

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

2002-2003 RECOMMENDATIONS

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March 2003

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

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## NOTE

The Commission's reports, recommendations, and studies are published in separate pamphlets that are later bound in hardcover form. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound, which permits citation to Commission publications before they are bound.

This publication (#215) will appear in Volume 33 of the Commission's *Reports, Recommendations, and Studies*.

Commission publications and other materials are available on the Internet at [www.clrc.ca.gov](http://www.clrc.ca.gov).

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

Organization of Davis-Stirling Common  
Interest Development Act

September 2002

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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STATE OF CALIFORNIA

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September 13, 2002

To: The Honorable Gray Davis  
*Governor of California*, and  
The Legislature of California

The Law Revision Commission is conducting a general study of common interest development law. In that study, the Commission will review the statutes affecting common interest developments with the goal of setting a clear, consistent, and unified policy with regard to their formation and management and the transaction of real property interests located within them. It will seek to clarify the law and eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, and determine to what extent common interest housing developments should be subject to regulation.

In this recommendation, the Commission recommends that descriptive chapter and article headings be inserted in the body of the Davis-Stirling Common Interest Development Act. The headings will aid in the use of this complex body of law and will help structure future revisions of the law in a logical manner.

This recommendation was prepared pursuant to Resolution Chapter 78 of the Statutes of 2001.

Respectfully submitted,

David Huebner  
*Chairperson*



## COMMON INTEREST DEVELOPMENT LAW

### BACKGROUND

The main body of law governing common interest developments is the Davis-Stirling Common Interest Development Act.<sup>1</sup> Other key statutes include the Subdivision Map Act, the Subdivided Lands Act, the Local Planning Law, and the Non-profit Mutual Benefit Corporation Law, as well as various environmental and land use statutes. In addition, statutes based on separate, rather than common, ownership models still control many aspects of the governing law.<sup>2</sup> The complexities and inconsistencies of this statutory arrangement have been criticized by homeowners and practitioners, among others.<sup>3</sup>

Common interest developments are governed by boards of laypeople, elected from among the unit owners. Faced with the complexity of common interest development law, many of these volunteers make mistakes and violate procedures for conducting hearings, adopting budgets, establishing reserves, enforcing parking, and collecting assessments. Housing consumers do not readily understand and cannot easily exercise their rights and obligations.

The Law Revision Commission is reviewing the statutes affecting common interest developments with the goal of setting a clear, consistent, and unified policy with regard to their formation and management and the transfer of real property interests located within them. The objective of the review is to clarify the law and eliminate unnecessary or obsolete pro-

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1. Civ. Code § 1350 *et seq.*

2. See, e.g., Civ. Code §§ 1102 *et seq.*, 2079 *et seq.* (real estate disclosure).

3. See, e.g., SR 10 (Lee and Sher) (Apr. 10, 1997); California Research Bureau, *Residential Common Interest Developments: An Overview* (Mar. 1998), available at <<http://www.library.ca.gov>>.

visions, to consolidate existing statutes in one place in the codes, and to determine to what extent common interest housing developments should be subject to regulation.

#### PROPOSED LAW

As a first step, the Commission recommends that a general organizational structure be added to the Davis-Stirling Act. This would be done simply by adding descriptive chapter and article headings to the statute without touching the body of the statute. No renumbering or rearranging of sections would be required.

The Commission also recommends that a constructional provision be added to make clear that the new headings do not affect the interpretation or meaning of the statute.

An organizational structure for the Davis-Stirling Act will assist interested persons in finding their way through the law. It will also facilitate future development of the law in a logical manner.

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## PROPOSED LEGISLATION

Ⓢ **Note.** The following chapter and article headings, along with proposed Civil Code Section 1350.5 on the effect of headings, are proposed to be added to the Davis-Stirling Common Interest Development Act. The sections comprising the Act are also set out, unchanged, for reference.

### TITLE 6. COMMON INTEREST DEVELOPMENTS

#### CHAPTER 1. GENERAL PROVISIONS

##### Article 1. Preliminary Provisions

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

##### **Civ. Code § 1350.5 (added). Effect of headings**

SEC. \_\_\_\_ . Section 1350.5 is added to the Civil Code, to read:

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

**Comment.** Section 1350.5 is a standard provision found in many codes. See, e.g., Evid. Code § 5; Fam. Code § 5; Prob. Code § 4.

##### Article 2. Definitions

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

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

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

may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

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

- (1) A community apartment project.
- (2) A condominium project.
- (3) A planned development.
- (4) A stock cooperative.

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

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

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

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

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

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

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

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

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

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

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

(i) “Exclusive use common area” means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate

interests and which is or will be appurtenant to the separate interest or interests.

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

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

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

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

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

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

(l) "Separate interest" has the following meanings:

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

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

(3) In a planned development, "separate interest" means a separately owned lot, parcel, area, or space.

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

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

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

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

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

## CHAPTER 2. GOVERNING DOCUMENTS

### Article 1. Creation

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

- (a) A declaration.
- (b) A condominium plan, if any exists.
- (c) A final map or parcel map, if Division 2 (commencing with Section 66410) of Title 7 of the Government Code requires the

recording of either a final map or parcel map for the common interest development.

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

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

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

1353. (a)(1) 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. If the property is located within an airport influence area, a declaration, recorded after January 1, 2004, shall contain the following statement:

#### NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or

inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

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

(3) The statement in a declaration acknowledging that a property is located in an airport influence area does not constitute a title defect, lien, or encumbrance.

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

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

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

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

## Article 2. Enforcement

1354. (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall

inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) Unless the applicable time limitation for commencing the action would run within 120 days, prior to the filing of a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than association assessments, not in excess of five thousand dollars (\$5,000), related to the enforcement of the governing documents, the parties shall endeavor, as provided in this subdivision, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within 30 days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the Code of Civil Procedure. Parties receiving a Request for Resolution shall have 30 days following service of the Request for Resolution to accept or reject alternative dispute resolution and, if not accepted within the 30-day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within 90 days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties.

(c) At the time of filing a civil action by either an association or an owner or a member of a common interest development solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages

not in excess of five thousand dollars (\$5,000), related to the enforcement of the governing documents, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with subdivision (b). The failure to file a certificate as required by subdivision (b) shall be grounds for a demurrer pursuant to Section 430.10 of the Code of Civil Procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure unless the filing party certifies in writing that one of the other parties to the dispute refused alternative dispute resolution prior to the filing of the complaint, that preliminary or temporary injunctive relief is necessary, or that alternative dispute resolution is not required by subdivision (b), because the limitation period for bringing the action would have run within the 120-day period next following the filing of the action, or the court finds that dismissal of the action for failure to comply with subdivision (b) would result in substantial prejudice to one of the parties.

(d) Once a civil action specified in subdivision (a) to enforce the governing documents has been filed by either an association or an owner or member of a common interest development, upon written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed. The costs of the alternative dispute resolution shall be borne by the parties. During this referral, the action shall not be subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(e) The requirements of subdivisions (b) and (c) shall not apply to the filing of a cross-complaint.

(f) In any action specified in subdivision (a) to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by any party for attorney's fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(g) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), evidence of anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence, and testimony or disclosure of such a

statement or admission may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(h) Unless consented to by both parties to alternative dispute resolution that is initiated by a Request for Resolution under subdivision (b), documents prepared for the purpose or in the course of, or pursuant to, the alternative dispute resolution shall not be admissible in evidence, and disclosure of these documents may not be compelled, in any civil action in which, pursuant to law, testimony can be compelled to be given.

(i) Members of the association shall annually be provided a summary of the provisions of this section, which specifically references this section. The summary shall include the following language:

“Failure by any member of the association to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents.”

The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner specified in Section 5016 of the Corporations Code.

(j) Any Request for Resolution sent to the owner of a separate interest pursuant to subdivision (b) shall include a copy of this section.

### Article 3. Amendment

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

(b) Except to the extent that a declaration provides by its express terms that it is not amendable, in whole or in part, a declaration which fails to include provisions permitting its amendment at all

times during its existence may be amended at any time. For purposes of this subdivision, an amendment is only effective after (1) the proposed amendment has been distributed to all of the owners of separate interests in the common interest development by first-class mail postage prepaid or personal delivery not less than 15 days and not more than 60 days prior to any approval being solicited; (2) the approval of owners representing more than 50 percent, or any higher percentage required by the declaration for the approval of an amendment to the declaration, of the separate interests in the common interest development has been given, and that fact has been certified in a writing, executed and acknowledged by an officer of the association; and (3) the amendment has been recorded in each county in which a portion of the common interest development is located. A copy of any amendment adopted pursuant to this subdivision shall be distributed by first-class mail postage prepaid or personal delivery to all of the owners of separate interest immediately upon its recordation.

1355.5. (a) Notwithstanding any provision of the governing documents of a common interest development to the contrary, the board of directors of the association may, after the developer of the common interest development has completed construction of the development, has terminated construction activities, and has terminated his or her marketing activities for the sale, lease, or other disposition of separate interests within the development, adopt an amendment deleting from any of the governing documents any provision which is unequivocally designed and intended, or which by its nature can only have been designed or intended, to facilitate the developer in completing the construction or marketing of the development. However, provisions of the governing documents relative to a particular construction or marketing phase of the development may not be deleted under the authorization of this subdivision until that construction or marketing phase has been completed.

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

designed to facilitate the completion of construction or marketing of separate interests.

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

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

1356. (a) If in order to amend a declaration, the declaration requires owners having more than 50 percent of the votes in the association, in a single class voting structure, or owners having more than 50 percent of the votes in more than one class in a voting structure with more than one class, to vote in favor of the amendment, the association, or any owner of a separate interest, may petition the superior court of the county in which the common interest development is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the association members in the manner provided in the declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing declaration, and other matters the petitioner considers

relevant to the court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

- (1) The governing documents.
- (2) A complete text of the amendment.
- (3) Copies of any notice and solicitation materials utilized in the solicitation of owner approvals.
- (4) A short explanation of the reason for the amendment.
- (5) Any other documentation relevant to the court's determination.

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

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

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

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

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

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

(5) The amendment is reasonable.

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

(d) If the court makes the findings required by subdivision (c), any order issued pursuant to this section may confirm the amendment as being validly approved on the basis of the affirmative votes actually received during the balloting period or

the order may dispense with any requirement relating to quorums or to the number or percentage of votes needed for approval of the amendment that would otherwise exist under the governing documents.

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

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

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

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

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

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

1357. (a) The Legislature finds that there are common interest developments that have been created with deed restrictions which do not provide a means for the property owners 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 areas including, but not limited to, roofs, roads, heating systems, and recreational facilities. If declarations terminate prematurely, common interest developments may deteriorate and the housing 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 owners having more than 50 percent of the votes in the association choose to do so.

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

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

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

### CHAPTER 3. OWNERSHIP RIGHTS AND INTERESTS

1358. (a) 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.

(b) In a condominium project the common areas are not subject to partition, except as provided in Section 1359. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the

separate interest includes the undivided interest in the common areas. 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.

(c) 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 areas, if any exist. 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.

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

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

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

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

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

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

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

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

(4) The conditions for such a sale, set forth in the declaration, have been met.

