and to remove obstacles thereto.
9 Accordingly, reasonable restrictions on a solar energy system are those restrictions
10 that do not significantly increase the cost of the system or significantly decrease its
11 efficiency or specified performance, or that allow for an alternative system of
12 comparable cost, efficiency, and energy conservation benefits.

13 (c)(1) A solar energy system shall meet applicable health and safety standards
14 and requirements imposed by state and local permitting authorities.

15 (2) A solar energy system for heating water shall be certified by the Solar Rating
16 Certification Corporation (SRCC) or other nationally recognized certification
17 agencies. SRCC is a nonprofit third party supported by the United States
18 Department of Energy. The certification shall be for the entire solar energy system
19 and installation.

20 (3) A solar energy system for producing electricity shall also meet all applicable
21 safety and performance standards established by the National Electrical Code, the
22 Institute of Electrical and Electronics Engineers, and accredited testing
23 laboratories such as Underwriters Laboratories and, where applicable, rules of the
24 Public Utilities Commission regarding safety and reliability.

25 (d) For the purposes of this section:

26 (1)(A) For solar domestic water heating systems or solar swimming pool heating
27 systems that comply with state and federal law, “significantly” means an amount
28 exceeding 20 percent of the cost of the system or decreasing the efficiency of the
29 solar energy system by an amount exceeding 20 percent, as originally specified
30 and proposed.

31 (B) For photovoltaic systems that comply with state and federal law,
32 “significantly” means an amount not to exceed two thousand dollars (\$2,000) over
33 the system cost as originally specified and proposed, or a decrease in system
34 efficiency of an amount exceeding 20 percent as originally specified and proposed.

35 (2) “Solar energy system” has the same meaning as defined in paragraphs (1)
36 and (2) of subdivision (a) of Section 801.5.

37 (e)(1) Whenever approval is required for the installation or use of a solar energy
38 system, the application for approval shall be processed and approved by the
39 appropriate approving entity in the same manner as an application for approval of
40 an architectural modification to the property, and shall not be willfully avoided or
41 delayed.

1 (2) For an approving entity that is a ~~homeowners'~~ an association, as defined in
2 subdivision (a) of Section 1351 or in Section 6528, and that is not a public entity,
3 both of the following shall apply:

4 (A) The approval or denial of an application shall be in writing.

5 (B) If an application is not denied in writing within 60 days from the date of
6 receipt of the application, the application shall be deemed approved, unless that
7 delay is the result of a reasonable request for additional information.

8 (f) Any entity, other than a public entity, that willfully violates this section shall
9 be liable to the applicant or other party for actual damages occasioned thereby, and
10 shall pay a civil penalty to the applicant or other party in an amount not to exceed
11 one thousand dollars (\$1,000).

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

14 (h)(1) A public entity that fails to comply with this section may not receive
15 funds from a state-sponsored grant or loan program for solar energy. A public
16 entity shall certify its compliance with the requirements of this section when
17 applying for funds from a state-sponsored grant or loan program.

18 (2) A local public entity may not exempt residents in its jurisdiction from the
19 requirements of this section.

20 **Comment.** Subdivision (a) of Section 714 is amended to add a cross-reference to Section 6552,
21 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
22 (Civ. Code §§ 6500-6876).

23 Paragraph (2) of subdivision (e) is amended to add a cross-reference to Section 6528, and to
24 make a conforming terminological change, for the same reason.

25 **Note.** The Commission invites comment on whether Section 714 applies to an exclusively
26 commercial or industrial common interest development, notwithstanding the use in Section
27 714(e)(2) of the undefined term "homeowners' association."

28 **Civ. Code § 714.1 (amended). Permissible restrictions by common interest development**
29 **association**

30 SEC. ____ . Section 714.1 of the Civil Code is amended to read:

31 714.1. Notwithstanding Section 714, any association, as defined in Section 1351
32 or 6528, may impose reasonable provisions which:

33 (a) Restrict the installation of solar energy systems installed in common areas, as
34 defined in Section 1351 or 6532, to those systems approved by the association.

35 (b) Require the owner of a separate interest, as defined in Section 1351 or 6564,
36 to obtain the approval of the association for the installation of a solar energy
37 system in a separate interest owned by another.

38 (c) Provide for the maintenance, repair, or replacement of roofs or other building
39 components.

40 (d) Require installers of solar energy systems to indemnify or reimburse the
41 association or its members for loss or damage caused by the installation,
42 maintenance, or use of the solar energy system.

1 **Comment.** Section 714.1 is amended to add cross-references to Sections 6528, 6532, and
2 6534, reflecting the enactment of the Commercial and Industrial Common Interest Development
3 Act (Civ. Code §§ 6500-6876).

4 **Civ. Code § 782 (amended). Discriminatory provision in deed of real property**

5 SEC. ____ . Section 782 of the Civil Code is amended to read:

6 782. (a) Any provision in any deed of real property in California, whether
7 executed before or after the effective date of this section, that purports to restrict
8 the right of any persons to sell, lease, rent, use or occupy the property to persons
9 having any characteristic listed in subdivision (a) or (d) of Section 12955 of the
10 Government Code, as those bases are defined in Sections 12926, 12926.1,
11 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section
12 12955.2 of the Government Code, by providing for payment of a penalty,
13 forfeiture, reverter, or otherwise, is void.

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, relating to housing for senior citizens. Subdivision (d) of Section
19 51, ~~and Section~~ Sections 1351 and 6714 of this code, and subdivisions (n), (o), and
20 (p) of Section 12955 of the Government Code shall apply to subdivision (a).

21 **Comment.** Section 782 is amended to add a cross-reference to Section 6714, reflecting the
22 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
23 6500-6876).

24 **Civ. Code § 782.5 (amended). Revision of instrument to omit provision that restricts rights**
25 **based on race or color**

26 SEC. ____ . Section 782.5 of the Civil Code is amended to read:

27 782.5. (a) Any deed or other written instrument that relates to title to real
28 property, or any written covenant, condition, or restriction annexed or made a part
29 of, by reference or otherwise, any ~~such~~ deed or instrument that relates to title to
30 real property, ~~that~~ which contains any provision that purports to forbid, restrict, or
31 condition the right of any person or persons to sell, buy, lease, rent, use, or occupy
32 the property on account of any basis listed in subdivision (a) or (d) of Section
33 12955 of the Government Code, as those bases are defined in Sections 12926,
34 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
35 and Section 12955.2 of the Government Code, with respect to any person or
36 persons, shall be deemed to be revised to omit that provision.

37 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
38 (a) shall not be construed to apply to housing for older persons, as defined in
39 Section 12955.9 of the Government Code. With respect to familial status, nothing
40 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
41 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 (c) This section shall not be construed to limit or expand the powers of a court to
4 reform a deed or other written instrument.

5 **Comment.** Subdivision (a) of Section 782.5 is amended to make stylistic revisions, reflecting
6 the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code
7 §§ 6500-6876).

8 Subdivision (b) is amended to add a cross-reference to Section 6714, for the same reason.

9 **Civ. Code § 783 (amended). “Condominium”**

10 SEC. _____. Section 783 of the Civil Code is amended to read:

11 783. A condominium is an estate in real property described in subdivision (f) of
12 Section 1351 or in Section 6542. A condominium may, with respect to the
13 duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate,
14 (2) an estate for life, (3) an estate for years, such as a leasehold or a subleasehold,
15 or (4) any combination of the foregoing.

16 **Comment.** Section 783 is amended to add a cross-reference to Section 6542, reflecting the
17 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
18 6500-6876).

19 **Civ. Code § 783.1 (amended). Separate and correlative interests as interests in real property**

20 SEC. _____. Section 783.1 of the Civil Code is amended to read:

21 783.1. In a stock cooperative, as defined in subdivision (m) of Section 1351 or
22 in Section 6566, both the separate interest, as defined in paragraph (4) of
23 subdivision (l) of Section 1351 or in paragraph (4) of subdivision (a) of Section
24 6564, and the correlative interest in the stock cooperative corporation, however
25 designated, are interests in real property.

26 **Comment.** Section 783.1 is amended to add cross-references to Sections 6564(a)(4) and 6566,
27 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
28 (Civ. Code §§ 6500-6876).

29 **Civ. Code § 1098 (amended). Transfer fee defined**

30 SEC. _____. Section 1098 of the Civil Code is amended to read:

31 1098. A “transfer fee” is any fee payment requirement imposed within a
32 covenant, restriction, or condition contained in any deed, contract, security
33 instrument, or other document affecting the transfer or sale of, or any interest in,
34 real property that requires a fee be paid upon transfer of the real property. A
35 transfer fee does not include any of the following:

36 (a) Fees or taxes imposed by a governmental entity.

37 (b) Fees pursuant to mechanics’ liens.

38 (c) Fees pursuant to court-ordered transfers, payments, or judgments.

39 (d) Fees pursuant to property agreements in connection with a legal separation
40 or dissolution of marriage.

1 (e) Fees, charges, or payments in connection with the administration of estates
2 or trusts pursuant to Division 7 (commencing with Section 7000), Division 8
3 (commencing with Section 13000), or Division 9 (commencing with Section
4 15000) of the Probate Code.

5 (f) Fees, charges, or payments imposed by lenders or purchasers of loans, as
6 these entities are described in subdivision (c) of Section 10232 of the Business and
7 Professions Code.

8 (g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling
9 Common Interest Development Act (Title 6 (commencing with Section 1350) of
10 Part 4 of Division 2) or by the Commercial and Industrial Common Interest
11 Development Act (Part 5.5 (commencing with Section 6500) of Division 4).

12 (h) Fees, charges, or payments for failing to comply with, or for transferring the
13 real property prior to satisfying, an obligation to construct residential
14 improvements on the real property.

15 (i) Any fee reflected in a document recorded against the property on or before
16 December 31, 2007, that is separate from any covenants, conditions, and
17 restrictions, and that substantially complies with subdivision (a) of Section 1098.5
18 by providing a prospective transferee notice of the following:

19 (1) Payment of a transfer fee is required.

20 (2) The amount or method of calculation of the fee.

21 (3) The date or circumstances under which the transfer fee payment requirement
22 expires, if any.

23 (4) The entity to which the fee will be paid.

24 (5) The general purposes for which the fee will be used.

25 **Comment.** Subdivision (g) of Section 1098 is amended to add a cross-reference to Part 5.5
26 (commencing with Section 6500) of Division 4, reflecting the enactment of the Commercial and
27 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

28 **Civ. Code § 1133 (amended). Sale or lease of subdivision lot subject to blanket encumbrance**

29 SEC. _____. Section 1133 of the Civil Code is amended to read:

30 1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket
31 encumbrance, as defined in Section 11013 of the Business and Professions Code,
32 but is exempt from a requirement of compliance with Section 11013.2 of the
33 Business and Professions Code, the subdivider, his or her agent, or representative,
34 shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor
35 cause it to be sold, or leased for a term exceeding five years, until the prospective
36 purchaser or lessee of the lot, parcel, or unit has been furnished with and has
37 signed a true copy of the following notice:

38 (b) "Subdivision," as used in subdivision (a), means improved or unimproved
39 land that is divided or proposed to be divided for the purpose of sale, lease, or
40 financing, whether immediate or future, into two or more lots, parcels, or units and
41 includes a condominium project, as defined in subdivision (f) of Section 1351 or
42 in Section 6542, a community apartment project, as defined in subdivision (d) of

1 Section 1351 or in Section 6536, a stock cooperative, as defined in subdivision
2 (m) of Section 1351 or in Section 6566, and a limited equity housing cooperative,
3 as defined in subdivision (m) of Section 1351.

4 (c) The failure of the buyer or lessee to sign the notice shall not invalidate any
5 grant, conveyance, lease, or encumbrance.

6 (d) Any person or entity who willfully violates the provisions of this section
7 shall be liable to the purchaser of a lot or unit which is subject to the provisions of
8 this section, for actual damages, and in addition thereto, shall be guilty of a public
9 offense punishable by a fine in an amount not to exceed five hundred dollars
10 (\$500). In an action to enforce ~~such~~ the liability or fine, the prevailing party shall
11 be awarded reasonable attorney's fees.

12 **Comment.** Subdivision (b) of Section 1133 is amended to add cross-references to Sections
13 6536, 6542, and 6566, reflecting the enactment of the Commercial and Industrial Common
14 Interest Development Act (Civ. Code §§ 6500-6876).

15 Subdivision (d) is amended to make a stylistic revision.

16 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
17 common interest development may be organized as a community apartment project or a stock
18 cooperative, arguably making a portion of this conforming revision unnecessary.

19 **Civ. Code § 1633.3 (amended). Transactions governed by title**

20 SEC. _____. Section 1633.3 of the Civil Code is amended to read:

21 1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title
22 applies to electronic records and electronic signatures relating to a transaction.

23 (b) This title does not apply to transactions subject to the following laws:

24 (1) A law governing the creation and execution of wills, codicils, or
25 testamentary trusts.

26 (2) Division 1 (commencing with Section 1101) of the Uniform Commercial
27 Code, except Sections 1107 and 1206.

28 (3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section
29 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9
30 (commencing with Section 9101), and 11 (commencing with Section 11101) of the
31 Uniform Commercial Code.

32 (4) A law that requires that specifically identifiable text or disclosures in a
33 record or a portion of a record be separately signed, including initialed, from the
34 record. However, this paragraph does not apply to Section 1677 or 1678 of this
35 code or Section 1298 of the Code of Civil Procedure.

36 (c) This title does not apply to any specific transaction described in Section
37 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14,
38 1133, or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or
39 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of
40 Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of,
41 Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of,
42 Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b,

1 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with
2 Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or
3 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with
4 Section 2985.7) of Title 14 of Part 4 of Division 3 of, ~~or~~ Section 3071.5 of, or Part
5 5.5 (commencing with Section 6500) of Division 4 of, the Civil Code, subdivision
6 (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15,
7 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section
8 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7,
9 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4,
10 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or
11 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code.
12 An electronic record may not be substituted for any notice that is required to be
13 sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this
14 subdivision shall be construed to prohibit the recordation of any document with a
15 county recorder by electronic means.

16 (d) This title applies to an electronic record or electronic signature otherwise
17 excluded from the application of this title under subdivision (b) when used for a
18 transaction subject to a law other than those specified in subdivision (b).

19 (e) A transaction subject to this title is also subject to other applicable
20 substantive law.

21 (f) The exclusion of a transaction from the application of this title under
22 subdivision (b) or (c) shall be construed only to exclude the transaction from the
23 application of this title, but shall not be construed to prohibit the transaction from
24 being conducted by electronic means if the transaction may be conducted by
25 electronic means under any other applicable law.

26 **Comment.** Subdivision (c) of Section 1633.3 is amended to add a cross-reference to Part 5.5
27 (commencing with Section 6500) of Division 4, reflecting the enactment of the Commercial and
28 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

29 **Civ. Code § 2924b (amended). Request for copy of notice of default or sale**

30 SEC. _____. Section 2924b of the Civil Code is amended to read:

31 2924b. (a) Any person desiring a copy of any notice of default and of any notice
32 of sale under any deed of trust or mortgage with power of sale upon real property
33 or an estate for years therein, as to which deed of trust or mortgage the power of
34 sale cannot be exercised until these notices are given for the time and in the
35 manner provided in Section 2924 may, at any time subsequent to recordation of
36 the deed of trust or mortgage and prior to recordation of notice of default
37 thereunder, cause to be filed for record in the office of the recorder of any county
38 in which any part or parcel of the real property is situated, a duly acknowledged
39 request for a copy of the notice of default and of sale. This request shall be signed
40 and acknowledged by the person making the request, specifying the name and
41 address of the person to whom the notice is to be mailed, shall identify the deed of
42 trust or mortgage by stating the names of the parties thereto, the date of

1 recordation thereof, and the book and page where the deed of trust or mortgage is
2 recorded or the recorder's number, and shall be in substantially the following
3 form:
4

5 **Note.** A table has been omitted to conserve resources.

6
7 Upon the filing for record of the request, the recorder shall index in the general
8 index of grantors the names of the trustors (or mortgagor) recited therein and the
9 names of persons requesting copies.

10 (b) The mortgagee, trustee, or other person authorized to record the notice of
11 default or the notice of sale shall do each of the following:

12 (1) Within 10 business days following recordation of the notice of default,
13 deposit or cause to be deposited in the United States mail an envelope, sent by
14 registered or certified mail with postage prepaid, containing a copy of the notice
15 with the recording date shown thereon, addressed to each person whose name and
16 address are set forth in a duly recorded request therefor, directed to the address
17 designated in the request and to each trustor or mortgagor at his or her last known
18 address if different than the address specified in the deed of trust or mortgage with
19 power of sale.

20 (2) At least 20 days before the date of sale, deposit or cause to be deposited in
21 the United States mail an envelope, sent by registered or certified mail with
22 postage prepaid, containing a copy of the notice of the time and place of sale,
23 addressed to each person whose name and address are set forth in a duly recorded
24 request therefor, directed to the address designated in the request and to each
25 trustor or mortgagor at his or her last known address if different than the address
26 specified in the deed of trust or mortgage with power of sale.

27 (3) As used in paragraphs (1) and (2), the "last known address" of each trustor or
28 mortgagor means the last business or residence physical address actually known
29 by the mortgagee, beneficiary, trustee, or other person authorized to record the
30 notice of default. For the purposes of this subdivision, an address is "actually
31 known" if it is contained in the original deed of trust or mortgage, or in any
32 subsequent written notification of a change of physical address from the trustor or
33 mortgagor pursuant to the deed of trust or mortgage. For the purposes of this
34 subdivision, "physical address" does not include an e-mail or any form of
35 electronic address for a trustor or mortgagor. The beneficiary shall inform the
36 trustee of the trustor's last address actually known by the beneficiary. However,
37 the trustee shall incur no liability for failing to send any notice to the last address
38 unless the trustee has actual knowledge of it.

39 (4) A "person authorized to record the notice of default or the notice of sale"
40 shall include an agent for the mortgagee or beneficiary, an agent of the named
41 trustee, any person designated in an executed substitution of trustee, or an agent of
42 that substituted trustee.

1 (c) The mortgagee, trustee, or other person authorized to record the notice of
2 default or the notice of sale shall do the following:

3 (1) Within one month following recordation of the notice of default, deposit or
4 cause to be deposited in the United States mail an envelope, sent by registered or
5 certified mail with postage prepaid, containing a copy of the notice with the
6 recording date shown thereon, addressed to each person set forth in paragraph (2),
7 provided that the estate or interest of any person entitled to receive notice under
8 this subdivision is acquired by an instrument sufficient to impart constructive
9 notice of the estate or interest in the land or portion thereof that is subject to the
10 deed of trust or mortgage being foreclosed, and provided the instrument is
11 recorded in the office of the county recorder so as to impart that constructive
12 notice prior to the recording date of the notice of default and provided the
13 instrument as so recorded sets forth a mailing address that the county recorder
14 shall use, as instructed within the instrument, for the return of the instrument after
15 recording, and which address shall be the address used for the purposes of mailing
16 notices herein.

17 (2) The persons to whom notice shall be mailed under this subdivision are:

18 (A) The successor in interest, as of the recording date of the notice of default, of
19 the estate or interest or any portion thereof of the trustor or mortgagor of the deed
20 of trust or mortgage being foreclosed.

21 (B) The beneficiary or mortgagee of any deed of trust or mortgage recorded
22 subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to
23 or concurrently with the deed of trust or mortgage being foreclosed but subject to a
24 recorded agreement or a recorded statement of subordination to the deed of trust or
25 mortgage being foreclosed.

26 (C) The assignee of any interest of the beneficiary or mortgagee described in
27 subparagraph (B), as of the recording date of the notice of default.

28 (D) The vendee of any contract of sale, or the lessee of any lease, of the estate or
29 interest being foreclosed that is recorded subsequent to the deed of trust or
30 mortgage being foreclosed, or recorded prior to or concurrently with the deed of
31 trust or mortgage being foreclosed but subject to a recorded agreement or
32 statement of subordination to the deed of trust or mortgage being foreclosed.

33 (E) The successor in interest to the vendee or lessee described in subparagraph
34 (D), as of the recording date of the notice of default.

35 (F) The office of the Controller, Sacramento, California, where, as of the
36 recording date of the notice of default, a "Notice of Lien for Postponed Property
37 Taxes" has been recorded against the real property to which the notice of default
38 applies.

39 (3) At least 20 days before the date of sale, deposit or cause to be deposited in
40 the United States mail an envelope, sent by registered or certified mail with
41 postage prepaid, containing a copy of the notice of the time and place of sale
42 addressed to each person to whom a copy of the notice of default is to be mailed as
43 provided in paragraphs (1) and (2), and addressed to the office of any state taxing

1 agency, Sacramento, California, that has recorded, subsequent to the deed of trust
2 or mortgage being foreclosed, a notice of tax lien prior to the recording date of the
3 notice of default against the real property to which the notice of default applies.

4 (4) Provide a copy of the notice of sale to the Internal Revenue Service, in
5 accordance with Section 7425 of the Internal Revenue Code and any applicable
6 federal regulation, if a “Notice of Federal Tax Lien under Internal Revenue Laws”
7 has been recorded, subsequent to the deed of trust or mortgage being foreclosed,
8 against the real property to which the notice of sale applies. The failure to provide
9 the Internal Revenue Service with a copy of the notice of sale pursuant to this
10 paragraph shall be sufficient cause to rescind the trustee’s sale and invalidate the
11 trustee’s deed, at the option of either the successful bidder at the trustee’s sale or
12 the trustee, and in either case with the consent of the beneficiary. Any option to
13 rescind the trustee’s sale pursuant to this paragraph shall be exercised prior to any
14 transfer of the property by the successful bidder to a bona fide purchaser for value.
15 A rescision of the trustee’s sale pursuant to this paragraph may be recorded in a
16 notice of rescision pursuant to Section 1058.5.

17 (5) The mailing of notices in the manner set forth in paragraph (1) shall not
18 impose upon any licensed attorney, agent, or employee of any person entitled to
19 receive notices as herein set forth any duty to communicate the notice to the
20 entitled person from the fact that the mailing address used by the county recorder
21 is the address of the attorney, agent, or employee.

22 (d) Any deed of trust or mortgage with power of sale hereafter executed upon
23 real property or an estate for years therein may contain a request that a copy of any
24 notice of default and a copy of any notice of sale thereunder shall be mailed to any
25 person or party thereto at the address of the person given therein, and a copy of
26 any notice of default and of any notice of sale shall be mailed to each of these at
27 the same time and in the same manner required as though a separate request
28 therefor had been filed by each of these persons as herein authorized. If any deed
29 of trust or mortgage with power of sale executed after September 19, 1939, except
30 a deed of trust or mortgage of any of the classes excepted from the provisions of
31 Section 2924, does not contain a mailing address of the trustor or mortgagor
32 therein named, and if no request for special notice by the trustor or mortgagor in
33 substantially the form set forth in this section has subsequently been recorded, a
34 copy of the notice of default shall be published once a week for at least four weeks
35 in a newspaper of general circulation in the county in which the property is
36 situated, the publication to commence within 10 business days after the filing of
37 the notice of default. In lieu of publication, a copy of the notice of default may be
38 delivered personally to the trustor or mortgagor within the 10 business days or at
39 any time before publication is completed, or by posting the notice of default in a
40 conspicuous place on the property and mailing the notice to the last known address
41 of the trustor or mortgagor.

42 (e) Any person required to mail a copy of a notice of default or notice of sale to
43 each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or

1 certified mail shall simultaneously cause to be deposited in the United States mail,
2 with postage prepaid and mailed by first-class mail, an envelope containing an
3 additional copy of the required notice addressed to each trustor or mortgagor at the
4 same address to which the notice is sent by registered or certified mail pursuant to
5 subdivision (b) or (c). The person shall execute and retain an affidavit identifying
6 the notice mailed, showing the name and residence or business address of that
7 person, that he or she is over the age of 18 years, the date of deposit in the mail,
8 the name and address of the trustor or mortgagor to whom sent, and that the
9 envelope was sealed and deposited in the mail with postage fully prepaid. In the
10 absence of fraud, the affidavit required by this subdivision shall establish a
11 conclusive presumption of mailing.

12 (f)(1) Notwithstanding subdivision (a), with respect to separate interests
13 governed by an association, as defined in subdivision (a) of Section 1351 or in
14 Section 6528, the association may cause to be filed in the office of the recorder in
15 the county in which the separate interests are situated a request that a mortgagee,
16 trustee, or other person authorized to record a notice of default regarding any of
17 those separate interests mail to the association a copy of any trustee's deed upon
18 sale concerning a separate interest. The request shall include a legal description or
19 the assessor's parcel number of all the separate interests. A request recorded
20 pursuant to this subdivision shall include the name and address of the association
21 and a statement that it is ~~a homeowners'~~ an association as defined in subdivision
22 (a) of Section 1351 or in Section 6528. Subsequent requests of an association shall
23 supersede prior requests. A request pursuant to this subdivision shall be recorded
24 before the filing of a notice of default. The mortgagee, trustee, or other authorized
25 person shall mail the requested information to the association within 15 business
26 days following the date the trustee's deed is recorded. Failure to mail the request,
27 pursuant to this subdivision, shall not affect the title to real property.

28 (g) No request for a copy of any notice filed for record pursuant to this section,
29 no statement or allegation in the request, and no record thereof shall affect the title
30 to real property or be deemed notice to any person that any person requesting
31 copies of notice has or claims any right, title, or interest in, or lien or charge upon
32 the property described in the deed of trust or mortgage referred to therein.

33 (h) "Business day," as used in this section, has the meaning specified in Section
34 9.

35 **Comment.** Subdivision (f) of Section 2924b is amended to add a cross-reference to Section
36 6528, and to make a conforming terminological change, reflecting the enactment of the
37 Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

38 **Note.** The Commission invites comment on whether Section 2924b applies to a commercial
39 or industrial common interest development, notwithstanding the use in Section 2924b(f) of the
40 undefined term "homeowners' association."

41 **Civ. Code § 2955.1 (amended). Disclosures regarding earthquake insurance requirements**

42 SEC. ____ . Section 2955.1 of the Civil Code is amended to read:

1 2955.1. (a) Any lender originating a loan secured by the borrower’s separate
2 interest in a condominium project, as defined in subdivision (f) of Section 1351 or
3 in Section 6542, which requires earthquake insurance or imposes a fee or any
4 other condition in lieu thereof pursuant to an underwriting requirement imposed
5 by an institutional third-party purchaser shall disclose all of the following to the
6 potential borrower:

7 (1) That the lender or the institutional third party in question requires earthquake
8 insurance or imposes a fee or any other condition in lieu thereof pursuant to an
9 underwriting requirement imposed by an institutional third party purchaser.

10 (2) That not all lenders or institutional third parties require earthquake insurance
11 or impose a fee or any other condition in lieu thereof pursuant to an underwriting
12 requirement imposed by an institutional third party purchaser.

13 (3) Earthquake insurance may be required on the entire condominium project.

14 (4) That lenders or institutional third parties may also require that a
15 condominium project maintain, or demonstrate an ability to maintain, financial
16 reserves in the amount of the earthquake insurance deductible.

17 (b) For the purposes of this section, “institutional third party” means the Federal
18 Home Loan Mortgage Corporation, the Federal National Mortgage Association,
19 the Government National Mortgage Association, and other substantially similar
20 institutions, whether public or private.

21 (c) The disclosure required by this section shall be made in writing by the lender
22 as soon as reasonably practicable.

23 **Comment.** Section 2955.1 is amended to add a cross-reference to Section 6542, reflecting the
24 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
25 6500-6876).

CODE OF CIVIL PROCEDURE

26 **Code Civ. Proc. § 86, as it reads in 2010 Cal. Stat. ch. 697, § 21 (amended). Specific cases**
27 **and proceedings that are limited civil cases**

28 SEC. _____. Section 86 of the Code of Civil Procedure, as it reads in Section 21 of
29 Chapter 697 of the Statutes of 2010, is amended to read:

30 86. (a) The following civil cases and proceedings are limited civil cases:

31 (1) A case at law in which the demand, exclusive of interest, or the value of the
32 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less.
33 This paragraph does not apply to a case that involves the legality of any tax,
34 impost, assessment, toll, or municipal fine, except an action to enforce payment of
35 delinquent unsecured personal property taxes if the legality of the tax is not
36 contested by the defendant.

37 (2) An action for dissolution of partnership where the total assets of the
38 partnership do not exceed twenty-five thousand dollars (\$25,000); an action of
39 interpleader where the amount of money or the value of the property involved
40 does not exceed twenty-five thousand dollars (\$25,000).

1 (3) An action to cancel or rescind a contract when the relief is sought in
2 connection with an action to recover money not exceeding twenty-five thousand
3 dollars (\$25,000) or property of a value not exceeding twenty-five thousand
4 dollars (\$25,000), paid or delivered under, or in consideration of, the contract; an
5 action to revise a contract where the relief is sought in an action upon the contract
6 if the action otherwise is a limited civil case.

7 (4) A proceeding in forcible entry or forcible or unlawful detainer where the
8 whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or
9 less.

10 (5) An action to enforce and foreclose a lien on personal property where the
11 amount of the lien is twenty-five thousand dollars (\$25,000) or less.

12 (6) An action to enforce and foreclose, or a petition to release, a lien arising
13 under the provisions of Chapter 4 (commencing with Section 8400) of Title 2 of
14 Part 6 of Division 4 of the Civil Code, or to enforce and foreclose an assessment
15 lien on a common interest development as defined in Section 1351 or 6534 of the
16 Civil Code, where the amount of the liens is twenty-five thousand dollars
17 (\$25,000) or less. However, if an action to enforce the lien affects property that is
18 also affected by a similar pending action that is not a limited civil case, or if the
19 total amount of liens sought to be foreclosed against the same property aggregates
20 an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a
21 limited civil case.

22 (7) An action for declaratory relief when brought pursuant to either of the
23 following:

24 (A) By way of cross-complaint as to a right of indemnity with respect to the
25 relief demanded in the complaint or a cross-complaint in an action or proceeding
26 that is otherwise a limited civil case.

27 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
28 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
29 Division 3 of the Business and Professions Code, where the amount in controversy
30 is twenty-five thousand dollars (\$25,000) or less.

31 (8) An action to issue a temporary restraining order or preliminary injunction; to
32 take an account, where necessary to preserve the property or rights of any party to
33 a limited civil case; to make any order or perform any act, pursuant to Title 9
34 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a
35 limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil
36 case; to determine title to personal property seized in a limited civil case.

37 (9) An action under Article 3 (commencing with Section 708.210) of Chapter 6
38 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal
39 property or to enforce the liability of the debtor of a judgment debtor where the
40 interest claimed adversely is of a value not exceeding twenty-five thousand dollars
41 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars
42 (\$25,000).

43 (10) An arbitration-related petition filed pursuant to either of the following:

1 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
2 except for uninsured motorist arbitration proceedings in accordance with Section
3 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
4 becomes final and the matter to be resolved by arbitration is a limited civil case
5 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
6 after the arbitration award becomes final and the amount of the award and all other
7 rulings, pronouncements, and decisions made in the award are within paragraphs
8 (1) to (9), inclusive, of subdivision (a).

9 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
10 and client that is binding or has become binding, pursuant to Article 13
11 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
12 Professions Code, where the arbitration award is twenty-five thousand dollars
13 (\$25,000) or less.

14 (b) The following cases in equity are limited civil cases:

15 (1) A case to try title to personal property when the amount involved is not more
16 than twenty-five thousand dollars (\$25,000).

17 (2) A case when equity is pleaded as a defensive matter in any case that is
18 otherwise a limited civil case.

19 (3) A case to vacate a judgment or order of the court obtained in a limited civil
20 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

21 **Comment.** Paragraph (6) of subdivision (a) of Section 86 is amended to add a cross-reference
22 to Civil Code Section 6534, reflecting the enactment of the Commercial and Industrial Common
23 Interest Development Act (Civ. Code §§ 6500-6876).

24 **Code Civ. Proc. § 116.540 (amended). Participation by individuals other than plaintiff and**
25 **defendant**

26 SEC. _____. Section 116.540 of the Code of Civil Procedure is amended to read:

27 116.540. (a) Except as permitted by this section, no individual other than the
28 plaintiff and the defendant may take part in the conduct or defense of a small
29 claims action.

30 (b) Except as additionally provided in subdivision (i), a corporation may appear
31 and participate in a small claims action only through a regular employee, or a duly
32 appointed or elected officer or director, who is employed, appointed, or elected for
33 purposes other than solely representing the corporation in small claims court.

34 (c) A party who is not a corporation or a natural person may appear and
35 participate in a small claims action only through a regular employee, or a duly
36 appointed or elected officer or director, or in the case of a partnership, a partner,
37 engaged for purposes other than solely representing the party in small claims
38 court.

39 (d) If a party is an individual doing business as a sole proprietorship, the party
40 may appear and participate in a small claims action by a representative and
41 without personally appearing if both of the following conditions are met:

1 (1) The claim can be proved or disputed by evidence of an account that
2 constitutes a business record as defined in Section 1271 of the Evidence Code, and
3 there is no other issue of fact in the case.

4 (2) The representative is a regular employee of the party for purposes other than
5 solely representing the party in small claims actions and is qualified to testify to
6 the identity and mode of preparation of the business record.

7 (e) A plaintiff is not required to personally appear, and may submit declarations
8 to serve as evidence supporting his or her claim or allow another individual to
9 appear and participate on his or her behalf, if (1) the plaintiff is serving on active
10 duty in the United States Armed Forces outside this state, (2) the plaintiff was
11 assigned to his or her duty station after his or her claim arose, (3) the assignment is
12 for more than six months, (4) the representative is serving without compensation,
13 and (5) the representative has appeared in small claims actions on behalf of others
14 no more than four times during the calendar year. The defendant may file a claim
15 in the same action in an amount not to exceed the jurisdictional limits stated in
16 Sections 116.220, 116.221, and 116.231.

17 (f) A party incarcerated in a county jail, a Department of Corrections and
18 Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to
19 personally appear, and may submit declarations to serve as evidence supporting
20 his or her claim, or may authorize another individual to appear and participate on
21 his or her behalf if that individual is serving without compensation and has
22 appeared in small claims actions on behalf of others no more than four times
23 during the calendar year.

24 (g) A defendant who is a nonresident owner of real property may defend against
25 a claim relating to that property without personally appearing by (1) submitting
26 written declarations to serve as evidence supporting his or her defense, (2)
27 allowing another individual to appear and participate on his or her behalf if that
28 individual is serving without compensation and has appeared in small claims
29 actions on behalf of others no more than four times during the calendar year, or (3)
30 taking the action described in both (1) and (2).

31 (h) A party who is an owner of rental real property may appear and participate in
32 a small claims action through a property agent under contract with the owner to
33 manage the rental of that property, if (1) the owner has retained the property agent
34 principally to manage the rental of that property and not principally to represent
35 the owner in small claims court, and (2) the claim relates to the rental property.

36 (i) A party that is an association created to manage a common interest
37 development, as defined in Section 1351, or in Sections 6528 and 6534, of the
38 Civil Code, may appear and participate in a small claims action through an agent,
39 a management company representative, or bookkeeper who appears on behalf of
40 that association.

41 (j) At the hearing of a small claims action, the court shall require any individual
42 who is appearing as a representative of a party under subdivisions (b) to (i),
43 inclusive, to file a declaration stating (1) that the individual is authorized to appear

1 for the party, and (2) the basis for that authorization. If the representative is
2 appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state
3 that the individual is not employed solely to represent the party in small claims
4 court. If the representative is appearing under subdivision (e), (f), or (g), the
5 declaration also shall state that the representative is serving without compensation,
6 and has appeared in small claims actions on behalf of others no more than four
7 times during the calendar year.

8 (k) A husband or wife who sues or who is sued with his or her spouse may
9 appear and participate on behalf of his or her spouse if (1) the claim is a joint
10 claim, (2) the represented spouse has given his or her consent, and (3) the court
11 determines that the interests of justice would be served.

12 (l) If the court determines that a party cannot properly present his or her claim or
13 defense and needs assistance, the court may in its discretion allow another
14 individual to assist that party.