1360. (a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the owner of the separate interest may do the following:

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

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

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

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

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the

owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

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

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

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

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

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

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

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

1361. Unless the declaration otherwise provides:

(a) In a community apartment project and condominium project, and in those planned developments with common areas 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 areas. The common areas are subject to these rights.

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

1361.5. 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 an owner or occupant physical access to his or her separate interest, either by restricting access through the common areas to the owner's separate interest, or by restricting access solely to the owner's separate interest.

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

## CHAPTER 4. GOVERNANCE

### Article 1. Association

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

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

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

The association, whether incorporated or unincorporated, may exercise the powers granted to an association by Section 383 of the Code of Civil Procedure and the powers granted to the association in this title.

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

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

(f) Members of the association shall have access to association records in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code.

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

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

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

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

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

## Article 2. Common Interest Development Open Meeting Act

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

(b) Any member of the association may attend meetings of the board of directors of the association, except when the board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments, as specified in Section 1367 or 1367.1. The board of directors of the association shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session.

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

(d) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any

meeting of the board of directors of an association, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member of the association upon request and upon reimbursement of the association's costs for making that distribution.

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

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

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

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

(i) The board of directors of the association shall permit any member of the association to speak at any meeting of the association or the board of directors, except for meetings of the board held in executive session. A reasonable time limit for all members of the association to speak to the board of directors or

before a meeting of the association shall be established by the board of directors.

### Article 3. Managing Agents

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

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

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

(A) What license is held.

(B) The dates the license is valid.

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

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

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

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

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

(b) As used in this section, a “managing agent” is a person or entity who, for compensation or in expectation of compensation, exercises control over the assets of a common interest

development. A “managing agent” does not include either of the following:

- (1) A full-time employee of the association.
- (2) Any regulated financial institution operating within the normal course of its regulated business practice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) As used in this section, a "managing agent" is a person or entity, who for compensation or, in expectation of compensation, exercises control over the assets of the association. However, a "managing agent" does not include a full-time employee of the association or a regulated financial institution operating within the

normal course of business, or an attorney at law acting within the scope of his or her license.

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

#### Article 4. Public Information

1363.5. (a) The articles of incorporation of any common interest development association filed with the Secretary of State on or after January 1, 1995, shall include a statement that shall be in addition to the statement of purposes of the corporation, and that (1) identifies the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, (2) states the business or corporate office of the association, if any, and, if the office is not on the site of the common interest development, states the nine-digit ZIP Code, front street, and nearest cross street for the physical location of the common interest development, and (3) states the name and address of the association's managing agent, as defined in Section 1363.1, if any, and whether the association's managing agent is certified pursuant to Section 11502 of the Business and Professions Code.

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

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

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

(2) The name of the association.

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

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

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

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

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

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

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

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

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

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

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

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

(d) On and after January 1, 2006, the penalty for an incorporated association's noncompliance with the initial or biennial filing requirements of this section shall be suspension of the association's

rights, privileges, and powers as a corporation and monetary penalties, to the same extent and in the same manner as suspension and monetary penalties imposed pursuant to Section 8810 of the Corporations Code.

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

## CHAPTER 5. OPERATIONS

### Article 1. Common Areas

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

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

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

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

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

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

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

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

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

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

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

## Article 2. Fiscal Matters

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

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

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

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

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

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

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

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

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

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

(3) A statement as to whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or

restore any major component or to provide adequate reserves therefor.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

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

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

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

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

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period

immediately preceding the beginning of the association's fiscal year.

(e)(1) A summary of the association's property, general liability, and earthquake and flood and fidelity insurance policies, which shall be distributed within 60 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

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

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

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

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement:

“This summary of the association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or, real

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

1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association’s fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11003.5 of the Business and Professions Code may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

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

“NOTICE

ASSESSMENTS AND FORECLOSURE

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

ASSESSMENTS AND NONJUDICIAL FORECLOSURE

The failure to pay association assessments may result in the loss of an owner’s property without court action, often referred to as nonjudicial foreclosure. When using nonjudicial foreclosure, the association records a lien on the owner’s property. The owner’s property may be sold to satisfy the lien if the lien is not paid. Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time. (Sections 1366 and 1367.1 of the Civil Code)

In a nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney’s fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for

costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

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

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

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

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

#### PAYMENTS

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

An owner may dispute an assessment debt by giving the board of the association a written explanation, and the board must respond within 15 days if certain conditions are met. An owner may pay assessments that are in dispute in full under protest, and then request alternative dispute resolution. (Sections 1366.3 and 1367.1 of the Civil Code)

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

#### MEETINGS AND PAYMENT PLANS

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

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

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

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

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

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

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

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

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

(c)(1) The board of directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration,

replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

(2) However, the board may authorize the temporary transfer of money from a reserve fund to the association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the board has made a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

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

(e) At least once every three years the board of directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the

common interest development if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association which excludes the association's reserve account for that period. The board shall review this study annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.

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

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

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

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1) during and at the end of their useful life.

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

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

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

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

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

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

### Article 3. Insurance

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

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

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

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

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

(A) At least five hundred thousand dollars (\$500,000) if the common interest development consists of 100 or fewer separate interests.

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

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

(c) An officer or director who at the time of the act or omission was a declarant, as defined in subdivision (g) of Section 1351, or who received either direct or indirect compensation as an employee from the declarant, or from a financial institution that purchased a separate interest, as defined in subdivision (l) of Section 1351, at a

judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property, is not a volunteer for the purposes of this section.

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

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

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

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

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

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

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

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

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

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

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

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

#### Article 4. Assessments

1366. (a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, "quorum" means more than 50 percent of the owners of an association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) If an amended statement is being recorded, the recording information identifying the prior statement or statements which the amendment is superseding.

(b) The county recorder is authorized to charge a fee for recording the document described in subdivision (a), which fee shall be based upon the number of pages in the document and the recorder's per-page recording fee.

1366.3. (a) The exception for disputes related to association assessments in subdivision (b) of Section 1354 shall not apply if, in a dispute between the owner of a separate interest and the association regarding the assessments imposed by the association, the owner of the separate interest chooses to pay in full to the association all of the charges listed in paragraphs (1) to (4), inclusive, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than 30 days from the recording of a notice of delinquent assessment in accordance with Section 1367 or 1367.1; and in those instances, the association shall inform the owner that the owner may resolve the dispute through alternative dispute resolution as set forth in Section 1354, civil action, and any other procedures to resolve the dispute that may be available through the association.

(1) The amount of the assessment in dispute.

(2) Late charges.

(3) Interest.

(4) All reasonable fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including reasonable attorney's fees not to exceed four hundred twenty-five dollars (\$425).

(b) The right of any owner of a separate interest to utilize alternative dispute resolution under this section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any owner of a separate interest and the association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this section. The owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the association on the total

amount paid under paragraphs (1) to (4), inclusive, of subdivision (a), if it is determined through alternative dispute resolution that the assessment levied by the association was not correctly levied.

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

(b) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (e) the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the

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

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

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

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

(f) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created

pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

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

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

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

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

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

(4) The right to request a meeting with the board as provided by subdivision (c).

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

of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c)(1) An owner may dispute the debt noticed pursuant to subdivision (a) by submitting to the board a written explanation of the reasons for his or her dispute. The board shall respond in writing to the owner within 15 days of the date of the postmark of the explanation, if the explanation is mailed within 15 days of the postmark of the notice.

(2) An owner, other than an owner of any interest that is described in Section 11003.5 of the Business and Professions Code, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after

recordation. 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. A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

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

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

(g) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of

collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

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

(i) 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.

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

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

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

## CHAPTER 6. TRANSFER OF OWNERSHIP INTERESTS

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales

contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development, including a copy of the association's articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

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

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

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

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

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association

complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

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

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

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

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

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

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

1368.1. (a) Any rule or regulation of an association that arbitrarily or unreasonably restricts an owner's ability to market his or her interest in a common interest development is void.

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

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

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

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

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

## CHAPTER 7. CIVIL ACTIONS AND LIENS

1368.4. (a) Not later than 30 days prior to the filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board of directors of the association shall provide written notice to each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:

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

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

(3) The time and place of this meeting.

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

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

#### CHAPTER 8. CONSTRUCTION OF INSTRUMENTS AND ZONING

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

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

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

1373. Sections 1356, 1365, 1365.5, 1366.1, and 1368, and subdivision (b) of Section 1363, and subdivision (b) of Section 1366 are not applicable to common interest developments that are expressly zoned as industrial developments and limited in use to industrial purposes or expressly zoned as commercial developments and limited in use to commercial purposes.

The Legislature finds that those aforementioned provisions may be appropriate to protect purchasers in residential common interest developments, however, the provisions are not necessary to protect purchasers in commercial or industrial developments since the application of those provisions results in unnecessary burdens and costs for these types of developments.

1374. Nothing in this title may be construed to apply to a development wherein there does not exist a common area as defined in subdivision (b) of Section 1351, nor may this title be construed to confer standing pursuant to Section 383 of the Code of Civil Procedure to an association created for the purpose of managing a development wherein there does not exist a common area.

This section is declaratory of existing law.

## CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

1375. (a) Before an association files a complaint for damages against a builder, developer, or general contractor (“respondent”) of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of this section shall be satisfied with respect to the builder, developer, or general contractor.

(b) The association shall serve upon the respondent a “Notice of Commencement of Legal Proceedings.” The notice shall be served by certified mail to the registered agent of the respondent, or if there is no registered agent, then to any officer of the respondent. If

there are no current officers of the respondent, service shall be upon the person or entity otherwise authorized by law to receive service of process. Service upon the general contractor shall be sufficient to initiate the process set forth in this section with regard to any builder or developer, if the builder or developer is not amenable to service of process by the foregoing methods. This notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity applicable to the claim for the period set forth in subdivision (c). The notice shall include all of the following:

(1) The name and location of the project.

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

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

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

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

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

(d) Within 25 days of the date the association serves the Notice of Commencement of Legal Proceedings, the respondent may request in writing to meet and confer with the board of directors of the association. Unless the respondent and the association otherwise agree, there shall be not more than one meeting, which

shall take place no later than 10 days from the date of the respondent's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (b) of Section 1363.05. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and the respondent consent in writing to their admission.