15 (m) Nothing in this section shall operate or be construed to authorize an attorney
16 to participate in a small claims action except as expressly provided in Section
17 116.530.

18 **Comment.** Subdivision (i) of Section 116.540 is amended to add cross-references to Civil
19 Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial
20 Common Interest Development Act (Civ. Code §§ 6500-6876).

GOVERNMENT CODE

21 **Gov't Code § 12191 (amended). Miscellaneous business entity filing fees**

22 SEC. ____ . Section 12191 of the Government Code is amended to read:

23 12191. The miscellaneous business entity filing fees are the following:

24 (a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations
25 Code:

26 (1) Filing the statement and designation upon the qualification of a foreign
27 association pursuant to Section 2105 of the Corporations Code: One hundred
28 dollars (\$100).

29 (2) Filing an amended statement and designation by a foreign association
30 pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

31 (3) Filing a certificate showing the surrender of the right of a foreign association
32 to transact intrastate business pursuant to Section 2112 of the Corporations Code:
33 No fee.

34 (b) Unincorporated Associations:

35 (1) Filing a statement in accordance with Section 24003 of the Corporations
36 Code as to principal place of office or place for sending notices or designating
37 agent for service: Twenty-five dollars (\$25).

38 (2) Insignia Registrations: Ten dollars (\$10).

39 (c) Community Associations and Common Interest Developments:

1 (1) Filing a statement by a community association in accordance with Section
2 1363.6 or 6762 of the Civil Code to register the common interest development that
3 it manages: An amount not to exceed thirty dollars (\$30).

4 (2) Filing an amended statement by a community association in accordance with
5 Section 1363.6 or 6762 of the Civil Code: No fee.

6 **Comment.** Section 12191 is amended to add cross-references to Civil Code Section 6762,
7 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
8 (Civ. Code §§ 6500-6876).

9 **Gov't Code § 12956.1 (amended). Restrictive covenant based on discriminatory grounds**

10 SEC. ____ . Section 12956.1 of the Government Code is amended to read:

11 12956.1. (a) As used in this section, “association,” “governing documents,” and
12 “declaration” have the same meanings as set forth in Section 1351, or in Sections
13 6528, 6546, and 6552, of the Civil Code.

14 (b)(1) A county recorder, title insurance company, escrow company, real estate
15 broker, real estate agent, or association that provides a copy of a declaration,
16 governing document, or deed to any person shall place a cover page or stamp on
17 the first page of the previously recorded document or documents stating, in at least
18 14-point boldface type, the following:

19 “If this document contains any restriction based on race, color, religion, sex,
20 sexual orientation, familial status, marital status, disability, national origin, source
21 of income as defined in subdivision (p) of Section 12955, or ancestry, that
22 restriction violates state and federal fair housing laws and is void, and may be
23 removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions
24 under state and federal law on the age of occupants in senior housing or housing
25 for older persons shall not be construed as restrictions based on familial status.”

26 (2) The requirements set forth in paragraph (1) shall not apply to documents
27 being submitted for recordation to a county recorder.

28 (c) Any person who records a document for the express purpose of adding a
29 racially restrictive covenant is guilty of a misdemeanor. The county recorder shall
30 not incur any liability for recording the document. Notwithstanding any other
31 provision of law, a prosecution for a violation of this subdivision shall commence
32 within three years after the discovery of the recording of the document.

33 **Comment.** Section 12956.1 is amended to add cross-references to Civil Code Sections 6528,
34 6546, and 6552, reflecting the enactment of the Commercial and Industrial Common Interest
35 Development Act (Civ. Code §§ 6500-6876).

36 **Gov't Code § 12956.2 (amended). Restrictive Covenant Modification**

37 SEC. ____ . Section 12956.2 of the Government Code is amended to read:

38 12956.2. (a) A person who holds an ownership interest of record in property that
39 he or she believes is the subject of an unlawfully restrictive covenant in violation
40 of subdivision (l) of Section 12955 may record a document titled Restrictive
41 Covenant Modification. The county recorder may choose to waive the fee
42 prescribed for recording and indexing instruments pursuant to Section 27361 in

1 the case of the modification document provided for in this section. The
2 modification document shall include a complete copy of the original document
3 containing the unlawfully restrictive language with the unlawfully restrictive
4 language stricken.

5 (b) Before recording the modification document, the county recorder shall
6 submit the modification document and the original document to the county
7 counsel who shall determine whether the original document contains an unlawful
8 restriction based on race, color, religion, sex, sexual orientation, familial status,
9 marital status, disability, national origin, source of income as defined in
10 subdivision (p) of Section 12955, or ancestry. The county counsel shall return the
11 documents and inform the county recorder of its determination. The county
12 recorder shall refuse to record the modification document if the county counsel
13 finds that the original document does not contain an unlawful restriction as
14 specified in this paragraph.

15 (c) The modification document shall be indexed in the same manner as the
16 original document being modified. It shall contain a recording reference to the
17 original document in the form of a book and page or instrument number, and date
18 of the recording.

19 (d) Subject to covenants, conditions, and restrictions that were recorded after the
20 recording of the original document that contains the unlawfully restrictive
21 language and subject to covenants, conditions, and restrictions that will be
22 recorded after the Restrictive Covenant Modification, the restrictions in the
23 Restrictive Covenant Modification, once recorded, are the only restrictions having
24 effect on the property. The effective date of the terms and conditions of the
25 modification document shall be the same as the effective date of the original
26 document.

27 (e) The county recorder shall make available to the public Restrictive Covenant
28 Modification forms.

29 (f) If the holder of an ownership interest of record in property causes to be
30 recorded a modified document pursuant to this section that contains modifications
31 not authorized by this section, the county recorder shall not incur liability for
32 recording the document. The liability that may result from the unauthorized
33 recordation is the sole responsibility of the holder of the ownership interest of
34 record who caused the modified recordation.

35 (g) This section does not apply to persons holding an ownership interest in
36 property that is part of a common interest development as defined in subdivision
37 (c) of Section 1351 or in Section 6534 of the Civil Code if the board of directors
38 of that common interest development is subject to the requirements of subdivision
39 (b) of Section 1352.5 or of Section 6606 of the Civil Code.

40 **Comment.** Subdivision (g) of Section 12956.2 is amended to add cross-references to Civil
41 Code Sections 6534 and 6606, reflecting the enactment of the Commercial and Industrial
42 Common Interest Development Act (Civ. Code §§ 6500-6876).

1 **Gov't Code § 53341.5 (amended). Lot, parcel, or unit of subdivision subject to special tax**

2 SEC. _____. Section 53341.5 of the Government Code is amended to read:

3 53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax
4 levied pursuant to this chapter, the subdivider, his or her agent, or representative,
5 shall not sell, or lease for a term exceeding five years, or permit a prospective
6 purchaser or lessor to sign a contract of purchase or a deposit receipt or any
7 substantially equivalent document in the event of a lease with respect to the lot,
8 parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until
9 the prospective purchaser or lessee of the lot, parcel, or unit has been furnished
10 with and has signed a written notice as provided in this section. The notice shall
11 contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-
12 point type, and shall be in substantially the following form. The form may be
13 modified as needed to clearly and accurately describe the tax structure and other
14 characteristics of districts created before January 1, 1993, or to clearly and
15 accurately consolidate information about the tax structure and other characteristics
16 of two or more districts that levy or are authorized to levy special taxes with
17 respect to the lot, parcel, or unit:

18 (b) "Subdivision," as used in subdivision (a), means improved or unimproved
19 land that is divided or proposed to be divided for the purpose of sale, lease, or
20 financing, whether immediate or future, into two or more lots, parcels, or units and
21 includes a condominium project, as defined by ~~Section 1350~~ subdivision (f) of
22 Section 1351 or by Section 6542 of the Civil Code, a community apartment
23 project, a stock cooperative, and a limited-equity housing cooperative, as defined
24 in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and
25 Professions Code.

26 (c) The buyer shall have three days after delivery in person or five days after
27 delivery by deposit in the mail of any notice required by this section, to terminate
28 his or her agreement by delivery of written notice of that termination to the owner,
29 subdivider, or agent.

30 (d) The failure to furnish the notice to the buyer or lessee, and failure of the
31 buyer or lessee to sign the notice of a special tax, shall not invalidate any grant,
32 conveyance, lease, or encumbrance.

33 (e) Any person or entity who willfully violates the provisions of this section
34 shall be liable to the purchaser of a lot or unit that is subject to the provisions of
35 this section, for actual damages, and in addition thereto, shall be guilty of a public
36 offense punishable by a fine in an amount not to exceed five hundred dollars
37 (\$500). In an action to enforce a liability or fine, the prevailing party shall be
38 awarded reasonable attorney's fees.

39 **Comment.** Subdivision (b) of Section 53341.5 is amended to add a cross-reference to Civil
40 Code Section 6542, reflecting the enactment of the Commercial and Industrial Common Interest
41 Development Act (Civ. Code §§ 6500-6876), and to correct a technical error.

1 **Note.** The existing cross-reference in Section 53341.5(b) to Civil Code Section 1350 appears
2 to be in error. Section 53341.5 refers to the definition of “condominium project,” which is defined
3 in Section 1351(f), not Section 1350. The proposed amendment would correct that error.

4 **Gov’t Code § 65008 (amended). Invalidation of discriminatory act**

5 SEC. _____. Section 65008 of the Government Code is amended to read:

6 65008. (a) Any action pursuant to this title by any city, county, city and county,
7 or other local governmental agency in this state is null and void if it denies to any
8 individual or group of individuals the enjoyment of residence, landownership,
9 tenancy, or any other land use in this state because of any of the following reasons:

10 (1)(A) The lawful occupation, age, or any characteristic of the individual or
11 group of individuals listed in subdivision (a) or (d) of Section 12955, as those
12 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
13 of subdivision (p) of Section 12955 and Section 12955.2.

14 (B) Notwithstanding subparagraph (A), with respect to familial status,
15 subparagraph (A) shall not be construed to apply to housing for older persons, as
16 defined in Section 12955.9. With respect to familial status, nothing in
17 subparagraph (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 this code shall apply
21 to subparagraph (A).

22 (2) The method of financing of any residential development of the individual or
23 group of individuals.

24 (3) The intended occupancy of any residential development by persons or
25 families of very low, low, moderate, or middle income.

26 (b)(1) No city, county, city and county, or other local governmental agency
27 shall, in the enactment or administration of ordinances pursuant to any law,
28 including this title, prohibit or discriminate against any residential development or
29 emergency shelter for any of the following reasons:

30 (A) Because of the method of financing.

31 (B)(i) Because of the lawful occupation, age, or any characteristic listed in
32 subdivision (a) or (d) of Section 12955, as those characteristics are defined in
33 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
34 Section 12955, and Section 12955.2 of the owners or intended occupants of the
35 residential development or emergency shelter.

36 (ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not
37 be construed to apply to housing for older persons, as defined in Section 12955.9.
38 With respect to familial status, nothing in clause (i) shall be construed to affect
39 Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to
40 housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections
41 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section
42 12955 of this code shall apply to clause (i).

1 (C) Because the development or shelter is intended for occupancy by persons
2 and families of very low, low, or moderate income, as defined in Section 50093 of
3 the Health and Safety Code, or persons and families of middle income.

4 (D) Because the development consists of a multifamily residential project that is
5 consistent with both the jurisdiction's zoning ordinance and general plan as they
6 existed on the date the application was deemed complete, except that a project
7 shall not be deemed to be inconsistent with the zoning designation for the site if
8 that zoning designation is inconsistent with the general plan only because the
9 project site has not been rezoned to conform with a more recently adopted general
10 plan.

11 (2) The discrimination prohibited by this subdivision includes the denial or
12 conditioning of a residential development or shelter because of, in whole or in
13 part, either of the following:

14 (A) The method of financing.

15 (B) The occupancy of the development by persons protected by this subdivision,
16 including, but not limited to, persons and families of very low, low, or moderate
17 income.

18 (3) A city, county, city and county, or other local government agency may not,
19 pursuant to subdivision (d) of Section 65589.5, disapprove a housing development
20 project or condition approval of a housing development project in a manner that
21 renders the project infeasible if the basis for the disapproval or conditional
22 approval includes any of the reasons prohibited in paragraph (1) or (2).

23 (c) For the purposes of this section, "persons and families of middle income"
24 means persons and families whose income does not exceed 150 percent of the
25 median income for the county in which the persons or families reside.

26 (d)(1) No city, county, city and county, or other local governmental agency may
27 impose different requirements on a residential development or emergency shelter
28 that is subsidized, financed, insured, or otherwise assisted by the federal or state
29 government or by a local public entity, as defined in Section 50079 of the Health
30 and Safety Code, than those imposed on nonassisted developments, except as
31 provided in subdivision (e). The discrimination prohibited by this subdivision
32 includes the denial or conditioning of a residential development or emergency
33 shelter based in whole or in part on the fact that the development is subsidized,
34 financed, insured, or otherwise assisted as described in this paragraph.

35 (2)(A) No city, county, city and county, or other local governmental agency
36 may, because of the lawful occupation age, or any characteristic of the intended
37 occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics
38 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
39 subdivision (p) of Section 12955, and Section 12955.2 or because the development
40 is intended for occupancy by persons and families of very low, low, moderate, or
41 middle income, impose different requirements on these residential developments
42 than those imposed on developments generally, except as provided in subdivision
43 (e).

1 (B) Notwithstanding subparagraph (A), with respect to familial status,
2 subparagraph (A) shall not be construed to apply to housing for older persons, as
3 defined in Section 12955.9. With respect to familial status, nothing in
4 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
5 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
6 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
7 Code, and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply
8 to subparagraph (A).

9 (e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title
10 do not prohibit either of the following:

11 (1) The County of Riverside from enacting and enforcing zoning to provide
12 housing for older persons, in accordance with state or federal law, if that zoning
13 was enacted prior to January 1, 1995.

14 (2) Any city, county, or city and county from extending preferential treatment to
15 residential developments or emergency shelters assisted by the federal or state
16 government or by a local public entity, as defined in Section 50079 of the Health
17 and Safety Code, or other residential developments or emergency shelters intended
18 for occupancy by persons and families of low and moderate income, as defined in
19 Section 50093 of the Health and Safety Code, or persons and families of middle
20 income, or agricultural employees, as defined in subdivision (b) of Section 1140.4
21 of the Labor Code, and their families. This preferential treatment may include, but
22 need not be limited to, reduction or waiver of fees or changes in architectural
23 requirements, site development and property line requirements, building setback
24 requirements, or vehicle parking requirements that reduce development costs of
25 these developments.

26 (f) “Residential development,” as used in this section, means a single-family
27 residence or a multifamily residence, including manufactured homes, as defined in
28 Section 18007 of the Health and Safety Code.

29 (g) This section shall apply to chartered cities.

30 (h) The Legislature finds and declares that discriminatory practices that inhibit
31 the development of housing for persons and families of very low, low, moderate,
32 and middle income, or emergency shelters for the homeless, are a matter of
33 statewide concern.

34 **Comment.** Section 65008 is amended to add cross-references to Civil Code Section 6714,
35 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
36 (Civ. Code §§ 6500-6876).

37 **Gov’t Code § 66411 (amended). Local control of common interest developments and**
38 **subdivision design and improvement**

39 SEC. ____ . Section 66411 of the Government Code is amended to read:

40 66411. Regulation and control of the design and improvement of subdivisions
41 are vested in the legislative bodies of local agencies. Each local agency shall, by
42 ordinance, regulate and control the initial design and improvement of common

1 interest developments as defined in Section 1351 or 6534 of the Civil Code and
2 subdivisions for which this division requires a tentative and final or parcel map. In
3 the development, adoption, revision, and application of ~~such~~ this type of
4 ordinance, the local agency shall comply with the provisions of Section 65913.2.
5 The ordinance shall specifically provide for proper grading and erosion control,
6 including the prevention of sedimentation or damage to offsite property. Each
7 local agency may by ordinance regulate and control other subdivisions, provided
8 that the regulations are not more restrictive than the regulations for those
9 subdivisions for which a tentative and final or parcel map are required by this
10 division, and provided further that the regulations shall not be applied to short-
11 term leases (terminable by either party on not more than 30 days' notice in
12 writing) of a portion of the operating right-of-way of a railroad corporation as
13 defined by Section 230 of the Public Utilities Code unless a showing is made in
14 individual cases, under substantial evidence, that public policy necessitates the
15 application of the regulations to those short-term leases in individual cases.

16 **Comment.** Section 66411 is amended to add a cross-reference to Civil Code Section 6534,
17 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
18 (Civ. Code §§ 6500-6876), and to make a stylistic revision.

19 **Gov't Code § 66412 (amended). Application of Subdivision Map Act**

20 66412. This division shall be inapplicable to any of the following:

21 (a) The financing or leasing of apartments, offices, stores, or similar space
22 within apartment buildings, industrial buildings, commercial buildings,
23 mobilehome parks, or trailer parks.

24 (b) Mineral, oil, or gas leases.

25 (c) Land dedicated for cemetery purposes under the Health and Safety Code.

26 (d) A lot line adjustment between four or fewer existing adjoining parcels,
27 where the land taken from one parcel is added to an adjoining parcel, and where a
28 greater number of parcels than originally existed is not thereby created, if the lot
29 line adjustment is approved by the local agency, or advisory agency. A local
30 agency or advisory agency shall limit its review and approval to a determination of
31 whether or not the parcels resulting from the lot line adjustment will conform to
32 the local general plan, any applicable specific plan, any applicable coastal plan,
33 and zoning and building ordinances. An advisory agency or local agency shall not
34 impose conditions or exactions on its approval of a lot line adjustment except to
35 conform to the local general plan, any applicable specific plan, any applicable
36 coastal plan, and zoning and building ordinances, to require the prepayment of real
37 property taxes prior to the approval of the lot line adjustment, or to facilitate the
38 relocation of existing utilities, infrastructure, or easements. No tentative map,
39 parcel map, or final map shall be required as a condition to the approval of a lot
40 line adjustment. The lot line adjustment shall be reflected in a deed, which shall be
41 recorded. No record of survey shall be required for a lot line adjustment unless
42 required by Section 8762 of the Business and Professions Code. A local agency

1 shall approve or disapprove a lot line adjustment pursuant to the Permit
2 Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

3 (e) Boundary line or exchange agreements to which the State Lands
4 Commission or a local agency holding a trust grant of tide and submerged lands is
5 a party.