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

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

(2) The respondent shall provide written notice by certified mail to all subcontractors, design professionals, their insurers, and the insurers of any additional insured whose identities are known to the respondent or readily ascertainable by review of the project files or other similar sources and whose potential responsibility appears on the face of the notice. This notice to subcontractors, design professionals, and insurers shall include a copy of the Notice of Commencement of Legal Proceedings, and shall specify the date and manner by which the parties shall meet and confer to select a dispute resolution facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its obligation to participate in the meet and confer or serve a written acknowledgment of receipt regarding this notice, advise the recipient that it will waive any challenge to selection of the dispute resolution facilitator if it

elects not to participate in the meet and confer, advise the recipient that it may be bound by any settlement reached pursuant to subdivision (d) of Section 1375.05, advise the recipient that it may be deemed to have waived rights to conduct inspection and testing pursuant to subdivision (c) of Section 1375.05, advise the recipient that it may seek the assistance of an attorney, and advise the recipient that it should contact its insurer, if any. Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who receives written notice from the respondent regarding the meet and confer shall, prior to the meet and confer, serve on the respondent a written acknowledgment of receipt. That subcontractor or design professional shall, within 10 days of service of the written acknowledgment of receipt, provide to the association and the respondent a Statement of Insurance that includes both of the following:

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

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

(3) Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who so chooses, may, at any time, make a written request to the dispute resolution facilitator for designation as a peripheral party. That request shall be served contemporaneously on the association and the respondent. If no objection to that designation is received within 15 days, or upon rejection of that objection, the dispute resolution facilitator shall designate that subcontractor or design professional as a peripheral party, and shall thereafter seek to limit the attendance of that subcontractor or design professional only to those dispute resolution sessions deemed peripheral party sessions or to those sessions during which the dispute resolution facilitator believes settlement as to peripheral parties may be finalized. Nothing in this subdivision shall preclude a party who has been designated a peripheral party from being reclassified as a nonperipheral party, nor shall this subdivision preclude a party

designated as a nonperipheral party from being reclassified as a peripheral party after notice to all parties and an opportunity to object. For purposes of this subdivision, a peripheral party is a party having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

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

(2) No later than 10 days prior to the case management meeting, the dispute resolution facilitator shall disclose to the parties all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed dispute resolution facilitator

would be able to resolve the conflict in a fair manner. The facilitator's disclosure shall include the existence of any ground specified in Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any attorney-client relationship the facilitator has or had with any party or lawyer for a party to the dispute resolution process, and any professional or significant personal relationship the facilitator or his or her spouse or minor child living in the household has or had with any party to the dispute resolution process. The disclosure shall also be provided to any subsequently noticed subcontractor or design professional within 10 days of the notice.

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

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

(5) Any subcontractor or design professional who receives notice of the association's claim without having previously received timely notice of the meet and confer to select the dispute resolution facilitator shall be notified by the respondent regarding the name, address, and telephone number of the dispute resolution facilitator. Any such subcontractor or design professional may serve upon the parties and the dispute resolution facilitator a written objection to the dispute resolution facilitator within 15 days of receiving notice of the claim. Within seven days after service of this objection, the subcontractor or design professional may petition the superior court to replace the dispute resolution facilitator. The court may replace the dispute resolution facilitator only upon a showing of good cause, liberally construed. Failure to satisfy the deadlines set

forth in this subdivision shall constitute a waiver of the right to challenge the dispute resolution facilitator.

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

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

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

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

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

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

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

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

(h) At the case management meeting, the parties shall, with the assistance of the dispute resolution facilitator, reach agreement on a case management statement, which shall set forth all of the

elements set forth in paragraphs (1) to (8), inclusive, except that the parties may dispense with one or more of these elements if they agree that it is appropriate to do so. The case management statement shall provide that the following elements shall take place in the following order:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g)(1) The only method of seeking judicial relief for the failure of the association or the respondent to complete the dispute resolution process under Section 1375 shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the respondent after that action has been filed. A verified application asserting a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

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

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

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

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

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

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

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

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

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

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

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

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

## CHAPTER 10. IMPROVEMENTS

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

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

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

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

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

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

(c) Whenever approval is required for the installation or use of a video or television antenna, including a satellite dish, the application for approval shall be processed by the appropriate

approving entity for the common interest development in the same manner as an application for approval of an architectural modification to the property, and the issuance of a decision on the application shall not be willfully delayed.

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

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STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

## **Common Interest Development Law: Procedural Fairness in Association Rulemaking and Decisionmaking**

December 2002

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Common Interest Development Law: Procedural Fairness in Association Rulemaking and Decisionmaking*, 33 Cal. L. Revision Comm'n Reports 81 (2003). This is part of publication #215 [2002-2003 Recommendations].

STATE OF CALIFORNIA

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CALIFORNIA LAW REVISION COMMISSION

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December 13, 2002

To: The Honorable Gray Davis  
*Governor of California*, and  
The Legislature of California

The Law Revision Commission is engaged in a general study of the law relating to common interest developments. The objective of the study is to set a clear, consistent, and unified policy with regard to their formation and management and the transaction of real property interests located within them. The study will seek to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, and determine to what extent common interest housing developments should be subject to regulation.

In this recommendation, the Commission recommends that fair and reasonable procedures be required when a community association board adopts operating rules or reviews a member's request to make changes to the member's separate interest property.

This recommendation was prepared pursuant to Resolution Chapter 166 of the Statutes of 2002.

Respectfully submitted,

David Huebner  
*Chairperson*



## COMMON INTEREST DEVELOPMENT LAW

### BACKGROUND

The main body of law governing common interest developments is the Davis-Stirling Common Interest Development Act.<sup>1</sup> Other key statutes include the Subdivision Map Act, the Subdivided Lands Act, the Local Planning Law, and the Non-profit Mutual Benefit Corporation Law, as well as various environmental and land use statutes. In addition, statutes based on separate, rather than common, ownership models still control many aspects of the governing law.<sup>2</sup> The complexities and inconsistencies of this statutory arrangement have been criticized by homeowners and practitioners, among others.<sup>3</sup>

The Law Revision Commission is reviewing the statutes affecting common interest developments with the goal of setting a clear, consistent, and unified policy with regard to their formation and management and the transfer of real property interests located within them. The objective of the review is to clarify the law and eliminate unnecessary or obsolete provisions, to consolidate existing statutes in one place in the codes, and to determine to what extent common interest housing developments should be subject to regulation.

The Commission will make a series of recommendations proposing revision of the laws governing common interest developments. A previous recommendation addressed the organization of the Davis-Stirling Common Interest Develop-

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1. Civ. Code § 1350 *et seq.*

2. See, e.g., Civ. Code §§ 1102 *et seq.*, 2079 *et seq.* (real estate disclosure).

3. See, e.g., SR 10 (Lee & Sher) (Apr. 10, 1997); California Research Bureau, *Residential Common Interest Developments: An Overview* (Mar. 1998) <<http://www.library.ca.gov>>.

ment Act.<sup>4</sup> The organization of this recommendation is premised on enactment of that prior recommendation.

### PROCEDURAL FAIRNESS IN ASSOCIATION RULEMAKING AND DECISIONMAKING

The Commission is examining ways in which to minimize reliance on the courts to resolve disputes between a community association<sup>5</sup> and its members. One approach is to reduce the number of disputes that arise by ensuring that decision-making procedures used by a community association are fair and reasonable. A decision made under a fair and reasonable procedure is more likely to be a just decision, and is more likely to be accepted by a homeowner who would dispute a decision reached under a procedure that is perceived to be unfair.

Fair and reasonable procedures are already required by case law<sup>6</sup> and reflect good public policy. The Commission rec-

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4. See *Organization of Davis-Stirling Common Interest Development Act*, 33 Cal. L. Revision Comm'n Reports 1 (2003).

5. A "community association" is the body that governs a common interest development. See Civ. Code § 1363(a).

6. See *Ironwood Owners Ass'n IX v. Solomon*, 178 Cal. App. 3d 766, 772, 224 Cal. Rptr. 18 (1986) ("When a homeowners' association seeks to enforce the provisions of its CCRs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious."); *Cohen v. Kite Hill Community Ass'n*, 142 Cal. App. 3d 642, 651, 191 Cal. Rptr. 209 (1983) ("The business and governmental aspects of the association and the association's relationship to its members clearly give rise to a special sense of responsibility upon the officers and directors.... This special responsibility is manifested in the requirements of fiduciary duties and the requirements of due process, equal protection, and fair dealing.") (citation omitted). There may also be circumstances where decisionmaking by a private community association is subject to the due process requirements of the United States or California Constitutions. See Siegel, *The Constitution and Private Government: Toward the Recognition of Constitutional Rights in Private*

ommends that fair and reasonable procedures be required when a community association adopts operating rules or reviews a member's request to make changes to the member's separate interest property.<sup>7</sup> Other types of association decisionmaking are already the subject of statutory or regulatory procedures.<sup>8</sup>

### SAFE HARBOR APPROACH

Common interest developments come in a variety of types and sizes. Some are large, professionally managed communities, resembling small cities. Others include fewer than ten units and are managed entirely by owner-volunteers.

Because common interest developments vary so much in size and character, it is not possible to craft a single procedure that is appropriate for every association in every circumstance. For that reason, the proposed law would add general provisions requiring fairness and member participation, without mandating the specific procedure to be followed. Instead, the proposed law would add optional statutory procedures that are deemed to satisfy the general requirements. A community association that follows these "safe harbor" procedures would be sure that its decision could not be challenged on procedural grounds.

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*Residential Communities Fifty Years After Marsh v. Alabama*, 6 Wm. & Mary Bill Rts. J. 461, 493-94 (1998); Rosenberry, *The Application of the Federal and State Constitutions to Condominiums, Cooperatives, and Planned Developments*, 19 Real Prop., Prob. & Tr. J. 1 (1984).

7. See Civ. Code § 1351(l) ("separate interest" defined).

8. These include procedures for member discipline (see Civ. Code § 1363(g)-(h); Corp. Code § 7341; 10 Cal. Code Regs. § 2792.26(b)), amendment of governing documents (see Civ. Code §§ 1355, 1355.5, 1356; 10 Cal. Code Regs. § 2792.24), and levying and collection of assessments (see Civ. Code §§ 1366-1367).

A safe harbor approach is efficient and preserves flexibility. It also avoids disputes over purely procedural matters that might arise if strict statutory procedures were imposed.

### OPERATING RULES

Existing law recognizes that the board of directors of a community association may adopt “operating rules” to govern the operation of a common interest development.<sup>9</sup> However, there is no procedure for doing so.

An association’s declaration or bylaws can only be changed with member approval,<sup>10</sup> but an operating rule can be adopted without advance notice to members or member involvement. This is problematic because operating rules can have a significant effect on member interests (e.g., an operating rule could restrict use of common facilities or regulate the appearance of one’s home).

The proposed law would require that the board of directors provide advance notice and an opportunity to comment before adopting or changing an operating rule. The power to adopt and change rules would remain exclusively in the board of directors, but members would have a chance to express their views before a decision is made and would not be surprised by enforcement of a rule that was never announced. An optional “safe harbor” procedure would satisfy the general requirements of notice and an opportunity to comment.

In addition, the proposed law would add a procedure for member reversal of a problematic rule change. Reversal could

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9. See Civ. Code §§ 1351(j) (“governing documents” includes “operating rules”), 1360.5 (restriction on rules governing pets), 1363(g) (monetary penalty for violation of “governing documents or rules”); 10 Cal. Code Regs. § 2792.21(a) (association may formulate “rules of operation of the common areas and facilities owned or controlled by the Association”).

10. Civ. Code § 1355 (amendment of declaration); 10 Cal. Code Regs. § 2792.24 (amendment of bylaws).

only be initiated within the first 30 days after a rule change is announced and would only occur if approved by a majority vote at a member meeting at which a quorum is established. This would provide a limited member veto, similar to the power to remove board members that members of an incorporated association enjoy under existing law.<sup>11</sup>

The proposed law would also make clear that an operating rule is invalid if it contradicts or is unauthorized by law or the association's governing documents.<sup>12</sup>

#### REVIEW OF PROPOSED ALTERATION OF SEPARATE INTEREST PROPERTY

The governing documents of many common interest developments require approval of the community association before a member can alter separate interest property. For example, a homeowner might be required to obtain association approval before adding a room, choosing a color of exterior paint, or planting flowers in a front yard. Existing case law requires that such a decision be made in good faith and in a fair and reasonable manner.<sup>13</sup> The proposed law would codify that general requirement and add an optional "safe harbor" procedure.

The optional procedure would provide a two-tiered process. The first level begins with submission of a written application. All members would receive notice of the application and could comment on the proposed alteration. The "reviewing

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11. See Corp. Code §§ 7222(a) (director may be removed by members, without cause), 7510(e) (members may call special meeting for any lawful purpose).

12. See *Major v. Miraverde Homeowners Ass'n, Inc.*, 7 Cal. App. 4th 618, 628, 9 Cal. Rptr. 2d 237, 243 (1992) ("Where the association exceeds its scope of authority, any rule or decision resulting from such an ultra vires act is invalid whether or not it is a 'reasonable' response to a particular circumstance.").

13. See *supra* note 6.

body” then makes its decision.<sup>14</sup> If the reviewing body fails to act, the proposal is deemed disapproved.

A decision by the reviewing body (including a deemed disapproval) could be appealed to the board of directors. Appeals would be heard *de novo* by the board, and any member would be free to testify. The board’s written decision would state the basis for decision, including reference to facts, standards, or provisions of the association’s governing documents that support the decision.

The two-tiered process would conserve association resources by providing a relatively streamlined procedure for noncontroversial proposals. Only applications that are actually in dispute would proceed to the more formal level of a hearing before the board of directors. A member who wishes to seek judicial review of the association’s decision would be required to exhaust the internal appeal process first.

The proposed law would also make clear that judicial review of a decision on a proposed alteration of a member’s separate interest is subject to existing ADR requirements, even if the relief sought is a writ of mandate.<sup>15</sup>

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14. The “reviewing body” is the person or group authorized by an association’s governing documents to approve or disapprove a proposed alteration of a separate interest. See proposed Civ. Code § 1378.060(c).

15. Civil Code Section 1354 requires that before filing a civil action to enforce an association’s governing documents, a party must endeavor to submit the dispute to a form of alternative dispute resolution. However, Section 1354 appears not to apply to an action for writ of mandate.

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## PROPOSED LEGISLATION

Ⓢ **Note.** The placement of article headings in the following provisions is premised on enactment of the Commission's recommendation on *Organization of Davis-Stirling Common Interest Development Act*, 33 Cal. L. Revision Comm'n Reports 1 (2003).

### **Civ. Code § 1350.7 (added). Document delivery**

SEC. \_\_\_\_ . Section 1350.7 is added to the Civil Code, to read:

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

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

(1) Personal delivery.

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

(3) E-mail, facsimile, or other electronic means, if the sender and recipient have agreed to that method of delivery. A provision of the governing documents providing for electronic delivery does not constitute agreement by a member of an association to that form of delivery. If a document is delivered by electronic means, delivery is complete at the time of transmission.

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

**Comment.** Section 1350.7 is new. It provides general document delivery rules that apply where this section is incorporated by reference in this title. For provisions incorporating this section by reference, see

Sections 1357.150 (rulemaking), 1357.160 (emergency rulemaking), 1378.120 (review of proposed alteration of separate interest).

Subdivision (b)(2) provides that delivery by mail is subject to the procedure for service of notice by mail. See Code Civ. Proc. § 1013(a). Under that procedure, delivery is complete on deposit in the mail, except that any period of notice and any right or duty to do an act or make any response within any period or on a date certain after the service of the document that is prescribed by statute or rule of court is extended by five calendar days (if the delivery address is within California).

See also Sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined).

**Civ. Code §§ 1357.100-1357.180 (added). Operating rules**

SEC. \_\_\_\_ . Article 4 (commencing with Section 1357.100) is added to Chapter 2 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 4. Operating Rules

**§ 1357.100. “Rule change” defined**

1357.100. As used in this article, “rule change” means the adoption, amendment, or repeal of an operating rule by the board of directors of the association.

**Comment.** Section 1357.100 is new. See also Section 1351(a) (“association” defined).

**§ 1357.110. Types of operating rules affected**

1357.110. This article applies to an operating rule relating to any of the following subjects:

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

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

(c) Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties.

(d) Assessment collection procedures.

**Comment.** Section 1357.110 specifies which types of operating rules are governed by this article.

See also Sections 1351(b) (“common area” defined), 1351(i) (“exclusive use common area” defined), 1351(j) (“governing documents” defined), 1351(l) (“separate interest” defined).

**§ 1357.120. Exempt actions**

1357.120. This article does not apply to the following actions by the board of directors of an association:

(a) A decision in a specific case that is not intended to apply generally.

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

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

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

**Comment.** Section 1357.120 exempts certain actions from application of this article. Subdivision (a) excludes decisions that are adjudicative or executive in nature. Subdivision (b) excludes the setting of generally applicable assessments. Budgeting and the setting of assessments are governed by other law. See Sections 1365-1365.5, 1366. Subdivision (c) reflects the fact that a board of directors may be legally required to make a specific rule change. Subdivision (d) recognizes that mere repetition of an existing rule is not the making of a new rule.

See also Sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined), 1357.100 (“rule change” defined).

**§ 1357.130. Validity of operating rule**

1357.130. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

(a) The rule is in writing.

(b) The rule is within the authority of the board of directors of the association conferred by law or by the declaration,

articles of incorporation or association, or bylaws of the association.

(c) The rule is consistent with governing law and the declaration, articles of incorporation or association, and bylaws of the association.

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

**Comment.** Section 1357.130 is new. Subdivisions (b) and (c) provide that an ultra vires operating rule is invalid. See *MaJor v. Miraverde Homeowners Ass'n, Inc.*, 7 Cal. App. 4th 618, 628, 9 Cal. Rptr. 2d 237, 243 (1992) (“Where the association exceeds its scope of authority, any rule or decision resulting from such an ultra vires act is invalid whether or not it is a ‘reasonable’ response to a particular circumstance.”).

See also Sections 1351(a) (“association” defined), 1351(h) (“declaration” defined).

#### **§ 1357.140. Required procedure**

1357.140. The board of directors of an association shall provide members with notice and an opportunity to comment before making a rule change.

**Comment.** Section 1357.140 is new. See also Sections 1351(a) (“association” defined), 1357.100 (“rule change” defined).

#### **§ 1357.150. Optional rulemaking procedure**

1357.150. (a) Use of the procedure described in subdivision (b) satisfies the requirements of Section 1357.140. An association is not required to use this procedure.

(b) The board of directors of the association shall deliver notice of a proposed rule change to every association member. The notice shall include all of the following information:

- (1) The text of the proposed rule change.
- (2) A description of the purpose and effect of the proposed rule change.

(3) The deadline for submission of a comment on the proposed rule change.

(c) For a period of not less than 15 days following delivery of a notice of a proposed rule change, the board of directors shall accept written comments from association members on the proposed rule change.

(d) The board of directors shall consider any comments it receives and shall make a decision on a proposed rule change at a board meeting. A decision shall not be made until after the comment submission deadline.

(e) The board of directors shall deliver notice of a rule change to every association member. The notice shall set out the text of the rule change and state the date the rule change takes effect. The date the rule change takes effect shall be not less than 15 days after notice of the rule change is delivered.

(f) A document that is required to be delivered pursuant to this section is subject to Section 1350.7.

**Comment.** Section 1357.150 provides an optional procedure for adoption, amendment, or repeal of an operating rule. Subdivision (a) provides that use of the procedure satisfies the requirements of Section 1357.140. Other procedures may also satisfy the requirements of that section.

Subdivisions (b) and (e) require that notice be provided to every member. Failure to provide notice to every member will not invalidate a rule change if the failure is inadvertent. See Section 1357.130(d) (validity of operating rule).

Subdivision (d) provides that a decision on a proposed rule change shall be made at a meeting of the board of directors. See Section 1363.05 (“Common Interest Development Open Meeting Act”).

See also Sections 1351(a) (“association” defined), 1357.100 (“rule change” defined).

#### **§ 1357.160. Optional emergency rulemaking procedure**

1357.160. (a) Use of the procedure described in subdivision (b) satisfies the requirements of Section 1357.140. An association is not required to use this procedure.

(b) If the board of directors of an association determines that an immediate rule change is necessary to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the association, it may make the rule change immediately.

(c) As soon as possible after making a rule change under this section, but not more than 15 days after making the rule change, the board of directors shall deliver notice of the rule change to every association member. The notice shall include the text of the rule change and an explanation of why an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the association.

(d) A rule change made under this section is effective for 120 days, unless the rule change provides for a shorter effective period.

(e) A rule change made under this section may not be readopted under this section.

(f) A document that is required to be delivered pursuant to this section is subject to Section 1350.7.

**Comment.** Section 1357.160 provides an optional procedure for emergency adoption, amendment, or repeal of an operating rule. Subdivision (a) provides that use of the procedure satisfies the requirements of Section 1357.140. Other procedures may also satisfy the requirements of that section.

Subdivision (d) provides that an emergency rule change is temporary.

Subdivision (e) makes clear that the effective period of an emergency rule change may not be extended by readopting the rule change under the emergency rulemaking procedure. To readopt a rule change made under this section an association must follow the procedure provided in Section 1357.150, or some other procedure that provides for advance notice to members and an opportunity to comment before the rule change is made.

See also Sections 1351(a) (“association” defined), 1357.100 (“rule change” defined).

**§ 1357.170. Rule change reversal**

1357.170. (a) Members of an association owning 10 percent or more of the separate interests may call a special meeting to reverse a rule change.

(b) A special meeting may be called by delivering a written request on the chair or secretary of the board of directors. The written request may not be delivered more than 30 days after the members of the association are notified of the rule change. Members are deemed to have been notified of a rule change on delivery of notice of the rule change, or on enforcement of the resulting rule, whichever is sooner.

(c) The rule change may be reversed by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by written ballot in conformity with Section 7513 of the Corporations Code, or if the declaration or bylaws require a greater proportion, by the affirmative vote or written ballot of the proportion required.

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

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

(f) A rule change reversed under this section may not be readopted for one year after the date of the meeting reversing the rule change.

**Comment.** Section 1357.170 authorizes member reversal of a recent rule change. This authority is limited to cases where members owning 10 percent or more of the separate interests call a meeting for that purpose within the specified time. This specific provision supersedes the general provision authorizing five percent or more of the members of a nonprofit mutual benefit corporation to call a special meeting. See Corp. Code §

7510(e). The governing documents of an association may provide other additional procedures for member participation in rulemaking.

Subdivision (c) is drawn from Corporations Code Section 5034.

See also Sections 1351(a) (“association” defined), 1357.100 (“rule change” defined).

**§ 1357.180. Prospective application**

1357.180. (a) This article applies to a rule change made on or after January 1, 2004.

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

**Comment.** Section 1357.180 governs the application of this article.

See also Section 1357.100 (“rule change” defined).

**Civ. Code § 1363 (amended). Management by association**

SEC. \_\_\_\_\_. Section 1363 of the Civil Code is amended to read:

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

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

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

The association, whether incorporated or unincorporated, may exercise the powers granted to an association by Section 383 of the Code of Civil Procedure and the powers granted to the association in this title.

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

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

(f) Members of the association shall have access to association records *and operating rules* in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code.