6 (f) Any separate assessment under Section 2188.7 of the Revenue and Taxation
7 Code.

8 (g) The conversion of a community apartment project, as defined in Section
9 1351 or 6536 of the Civil Code, to a condominium, as defined in Section 783 of
10 the Civil Code, but only if all of the following requirements are met:

11 (1) The property was subdivided before January 1, 1982, as evidenced by a
12 recorded deed creating the community apartment project.

13 (2) Subject to compliance with subdivision (e) of Section 1351, or with Sections
14 6626 and 6628, of the Civil Code, all conveyances and other documents necessary
15 to effectuate the conversion shall be executed by the required number of owners in
16 the project as specified in the bylaws or other organizational documents. If the
17 bylaws or other organizational documents do not expressly specify the number of
18 owners necessary to execute the conveyances and other documents, a majority of
19 owners in the project shall be required to execute the conveyances or other
20 documents. Conveyances and other documents executed under the foregoing
21 provisions shall be binding upon and affect the interests of all parties in the
22 project.

23 (3) If subdivision, as defined in Section 66424, of the property occurred after
24 January 1, 1964, both of the following requirements are met:

25 (A) A final or parcel map of that subdivision was approved by the local agency
26 and recorded, with all of the conditions of that map remaining in effect after the
27 conversion.

28 (B) No more than 49 percent of the units in the project were owned by any one
29 person as defined in Section 17, including an incorporator or director of the
30 community apartment project, on January 1, 1982.

31 (4) The local agency certifies that the above requirements were satisfied if the
32 local agency, by ordinance, provides for that certification.

33 (h) The conversion of a stock cooperative, as defined in Section 1351 or 6566 of
34 the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but
35 only if all of the following requirements are met:

36 (1) The property was subdivided before January 1, 1982, as evidenced by a
37 recorded deed creating the stock cooperative, an assignment of lease, or issuance
38 of shares to a stockholder.

39 (2) A person renting a unit in a cooperative shall be entitled at the time of
40 conversion to all tenant rights in state or local law, including, but not limited to,
41 rights respecting first refusal, notice, and displacement and relocation benefits.

42 (3) Subject to compliance with subdivision (e) of Section 1351, or with Sections
43 6626 and 6628, of the Civil Code, all conveyances and other documents necessary

1 to effectuate the conversion shall be executed by the required number of owners in
2 the cooperative as specified in the bylaws or other organizational documents. If
3 the bylaws or other organizational documents do not expressly specify the number
4 of owners necessary to execute the conveyances and other documents, a majority
5 of owners in the cooperative shall be required to execute the conveyances or other
6 documents. Conveyances and other documents executed under the foregoing
7 provisions shall be binding upon and affect the interests of all parties in the
8 cooperative.

9 (4) If subdivision, as defined in Section 66424, of the property occurred after
10 January 1, 1980, both of the following requirements are met:

11 (A) A final or parcel map of that subdivision was approved by the local agency
12 and recorded, with all of the conditions of that map remaining in effect after the
13 conversion.

14 (B) No more than 49 percent of the shares in the project were owned by any one
15 person as defined in Section 17, including an incorporator or director of the
16 cooperative, on January 1, 1982.

17 (5) The local agency certifies that the above requirements were satisfied if the
18 local agency, by ordinance, provides for that certification.

19 (i) The leasing of, or the granting of an easement to, a parcel of land, or any
20 portion or portions thereof, in conjunction with the financing, erection, and sale or
21 lease of a windpowered electrical generation device on the land, if the project is
22 subject to discretionary action by the advisory agency or legislative body.

23 (j) The leasing or licensing of a portion of a parcel, or the granting of an
24 easement, use permit, or similar right on a portion of a parcel, to a telephone
25 corporation as defined in Section 234 of the Public Utilities Code, exclusively for
26 the placement and operation of cellular radio transmission facilities, including, but
27 not limited to, antennae support structures, microwave dishes, structures to house
28 cellular communications transmission equipment, power sources, and other
29 equipment incidental to the transmission of cellular communications, if the project
30 is subject to discretionary action by the advisory agency or legislative body.

31 (k) Leases of agricultural land for agricultural purposes. As used in this
32 subdivision, “agricultural purposes” means the cultivation of food or fiber, or the
33 grazing or pasturing of livestock.

34 (l) The leasing of, or the granting of an easement to, a parcel of land, or any
35 portion or portions thereof, in conjunction with the financing, erection, and sale or
36 lease of a solar electrical generation device on the land, if the project is subject to
37 review under other local agency ordinances regulating design and improvement or,
38 if the project is subject to other discretionary action by the advisory agency or
39 legislative body.

40 (m) The leasing of, or the granting of an easement to, a parcel of land or any
41 portion or portions of the land in conjunction with a biogas project that uses, as
42 part of its operation, agricultural waste or byproducts from the land where the
43 project is located and reduces overall emissions of greenhouse gases from

1 agricultural operations on the land if the project is subject to review under other
2 local agency ordinances regulating design and improvement or if the project is
3 subject to discretionary action by the advisory agency or legislative body.

4 **Comment.** Subdivisions (g) and (h) of Section 66412 are amended to add cross-references to
5 Civil Code Sections 6536, 6566, 6626, and 6628, reflecting the enactment of the Commercial and
6 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

7 **Notes.** (1) Section 66412 refers to compliance with Civil Code Section 1351(e). That
8 provision includes both a definition of “condominium plan” and substantive provisions governing
9 the creation, amendment, or repeal of a condominium plan. In the proposed law, the definition is
10 separated from the substantive provisions (consistent with general statutory drafting practice). In
11 the proposed amendments to Section 66412(g)(2) and (h)(3), the added cross-references refer
12 only to the provisions of the proposed law that would continue the substantive provisions of
13 Section 1351(e) (i.e., to proposed Sections 6626 and 6628).

14 (2) The Commission invites comment on whether an exclusively commercial or industrial
15 common interest development may be organized as either a community apartment project or a
16 stock cooperative, arguably making a portion of this conforming revision unnecessary.

17 **Gov’t Code § 66424 (amended). Subdivision**

18 SEC. ____ . Section 66424 of the Government Code is amended to read:

19 66424. “Subdivision” means the division, by any subdivider, of any unit or units
20 of improved or unimproved land, or any portion thereof, shown on the latest
21 equalized county assessment roll as a unit or as contiguous units, for the purpose
22 of sale, lease or financing, whether immediate or future. Property shall be
23 considered as contiguous units, even if it is separated by roads, streets, utility
24 easement or railroad rights-of-way. “Subdivision” includes a condominium
25 project, as defined in subdivision (f) of Section 1351 or in Section 6542 of the
26 Civil Code, a community apartment project, as defined in subdivision (d) of
27 Section 1351 or in Section 6536 of the Civil Code, or the conversion of five or
28 more existing dwelling units to a stock cooperative, as defined in subdivision (m)
29 of Section 1351 or in Section 6566 of the Civil Code.

30 **Comment.** Section 66424 is amended to add cross-references to Civil Code Sections 6536,
31 6542, and 6566, reflecting the enactment of the Commercial and Industrial Common Interest
32 Development Act (Civ. Code §§ 6500-6876).

33 **Note.** The Commission invites comment on whether an exclusively commercial or industrial
34 common interest development may be organized as either a community apartment project or a
35 stock cooperative, arguably making a portion of this conforming revision unnecessary.

36 **Gov’t Code § 66427 (amended). Map of condominium, community apartment project, or**
37 **stock cooperative project**

38 SEC. ____ . Section 66427 of the Government Code is amended to read:

39 66427. (a) A map of a condominium project, a community apartment project, or
40 of the conversion of five or more existing dwelling units to a stock cooperative
41 project need not show the buildings or the manner in which the buildings or the
42 airspace above the property shown on the map are to be divided, nor shall the
43 governing body have the right to refuse approval of a parcel, tentative, or final

1 map of the project on account of the design or the location of buildings on the
2 property shown on the map that are not violative of local ordinances or on account
3 of the manner in which airspace is to be divided in conveying the condominium.

4 (b) A map need not include a condominium plan or plans, as defined in
5 subdivision (e) of Section 1351 or in Section 6540 of the Civil Code, and the
6 governing body may not refuse approval of a parcel, tentative, or final map of the
7 project on account of the absence of a condominium plan.

8 (c) Fees and lot design requirements shall be computed and imposed with
9 respect to those maps on the basis of parcels or lots of the surface of the land
10 shown thereon as included in the project.

11 (d) Nothing herein shall be deemed to limit the power of the legislative body to
12 regulate the design or location of buildings in a project by or pursuant to local
13 ordinances.

14 (e) If the governing body has approved a parcel map or final map for the
15 establishment of condominiums on property pursuant to the requirements of this
16 division, the separation of a three-dimensional portion or portions of the property
17 from the remainder of the property or the division of that three-dimensional
18 portion or portions into condominiums shall not constitute a further subdivision as
19 defined in Section 66424, provided each of the following conditions has been
20 satisfied:

21 (1) The total number of condominiums established is not increased above the
22 number authorized by the local agency in approving the parcel map or final map.

23 (2) A perpetual estate or an estate for years in the remainder of the property is
24 held by the condominium owners in undivided interests in common, or by an
25 association as defined in subdivision (a) of Section 1351 or in Section 6528 of the
26 Civil Code, and the duration of the estate in the remainder of the property is the
27 same as the duration of the estate in the condominiums.

28 (3) The three-dimensional portion or portions of property are described on a
29 condominium plan or plans, as defined in subdivision (e) of Section 1351 or in
30 Section 6540 of the Civil Code.

31 **Comment.** Section 66427 is amended to add cross-references to Civil Code Sections 6528 and
32 6540, reflecting the enactment of the Commercial and Industrial Common Interest Development
33 Act (Civ. Code §§ 6500-6876).

34 **Gov't Code § 66452.10 (amended). Stock cooperative or community apartment project**

35 SEC. _____. Section 66452.10 of the Government Code is amended to read:

36 66452.10. A stock cooperative, as defined in Section 11003.2 of the Business
37 and Professions Code, or a community apartment project, as defined in Section
38 11004 of the Business and Professions Code, shall not be converted to a
39 condominium, as defined in Section 783 of the Civil Code, unless the required
40 number of (1) owners and (2) trustees or beneficiaries of each recorded deed of
41 trust and mortgagees of each recorded mortgage in the cooperative or project, as
42 specified in the bylaws, or other organizational documents, have voted in favor of

1 the conversion. If the bylaws or other organizational documents do not expressly
2 specify the number of votes required to approve the conversion, a majority vote of
3 the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and
4 mortgagees of each recorded mortgage in the cooperative or project shall be
5 required. Upon approval of the conversion as set forth above and in compliance
6 with subdivision (e) of Section 1351, or with Sections 6626 and 6628, of the Civil
7 Code, all conveyances and other documents necessary to effectuate the conversion
8 shall be executed by the required number of owners in the cooperative or project
9 as specified in the bylaws or other organizational documents. If the bylaws or
10 other organizational documents do not expressly specify the number of owners
11 necessary to execute the conveyances or other documents, a majority of owners in
12 the cooperative or project shall be required to execute the conveyances and other
13 documents. Conveyances and other documents executed under the foregoing
14 provisions shall be binding upon and affect the interests of all parties in the
15 cooperative or project. The provisions of Section 66499.31 shall not apply to a
16 violation of this section.

17 **Comment.** Section 66452.10 is amended to add cross-references to Civil Code Sections 6626
18 and 6628, reflecting the enactment of the Commercial and Industrial Common Interest
19 Development Act (Civ. Code §§ 6500-6876).

20 **Notes.** (1) Section 66452.10 refers to compliance with Civil Code Section 1351(e). That
21 provision includes both a definition of “condominium plan” and substantive provisions governing
22 the creation, amendment, or repeal of a condominium plan. In the proposed law, the definition is
23 separated from the substantive provisions (consistent with general statutory drafting practice). In
24 the proposed amendment to Section 66452.10, the added cross-references refer only to the
25 provisions of the proposed law that would continue the substantive provisions of Section 1351(e)
26 (i.e., to proposed Sections 6626 and 6628).

27 (2) The Commission invites comment on whether an exclusively commercial or industrial
28 common interest development may be organized as either a stock cooperative or a community
29 apartment project, arguably making a portion of this conforming revision unnecessary.

30 **Gov’t Code § 66475.2 (amended). Local transit facilities**

31 SEC. ____ . Section 66475.2 of the Government Code is amended to read:

32 66475.2. (a) There may be imposed by local ordinance a requirement of a
33 dedication or an irrevocable offer of dedication of land within the subdivision for
34 local transit facilities such as bus turnouts, benches, shelters, landing pads and
35 similar items that directly benefit the residents of a subdivision. The irrevocable
36 offers may be terminated as provided in subdivisions (c) and (d) of Section
37 66477.2.

38 (b) Only the payment of fees in lieu of the dedication of land may be required in
39 subdivisions that consist of the subdivision of airspace in existing buildings into
40 condominium projects, stock cooperatives, or community apartment projects, as
41 those terms are defined in Section 1351, or in Sections 6536, 6542, and 6566, of
42 the Civil Code.

1 **Comment.** Section 66475.2 is amended to add cross-references to Civil Code Sections 6536,
2 6542, and 6566, reflecting the enactment of the Commercial and Industrial Common Interest
3 Development Act (Civ. Code §§ 6500-6876).

4 **Note.** The Commission invites comment on whether Section 66475.2 applies to an
5 exclusively commercial or industrial common interest development, notwithstanding the
6 reference to “residents” in Section 66475.2(a).

HEALTH AND SAFETY CODE

7 **Health & Safety Code § 13132.7 (amended). Fire retardant roof covering that meets** 8 **building standards**

9 SEC. ____. Section 13132.7 of the Health and Safety Code is amended to read:

10 13132.7. (a) Within a very high fire hazard severity zone designated by the
11 Director of Forestry and Fire Protection pursuant to Article 9 (commencing with
12 Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code
13 and within a very high hazard severity zone designated by a local agency pursuant
14 to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5
15 of the Government Code, the entire roof covering of every existing structure
16 where more than 50 percent of the total roof area is replaced within any one-year
17 period, every new structure, and any roof covering applied in the alteration, repair,
18 or replacement of the roof of every existing structure, shall be a fire retardant roof
19 covering that is at least class B as defined in the Uniform Building Code, as
20 adopted and amended by the State Building Standards Commission.

21 (b) In all other areas, the entire roof covering of every existing structure where
22 more than 50 percent of the total roof area is replaced within any one-year period,
23 every new structure, and any roof covering applied in the alteration, repair, or
24 replacement of the roof of every existing structure, shall be a fire retardant roof
25 covering that is at least class C as defined in the Uniform Building Code, as
26 adopted and amended by the State Building Standards Commission.

27 (c) Notwithstanding subdivision (b), within state responsibility areas classified
28 by the State Board of Forestry and Fire Protection pursuant to Article 3
29 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public
30 Resources Code, except for those state responsibility areas designated as moderate
31 fire hazard responsibility zones, the entire roof covering of every existing structure
32 where more than 50 percent of the total roof area is replaced within any one-year
33 period, every new structure, and any roof covering applied in the alteration, repair,
34 or replacement of the roof of every existing structure, shall be a fire retardant roof
35 covering that is at least class B as defined in the Uniform Building Code, as
36 adopted and amended by the State Building Standards Commission.

37 (d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard
38 severity zones designated by the Director of Forestry and Fire Protection pursuant
39 to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4
40 of the Public Resources Code or by a local agency pursuant to Chapter 6.8

1 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the
2 Government Code, the entire roof covering of every existing structure where more
3 than 50 percent of the total roof area is replaced within any one-year period, every
4 new structure, and any roof covering applied in the alteration, repair, or
5 replacement of the roof of every existing structure, shall be a fire retardant roof
6 covering that is at least class A as defined in the Uniform Building Code, as
7 adopted and amended by the State Building Standards Commission.

8 (2) Paragraph (1) does not apply to any jurisdiction containing a very high fire
9 hazard severity zone if the jurisdiction fulfills both of the following requirements:

10 (A) Adopts the model ordinance approved by the State Fire Marshal pursuant to
11 Section 51189 of the Government Code or an ordinance that substantially
12 conforms to the model ordinance of the State Fire Marshal.

13 (B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

14 (e) The State Building Standards Commission shall incorporate the requirements
15 set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to
16 the California Building Standards Code in accordance with Chapter 4
17 (commencing with Section 18935) of Part 2.5 of Division 13.

18 (f) Nothing in this section shall limit the authority of a city, county, city and
19 county, or fire protection district in establishing more restrictive requirements, in
20 accordance with current law, than those specified in this section.

21 (g) This section shall not affect the validity of an ordinance, adopted prior to the
22 effective date for the relevant roofing standard specified in subdivisions (a) and
23 (b), by a city, county, city and county, or fire protection district, unless the
24 ordinance mandates a standard that is less stringent than the standards set forth in
25 subdivision (a), in which case the ordinance shall not be valid on or after the
26 effective date for the relevant roofing standard specified in subdivisions (a) and
27 (b).

28 (h) Any qualified historical building or structure as defined in Section 18955
29 may, on a case-by-case basis, utilize alternative roof constructions as provided by
30 the State Historical Building Code.

31 (i) The installer of the roof covering shall provide certification of the roof
32 covering classification, as provided by the manufacturer or supplier, to the
33 building owner and, when requested, to the agency responsible for enforcement of
34 this part. The installer shall also install the roof covering in accordance with the
35 manufacturer's listing.

36 (j) No wood roof covering materials shall be sold or applied in this state unless
37 both of the following conditions are met:

38 (1) The materials have been approved and listed by the State Fire Marshal as
39 complying with the requirements of this section.

40 (2) The materials have passed at least five years of the 10-year natural
41 weathering test. The 10-year natural weathering test required by this subdivision
42 shall be conducted in accordance with standard 15-2 of the 1994 edition of the
43 Uniform Building Code at a testing facility recognized by the State Fire Marshal.