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

(h) When the board of directors is to meet to consider or impose discipline upon a member, the board shall notify the member in writing, by either personal delivery or first-class mail, at least 10 days prior to the meeting. The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which a

member may be disciplined, and a statement that the member has a right to attend and may address the board at the meeting. The board of directors of the association shall meet in executive session if requested by the member being disciplined.

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

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

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

**Comment.** Subdivision (f) of Section 1363 is amended to make clear that an association's operating rules are subject to inspection by members.

See also Sections 1351(a) ("association" defined), 1351(c) ("common interest development" defined), 1351(j) ("governing documents" defined).

**Civ. Code § 1368 (amended). Owner's disclosure**

SEC. \_\_\_\_\_. Section 1368 of the Civil Code is amended to read:

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

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

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

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

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

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

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

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

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

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

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

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

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

**Comment.** Subdivision (a) of Section 1368 is amended to make clear that the required disclosure of the governing documents of a common interest development includes disclosure of any operating rules.

See also Sections 1351(a) ("association" defined), 1351(c) ("common interest development" defined), 1351(j) ("governing documents" defined), 1351(l) ("separate interest" defined).

**Heading of Article 1 (commencing with Section 1376) (added)**

SEC. \_\_\_\_\_. An article heading is added immediately preceding Section 1376 of the Civil Code, to read:

Article 1. Video or Television Antenna

**Civ. Code §§ 1378.010-1378.030 (added). Review of proposed alteration of separate interest**

SEC. \_\_\_\_\_. Article 2 (commencing with Section 1378.010) is added to Chapter 10 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

## Article 2. Review of Proposed Alteration of Separate Interest

### § 1378.010. Application of article

1378.010. If an association's governing documents require that an owner of a separate interest obtain association approval before altering a separate interest, exclusive use common area, or part of the common area, this article governs the association's decisionmaking process.

**Comment.** Section 1378.010 is new. See also Sections 1351(a) ("association" defined), 1351(b) ("common area" defined), 1351(i) ("exclusive use common area" defined), 1351(j) ("governing documents" defined), 1351(l) ("separate interest" defined), 1360 (modification of separate interest contained within building).

### § 1378.020. Good faith, fair and reasonable procedure required

1378.020. (a) A decision to approve or disapprove a proposed alteration of a member's separate interest, an exclusive use common area, or part of the common area, shall be made in good faith and in a fair and reasonable manner.

(b) The procedure provided in Article 3 (commencing with Section 1378.050) is fair and reasonable. Other procedures may also be fair and reasonable under the circumstances.

**Comment.** Subdivision (a) of Section 1378.020 is consistent with case law requiring that an association enforce its governing documents in good faith and in a fair and reasonable manner. See *Ironwood Owners Ass'n IX v. Solomon*, 178 Cal. App. 3d 766, 772, 224 Cal. Rptr. 18 (1986) ("When a homeowners' association seeks to enforce the provisions of its CCRs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious."); *Cohen v. Kite Hill Community Ass'n*, 142 Cal. App. 3d 642, 651, 191 Cal. Rptr. 209 (1983) ("The business and governmental aspects of the association and the association's relationship to its members clearly give rise to a special sense of responsibility upon the officers and directors.... This special responsibility is manifested in the requirements of fiduciary duties and

the requirements of due process, equal protection, and fair dealing.”) (citation omitted).

Subdivision (b) establishes the procedure provided in Article 3 as a safe harbor. An association is not required to use the statutory procedure. It may use any procedure that is fair and reasonable under the circumstances. For example, an association might decide to use the statutory procedure to review structural changes, while adopting a simpler procedure for review of minor landscaping improvements.

See also Sections 1351(b) (“common area” defined), 1351(i) (“exclusive use common area” defined), 1351(l) (“separate interest” defined).

#### **§ 1378.030. Alternative dispute resolution**

1378.030. A writ proceeding for review of a decision to approve or disapprove a proposed alteration of a member’s separate interest, an exclusive use common area, or part of the common area, is subject to Section 1354.

**Comment.** Section 1378.030 is new. This section supersedes language in Section 1354(b) limiting the alternative dispute resolution provisions to civil actions for declaratory or injunctive relief.

See also Sections 1351(b) (“common area” defined), 1351(i) (“exclusive use common area” defined), 1351(l) (“separate interest” defined).

#### **Civ. Code §§ 1378.050-1378.120 (added). Review of proposed alteration of separate interest**

SEC. \_\_\_\_ . Article 3 (commencing with Section 1378.050) is added to Chapter 10 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

### Article 3. Optional Procedure

#### **§ 1378.050. Nature of procedure**

1378.050. This article provides a fair and reasonable procedure that an association may use in reviewing a member’s proposed alteration of a separate interest, an exclusive use common area, or part of the common area. Use of the procedure is not mandatory.

**Comment.** Section 1378.050 makes clear that the procedure provided in this article is optional. However, a decision made in good faith, under the procedure provided in this article, satisfies the requirements of Section 1378.020. See Section 1378.020(b).

See also Sections 1351(a) (“association” defined), 1351(b) (“common area” defined), 1351(i) (“exclusive use common area” defined), 1351(l) (“separate interest” defined).

#### § 1378.060. Definitions

1378.060. (a) The definitions in this section govern the construction of this article.

(b) “Participating member” means an association member who, before the reviewing body makes its decision on the proposed alteration, submits to the reviewing body a comment opposed to a proposed alteration of a separate interest, exclusive use common area, or part of the common area.

(c) “Reviewing body” means the person or group authorized by an association’s governing documents to approve or disapprove the alteration of a separate interest, exclusive use common area, or part of the common area.

**Comment.** Section 1378.060 is new. In some associations the reviewing body is the board of directors. In that situation, an appeal to the board of directors would result in reconsideration of the board’s decision as the reviewing body and issuance of a written decision to serve as a record in any judicial review of the decision on appeal. See Sections 1378.090 (appeal to board), 1378.100 (judicial review).

See also Sections 1351(a) (“association” defined), 1351(b) (“common area” defined), 1351(i) (“exclusive use common area” defined), 1351(j) (“governing documents” defined), 1351(l) (“separate interest” defined).

#### § 1378.070. Approval process

1378.070. (a) An association member who proposes to alter a separate interest shall submit a written application to the reviewing body. The application shall be in the form specified by the association. An incomplete application may be returned to the applicant with an explanation of why the

application is incomplete. No further action is required on an application that is returned as incomplete.

(b) Within 30 days after receipt of the application, the reviewing body shall deliver notice of the application to the following persons:

(1) If the proposed alteration would affect the common area, to all members.

(2) If the association delivers a newsletter, billing statement, or other document to all members at least once a month, to all members.

(3) If the proposed alteration would not affect the common area and the association does not deliver a newsletter, billing statement, or other document to all members at least once a month, to members owning separate interests within 500 feet of, or located within the same building as, the separate interest that is the subject of the proposed alteration.

(c) The notice shall include the address or location of the separate interest, exclusive use common area, or part of the common area, that is the subject of the application, a description of the proposed alteration adequate to inform other members of its nature, and the date after which the reviewing body may make its decision.

(d) Not less than 20 days nor more than 45 days after delivery of the notice of the application, the reviewing body shall deliver a written decision to the applicant and to any participating member. If the reviewing body does not deliver a written decision to the applicant within 45 days after delivery of the notice of application, the application is deemed disapproved on the 45th day.

(e) A written decision approving a proposed alteration of a separate interest, exclusive use common area, or part of the common area, shall state whether the reviewing body received any comments opposing the alteration.

**Comment.** Section 1378.070 is new. See also Sections 1351(a) (“association” defined), 1351(b) (“common area” defined), 1351(i)

(“exclusive use common area” defined), 1351(j) (“governing documents” defined), 1351(l) (“separate interest” defined), 1378.060(b) (“participating member” defined), 1378.060(c) (“reviewing body” defined), 1378.120 (delivery of document).

**§ 1378.080. Commencement of approved alteration**

1378.080. (a) Except as provided in subdivision (b), an applicant may not commence work on an approved alteration of a separate interest, exclusive use common area, or part of the common area, until either the period for appeal passes without an appeal being filed or the approval is upheld on appeal.

(b) If a written decision approving alteration of a separate interest, exclusive use common area, or part of the common area, states that no member comments opposing the alteration were received by the reviewing body before it made its decision, the applicant may commence work on the approved alteration immediately.

**Comment.** Section 1378.080 is new. See also Sections 1351(b) (“common area” defined), 1351(i) (“exclusive use common area” defined), 1351(l) (“separate interest” defined), 1378.090 (appeal to board).

**§ 1378.090. Appeal to board**

1378.090. (a) An applicant or participating member may appeal the approval or disapproval of a proposed alteration of a separate interest, exclusive use common area, or part of the common area, to the board of directors of the association. The appeal shall be in writing and shall be delivered to the board of directors within 30 days after the reviewing body’s decision is delivered or the proposed alteration is deemed disapproved.

(b) Within 30 days after receipt of a timely request for appeal, the board of directors shall deliver notice of the appeal to the following persons:

(1) If the proposed alteration would affect the common area, to all members.

(2) If the association delivers a newsletter, billing statement, or other document to all members at least once a month, to all members.

(3) If the proposed alteration would not affect the common area and the association does not deliver a newsletter, billing statement, or other document to all members at least once a month, to members owning separate interests within 500 feet of, or located within the same building as, the separate interest that is the subject of the proposed alteration.

(c) The notice of appeal shall state the time and place where the appeal will be heard.

(d) Within 45 days after notice of the appeal is delivered, the board of directors shall meet and review de novo the proposed alteration that is the subject of the appeal. Any association member may testify at the appeal and may submit written materials in support of or in opposition to the proposed alteration.

(e) Within 15 days after hearing the appeal, the board of directors shall deliver its decision to the applicant and, if the appeal is by a person other than the applicant, to that person. The decision shall be in writing and shall include a statement explaining the basis for the decision, including reference to facts, standards, or provisions of the governing documents that support the decision.

**Comment.** Section 1378.090 is new. See also sections 1351(a) (“association” defined), 1351(b) (“common area” defined), 1351(i) (“exclusive use common area” defined), 1351(j) (“governing documents” defined), 1351(l) (“separate interest” defined), 1378.060(b) (“participating member” defined), 1378.060(c) (“reviewing body” defined), 1378.120 (delivery of document).

#### § 1378.100. Judicial review

1378.100. (a) A decision of the reviewing body made under Section 1378.070 is not subject to judicial review.

(b) Any member may seek judicial review of a decision of the board of directors of the association made under Section 1378.090. Judicial review may be by writ of administrative mandamus, pursuant to Section 1094.5 of the Code of Civil Procedure.

**Comment.** Section 1378.100 is new. Judicial review is only available to review a decision of the board of directors on appeal. Thus, the internal appeal process must be exhausted before a member may seek judicial review of a decision on a proposed alteration.

Subdivision (b) provides that a decision on a proposed alteration of a separate interest may be reviewed under the procedure for administrative mandamus. This does not preclude other applicable forms of relief.

See also Sections 1351(a) (“association” defined), 1351(j) (“governing documents” defined), 1378.060(c) (“reviewing body” defined).

#### **§ 1378.110. Scope of inquiry**

1378.110. In making a decision to approve or disapprove a proposed alteration of a member’s separate interest, an exclusive use common area, or part of the common area, the reviewing body or board of directors may consider any relevant information. The reviewing body or board of directors is not required to consider information other than that provided to the reviewing body or board of directors.