1 (k) The Insurance Commissioner shall accept the use of fire retardant wood roof
2 covering material that complies with the requirements of this section, used in the
3 partial repair or replacement of nonfire retardant wood roof covering material, as
4 complying with the requirement in Section 2695.9 of Title 10 of the California
5 Code of Regulations relative to matching replacement items in quality, color, and
6 size.

7 (l) No common interest development, as defined in Section 1351 or 6534 of the
8 Civil Code, may require a ~~homeowner~~ an owner to install or repair a roof in a
9 manner that is in violation of this section. The governing documents, as defined in
10 Section 1351 or 6552 of the Civil Code, of a common interest development within
11 a very high fire severity zone shall allow for at least one type of fire retardant roof
12 covering material that meets the requirements of this section.

13 **Comment.** Subdivision (l) of Section 13132.7 is amended to add cross-references to Civil
14 Code Sections 6534 and 6552, and to make a conforming terminological change, reflecting the
15 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
16 6500-6876).

17  **Note.** The Commission invites comment on whether Section 13132.7 applies to an
18 exclusively commercial or industrial common interest development, notwithstanding the use in
19 Section 13132.7(l) of the undefined term “homeowner.”

20 **Health & Safety Code § 19850 (amended). Filing of building plans**

21 SEC. ____ . Section 19850 of the Health and Safety Code is amended to read:

22 19850. The building department of every city or county shall maintain an
23 official copy, which may be on microfilm or other type of photographic copy, of
24 the plans of every building, during the life of the building, for which the
25 department issued a building permit.

26 “Building department” means the department, bureau, or officer charged with
27 the enforcement of laws or ordinances regulating the erection, construction, or
28 alteration of buildings.

29 Except for plans of a common interest development as defined in Section 1351
30 or 6534 of the Civil Code, plans need not be filed for:

31 (a) Single or multiple dwellings not more than two stories and basement in
32 height.

33 (b) Garages and other structures appurtenant to buildings described under
34 subdivision (a).

35 (c) Farm or ranch buildings.

36 (d) Any one-story building where the span between bearing walls does not
37 exceed 25 feet. The exemption in this subdivision does not, however, apply to a
38 steel frame or concrete building.

39 **Comment.** Section 19850 is amended to add a cross-reference to Civil Code Section 6534,
40 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
41 (Civ. Code §§ 6500-6876).

1 **Health & Safety Code § 25400.22 (amended). Lien placed on contaminated property**

2 SEC. _____. Section 25400.22 of the Health and Safety Code is amended to read:

3 25400.22. (a) No later than 10 working days after the date when a local health
4 officer determines that property is contaminated pursuant to subdivision (b) of
5 Section 25400.20, the local health officer shall do all of the following:

6 (1) Except as provided in paragraph (2), if the property is real property, record
7 with the county recorder a lien on the property. The lien shall specify all of the
8 following:

9 (A) The name of the agency on whose behalf the lien is imposed.

10 (B) The date on which the property is determined to be contaminated.

11 (C) The legal description of the real property and the assessor's parcel number.

12 (D) The record owner of the property.

13 (E) The amount of the lien, which shall be the greater of two hundred dollars
14 (\$200) or the costs incurred by the local health officer in compliance with this
15 chapter, including, but not limited to, the cost of inspection performed pursuant to
16 Section 25400.19 and the county recorder's fee.

17 (2)(A) If the property is a mobilehome or manufactured home specified in
18 paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record
19 with a restraint on the mobilehome, or manufactured home with the Department of
20 Housing and Community Development, in the form prescribed by that department,
21 providing notice of the determination that the property is contaminated.

22 (B) If the property is a recreational vehicle specified in paragraph (2) of
23 subdivision (t) of Section 25400.11, perfect by filing with the Department of
24 Motor Vehicles a vehicle license stop on the recreational vehicle in the form
25 prescribed by that department, providing notice of the determination that the
26 property is contaminated.

27 (C) If the property is a mobilehome or manufactured home, not subject to
28 paragraph (2) of subdivision (t) of Section 25400.11, is located on real property,
29 and is not attached to that real property, the local health officer shall record a lien
30 for the real property with the county recorder, and the Department of Housing and
31 Community Development shall amend the permanent record with a restraint for
32 the mobilehome or manufactured home, in the form and with the contents
33 prescribed by that department.

34 (3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall
35 specify all of the following:

36 (A) The name of the agency on whose behalf the lien, restraint, or vehicle
37 license stop is imposed.

38 (B) The date on which the property is determined to be contaminated.

39 (C) The legal description of the real property and the assessor's parcel number,
40 and the mailing and street address or space number of the manufactured home,
41 mobilehome, or recreational vehicle or the vehicle identification number of the
42 recreational vehicle, if applicable.

1 (D) The registered owner of the mobilehome, manufactured home, or
2 recreational vehicle, if applicable, or the name of the owner of the real property as
3 indicated in the official county records.

4 (E) The amount of the lien, if applicable, which shall be the greater of two
5 hundred dollars (\$200) or the costs incurred by the local health officer in
6 compliance with this chapter, including, but not limited to, the cost of inspection
7 performed pursuant to Section 25400.19 and the fee charged by the Department of
8 Housing and Community Development and the Department of Motor Vehicles
9 pursuant to paragraph (2) of subdivision (b).

10 (F) Other information required by the county recorder for the lien, the
11 Department of Housing and Community Development for the restraint, or the
12 Department of Motor Vehicles for the vehicle license stop.

13 (4) Issue to persons specified in subdivisions (d), (e), and (f) an order
14 prohibiting the use or occupancy of the contaminated portions of the property.

15 (b)(1) The county recorder's fees for recording and indexing documents
16 provided for in this section shall be in the amount specified in Article 5
17 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the
18 Government Code.

19 (2) The Department of Housing and Community Development and the
20 Department of Motor Vehicles may charge a fee to cover its administrative costs
21 for recording and indexing documents provided for in paragraph (2) of subdivision
22 (a).

23 (c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect,
24 and priority of a judgment lien. The restraint amending the permanent record
25 pursuant to subdivision (a) shall be displayed on any manufactured home or
26 mobilehome title search until the restraint is released. The vehicle license stop
27 shall remain in effect until it is released.

28 (2) The local health officer shall not authorize the release of a lien, restraint, or
29 vehicle license stop made pursuant to subdivision (a), until one of the following
30 occurs:

31 (A) The property owner satisfies the real property lien, or the contamination in
32 the mobilehome, manufactured home, or recreational vehicle is abated to the
33 satisfaction of the local health officer consistent with the notice in the restraint, or
34 vehicle license stop and the local health officer issues a release pursuant to Section
35 25400.27.

36 (B) For a manufactured home or mobilehome, the local health officer determines
37 that the unit will be destroyed or permanently salvaged. For the purposes of this
38 paragraph, the unit shall not be reregistered after this determination is made unless
39 the local health officer issues a release pursuant to Section 25400.27.

40 (C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in
41 a foreclosure sale.

1 (d) Except as otherwise specified in this section, an order issued pursuant to this
2 section shall be served, either personally or by certified mail, return receipt
3 requested in the following manner:

4 (1) For real property, to all known occupants of the property and to all persons
5 who have an interest in the property, as contained in the records of the recorder's
6 office of the county in which the property is located.

7 (2) In the case of a mobilehome or manufactured home, the order shall be served
8 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
9 defined in Section 18005.3, and the registered owner, as defined in Section
10 18009.5.

11 (3) In the case of a recreational vehicle, the order shall be served on the legal
12 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
13 defined in Section 505 of the Vehicle Code.

14 (e) If the whereabouts of the person described in subdivision (d) are unknown
15 and cannot be ascertained by the local health officer, in the exercise of reasonable
16 diligence, and the local health officer makes an affidavit to that effect, the local
17 health officer shall serve the order by personal service or by mailing a copy of the
18 order by certified mail, postage prepaid, return receipt requested, as follows:

19 (1) The order related to real property shall be served to each person at the
20 address appearing on the last equalized tax assessment roll of the county where the
21 property is located, and to all occupants of the affected unit.

22 (2) In the case of a mobilehome or manufactured home, the order shall be served
23 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
24 defined in Section 18005.3, and the registered owner, as defined in Section
25 18009.5, at the address appearing on the permanent record and all occupants of the
26 affected unit at the mobilehome park space.

27 (3) In the case of a recreational vehicle, the order shall be served on the legal
28 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
29 defined in Section 505 of the Vehicle Code, at the address appearing on the
30 permanent record and all occupants of the affected vehicle at the mobilehome park
31 or special occupancy park space.

32 (f)(1) The local health officer shall also mail a copy of the order required by this
33 section to the address of each person or party having a recorded right, title, estate,
34 lien, or interest in the property and to the association of a common interest
35 development, as defined in Section 1351, or in Sections 6528 and 6534, of the
36 Civil Code.

37 (2) In addition to the requirements of paragraph (1), if the affected property is a
38 mobilehome, manufactured home, or recreational vehicle, specified in paragraph
39 (2) of subdivision (t) of Section 25400.11, the order issued by the local health
40 officer shall also be served, either personally or by certified mail, return receipt
41 requested, to the owner of the mobilehome park or special occupancy park.

42 (g) The order issued pursuant to this section shall include all of the following
43 information:

- 1 (1) A description of the property.
- 2 (2) The parcel identification number, address, or space number, if applicable.
- 3 (3) The vehicle identification number, if applicable.
- 4 (4) A description of the local health officer's intended course of action.
- 5 (5) A specification of the penalties for noncompliance with the order.
- 6 (6) A prohibition on the use of all or portions of the property that are
7 contaminated.
- 8 (7) A description of the measures the property owner is required to take to
9 decontaminate the property.
- 10 (8) An indication of the potential health hazards involved.
- 11 (9) A statement that a property owner who fails to provide a notice or disclosure
12 that is required by this chapter is subject to a civil penalty of up to five thousand
13 dollars (\$5,000).
- 14 (h) The local health officer shall provide a copy of the order to the local building
15 or code enforcement agency or other appropriate agency responsible for the
16 enforcement of the State Housing Law (Part 1.5 (commencing with Section
17 17910) of Division 13).
- 18 (i) The local health officer shall post the order in a conspicuous place on the
19 property within one working day of the date that the order is issued.

20 **Comment.** Subdivision (f) of Section 25400.22 is amended to add cross-references to Civil
21 Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial
22 Common Interest Development Act (Civ. Code §§ 6500-6876).

23 **Health & Safety Code § 25915.2 (amended). Publication and mailing of notice**

- 24 SEC. ____ . Section 25915.2 of the Health and Safety Code is amended to read:
- 25 25915.2. (a) Notice provided pursuant to this chapter shall be provided in
26 writing to each individual employee, and shall be mailed to other owners
27 designated to receive the notice pursuant to subdivision (a) of Section 25915.5,
28 within 15 days of the first receipt by the owner of information identifying the
29 presence or location of asbestos-containing construction materials in the building.
30 This notice shall be provided annually thereafter. In addition, if new information
31 regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision
32 (a) of Section 25915 has been obtained within 90 days after the notice required by
33 this subdivision is provided or any subsequent 90-day period, then a supplemental
34 notice shall be provided within 15 days of the close of that 90-day period.
- 35 (b) Notice provided pursuant to this chapter shall be provided to new employees
36 within 15 days of commencement of work in the building.
- 37 (c) Notice provided pursuant to this chapter shall be mailed to any new owner
38 designated to receive the notice pursuant to subdivision (a) of Section 25915.5
39 within 15 days of the effective date of the agreement under which a person
40 becomes a new owner.
- 41 (d) Subdivisions (a) and (c) shall not be construed to require owners of a
42 building or part of a building within a residential common interest development to

1 mail written notification to other owners of a building or part of a building within
2 the residential common interest development, if all the following conditions are
3 met:

4 (1) The association conspicuously posts, in each building or part of a building
5 known to contain asbestos-containing materials, a large sign in a prominent
6 location that fully informs persons entering each building or part of a building
7 within the common interest development that the association knows the building
8 contains asbestos-containing materials.

9 The sign shall also inform persons of the location where further information, as
10 required by this chapter, is available about the asbestos-containing materials
11 known to be located in the building.

12 (2) The owners or association disclose, as soon as practicable before the transfer
13 of title of a separate interest in the common interest development, to a transferee
14 the existence of asbestos-containing material in a building or part of a building
15 within the common interest development.

16 Failure to comply with this section shall not invalidate the transfer of title of real
17 property. This paragraph shall only apply to transfers of title of separate interests
18 in the common interest development of which the owners have knowledge. As
19 used in this section, “association” and “common interest development” are defined
20 in Section 1351, or Sections 6528 and 6534, of the Civil Code.

21 (e) If a person contracting with an owner receives notice pursuant to this
22 chapter, that contractor shall provide a copy of the notice to his or her employees
23 or contractors working within the building.

24 (f) If the asbestos-containing construction material in the building is limited to
25 an area or areas within the building that meet all the following criteria:

26 (1) Are unique and physically defined.

27 (2) Contain asbestos-containing construction materials in structural, mechanical,
28 or building materials which are not replicated throughout the building.

29 (3) Are not connected to other areas through a common ventilation system; then,
30 an owner required to give notice to his or her employees pursuant to subdivision
31 (a) of Section 25915 or 25915.1 may provide that notice only to the employees
32 working within or entering that area or those areas of the building meeting the
33 conditions above.

34 (g) If the asbestos-containing construction material in the building is limited to
35 an area or areas within the building that meet all the following criteria:

36 (1) Are accessed only by building maintenance employees or contractors and are
37 not accessed by tenants or employees in the building, other than on an incidental
38 basis.

39 (2) Contain asbestos-containing construction materials in structural, mechanical,
40 or building materials which are not replicated in areas of the building which are
41 accessed by tenants and employees.

42 (3) The owner knows that no asbestos fibers are being released or have the
43 reasonable possibility to be released from the material; then, as to that asbestos-

1 containing construction material, an owner required to give notice to his or her
2 employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may
3 provide that notice only to its building maintenance employees and contractors
4 who have access to that area or those areas of the building meeting the conditions
5 above.

6 (h) In those areas of a building where the asbestos-containing construction
7 material is composed only of asbestos fibers which are completely encapsulated, if
8 the owner knows that no asbestos fibers are being released or have the reasonable
9 possibility to be released from that material in its present condition and has no
10 knowledge that other asbestos-containing material is present, then an owner
11 required to give notice pursuant to subdivision (a) of Section 25915 shall provide
12 the information required in paragraph (2) of subdivision (a) of Section 25915 and
13 may substitute the following notice for the requirements of paragraphs (1), (3), (4),
14 and (5) of subdivision (a) of Section 25915:

15 (1) The existence of, conclusions from, and a description or list of the contents
16 of, that portion of any survey conducted to determine the existence and location of
17 asbestos-containing construction materials within the building that refers to the
18 asbestos materials described in this subdivision, and information describing when
19 and where the results of the survey are available pursuant to Section 25917.

20 (2) Information to convey that moving, drilling, boring, or otherwise disturbing
21 the asbestos-containing construction material identified may present a health risk
22 and, consequently, should not be attempted by an unqualified employee. The
23 notice shall identify the appropriate person the employee is required to contact if
24 the condition of the asbestos-containing construction material deteriorates.

25 **Comment.** Paragraph (2) of subdivision (d) of Section 25915.2 is amended to add cross-
26 references to Civil Code Sections 6528 and 6534, reflecting the enactment of the Commercial and
27 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

28 **Health & Safety Code § 33050 (amended). Legislative declaration of policy in undertaking**
29 **community redevelopment projects**

30 SEC. _____. Section 33050 of the Health and Safety Code is amended to read:

31 33050. (a) It is hereby declared to be the policy of the state that in undertaking
32 community redevelopment projects under this part there shall be no discrimination
33 because of any basis 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
36 Section 12955.2 of the Government Code.

37 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
38 (a) shall not be construed to apply to housing for older persons, as defined in
39 Section 12955.9 of the Government Code. With respect to familial status, nothing
40 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
41 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
42 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil

1 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
2 shall apply to subdivision (a).

3 **Comment.** Section 33050 is amended to add a cross-reference to Civil Code Section 6714,
4 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
5 (Civ. Code §§ 6500-6876).

6 **Health & Safety Code § 33435 (amended). Obligation of lessees and purchasers to refrain**
7 **from discrimination**

8 SEC. _____. Section 33435 of the Health and Safety Code is amended to read:

9 33435. (a) Agencies shall obligate lessees and purchasers of real property
10 acquired in redevelopment projects and owners of property improved as a part of a
11 redevelopment project to refrain from restricting the rental, sale, or lease of the
12 property on any basis listed in subdivision (a) or (d) of Section 12955 of the
13 Government Code, as those bases are defined in Sections 12926, 12926.1,
14 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
15 Section 12955.2 of the Government Code. All deeds, leases, or contracts for the
16 sale, lease, sublease, or other transfer of any land in a redevelopment project shall
17 contain or be subject to the nondiscrimination or nonsegregation clauses hereafter
18 prescribed.

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 of the Civil Code, relating to housing for senior citizens.
24 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
25 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
26 shall apply to subdivision (a).

27 **Comment.** Section 33435 is amended to add a cross-reference to Civil Code Section 6714,
28 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
29 (Civ. Code §§ 6500-6876).

30 **Health & Safety Code § 33436 (amended). Nondiscrimination and nonsegregation clauses**

31 SEC. _____. Section 33436 of the Health and Safety Code is amended to read:

32 33436. Express provisions shall be included in all deeds, leases, and contracts
33 that the agency proposes to enter into with respect to the sale, lease, sublease,
34 transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment
35 project in substantially the following form:

36 (a)(1) In deeds the following language shall appear-- "The grantee herein
37 covenants by and for himself or herself, his or her heirs, executors, administrators,
38 and assigns, and all persons claiming under or through them, that there shall be no
39 discrimination against or segregation of, any person or group of persons on
40 account of any basis listed in subdivision (a) or (d) of Section 12955 of the
41 Government Code, as those bases are defined in Sections 12926, 12926.1,
42 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and

1 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer,
2 use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall
3 the grantee or any person claiming under or through him or her, establish or permit
4 any practice or practices of discrimination or segregation with reference to the
5 selection, location, number, use or occupancy of tenants, lessees, subtenants,
6 sublessees, or vendees in the premises herein conveyed. The foregoing covenants
7 shall run with the land.”