**Comment.** Section 1378.110 is new. See also Sections 1351(b) (“common area” defined), 1351(i) (“exclusive use common area” defined), 1351(l) (“separate interest” defined).

#### **§ 1378.120. Delivery of document**

1378.120. A document that is required to be delivered pursuant to this article is subject to Section 1350.7.

**Comment.** Section 1378.120 is new.

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STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

Exemptions from Enforcement of Money  
Judgments: Second Decennial Review

December 2002

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Exemptions from Enforcement of Money Judgments: Second Decennial Review*, 33 Cal. L. Revision Comm'n Reports 113 (2003). This is part of publication #215 [2002-2003 *Recommendations*].

STATE OF CALIFORNIA

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CALIFORNIA LAW REVISION COMMISSION

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WILLIAM E. WEINBERGER

December 13, 2002

To: The Honorable Gray Davis  
*Governor of California*, and  
The Legislature of California

Pursuant to its statutory duty to review dollar amounts of exemptions from enforcement of judgments, the Law Revision Commission recommends adjusting personal property monetary exemptions to account for cost-of-living increases since the last review in 1995. In addition, the Commission recommends implementation of an automatic triennial cost-of-living adjustment, consistent with federal bankruptcy law to keep pace with inflation without the need for legislation.

This review of exemptions has been conducted pursuant to Code of Civil Procedure Section 703.120(a).

Respectfully submitted,

David Huebner  
*Chairperson*



## EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS: SECOND DECENNIAL REVIEW

The Enforcement of Judgments Law<sup>1</sup> charges the Law Revision Commission with the duty to review the dollar amount of debtors' exemptions every 10 years and to recommend any changes in amounts "that appear proper."<sup>2</sup> As a result of its second decennial review, the Commission proposes increasing the amount of personal property exemptions by approximately 20% to adjust for changes in the cost of living since the last comprehensive review. The Commission also proposes implementation of an automatic triennial cost-of-living adjustment for consistency with the automatic adjustment of California's alternative bankruptcy exemptions.

### Background

Exemptions are necessary to protect an amount of property sufficient to support the judgment debtor and dependent family and to facilitate the debtor's financial rehabilitation. To fulfill this purpose, exemption amounts need to be adjusted periodically to reflect changes in the cost of living.

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1. Code Civ. Proc. § 680.010 *et seq.* The Enforcement of Judgments Law, operative July 1, 1983, was enacted on Commission recommendation. Part of that study involved modernizing the exemption statutes. See generally *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2075-106 (1980); *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1079-109 (1982).

All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

2. See Section 703.120(a). The 10-year periods run from July 1, 1983, the operative date of the Enforcement of Judgments Law. The first review was deferred until 1994 as authorized by former Government Code Section 7550.5 (enacted by 1992 Cal. Stat. ch. 710, § 1; repealed under its own terms, Jan. 1, 1995). The period of this second decennial review is counted from the original 1983 operative date.

Existing law provides seven personal property exemptions that are subject to dollar limitations: motor vehicles,<sup>3</sup> residential repair materials,<sup>4</sup> jewelry, heirlooms, and works of art,<sup>5</sup> tools of a trade, business, or profession,<sup>6</sup> directly deposited Social Security and public benefit payments,<sup>7</sup> inmate trust accounts,<sup>8</sup> and life insurance and annuity loan value.<sup>9</sup> Some of these exemptions are increased in the case of marital property or indebtedness of both spouses,<sup>10</sup> but the general rule is that married persons are not entitled to increased or doubled exemption amounts, regardless of whether one or both of the spouses are debtors and regardless of the separate or community nature of the property.<sup>11</sup>

Exemptions based on need or on the type of property are immune from inflation and price changes.<sup>12</sup> Exemptions in

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3. Section 704.010.

4. Section 704.030.

5. Section 704.040.

6. Section 704.060.

7. Section 704.080.

8. Section 704.090.

9. Section 704.100.

10. E.g., Sections 704.030(b) (residential repair materials where spouses live separate and apart), 704.060(a)(2)-(3), (d)(2) (tools of trade), 704.080(b)(2) (directly deposited Social Security or public benefit payments), 704.090(a) (inmate trust account).

11. In relevant part, Section 703.110(a) provides:

Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount, whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community.

12. See, e.g., Sections 704.020 (necessary household furnishings, appliances, provisions, wearing apparel, and other personal effects), 704.050 (necessary health aids and prosthetic and orthopedic appliances).

fixed dollar amounts are subject to degradation as the purchasing power of a dollar shrinks. It is difficult to determine a dollar amount that is appropriate in all circumstances, but once a dollar amount has been set by the Legislature, it follows that exempt amounts should be revised from time to time to reflect inflation. Otherwise, the protection enacted at one point in time will erode significantly over the years.

#### **Cost-of-Living Adjustment**

Legislation comprehensively adjusting personal property exemption amounts was last enacted, on Commission recommendation, in 1994 (operative July 31, 1995).<sup>13</sup> Since that time, the average cost of living in California has increased by approximately 21%,<sup>14</sup> making revision of exempt amounts appropriate to account for inflation.

In addition, the California alternative bankruptcy-only exemptions have recently been increased for general conformity with the federal amounts and subjected to an automatic triennial cost-of-living adjustment through incorpora-

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13. See 1995 Cal. Stat. ch. 196; *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm'n Reports 1, 12-15 (1995). The alternative bankruptcy-only exemptions in Section 703.140(b) were also increased for conformity with federal amounts in this Commission-sponsored legislation.

14. Using the California All Urban Consumer figures, the factor from 1995 to August 2002 is 1.21. This factor is calculated by dividing the current statewide CPI of 186.8 by the 1995 annual average CPI of 154 (1982-84=100). See California Dept. of Industrial Relations, Div. of Labor Statistics & Research, *Consumer Price Index — California* (12/13/02), at <[http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html)>, under file name <PresentCCPI.PDF>.

The most recent monthly figure is used to set the basis before the triennial adjustment commences in 2007 under the proposed general rule. This is necessary to compensate as much as possible for the change in the CPI between the 1995 revisions and the likely January 1, 2004, operative date of legislation that would implement this proposal. See proposed Section 703.150 *infra*.

tion of federal law.<sup>15</sup> Thus, the alternative bankruptcy exemptions no longer need to be adjusted with respect to inflation.

To account for changes in the cost of living since 1995, and to catch up with the recent bankruptcy-only revisions, the Commission recommends amending the personal property enforcement of judgment exemptions as set out in the following table, with amounts rounded to the nearest \$25:<sup>16</sup>

Code Civ. Proc.	Type of Property	Current	x 1.21	Rounded
704.010	Motor vehicle	\$ 1,900	\$ 2,305	\$ 2,300
704.030	Home repair materials	\$ 2,000	\$ 2,426	\$ 2,425
704.040	Jewelry, heirlooms, art	\$ 5,000	\$ 6,065	\$ 6,075
704.060(a)(1-2)	Tools of trade 1	\$ 5,000	\$ 6,065	\$ 6,075
704.060(a)(3)	Tools of trade 2*	\$10,000	\$12,130	\$12,150
704.060(d)(1)	Commercial vehicle 1	\$ 4,000	\$ 4,852	\$ 4,850
704.060(d)(2)	Commercial vehicle 2*	\$ 8,000	\$ 9,704	\$ 9,700
704.080(b)(1)	Social Security 1	\$ 2,000	\$ 2,426	\$ 2,425
704.080(b)(2)	Social Security 2	\$ 3,000	\$ 3,639	\$ 3,650
704.080(b)(1)	Public benefits 1	\$ 1,000	\$ 1,213	\$ 1,225
704.080(b)(2)	Public benefits 2	\$ 1,500	\$ 1,819	\$ 1,825
704.090(a)	Inmate trust funds	\$ 1,000	\$ 1,213	\$ 1,225
704.090(b)	Inmate trust funds limit <sup>17</sup>	\$ 300		
704.100(b)	Life insurance loan value	\$ 8,000	\$ 9,704	\$ 9,700

15. See Section 703.140, as amended by 1998 Cal. Stat. ch. 290, § 1 (operative Jan. 1, 2000). The amounts in Section 703.140(b) are identical to the federal bankruptcy exemptions (11 U.S.C. § 522(d)), except that there is no cap on the aggregate personal property exemption (compare Section 703.140(b)(3) with 11 U.S.C. § 522(d)(3)), and the limit on the wildcard exemption applicable where the debtor does not claim the residence exemption is nearly double in California (compare Section 703.140(b)(5) with 11 U.S.C. § 522(d)(5)). Section 703.140(c) loosely incorporates the federal bankruptcy automatic COLA rule, presumably including the nearest \$25 rounding principle.

16. The \$25 rounding figure is drawn from federal bankruptcy law. See 11 U.S.C. § 104(b)(1)(B).

17. The special \$300 exemption of inmate trust funds as to claims for victims' restitution fines and orders would not be subject to the automatic COLA, in recognition of the special status of this provision.

Two exemptions (marked with asterisks in the table) are set at double the amount of other exemptions. Where an exempt amount is double another exempt amount, as for personal property used in a trade, business, or profession by spouses,<sup>18</sup> the doubling feature should be retained, rather than applying the COLA factor to the higher amount.

#### **Homestead Exemption**

The homestead exemption receives frequent legislative attention, because of the obvious importance of the home, the high level of the exemption, and the role played by interest groups that can effectively sponsor legislation. For that reason, the Commission has not reviewed the current homestead exemption amount and makes no recommendation on whether that amount should be changed.<sup>19</sup>

#### **Automatic Triennial Cost-of-Living Adjustment**

The Commission's existing duty to review exemption statutes every ten years should be supplemented with an automatic triennial cost-of-living adjustment.<sup>20</sup> This will bring the enforcement of judgments personal property exemptions in line with the automatic COLA applicable to the bankruptcy-only exemptions. In addition, since a debtor filing for personal bankruptcy in California can choose between the bankruptcy-only exemptions and the enforcement of

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18. Section 704.060(a)(3).

19. As amended in 1997, the statutes provide a three-tier homestead exemption in the following amounts: a \$50,000 basic exemption, unless a special rule applies to the resident judgment debtor or spouse; a \$75,000 "family" exemption; and a \$125,000 elder or disabled exemption. See Section 704.730, as amended by 1997 Cal. Stat. ch. 82, § 1. As introduced, the 1997 bill that increased the top tier to \$125,000 had also proposed to increase the first and second tiers to \$75,000 and \$100,000 respectively. See AB 451 (1997-98 Session), as introduced, Feb. 24, 1997.

20. See proposed Section 703.150 *infra*.

judgment exemptions, the relative dollar relationship between the two sets of exemptions will be preserved over time.

Automatic COLA provisions relieve the Legislature of the burden of considering routine adjustments needed to preserve important protections in the face of inflation. Use of this simple and practical approach has grown in recent decades. There are many examples scattered throughout the California codes, applicable to retirement benefits,<sup>21</sup> welfare payments,<sup>22</sup> taxes,<sup>23</sup> campaign spending limits,<sup>24</sup> and a variety of other functions.<sup>25</sup>

The Commission recommends using the California All Urban Consumer Price Index<sup>26</sup> as the best single measure of cost-of-living changes affecting Californians. This index should be used to determine the appropriate adjustments of both the enforcement of judgments exemptions and the bankruptcy-only exemptions. In bankruptcy, this will result in a divergence from the similar amounts provided in the federal Bankruptcy Code. This is not significant, however, because California has opted out of the federal exemptions,<sup>27</sup> and it is preferable to maintain the relative relationship between the two sets of exemptions available in California bankruptcy filings.

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21. E.g., Gov't Code §§ 9360.9 (legislative retirement), 21310-21337.1 (public employees' retirement), 31870 (county employees' retirement).

22. E.g., Welf. & Inst. Code §§ 11453 (AFDC), 12201(i) (aged, blind, and disabled).

23. E.g., Rev. & Tax. Code §§ 51, 2212.

24. Gov't Code § 82001.

25. At least two states have automatic COLA provisions applicable to enforcement exemptions. See Alaska Stat. Ann. § 09.38.115 (Westlaw 2002); Minn. Stat. Ann. § 550.37(4a) (Westlaw 2002). These provisions appear to be drawn from Section 2 of the Uniform Exemptions Act (1976, 1979).

26. See note 14 *supra*.

27. Section 703.130.

Responsibility for determining the appropriate COLA factor should be placed on the Judicial Council.<sup>28</sup> This is appropriate because the Judicial Council is responsible for rules of practice and procedure under the Enforcement of Judgments Law, as well as for preparation of exemption claim informational forms.<sup>29</sup> This responsibility would also be analogous to the role of the Judicial Conference of the United States in determining and publishing the COLA factor under the Bankruptcy Code.<sup>30</sup>

An objection to automatic adjustments of exemptions is that the applicable amount of an exemption would differ from that stated in the statute. Of course, this objection applies to any of the scores of dollar amounts provided by statute that are subject to automatic COLA provisions. In bankruptcy, the exemptions are applied in a judicial proceeding in one time-frame, facilitating easy determination of the correct exemption amounts. To address the issue in state enforcement of judgments proceedings, the Judicial Council would be required to publish a list of the personal property exemption amounts, together with the date of the next scheduled cost-of-living adjustment. The list would be served on the debtor along with a notice of levy.<sup>31</sup> This would enable parties to quickly determine the appropriate amount and be on notice of impending changes where the notice is received near the time of a scheduled adjustment. In practical terms, parties are far more likely to see the list of exempt amounts published by the Judicial Council than the statute. In addition, exemption claims ultimately are determined in court proceedings, where

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28. For an example of a section requiring that the Judicial Council compute and publish a cost of living adjustment, see Civ. Code § 1714.1(c) (parent or guardian liability for misconduct of minor).

29. See Section 681.030.

30. See 11 U.S.C. § 104.

31. See proposed amendments to Code Civ. Proc. § 700.010.

any issues concerning the correct amount of the exemption can be determined.<sup>32</sup>

Unlike bankruptcy, enforcement of a judgment may occur over a number of years, as the creditor discovers the debtor's assets and seeks to apply them to the satisfaction of the money judgment. Thus, exemptions in different amounts may be applicable in the same case. But this is no different than the situation under existing law, because the Legislature may change exemptions from time to time,<sup>33</sup> and the amount of a debtor's exemption is generally locked in when the creditor's lien attaches to the property.<sup>34</sup> Thus, a creditor's lien on specific property, claimed to be exempt, will not be affected by later increases in the exempt amount, whether by legislative action or an automatic COLA.

If the proposed law becomes operative in 2004, the automatic triennial adjustment applicable to the bankruptcy-only exemptions would coincide with the triennial COLA operative under the Bankruptcy Code, thereby maintaining consistent timing with federal law. The automatic triennial adjustment of the enforcement of judgments personal property exemptions would not take place until April 2007, because these exemptions will have been updated by statute in 2004, making a 2004 automatic adjustment redundant.

#### **Exemptions from County Aid Reimbursement**

Welfare and Institutions Code Section 17409 provides a specialized exemption for reimbursement claims against recipients of county aid.<sup>35</sup> These subsistence level exemptions

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32. See generally Sections 703.510-703.610.

33. See also Section 703.060 (specific reservation of power to change exemptions).

34. See Section 703.100.

35. For the text of this provision, see proposed amendments to Welf. & Inst. Code § 17409 *infra*.

have not been revised since 1959,<sup>36</sup> with some exemptions remaining unchanged since 1945.<sup>37</sup>

The proposed legislation would double these exempt amounts to make some adjustment for inflation, although this is nowhere near the five to 10 times multiplier that would be required to adjust for inflation since 1959 and 1945, respectively. The Commission is not proposing to subject these exemptions to the automatic COLA provision, as they are outside the mainstream of debtor-creditor law.

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36. See 1959 Cal. Stat. ch. 1443, § 1 (funeral expenses and insurance cash value).

37. See 1945 Cal. Stat. ch. 636, § 1 (cash and personal effects).



## PROPOSED LEGISLATION

### **Code Civ. Proc. § 681.030 (amended). Judicial Council rules**

SECTION 1. Section 681.030 of the Code of Civil Procedure is amended to read:

681.030. (a) The Judicial Council may provide by rule for the practice and procedure in proceedings under this title.

(b) The Judicial Council may prescribe the form of the applications, notices, orders, writs, and other papers to be used under this title. The Judicial Council may prescribe forms in languages other than English. The timely completion and return of a Judicial Council form prescribed in a language other than English has the same force and effect as the timely completion and return of an English language form.

(c) The Judicial Council shall prepare a form containing both *all* of the following:

(1) A list of each of the federal and this state's exemptions from enforcement of a money judgment against a natural person.

(2) A citation to the relevant statute of the United States or this state which creates each of the exemptions.

(3) *Information on how to obtain the list of exemption amounts published pursuant to subdivision (d) of Section 703.150.*

**Comment.** Paragraph (3) is added to Section 681.030(c) to reflect the automatic triennial cost-of-living adjustment of personal property exemptions from enforcement of money judgments pursuant to Section 703.150.

### **Code Civ. Proc. § 700.010 (amended). Notice of levy**

SEC. 2. Section 700.010 of the Code of Civil Procedure is amended to read:

700.010. (a) At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the following on the judgment debtor:

(1) The writ of execution.

(2) A notice of levy.

(3) If the judgment debtor is a natural person, a copy of the form listing exemptions prepared by the Judicial Council pursuant to subdivision (c) of Section 681.030 *and the list of exemption amounts published pursuant to subdivision (d) of Section 703.150.*

(4) Any affidavit of identity, as defined in Section 680.135, for names of the debtor listed on the writ of execution.

(b) Service under this section shall be made personally or by mail.

**Comment.** Section 700.010 is amended to reflect the automatic triennial cost-of-living adjustment of personal property exemptions from enforcement of money judgments pursuant to Section 703.150.

**Code Civ. Proc. § 703.140 (amended). Alternate bankruptcy exemptions**

SEC. 3. Section 703.140 of the Code of Civil Procedure is amended to read:

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of

subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed seventeen thousand four hundred twenty-five dollars (\$17,425) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed two thousand seven hundred seventy-five dollars (\$2,775) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed four hundred fifty dollars (\$450) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held

primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand one hundred fifty dollars (\$1,150) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value nine hundred twenty-five dollars (\$925) plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed one thousand seven hundred fifty dollars (\$1,750) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmaturred life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value nine thousand three hundred dollars (\$9,300), in any accrued dividend or interest under, or loan value of, any unmaturred life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive any of the following:

(A) A social security benefit, unemployment compensation, or a local public assistance benefit.

(B) A veterans' benefit.

(C) A disability, illness, or unemployment benefit.

(D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness,

disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to, any of the following:

(A) An award under a crime victim's reparation law.

(B) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment, not to exceed seventeen thousand four hundred twenty-five dollars (\$17,425), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

(E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

~~(c) Each dollar amount in effect under this section shall be increased in accordance with the periodic adjustments of similar exemptions provided under federal bankruptcy laws.~~

**Comment.** Section 703.140 is amended to delete subdivision (c), which is superseded by the automatic cost-of-living adjustment provided in Section 703.150.

**Code Civ. Proc. § 703.150 (added). Automatic adjustment of exemption amounts**

SEC. 4. Section 703.150 is added to the Code of Civil Procedure, to read:

703.150 (a) On April 1, 2004, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in subdivision (b) of Section 703.140 in effect immediately before that date shall be adjusted as provided in subdivision (c).

(b) On April 1, 2007, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in Article 3 (commencing with Section 704.010) in effect immediately before that date shall be adjusted as provided in subdivision (c).

(c) The Judicial Council shall determine the amount of the adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics, for the most recent three-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars (\$25).

(d) Beginning April 1, 2004, the Judicial Council shall publish a list of the current dollar amounts of exemptions provided in subdivision (b) of Section 703.140 and in Article 3 (commencing with Section 704.010), together with the date of the next scheduled adjustment.

(e) Adjustments made under subdivision (a) do not apply with respect to cases commenced before the date of the adjustment, subject to any contrary rule applicable under the federal Bankruptcy Code. The applicability of adjustments made under subdivision (b) is governed by Section 703.050.

**Comment.** Section 703.150 provides a new automatic triennial cost-of-living adjustment (COLA) for personal property exemptions applicable to enforcement of judgments and in bankruptcy. Subdivision (a) supersedes former subdivision (c) of Section 703.140, which coordinated the bankruptcy-only exemptions in Section 703.140(b) with triennial adjustments under the federal Bankruptcy Code. The automatic COLA applicable to the bankruptcy-only exemptions in Section 703.140(b) begins in 2004.

Under subdivision (b), the automatic COLA applicable to the Article 3 enforcement of judgments exemptions (Sections 704.010-704.210) is deferred until 2007, because these amounts are adjusted by statute operative January 1, 2004. For an exception to the adjustment provided in subdivision (b), see Section 704.090(b) (inmate trust fund exemption as to crime victim's claim).

The triennial adjustment period under this section is the same as that provided under the Bankruptcy Code. See 11 U.S.C. § 104(b)(1)(A). The \$25 rounding factor in subdivision (c) is also drawn from federal law. See 11 U.S.C. § 104(b)(1)(B).

Subdivision (e) clarifies the application of adjusted exemption amounts. As to bankruptcy, the rule is the same as provided by 11 U.S.C. § 104(c). The rule as to adjusted exemption amounts in state enforcement of judgment proceedings is consistent with the general rule under this title.

See also Sections 681.030(c)(3) (list of exemption amounts published pursuant to subdivision (d) referenced in Judicial Council form), 700.010 (list of exemption amounts published pursuant to subdivision (d) served with notice of levy).

**Code Civ. Proc. § 704.010 (amended). Motor vehicles**

SEC. 5. Section 704.010 of the Code of Civil Procedure is amended to read:

704.010. (a) Any combination of the following is exempt in the amount of ~~one thousand nine hundred dollars (\$1,900)~~ *two thousand three hundred dollars (\$2,300)*:

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of ~~one thousand nine hundred dollars (\$1,900)~~ *two thousand three hundred dollars (\$2,300)* without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

**Comment.** Section 704.010 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 2. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

**Code Civ. Proc. § 704.030 (amended). Materials for repair or improvement of dwelling**

SEC. 6. Section 704.030 of the Code of Civil Procedure is amended to read:

704.030. Material that in good faith is about to be applied to the repair or improvement of a residence is exempt if the equity in the material does not exceed ~~two thousand dollars (\$2,000)~~ *two thousand four hundred twenty-five dollars (\$2,425)* in the following cases:

(a) If purchased in good faith for use in the repair or improvement of the judgment debtor's principal place of residence.