8 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
9 shall not be construed to apply to housing for older persons, as defined in Section
10 12955.9 of the Government Code. With respect to familial status, nothing in
11 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
12 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
13 of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and
14 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
15 apply to paragraph (1).

16 (b)(1) In leases the following language shall appear-- “The lessee herein
17 covenants by and for himself or herself, his or her heirs, executors, administrators,
18 and assigns, and all persons claiming under or through him or her, and this lease is
19 made and accepted upon and subject to the following conditions:

20 That there shall be no discrimination against or segregation of any person or
21 group of persons, on account of any basis listed in subdivision (a) or (d) of Section
22 12955 of the Government Code, as those bases are defined in Sections 12926,
23 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
24 and Section 12955.2 of the Government Code, in the leasing, subleasing,
25 transferring, use, occupancy, tenure, or enjoyment of the premises herein leased
26 nor shall the lessee himself or herself, or any person claiming under or through
27 him or her, establish or permit any such practice or practices of discrimination or
28 segregation with reference to the selection, location, number, use, or occupancy, of
29 tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

30 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
31 shall not be construed to apply to housing for older persons, as defined in Section
32 12955.9 of the Government Code. With respect to familial status, nothing in
33 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
34 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
35 of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil Code, and
36 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
37 apply to paragraph (1).

38 (c) In contracts entered into by the agency relating to the sale, transfer, or
39 leasing of land or any interest therein acquired by the agency within any survey
40 area or redevelopment project the foregoing provisions in substantially the forms
41 set forth shall be included and the contracts shall further provide that the foregoing
42 provisions shall be binding upon and shall obligate the contracting party or parties
43 and any subcontracting party or parties, or other transferees under the instrument.

1 **Comment.** Section 33436 is amended to add cross-references to Civil Code Section 6714,
2 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
3 (Civ. Code §§ 6500-6876).

4 **Health & Safety Code § 35811 (amended). Consideration of ethnicity, religion, sex, marital**
5 **status, or national origin**

6 SEC. _____. Section 35811 of the Health and Safety Code is amended to read:

7 35811. (a) No financial institution shall discriminate in the availability of, or in
8 the provision of, financial assistance for the purpose of purchasing, constructing,
9 rehabilitating, improving, or refinancing housing accommodations due, in whole
10 or in part, to the consideration of any basis listed in subdivision (a) or (d) of
11 Section 12955 of the Government Code, as those bases are defined in Sections
12 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
13 12955, and Section 12955.2 of the Government Code.

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 35811 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 § 37630 (amended). Equal opportunity**

26 SEC. _____. Section 37630 of the Health and Safety Code is amended to read:

27 37630. (a) The local agency shall require that any property that is rehabilitated
28 with financing obtained under this part shall be open, upon sale or rental of any
29 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of
30 Section 12955 of the Government Code, as those bases are defined in Sections
31 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
32 12955, and Section 12955.2 of the Government Code. The local agency shall also
33 require that contractors and subcontractors engaged in historical rehabilitation
34 financed under this part provide equal opportunity for employment, without
35 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
36 Government Code, as those bases are defined in Sections 12926 and 12926.1 of
37 the Government Code, and except as otherwise provided in Section 12940 of the
38 Government Code. All contracts and subcontracts for historical rehabilitation
39 financed under this part shall be let without discrimination as to any basis listed in
40 subdivision (a) of Section 12940 of the Government Code, as those bases are
41 defined in Sections 12926 and 12926.1 of the Government Code, and except as
42 otherwise provided in Section 12940 of the Government Code.

1 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
2 (a) shall not be construed to apply to housing for older persons, as defined in
3 Section 12955.9 of the Government Code. With respect to familial status, nothing
4 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
5 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
6 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
7 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
8 shall apply to subdivision (a).

9 **Comment.** Section 37630 is amended to add a cross-reference to Civil Code Section 6714,
10 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
11 (Civ. Code §§ 6500-6876).

12 **Health & Safety Code § 50955 (amended). Civil rights and equal employment opportunity**

13 SEC. _____. Section 50955 of the Health and Safety Code is amended to read:

14 50955. (a) The agency and every housing sponsor shall require that occupancy
15 of housing developments assisted under this part shall be open to all regardless of
16 any basis listed in subdivision (a) or (d) of Section 12955 of the Government
17 Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and
18 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
19 Government Code, that contractors and subcontractors engaged in the construction
20 of housing developments shall provide an equal opportunity for employment,
21 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
22 the Government Code, as those bases are defined in Sections 12926 and 12926.1
23 of the Government Code, and except as otherwise provided in Section 12940 of
24 the Government Code, and that contractors and subcontractors shall submit and
25 receive approval of an affirmative action program prior to the commencement of
26 construction or rehabilitation. Affirmative action requirements respecting
27 apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070)
28 of Division 3 of the Labor Code.

29 All contracts for the management, construction, or rehabilitation of housing
30 developments, and contracts let by housing sponsors, contractors, and
31 subcontractors in the performance of management, construction or rehabilitation,
32 shall be let without discrimination as to any basis listed in subdivision (a) of
33 Section 12940 of the Government Code, as those bases are defined in Sections
34 12926 and 12926.1 of the Government Code, except as otherwise provided in
35 Section 12940 of the Government Code, and pursuant to an affirmative action
36 program, which shall be at not less than the Federal Housing Administration
37 affirmative action standards unless the board makes a specific finding that the
38 particular requirement would be unworkable. The agency shall periodically review
39 implementation of affirmative action programs required by this section.

40 It shall be the policy of the agency and housing sponsors to encourage
41 participation with respect to all projects by minority developers, builders, and
42 entrepreneurs in all levels of construction, planning, financing, and management

1 of housing developments. In areas of minority concentration the agency shall
2 require significant participation of minorities in the sponsorship, construction,
3 planning, financing, and management of housing developments. The agency shall
4 (1) require that, to the greatest extent feasible, opportunities for training and
5 employment arising in connection with the planning, construction, rehabilitation,
6 and operation of housing developments financed pursuant to this part be given to
7 persons of low income residing in the area of that housing, and (2) determine and
8 implement means to secure the participation of small businesses in the
9 performance of contracts for work on housing developments and to develop the
10 capabilities of these small businesses to more efficiently and competently
11 participate in the economic mainstream. In order to achieve this participation by
12 small businesses, the agency may, among other things, waive retention
13 requirements otherwise imposed on contractors or subcontractors by regulation of
14 the agency and may authorize or make advance payments for work to be
15 performed. The agency shall develop relevant selection criteria for the
16 participation of small businesses to ensure that, to the greatest extent feasible, the
17 participants possess the necessary nonfinancial capabilities. The agency may, with
18 respect to these small businesses, waive bond requirements otherwise imposed
19 upon contractors or subcontractors by regulation of the agency, but the agency
20 shall in that case substantially reduce the risk through (1) a pooled-risk bonding
21 program, (2) a bond program in cooperation with other federal or state agencies, or
22 (3) development of a self-insured bonding program with adequate reserves.

23 The agency shall adopt rules and regulations to implement this section.

24 Prior to commitment of a mortgage loan, the agency shall require each housing
25 sponsor, except with respect to mutual self-help housing, to submit an affirmative
26 marketing program that meets standards set forth in regulations of the agency. The
27 agency shall require ~~such a~~ each housing sponsor to conduct the affirmative
28 marketing program so approved. Additionally, the agency shall supplement the
29 efforts of individual housing sponsors by conducting affirmative marketing
30 programs with respect to housing at the state level.

31 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
32 (a) shall not be construed to apply to housing for older persons, as defined in
33 Section 12955.9 of the Government Code. With respect to familial status, nothing
34 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
35 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
36 Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
37 Code, and subdivisions (n), (o), and (p) of Section 12955 of the Government Code
38 shall apply to subdivision (a).

39 **Comment.** Subdivision (a) of Section 50955 is amended to make a stylistic revision.

40 Subdivision (b) is amended to add a cross-reference to Civil Code Section 6714, reflecting the
41 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
42 6500-6876).

1 **Health & Safety Code § 51602 (amended). Nondiscrimination in occupancy of housing**

2 SEC. _____. Section 51602 of the Health and Safety Code is amended to read:

3 51602. (a) The agency shall require that occupancy of housing for which a loan
4 is insured pursuant to this part shall be open to all regardless of any basis listed in
5 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
6 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
7 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,
8 and that contractors and subcontractors engaged in the construction or
9 rehabilitation of housing funded by a loan insured pursuant to this part shall
10 provide an equal opportunity for employment without discrimination as to any
11 basis listed in subdivision (a) of Section 12940 of the Government Code, as those
12 bases are defined in Sections 12926 and 12926.1 of the Government Code, and
13 except as otherwise provided in Section 12940 of the Government Code.

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 (c) A qualified developer shall certify compliance with this section and Section
23 50955 according to requirements specified by the pertinent criteria of the agency.

24 **Comment.** Section 51602 is amended to add a cross-reference to Civil Code Section 6714,
25 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
26 (Civ. Code §§ 6500-6876).

27 **Health & Safety Code § 116048 (amended). Public swimming pool in common interest**
28 **development**

29 SEC. _____. Section 116048 of the Health and Safety Code is amended to read:

30 116048. (a) On or after January 1, 1987, for public swimming pools in any
31 common interest development, as defined in Section 1351 or 6534 of the Civil
32 Code, that consists of fewer than 25 separate interests, as defined in subdivision (l)
33 of Section 1351 or in Section 6564 of the Civil Code, the person operating each
34 ~~such~~ pool open for use shall be required to keep a record of the information
35 required by subdivision (a) of Section 65523 of Title 22 of the California
36 Administrative Code, except that the information shall be recorded at least two
37 times per week and at intervals no greater than four days apart.

38 (b) On or after January 1, 1987, any rule or regulation of the department that is
39 in conflict with subdivision (a) is invalid.

40 **Comment.** Section 116048 is amended to add cross-references to Civil Code Sections 6534
41 and 6564, reflecting the enactment of the Commercial and Industrial Common Interest
42 Development Act (Civ. Code §§ 6500-6876).

43 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).

18  **Note.** The Commission invites comment on whether Section 790.031 applies to an
19 exclusively commercial or industrial common interest development.

REVENUE AND TAXATION CODE

20 **Rev. & Tax. Code § 2188.6 (amended). Separate assessment of property divided into**
21 **condominiums**

22 SEC. _____. Section 2188.6 of the Revenue and Taxation Code is amended to
23 read:

24 2188.6. (a) Unless a request for exemption has been recorded pursuant to
25 subdivision (d), prior to the creation of a condominium as defined in Section 783
26 of the Civil Code, the county assessor may separately assess each individual unit
27 which is shown on the condominium plan of a proposed condominium project
28 when all of the following documents have been recorded as required by law:

29 (1) A subdivision final map or parcel map, as described in Sections 66434 and
30 66445, respectively, of the Government Code.

31 (2) A condominium plan, as defined in subdivision (e) of Section 1351 or in
32 Section 6540 of the Civil Code.

33 (3) A declaration, as defined in subdivision (h) of Section 1351 or in Section
34 6546 of the Civil Code.

35 (b) The tax due on each individual unit shall constitute a lien solely on that unit.

36 (c) The lien created pursuant to this section shall be a lien on an undivided
37 interest in a portion of real property coupled with a separate interest in space

1 called a unit as described in subdivision (f) of Section 1351 or in subdivision (b)
2 of Section 6542 of the Civil Code.

3 (d) The record owner of the real property may record with the condominium
4 plan a request that the real property be exempt from separate assessment pursuant
5 to this section. If a request for exemption is recorded, separate assessment of a
6 condominium unit shall be made only in accordance with Section 2188.3.

7 (e) This section shall become operative on January 1, 1990, and shall apply to
8 condominium projects for which a condominium plan is recorded after that date.

9 **Comment.** Section 2188.6 is amended to add cross-references to Civil Code Sections 6540,
10 6542, and 6546, reflecting the enactment of the Commercial and Industrial Common Interest
11 Development Act (Civ. Code §§ 6500-6876).

VEHICLE CODE

12 **Veh. Code § 21107.7 (amended). Private road not open to public use**

13 SEC. ____ . Section 21107.7 of the Vehicle Code is amended to read:

14 21107.7. (a) Any city or county may, by ordinance or resolution, find and
15 declare that there are privately owned and maintained roads as described in the
16 ordinance or resolution within the city or county that are not generally held open
17 for use of the public for purposes of vehicular travel but, by reason of their
18 proximity to or connection with highways, the interests of any residents residing
19 along the roads and the motoring public will best be served by application of the
20 provisions of this code to those roads. No ordinance or resolution shall be enacted
21 unless there is first filed with the city or county a petition requesting it by a
22 majority of the owners of any privately owned and maintained road, or by at least
23 a majority of the board of directors of a common interest development, as defined
24 by Section 1351 or 6534 of the Civil Code, that is responsible for maintaining the
25 road, and without a public hearing thereon and 10 days' prior written notice to all
26 owners of the road or all of the owners in the development. Upon enactment of the
27 ordinance or resolution, the provisions of this code shall apply to the privately
28 owned and maintained road if appropriate signs are erected at the entrance to the
29 road of the size, shape, and color as to be readily legible during daylight hours
30 from a distance of 100 feet, to the effect that the road is subject to the provisions
31 of this code. The city or county may impose reasonable conditions and may
32 authorize the owners, or board of directors of the common interest development, to
33 erect traffic signs, signals, markings, and devices which conform to the uniform
34 standards and specifications adopted by the Department of Transportation.

35 (b) The department shall not be required to provide patrol or enforce any
36 provisions of this code on any privately owned and maintained road subjected to
37 the provisions of this code under this section, except those provisions applicable to
38 private property other than by action under this section.

1 (c) As used in this section, “privately owned and maintained roads” includes
2 roads owned and maintained by a city, county or district that are not dedicated to
3 use by the public or are not generally held open for use of the public for purposes
4 of vehicular travel.

5 **Comment.** Section 21107.7 is amended to add a cross-reference to Civil Code Section 6534,
6 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
7 (Civ. Code §§ 6500-6876).

8 **Veh. Code § 22651 (amended). Circumstances in which removal of vehicle is permitted**

9 SEC. _____. Section 22651 of the Vehicle Code is amended to read:

10 22651. A peace officer, as defined in Chapter 4.5 (commencing with Section
11 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried
12 employee, who is engaged in directing traffic or enforcing parking laws and
13 regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is
14 located, may remove a vehicle located within the territorial limits in which the
15 officer or employee may act, under the following circumstances:

16 (a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a
17 tube or tunnel where the vehicle constitutes an obstruction to traffic.

18 (b) When a vehicle is parked or left standing upon a highway in a position so as
19 to obstruct the normal movement of traffic or in a condition so as to create a
20 hazard to other traffic upon the highway.

21 (c) When a vehicle is found upon a highway or public land and a report has
22 previously been made that the vehicle is stolen or a complaint has been filed and a
23 warrant thereon is issued charging that the vehicle was embezzled.

24 (d) When a vehicle is illegally parked so as to block the entrance to a private
25 driveway and it is impractical to move the vehicle from in front of the driveway to
26 another point on the highway.

27 (e) When a vehicle is illegally parked so as to prevent access by firefighting
28 equipment to a fire hydrant and it is impracticable to move the vehicle from in
29 front of the fire hydrant to another point on the highway.

30 (f) When a vehicle, except highway maintenance or construction equipment, is
31 stopped, parked, or left standing for more than four hours upon the right-of-way of
32 a freeway that has full control of access and no crossings at grade and the driver, if
33 present, cannot move the vehicle under its own power.

34 (g) When the person in charge of a vehicle upon a highway or public land is, by
35 reason of physical injuries or illness, incapacitated to an extent so as to be unable
36 to provide for its custody or removal.

37 (h)(1) When an officer arrests a person driving or in control of a vehicle for an
38 alleged offense and the officer is, by this code or other law, required or permitted
39 to take, and does take, the person into custody.

40 (2) When an officer serves a notice of an order of suspension or revocation
41 pursuant to Section 13388 or 13389.

1 (i)(1) When a vehicle, other than a rented vehicle, is found upon a highway or
2 public land, or is removed pursuant to this code, and it is known that the vehicle
3 has been issued five or more notices of parking violations to which the owner or
4 person in control of the vehicle has not responded within 21 calendar days of
5 notice of citation issuance or citation issuance or 14 calendar days of the mailing
6 of a notice of delinquent parking violation to the agency responsible for processing
7 notices of parking violations, or the registered owner of the vehicle is known to
8 have been issued five or more notices for failure to pay or failure to appear in
9 court for traffic violations for which a certificate has not been issued by the
10 magistrate or clerk of the court hearing the case showing that the case has been
11 adjudicated or concerning which the registered owner's record has not been
12 cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17,
13 the vehicle may be impounded until that person furnishes to the impounding law
14 enforcement agency all of the following:

15 (A) Evidence of his or her identity.

16 (B) An address within this state at which he or she can be located.

17 (C) Satisfactory evidence that all parking penalties due for the vehicle and all
18 other vehicles registered to the registered owner of the impounded vehicle, and all
19 traffic violations of the registered owner, have been cleared.

20 (2) The requirements in subparagraph (C) of paragraph (1) shall be fully
21 enforced by the impounding law enforcement agency on and after the time that the
22 Department of Motor Vehicles is able to provide access to the necessary records.

23 (3) A notice of parking violation issued for an unlawfully parked vehicle shall
24 be accompanied by a warning that repeated violations may result in the
25 impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full
26 amount of parking penalties or bail has been deposited, that person may demand to
27 be taken without unnecessary delay before a magistrate, for traffic offenses, or a
28 hearing examiner, for parking offenses, within the county in which the offenses
29 charged are alleged to have been committed and who has jurisdiction of the
30 offenses and is nearest or most accessible with reference to the place where the
31 vehicle is impounded. Evidence of current registration shall be produced after a
32 vehicle has been impounded, or, at the discretion of the impounding law
33 enforcement agency, a notice to appear for violation of subdivision (a) of Section
34 4000 shall be issued to that person.

35 (4) A vehicle shall be released to the legal owner, as defined in Section 370, if
36 the legal owner does all of the following:

37 (A) Pays the cost of towing and storing the vehicle.

38 (B) Submits evidence of payment of fees as provided in Section 9561.

39 (C) Completes an affidavit in a form acceptable to the impounding law
40 enforcement agency stating that the vehicle was not in possession of the legal
41 owner at the time of occurrence of the offenses relating to standing or parking. A
42 vehicle released to a legal owner under this subdivision is a repossessed vehicle
43 for purposes of disposition or sale. The impounding agency shall have a lien on

1 any surplus that remains upon sale of the vehicle to which the registered owner is
2 or may be entitled, as security for the full amount of the parking penalties for all
3 notices of parking violations issued for the vehicle and for all local administrative
4 charges imposed pursuant to Section 22850.5. The legal owner shall promptly
5 remit to, and deposit with, the agency responsible for processing notices of
6 parking violations from that surplus, on receipt of that surplus, the full amount of
7 the parking penalties for all notices of parking violations issued for the vehicle and
8 for all local administrative charges imposed pursuant to Section 22850.5.

9 (5) The impounding agency that has a lien on the surplus that remains upon the
10 sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4)
11 has a deficiency claim against the registered owner for the full amount of the
12 parking penalties for all notices of parking violations issued for the vehicle and for
13 all local administrative charges imposed pursuant to Section 22850.5, less the
14 amount received from the sale of the vehicle.

15 (j) When a vehicle is found illegally parked and there are no license plates or
16 other evidence of registration displayed, the vehicle may be impounded until the
17 owner or person in control of the vehicle furnishes the impounding law
18 enforcement agency evidence of his or her identity and an address within this state
19 at which he or she can be located.

20 (k) When a vehicle is parked or left standing upon a highway for 72 or more
21 consecutive hours in violation of a local ordinance authorizing removal.

22 (l) When a vehicle is illegally parked on a highway in violation of a local
23 ordinance forbidding standing or parking and the use of a highway, or a portion
24 thereof, is necessary for the cleaning, repair, or construction of the highway, or for
25 the installation of underground utilities, and signs giving notice that the vehicle
26 may be removed are erected or placed at least 24 hours prior to the removal by a
27 local authority pursuant to the ordinance.

28 (m) When the use of the highway, or a portion of the highway, is authorized by a
29 local authority for a purpose other than the normal flow of traffic or for the
30 movement of equipment, articles, or structures of unusual size, and the parking of
31 a vehicle would prohibit or interfere with that use or movement, and signs giving
32 notice that the vehicle may be removed are erected or placed at least 24 hours
33 prior to the removal by a local authority pursuant to the ordinance.

34 (n) Whenever a vehicle is parked or left standing where local authorities, by
35 resolution or ordinance, have prohibited parking and have authorized the removal
36 of vehicles. Except as provided in subdivision (v), a vehicle shall not be removed
37 unless signs are posted giving notice of the removal.

38 (o)(1) When a vehicle is found or operated upon a highway, public land, or an
39 offstreet parking facility under the following circumstances:

40 (A) With a registration expiration date in excess of six months before the date it
41 is found or operated on the highway, public lands, or the offstreet parking facility.

42 (B) Displaying in, or upon, the vehicle, a registration card, identification card,
43 temporary receipt, license plate, special plate, registration sticker, device issued

1 pursuant to Section 4853, or permit that was not issued for that vehicle, or is not
2 otherwise lawfully used on that vehicle under this code.

3 (C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or
4 falsified registration card, identification card, temporary receipt, license plate,
5 special plate, registration sticker, device issued pursuant to Section 4853, or
6 permit.

7 (2) When a vehicle described in paragraph (1) is occupied, only a peace officer,
8 as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of
9 the Penal Code, may remove the vehicle.

10 (3) For the purposes of this subdivision, the vehicle shall be released to the
11 owner or person in control of the vehicle only after the owner or person furnishes
12 the storing law enforcement agency with proof of current registration and a
13 currently valid driver's license to operate the vehicle.

14 (4) As used in this subdivision, "offstreet parking facility" means an offstreet
15 facility held open for use by the public for parking vehicles and includes a publicly
16 owned facility for offstreet parking, and a privately owned facility for offstreet
17 parking if a fee is not charged for the privilege to park and it is held open for the
18 common public use of retail customers.

19 (p) When the peace officer issues the driver of a vehicle a notice to appear for a
20 violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5,
21 or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle
22 so removed from the highway or public land, or from private property after having
23 been on a highway or public land, shall not be released to the registered owner or
24 his or her agent, except upon presentation of the registered owner's or his or her
25 agent's currently valid driver's license to operate the vehicle and proof of current
26 vehicle registration, or upon order of a court.

27 (q) When a vehicle is parked for more than 24 hours on a portion of highway
28 that is located within the boundaries of a common interest development, as defined
29 in subdivision (c) of Section 1351 or in Section 6534 of the Civil Code, and signs,
30 as required by paragraph (1) of subdivision (a) of Section 22658 of this code, have
31 been posted on that portion of highway providing notice to drivers that vehicles
32 parked thereon for more than 24 hours will be removed at the owner's expense,
33 pursuant to a resolution or ordinance adopted by the local authority.

34 (r) When a vehicle is illegally parked and blocks the movement of a legally
35 parked vehicle.

36 (s)(1) When a vehicle, except highway maintenance or construction equipment,
37 an authorized emergency vehicle, or a vehicle that is properly permitted or
38 otherwise authorized by the Department of Transportation, is stopped, parked, or
39 left standing for more than eight hours within a roadside rest area or viewpoint.

40 (2) Notwithstanding paragraph (1), when a commercial motor vehicle, as
41 defined in paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or
42 left standing for more than 10 hours within a roadside rest area or viewpoint.

1 (3) For purposes of this subdivision, a roadside rest area or viewpoint is a
2 publicly maintained vehicle parking area, adjacent to a highway, utilized for the
3 convenient, safe stopping of a vehicle to enable motorists to rest or to view the
4 scenery. If two or more roadside rest areas are located on opposite sides of the
5 highway, or upon the center divider, within seven miles of each other, then that
6 combination of rest areas is considered to be the same rest area.

7 (t) When a peace officer issues a notice to appear for a violation of Section
8 25279.

9 (u) When a peace officer issues a citation for a violation of Section 11700 and
10 the vehicle is being offered for sale.

11 (v)(1) When a vehicle is a mobile billboard advertising display, as defined in
12 Section 395.5, and is parked or left standing in violation of a local resolution or
13 ordinance adopted pursuant to subdivision (m) of Section 21100, if the registered
14 owner of the vehicle was previously issued a warning citation for the same
15 offense, pursuant to paragraph (2).

16 (2) Notwithstanding subdivision (a) of Section 22507, a city or county, in lieu of
17 posting signs noticing a local ordinance prohibiting mobile billboard advertising
18 displays adopted pursuant to subdivision (m) of Section 21100, may provide
19 notice by issuing a warning citation advising the registered owner of the vehicle
20 that he or she may be subject to penalties upon a subsequent violation of the
21 ordinance, that may include the removal of the vehicle as provided in paragraph
22 (1). A city or county is not required to provide further notice for a subsequent
23 violation prior to the enforcement of penalties for a violation of the ordinance.

24 **Comment.** Subdivision (q) of Section 22651 is amended to add a cross-reference to Civil Code
25 Section 6534, reflecting the enactment of the Commercial and Industrial Common Interest
26 Development Act (Civ. Code §§ 6500-6876).

27 **Veh. Code § 22651.05 (amended). Removal of vehicle by trained volunteer in specified**
28 **circumstances**

29 SEC. ____. Section 22651.05 of the Vehicle Code is amended to read:

30 22651.05. (a) A trained volunteer of a state or local law enforcement agency,
31 who is engaged in directing traffic or enforcing parking laws and regulations, of a
32 city, county, or jurisdiction of a state agency in which a vehicle is located, may
33 remove or authorize the removal of a vehicle located within the territorial limits in
34 which an officer or employee of that agency may act, under any of the following
35 circumstances:

36 (1) When a vehicle is parked or left standing upon a highway for 72 or more
37 consecutive hours in violation of a local ordinance authorizing the removal.

38 (2) When a vehicle is illegally parked or left standing on a highway in violation
39 of a local ordinance forbidding standing or parking and the use of a highway, or a
40 portion thereof, is necessary for the cleaning, repair, or construction of the
41 highway, or for the installation of underground utilities, and signs giving notice

1 that the vehicle may be removed are erected or placed at least 24 hours prior to the
2 removal by local authorities pursuant to the ordinance.

3 (3) Wherever the use of the highway, or a portion thereof, is authorized by local
4 authorities for a purpose other than the normal flow of traffic or for the movement
5 of equipment, articles, or structures of unusual size, and the parking of a vehicle
6 would prohibit or interfere with that use or movement, and signs giving notice that
7 the vehicle may be removed are erected or placed at least 24 hours prior to the
8 removal by local authorities pursuant to the ordinance.

9 (4) Whenever a vehicle is parked or left standing where local authorities, by
10 resolution or ordinance, have prohibited parking and have authorized the removal
11 of vehicles. A vehicle may not be removed unless signs are posted giving notice of
12 the removal.

13 (5) Whenever a vehicle is parked for more than 24 hours on a portion of
14 highway that is located within the boundaries of a common interest development,
15 as defined in subdivision (c) of Section 1351 or in Section 6534 of the Civil Code,
16 and signs, as required by Section 22658.2, have been posted on that portion of
17 highway providing notice to drivers that vehicles parked thereon for more than 24
18 hours will be removed at the owner's expense, pursuant to a resolution or
19 ordinance adopted by the local authority.

20 (b) The provisions of this chapter that apply to a vehicle removed pursuant to
21 Section 22651 apply to a vehicle removed pursuant to subdivision (a).

22 (c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his
23 or her own free will, provides services, without any financial gain, to a local or
24 state law enforcement agency, and who is duly trained and certified to remove a
25 vehicle by a local or state law enforcement agency.

26 **Comment.** Section 22651.05 is amended to add a cross-reference to Civil Code Section 6534,
27 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
28 (Civ. Code §§ 6500-6876).

29 **Veh. Code § 22658 (amended). Removal of vehicle from private property by property owner**

30 SEC. ____ . Section 22658 of the Vehicle Code is amended to read:

31 22658. (a) The owner or person in lawful possession of private property,
32 including an association of a common interest development as defined in Section
33 1351, or in Sections 6528 and 6534, of the Civil Code, may cause the removal of a
34 vehicle parked on the property to a storage facility that meets the requirements of
35 subdivision (n) under any of the following circumstances:

36 (1) There is displayed, in plain view at all entrances to the property, a sign not
37 less than 17 inches by 22 inches in size, with lettering not less than one inch in
38 height, prohibiting public parking and indicating that vehicles will be removed at
39 the owner's expense, and containing the telephone number of the local traffic law
40 enforcement agency and the name and telephone number of each towing company
41 that is a party to a written general towing authorization agreement with the owner

1 or person in lawful possession of the property. The sign may also indicate that a
2 citation may also be issued for the violation.

3 (2) The vehicle has been issued a notice of parking violation, and 96 hours have
4 elapsed since the issuance of that notice.

5 (3) The vehicle is on private property and lacks an engine, transmission, wheels,
6 tires, doors, windshield, or any other major part or equipment necessary to operate
7 safely on the highways, the owner or person in lawful possession of the private
8 property has notified the local traffic law enforcement agency, and 24 hours have
9 elapsed since that notification.

10 (4) The lot or parcel upon which the vehicle is parked is improved with a single-
11 family dwelling.

12 (b) The tow truck operator removing the vehicle, if the operator knows or is able
13 to ascertain from the property owner, person in lawful possession of the property,
14 or the registration records of the Department of Motor Vehicles the name and
15 address of the registered and legal owner of the vehicle, shall immediately give, or
16 cause to be given, notice in writing to the registered and legal owner of the fact of
17 the removal, the grounds for the removal, and indicate the place to which the
18 vehicle has been removed. If the vehicle is stored in a storage facility, a copy of
19 the notice shall be given to the proprietor of the storage facility. The notice
20 provided for in this section shall include the amount of mileage on the vehicle at
21 the time of removal and the time of the removal from the property. If the tow truck
22 operator does not know and is not able to ascertain the name of the owner or for
23 any other reason is unable to give the notice to the owner as provided in this
24 section, the tow truck operator shall comply with the requirements of subdivision
25 (c) of Section 22853 relating to notice in the same manner as applicable to an
26 officer removing a vehicle from private property.

27 (c) This section does not limit or affect any right or remedy that the owner or
28 person in lawful possession of private property may have by virtue of other
29 provisions of law authorizing the removal of a vehicle parked upon private
30 property.

31 (d) The owner of a vehicle removed from private property pursuant to
32 subdivision (a) may recover for any damage to the vehicle resulting from any
33 intentional or negligent act of a person causing the removal of, or removing, the
34 vehicle.

35 (e)(1) An owner or person in lawful possession of private property, or an
36 association of a common interest development, causing the removal of a vehicle
37 parked on that property is liable for double the storage or towing charges
38 whenever there has been a failure to comply with paragraph (1), (2), or (3) of
39 subdivision (a) or to state the grounds for the removal of the vehicle if requested
40 by the legal or registered owner of the vehicle as required by subdivision (f).

41 (2) A property owner or owner's agent or lessee who causes the removal of a
42 vehicle parked on that property pursuant to the exemption set forth in
43 subparagraph (A) of paragraph (1) of subdivision (l) and fails to comply with that

1 subdivision is guilty of an infraction, punishable by a fine of one thousand dollars
2 (\$1,000).

3 (f) An owner or person in lawful possession of private property, or an
4 association of a common interest development, causing the removal of a vehicle
5 parked on that property shall notify by telephone or, if impractical, by the most
6 expeditious means available, the local traffic law enforcement agency within one
7 hour after authorizing the tow. An owner or person in lawful possession of private
8 property, an association of a common interest development, causing the removal
9 of a vehicle parked on that property, or the tow truck operator who removes the
10 vehicle, shall state the grounds for the removal of the vehicle if requested by the
11 legal or registered owner of that vehicle. A towing company that removes a
12 vehicle from private property in compliance with subdivision (l) is not responsible
13 in a situation relating to the validity of the removal. A towing company that
14 removes the vehicle under this section shall be responsible for the following:

15 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

16 (2) The removal of a vehicle other than the vehicle specified by the owner or
17 other person in lawful possession of the private property.

18 (g)(1)(A) Possession of a vehicle under this section shall be deemed to arise
19 when a vehicle is removed from private property and is in transit.

20 (B) Upon the request of the owner of the vehicle or that owner's agent, the
21 towing company or its driver shall immediately and unconditionally release a
22 vehicle that is not yet removed from the private property and in transit.

23 (C) A person failing to comply with subparagraph (B) is guilty of a
24 misdemeanor.

25 (2) If a vehicle is released to a person in compliance with subparagraph (B) of
26 paragraph (1), the vehicle owner or authorized agent shall immediately move that
27 vehicle to a lawful location.

28 (h) A towing company may impose a charge of not more than one-half of the
29 regular towing charge for the towing of a vehicle at the request of the owner, the
30 owner's agent, or the person in lawful possession of the private property pursuant
31 to this section if the owner of the vehicle or the vehicle owner's agent returns to
32 the vehicle after the vehicle is coupled to the tow truck by means of a regular
33 hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by
34 means of a conventional trailer, and before it is removed from the private property.
35 The regular towing charge may only be imposed after the vehicle has been
36 removed from the property and is in transit.

37 (i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section
38 is excessive if the charge exceeds the greater of the following:

39 (i) That which would have been charged for that towing or storage, or both,
40 made at the request of a law enforcement agency under an agreement between a
41 towing company and the law enforcement agency that exercises primary
42 jurisdiction in the city in which is located the private property from which the
43 vehicle was, or was attempted to be, removed, or if the private property is not

1 located within a city, then the law enforcement agency that exercises primary
2 jurisdiction in the county in which the private property is located.

3 (ii) That which would have been charged for that towing or storage, or both,
4 under the rate approved for that towing operator by the California Highway Patrol
5 for the jurisdiction in which the private property is located and from which the
6 vehicle was, or was attempted to be, removed.

7 (B) A towing operator shall make available for inspection and copying his or her
8 rate approved by the California Highway Patrol, if any, within 24 hours of a
9 request without a warrant to law enforcement, the Attorney General, district
10 attorney, or city attorney.

11 (2) If a vehicle is released within 24 hours from the time the vehicle is brought
12 into the storage facility, regardless of the calendar date, the storage charge shall be
13 for only one day. Not more than one day's storage charge may be required for a
14 vehicle released the same day that it is stored.

15 (3) If a request to release a vehicle is made and the appropriate fees are tendered
16 and documentation establishing that the person requesting release is entitled to
17 possession of the vehicle, or is the owner's insurance representative, is presented
18 within the initial 24 hours of storage, and the storage facility fails to comply with
19 the request to release the vehicle or is not open for business during normal
20 business hours, then only one day's storage charge may be required to be paid
21 until after the first business day. A business day is any day in which the lienholder
22 is open for business to the public for at least eight hours. If a request is made more
23 than 24 hours after the vehicle is placed in storage, charges may be imposed on a
24 full calendar day basis for each day, or part thereof, that the vehicle is in storage.

25 (j)(1) A person who charges a vehicle owner a towing, service, or storage charge
26 at an excessive rate, as described in subdivision (h) or (i), is civilly liable to the
27 vehicle owner for four times the amount charged.

28 (2) A person who knowingly charges a vehicle owner a towing, service, or
29 storage charge at an excessive rate, as described in subdivision (h) or (i), or who
30 fails to make available his or her rate as required in subparagraph (B) of paragraph
31 (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more
32 than two thousand five hundred dollars (\$2,500), or by imprisonment in the county
33 jail for not more than three months, or by both that fine and imprisonment.

34 (k)(1) A person operating or in charge of a storage facility where vehicles are
35 stored pursuant to this section shall accept a valid bank credit card or cash for
36 payment of towing and storage by a registered owner, the legal owner, or the
37 owner's agent claiming the vehicle. A credit card shall be in the name of the
38 person presenting the card. "Credit card" means "credit card" as defined in
39 subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of
40 this section, credit card does not include a credit card issued by a retail seller.

41 (2) A person described in paragraph (1) shall conspicuously display, in that
42 portion of the storage facility office where business is conducted with the public, a

1 notice advising that all valid credit cards and cash are acceptable means of
2 payment.

3 (3) A person operating or in charge of a storage facility who refuses to accept a
4 valid credit card or who fails to post the required notice under paragraph (2) is
5 guilty of a misdemeanor, punishable by a fine of not more than two thousand five
6 hundred dollars (\$2,500), or by imprisonment in the county jail for not more than
7 three months, or by both that fine and imprisonment.

8 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is
9 civilly liable to the registered owner of the vehicle or the person who tendered the
10 fees for four times the amount of the towing and storage charges.

11 (5) A person operating or in charge of the storage facility shall have sufficient
12 moneys on the premises of the primary storage facility during normal business
13 hours to accommodate, and make change in, a reasonable monetary transaction.

14 (6) Credit charges for towing and storage services shall comply with Section
15 1748.1 of the Civil Code. Law enforcement agencies may include the costs of
16 providing for payment by credit when making agreements with towing companies
17 as described in subdivision (i).

18 (l)(1)(A) A towing company shall not remove or commence the removal of a
19 vehicle from private property without first obtaining the written authorization from
20 the property owner or lessee, including an association of a common interest
21 development, or an employee or agent thereof, who shall be present at the time of
22 removal and verify the alleged violation, except that presence and verification is
23 not required if the person authorizing the tow is the property owner, or the owner's
24 agent who is not a tow operator, of a residential rental property of 15 or fewer
25 units that does not have an onsite owner, owner's agent or employee, and the
26 tenant has verified the violation, requested the tow from that tenant's assigned
27 parking space, and provided a signed request or electronic mail, or has called and
28 provides a signed request or electronic mail within 24 hours, to the property owner
29 or owner's agent, which the owner or agent shall provide to the towing company
30 within 48 hours of authorizing the tow. The signed request or electronic mail shall
31 contain the name and address of the tenant, and the date and time the tenant
32 requested the tow. A towing company shall obtain, within 48 hours of receiving
33 the written authorization to tow, a copy of a tenant request required pursuant to
34 this subparagraph. For the purpose of this subparagraph, a person providing the
35 written authorization who is required to be present on the private property at the
36 time of the tow does not have to be physically present at the specified location of
37 where the vehicle to be removed is located on the private property.

38 (B) The written authorization under subparagraph (A) shall include all of the
39 following:

40 (i) The make, model, vehicle identification number, and license plate number of
41 the removed vehicle.

1 (ii) The name, signature, job title, residential or business address and working
2 telephone number of the person, described in subparagraph (A), authorizing the
3 removal of the vehicle.

4 (iii) The grounds for the removal of the vehicle.

5 (iv) The time when the vehicle was first observed parked at the private property.

6 (v) The time that authorization to tow the vehicle was given.

7 (C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing
8 company prior to payment of a towing or storage charge shall provide a photocopy
9 of the written authorization to the vehicle owner or the agent.

10 (ii) If the vehicle was towed from a residential property, the towing company
11 shall redact the information specified in clause (ii) of subparagraph (B) in the
12 photocopy of the written authorization provided to the vehicle owner or the agent
13 pursuant to clause (i).

14 (iii) The towing company shall also provide to the vehicle owner or the agent a
15 separate notice that provides the telephone number of the appropriate local law
16 enforcement or prosecuting agency by stating “If you believe that you have been
17 wrongfully towed, please contact the local law enforcement or prosecuting agency
18 at [insert appropriate telephone number].” The notice shall be in English and in the
19 most populous language, other than English, that is spoken in the jurisdiction.

20 (D) A towing company shall not remove or commence the removal of a vehicle
21 from private property described in subdivision (a) of Section 22953 unless the
22 towing company has made a good faith inquiry to determine that the owner or the
23 property owner’s agent complied with Section 22953.

24 (E)(i) General authorization to remove or commence removal of a vehicle at the
25 towing company’s discretion shall not be delegated to a towing company or its
26 affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire
27 hydrant or in a fire lane, or in a manner which interferes with an entrance to, or
28 exit from, the private property.

29 (ii) In those cases in which general authorization is granted to a towing company
30 or its affiliate to undertake the removal or commence the removal of a vehicle that
31 is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that
32 interferes with an entrance to, or exit from, private property, the towing company
33 and the property owner, or owner’s agent, or person in lawful possession of the
34 private property shall have a written agreement granting that general authorization.

35 (2) If a towing company removes a vehicle under a general authorization
36 described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully
37 parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that
38 interferes with an entrance to, or exit from, the private property, the towing
39 company shall take, prior to the removal of that vehicle, a photograph of the
40 vehicle that clearly indicates that parking violation. Prior to accepting payment,
41 the towing company shall keep one copy of the photograph taken pursuant to this
42 paragraph, and shall present that photograph and provide, without charge, a

1 photocopy to the owner or an agent of the owner, when that person claims the
2 vehicle.

3 (3) A towing company shall maintain the original written authorization, or the
4 general authorization described in subparagraph (E) of paragraph (1) and the
5 photograph of the violation, required pursuant to this section, and any written
6 requests from a tenant to the property owner or owner's agent required by
7 subparagraph (A) of paragraph (1), for a period of three years and shall make them
8 available for inspection and copying within 24 hours of a request without a
9 warrant to law enforcement, the Attorney General, district attorney, or city
10 attorney.

11 (4) A person who violates this subdivision is guilty of a misdemeanor,
12 punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
13 or by imprisonment in the county jail for not more than three months, or by both
14 that fine and imprisonment.

15 (5) A person who violates this subdivision is civilly liable to the owner of the
16 vehicle or his or her agent for four times the amount of the towing and storage
17 charges.

18 (m)(1) A towing company that removes a vehicle from private property under
19 this section shall notify the local law enforcement agency of that tow after the
20 vehicle is removed from the private property and is in transit.

21 (2) A towing company is guilty of a misdemeanor if the towing company fails to
22 provide the notification required under paragraph (1) within 60 minutes after the
23 vehicle is removed from the private property and is in transit or 15 minutes after
24 arriving at the storage facility, whichever time is less.

25 (3) A towing company that does not provide the notification under paragraph (1)
26 within 30 minutes after the vehicle is removed from the private property and is in
27 transit is civilly liable to the registered owner of the vehicle, or the person who
28 tenders the fees, for three times the amount of the towing and storage charges.

29 (4) If notification is impracticable, the times for notification, as required
30 pursuant to paragraphs (2) and (3), shall be tolled for the time period that
31 notification is impracticable. This paragraph is an affirmative defense.

32 (n) A vehicle removed from private property pursuant to this section shall be
33 stored in a facility that meets all of the following requirements:

34 (1)(A) Is located within a 10-mile radius of the property from where the vehicle
35 was removed.

36 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a
37 towing company has prior general written approval from the law enforcement
38 agency that exercises primary jurisdiction in the city in which is located the
39 private property from which the vehicle was removed, or if the private property is
40 not located within a city, then the law enforcement agency that exercises primary
41 jurisdiction in the county in which is located the private property.

42 (2)(A) Remains open during normal business hours and releases vehicles after
43 normal business hours.

1 (B) A gate fee may be charged for releasing a vehicle after normal business
2 hours, weekends, and state holidays. However, the maximum hourly charge for
3 releasing a vehicle after normal business hours shall be one-half of the hourly tow
4 rate charged for initially towing the vehicle, or less.

5 (C) Notwithstanding any other provision of law and for purposes of this
6 paragraph, “normal business hours” are Monday to Friday, inclusive, from 8 a.m.
7 to 5 p.m., inclusive, except state holidays.

8 (3) Has a public pay telephone in the office area that is open and accessible to
9 the public.

10 (o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to
11 assist vehicle owners or their agents by, among other things, allowing payment by
12 credit cards for towing and storage services, thereby expediting the recovery of
13 towed vehicles and concurrently promoting the safety and welfare of the public.

14 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further
15 the safety of the general public by ensuring that a private property owner or lessee
16 has provided his or her authorization for the removal of a vehicle from his or her
17 property, thereby promoting the safety of those persons involved in ordering the
18 removal of the vehicle as well as those persons removing, towing, and storing the
19 vehicle.

20 (3) It is the intent of the Legislature in the adoption of subdivision (g) to
21 promote the safety of the general public by requiring towing companies to
22 unconditionally release a vehicle that is not lawfully in their possession, thereby
23 avoiding the likelihood of dangerous and violent confrontation and physical injury
24 to vehicle owners and towing operators, the stranding of vehicle owners and their
25 passengers at a dangerous time and location, and impeding expedited vehicle
26 recovery, without wasting law enforcement’s limited resources.

27 (p) The remedies, sanctions, restrictions, and procedures provided in this section
28 are not exclusive and are in addition to other remedies, sanctions, restrictions, or
29 procedures that may be provided in other provisions of law, including, but not
30 limited to, those that are provided in Sections 12110 and 34660.

31 (q) A vehicle removed and stored pursuant to this section shall be released by
32 the law enforcement agency, impounding agency, or person in possession of the
33 vehicle, or any person acting on behalf of them, to the legal owner or the legal
34 owner’s agent upon presentation of the assignment, as defined in subdivision (b)
35 of Section 7500.1 of the Business and Professions Code; a release from the one
36 responsible governmental agency, only if required by the agency; a government-
37 issued photographic identification card; and any one of the following as
38 determined by the legal owner or the legal owner’s agent: a certificate of
39 repossession for the vehicle, a security agreement for the vehicle, or title, whether
40 paper or electronic, showing proof of legal ownership for the vehicle. Any
41 documents presented may be originals, photocopies, or facsimile copies, or may be
42 transmitted electronically. The storage facility shall not require any documents to
43 be notarized. The storage facility may require the agent of the legal owner to

1 produce a photocopy or facsimile copy of its repossession agency license or
2 registration issued pursuant to Chapter 11 (commencing with Section 7500) of
3 Division 3 of the Business and Professions Code, or to demonstrate, to the
4 satisfaction of the storage facility, that the agent is exempt from licensure pursuant
5 to Section 7500.2 or 7500.3 of the Business and Professions Code.

6 **Comment.** Subdivision (a) of Section 22658 is amended to add cross-references to Civil Code
7 Section 6528 and 6534, reflecting the enactment of the Commercial and Industrial Common
8 Interest Development Act (Civ. Code §§ 6500-6876).

WATER CODE

9 **Water Code § 13553 (amended). Recycled water**

10 SEC. ____ . Section 13553 of the Water Code is amended to read:

11 13553. (a) The Legislature hereby finds and declares that the use of potable
12 domestic water for toilet and urinal flushing in structures is a waste or an
13 unreasonable use of water within the meaning of Section 2 of Article X of the
14 California Constitution if recycled water, for these uses, is available to the user
15 and meets the requirements set forth in Section 13550, as determined by the state
16 board after notice and a hearing.

17 (b) The state board may require a public agency or person subject to this section
18 to furnish any information that may be relevant to making the determination
19 required in subdivision (a).

20 (c) For purposes of this section and Section 13554, “structure” or “structures”
21 means commercial, retail, and office buildings, theaters, auditoriums,
22 condominium projects, schools, hotels, apartments, barracks, dormitories, jails,
23 prisons, and reformatories, and other structures as determined by the State
24 Department of Public Health.

25 (d) Recycled water may be used in condominium projects, as defined in Section
26 1351 or 6542 of the Civil Code, subject to all of the following conditions:

27 (1) Prior to the indoor use of recycled water in any condominium project, the
28 agency delivering the recycled water to the condominium project shall file a report
29 with, and receive written approval of the report from, the State Department of
30 Public Health. The report shall be consistent with the provisions of Title 22 of the
31 California Code of Regulations generally applicable to dual-plumbed structures
32 and shall include all the following:

33 (A) That potable water service to each condominium project will be provided
34 with a backflow protection device approved by the State Department of Public
35 Health to protect the agency’s public water system, as defined in Section 116275
36 of the Health and Safety Code. The backflow protection device approved by the
37 State Department of Public Health shall be inspected and tested annually by a
38 person certified in the inspection of backflow prevention devices.

1 (B) That any plumbing modifications in the condominium unit or any physical
2 alteration of the structure will be done in compliance with state and local
3 plumbing codes.

4 (C) That each condominium project will be tested by the recycled water agency
5 or the responsible local agency at least once every four years to ensure that there
6 are no indications of a possible cross connection between the condominium's
7 potable and nonpotable systems.

8 (D) That recycled water lines will be color coded consistent with current statutes
9 and regulations.

10 (2) The recycled water agency or the responsible local agency shall maintain
11 records of all tests and annual inspections conducted.

12 (3) The condominium's declaration, as defined in Section 1351 or 6546 of the
13 Civil Code, shall provide that the laws and regulations governing recycled water
14 apply, shall not permit any exceptions to those laws and regulations, shall
15 incorporate the report described in paragraph (1), and shall contain the following
16 statement:

17 "NOTICE OF USE OF RECYCLED WATER

18 This property is approved by the State Department of Public Health for the use
19 of recycled water for toilet and urinal flushing. This water is not potable, is not
20 suitable for indoor purposes other than toilet and urinal flushing purposes, and
21 requires dual plumbing. Alterations and modifications to the plumbing system
22 require a permit and are prohibited without first consulting with the appropriate
23 local building code enforcement agency and your property management company
24 or ~~homeowners'~~ owners' association to ensure that the recycled water is not mixed
25 with the drinking water."

26 (e) The State Department of Public Health may adopt regulations as necessary to
27 assist in the implementation of this section.

28 (f) This section shall only apply to condominium projects that are created,
29 within the meaning of Section 1352 or 6580 of the Civil Code, on or after January
30 1, 2008.

31 (g) This section and Section 13554 do not apply to a pilot program adopted
32 pursuant to Section 13553.1.

33 **Comment.** Subdivision (d) of Section 13553 is amended to add cross-references to Civil Code
34 Sections 6542 and 6546, and to make a terminological change, reflecting the enactment of the
35 Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

36 Subdivision (f) is amended to add a cross-reference to Civil Code Section 6580, for the same
37 reason.

38 **Note.** The Commission invites comment on whether Section 13553 applies to an exclusively
39 commercial or industrial common interest development, notwithstanding the use in Section
40 13553(d) of the undefined term "homeowners' association."

DISPOSITION OF EXISTING LAW

The table below shows the disposition of each provision of the existing Davis-Stirling Common Interest Development Act in the proposed law.

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1350	not continued	1357.130	not continued
1350.5	6502	1357.140	not continued
1350.7	not continued	1357.150	not continued
1351 (intro.)	6526	1358(a)	6660
1351(a)	6528	1358(b)	6662
1351(b)	6532	1358(c)	6664
1351(c)	6534	1358(d)	6666
1351(d)	6536	1358 (last ¶)	6670
1351(e)(1)	6624	1358 (next to last ¶)	6668
1351(e)(3)	6624, 6626(a)	1359	6656
1351(e) (next to last ¶)	6626(b)-(c)	1360	6714
1351(e) (last ¶)	6628	1360.5	6706
1351(f)	6542	1361	6652
1351(g)	6544	1361.5	6654
1351(h)	6546	1362	6650
1351(i)	6550	1363(a)	6750
1351(j)	6552	1363(b)	not continued
1351(k)	6562	1363(c)	6752
1351(l)	6564	1363(d)	not continued
1351(m)	6566	1363(e)	not continued
1352	6580	1363(f)	not continued
1352.5	6606(a)-(b), (d)	1363(g) (1st sent.)	6850
1353(a)(1) (1st & 2d sent.)	6614(a)	1363(g) (2d sent.)	not continued
1353(a)(1)-(4) (except 1st & 2d sent.)	not continued	1363(h)	not continued
1353(b)	6614(b)	1363(i)	not continued
1353.5	6702	1363(j)	6854
1353.6	6704	1363.001	6760
1353.7	not continued (but see 6612)	1363.005	not continued
1353.8	6712	1363.03	not continued
1354	6856	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	6762
1355(b)(3)	6620(a)(3)	1363.810	not continued
1355.5	6608	1363.820	not continued
1356	not continued	1363.830	not continued
1357(a)	6618(a)	1363.840	not continued
1357(b) (1st sent.)	6618(b), 6620	1363.850	not continued
1357(c)	not continued	1364(a)	6716(a)
1357(d)	6618(c)	1364(b)	6718
1357.100	not continued	1364(c)	6716(b)
1357.110	not continued	1364(d)-(e)	6720
1357.120	not continued	1364(f)	6722
		1365	not continued

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1365.1	not continued	1367.1(h)	6820(b)
1365.2	not continued	1367.1(i)	6818(b)
1365.2.5	not continued	1367.1(j)	6822(b)
1365.3	not continued	1367.1(k)	6814(f)
1365.5	not continued	1367.1(l)	6819
1365.6	6758(a)	1367.1(m)	not continued (but see 6828)
1365.7	not continued	1367.1(n)	not continued
1365.9	6840	1367.4	not continued
1366(a) (1st sent. only)	6800	1367.5	not continued
1366(a) (except 1st sent.)	not continued	1367.6	not continued
1366(b)	not continued	1368	not continued
1366(c)	6804	1368.1	6710
1366(d)	not continued	1368.3	6858
1366(e)	not continued	1368.4	6860
1366(f)	6808(c)	1368.5	6150
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)	6810	1369.580	not continued
1367.1(c)	not continued	1369.590	not continued
1367.1(d) (1st - 5th sent.)	6814(a)-(e)	1370	6602
1367.1(d) (6th sent.)	6818(a)	1371	6604
1367.1(d) (7th & 8th sent.)	6824(a)	1372	6510
1367.1(e)	6824(b)	1373	6580(a), 6531
1367.1(f)	6816	1374	6580(b)
1367.1(g) (1st sent.)	6826	1375	6000
1367.1(g) (2d sent.)	6820(a)	1375.05	6050
1367.1(g) (3d sent.)	6822(a)	1375.1	6100
1367.1(g) (4th sent.)	6822(c) (intro.)	1376	6708
1367.1(g)(1)-(2)	6822(c)(1)-(2)	1378	not continued