(b) Where the judgment debtor and the judgment debtor's spouse live separate and apart, if purchased in good faith for use in the repair or improvement of the spouse's principal place of residence.

**Comment.** Section 704.030 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 3. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

**Code Civ. Proc. § 704.040 (amended). Jewelry, heirlooms, works of art**

SEC. 7. Section 704.040 of the Code of Civil Procedure is amended to read:

704.040. Jewelry, heirlooms, and works of art are exempt to the extent that the aggregate equity therein does not exceed ~~five thousand dollars (\$5,000)~~ *six thousand seventy-five dollars (\$6,075)*.

**Comment.** Section 704.040 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 4. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

**Code Civ. Proc. § 704.060 (amended). Personal property used in trade, business, or profession**

SEC. 8. Section 704.060 of the Code of Civil Procedure is amended to read:

704.060. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are

exempt to the extent that the aggregate equity therein does not exceed:

(1) ~~Five thousand dollars (\$5,000)~~ *Six thousand seventy-five dollars (\$6,075)*, if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.

(2) ~~Five thousand dollars (\$5,000)~~ *Six thousand seventy-five dollars (\$6,075)*, if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.

(3) ~~Ten thousand dollars (\$10,000)~~ *Twice the amount of the exemption provided in paragraph (1)*, if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

(b) If property described in subdivision (a) is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. The amount exempt under this subdivision is the amount specified in subdivision (a) that applies to the particular case less the aggregate equity of any other property to which the exemption provided by subdivision (a) for the particular case has been applied.

(c) Notwithstanding subdivision (a), a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.

(d) Notwithstanding subdivisions (a) and (b):

(1) The amount of the exemption for a commercial motor vehicle under paragraph (1) or (2) of subdivision (a) is limited to ~~four thousand dollars (\$4,000)~~ *four thousand eight hundred fifty dollars (\$4,850)*.

(2) The amount of the exemption for a commercial motor vehicle under paragraph (3) of subdivision (a) is limited to ~~eight thousand dollars (\$8,000)~~ *twice the amount of the exemption provided by paragraph (1) of this subdivision*.

**Comment.** Section 704.060 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 5. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25, except that the amounts in subdivisions (a)(3) and (d)(2) are determined by doubling the amounts in subdivisions (a)(1) and (d)(1), respectively.

**Code Civ. Proc. § 704.080 (amended). Deposit account in which social security or public benefit payments are directly deposited**

SEC. 9. Section 704.080 of the Code of Civil Procedure is amended to read:

704.080. (a) For the purposes of this section:

(1) “Deposit account” means a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent.

(2) “Social security benefits” means payments authorized by the Social Security Administration for regular retirement and survivors’ benefits, supplemental security income benefits, coal miners’ health benefits, and disability insurance benefits. “Public benefits” means aid payments authorized pursuant to subdivision (a) of Section 11450 of the Welfare and Institutions Code, payments for supportive services as described in Section 11323.2 of the Welfare and Institutions Code, and general assistance payments made pursuant to Section 17000.5 of the Welfare and Institutions Code.

(b) A deposit account is exempt without making a claim in the following amount:

(1) ~~One thousand dollars (\$1,000)~~ *One thousand two hundred twenty-five dollars (\$1,225)* where one depositor is the designated payee of the directly deposited public benefits payments, ~~and two thousand dollars (\$2,000)~~.

(2) *Two thousand four hundred twenty-five dollars (\$2,425)* where one depositor is the designated payee of directly deposited social security payments.

~~(2) (3) One thousand five hundred dollars (\$1,500)~~ *One thousand eight hundred twenty-five dollars (\$1,825)* where two or more depositors are the designated payees of the directly deposited public benefits payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the ~~exempt amount is one thousand dollars (\$1,000)~~. ~~Three thousand dollars (\$3,000)~~ *exemption under paragraph (1) applies.*

(4) *Three thousand six hundred fifty dollars (\$3,650)* where two or more depositors are the designated payees of directly deposited social security payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the ~~exempt amount is two thousand dollars (\$2,000)~~ *exemption under paragraph (2) applies.*

(c) The amount of a deposit account that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments of public benefits or social security benefits.

(d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3, when a deposit account is levied upon or otherwise sought to be subjected to the enforcement of a money judgment, the financial institution that holds the deposit account shall either place the amount that exceeds the

exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of that amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating (1) that the deposit account is one in which payments of public benefits or social security benefits are directly deposited by the government or its agent and (2) the balance of the deposit account that exceeds the exemption provided by subdivision (b). Promptly upon receipt of the notice, the levying officer shall serve the notice on the judgment creditor. Service shall be made personally or by mail.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves the notice on the judgment creditor under subdivision (d), a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and file a copy with the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the “notice of opposition to the claim of exemption” in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not file the affidavit with the levying officer and give notice of hearing pursuant to Section 703.570 within the time provided in paragraph (1), the levying officer shall release the deposit account and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted and no counteraffidavit is required.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c) in whole or in part and shall make an appropriate order for its prompt disposition. No findings are required in a proceeding under this subdivision.

(6) Upon determining the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 703.510). If the judgment debtor also opposes the judgment creditor's affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 703.510).

**Comment.** Section 704.080 is amended to adjust the social security payments exemption amounts for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 6. The

public benefits exemption amounts are also adjusted for consistency with the scheme enacted in 1998 of setting this exemption at 50% of the social security payments exemption (subject to rounding to nearest \$25). See 1998 Cal. Stat. ch. 290, § 1. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

**Code Civ. Proc. § 704.090 (amended). Inmate's trust account**

SEC. 10. Section 704.090 of the Code of Civil Procedure is amended to read:

704.090. (a) The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim in the amount of ~~one thousand dollars (\$1,000)~~ *one thousand two hundred twenty-five dollars (\$1,225)*. If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

(b) Notwithstanding subdivision (a), if the judgment is for a restitution fine or order imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative on or before September 28, 1994, or Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 1202.4 of the Penal Code, the funds held in trust for, or to the credit of, a judgment debtor described in subdivision (a) are exempt in the amount of three hundred dollars (\$300) without making a claim. *The exemption provided in this subdivision is not subject to adjustment under Section 703.150.*

**Comment.** Subdivision (a) of Section 704.090 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 2. Adjusted amounts

were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

Subdivision (b) is amended to provide an exception to the automatic triennial adjustment for this special type of exemption.

**Code Civ. Proc. § 704.100 (amended). Life insurance, endowment, annuity policies**

SEC. 11. Section 704.100 of the Code of Civil Procedure is amended to read:

704.100. (a) Unmatured life insurance policies (including endowment and annuity policies), but not the loan value of such policies, are exempt without making a claim.

(b) The aggregate loan value of unexpired life insurance policies (including endowment and annuity policies) is subject to the enforcement of a money judgment but is exempt in the amount of ~~eight thousand dollars (\$8,000)~~ *nine thousand seven hundred dollars (\$9,700)*. If the judgment debtor is married, each spouse is entitled to a separate exemption under this subdivision, and the exemptions of the spouses may be combined, regardless of whether the policies belong to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment debtor under the judgment. The exemption provided by this subdivision shall be first applied to policies other than the policy before the court and then, if the exemption is not exhausted, to the policy before the court.

(c) Benefits from matured life insurance policies (including endowment and annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

**Comment.** Section 704.100 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 7. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

**Welf. & Inst. Code § 17409 (amended). Exemptions from county claim against indigent**

SEC. 12. Section 17409 of the Welfare and Institutions Code is amended to read:

17409. There shall be exempt from the transfers and grants authorized by Section 17109 and from execution on claims under Section 17403 against property acquired by persons for the support of whom public moneys have been expended all of the following property:

(a) ~~Cash to the amount of fifty dollars (\$50) not exceeding one hundred dollars (\$100).~~

(b) ~~Personal effects and household furniture to the value of five hundred dollars (\$500) not exceeding one thousand dollars (\$1,000) in value.~~

(c) An interment space, crypt, or niche intended for the interment of the applicant or recipient of aid.

(d) ~~Funds placed in trust for funeral or burial expenses to the extent that such funds do not exceed the sum of five hundred dollars (\$500) not exceeding one thousand dollars (\$1,000).~~

(e) ~~Insurance policies having an actual cash surrender value of not to exceed five hundred dollars (\$500) not exceeding one thousand dollars (\$1,000).~~

(f) Real or personal property of a recipient of public assistance, with respect to aid or county hospital care granted after May 21, 1963.

(g) For a period of six months from the date of receipt, the compensation received from a public entity which acquires for a public use a dwelling actually owned and occupied by the recipient. Such compensation shall be exempt in the amount, over and above all liens and encumbrances, provided by Section 704.730 of the Code of Civil Procedure.

(h) Relocation benefits shall be exempt as provided by Section 704.180 of the Code of Civil Procedure.

No county shall withhold emergency medical or hospital care from any person pending the person giving security for reimbursement to the county for the care or hospitalization to be provided to the person.

**Comment.** Section 17409 is amended to double the amount of the exemption values, which were originally set in 1945 and 1959. See 1945 Cal. Stat. ch. 636, § 1 (enacting Welf. & Inst. Code § 2611) (cash and personal effects); 1959 Cal. Stat. ch. 1443, § 1 (funeral expenses, insurance cash value). This section is also amended to make technical, nonsubstantive revisions. In subdivision (f), the reference to May 21, 1963, is deleted because it is obsolete.

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STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

Probate Code Technical Corrections

March 2003

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Probate Code Technical Corrections*, 33 Cal. L. Revision Comm'n Reports 145 (2003). This is part of publication #215 [2002-2003 Recommendations].

STATE OF CALIFORNIA

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CALIFORNIA LAW REVISION COMMISSION

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March 7, 2003

To: The Honorable Gray Davis  
*Governor of California*, and  
The Legislature of California

This recommendation proposes technical corrections to the Probate Code to address defects in numbering that have been brought to the attention of the Law Revision Commission. It includes clarification of the “date of death valuation” provision of Probate Code Sections 21612 (share of omitted spouse) and 21623 (share of omitted child).

The recommendation was prepared pursuant to Resolution Chapter 166 of the Statutes of 2002.

Respectfully submitted,

David Huebner  
*Chairperson*



## PROBATE CODE TECHNICAL CORRECTIONS

### Numbering Corrections

This recommendation proposes technical corrections to the Probate Code to address defects in numbering that have been brought to the attention of the Law Revision Commission.

### Clarification of “Date of Death Valuation”

If the maker of a will or trust marries after making the instrument and neglects thereafter to amend it to provide for the surviving spouse, the law gives the surviving spouse a share of the decedent’s estate (unless it is proved that the decedent intended not to provide for the surviving spouse or provided for the surviving spouse by other means).<sup>1</sup> The amount of the omitted spouse’s share depends on the community or separate property character of the estate.

The omitted spouse’s share is taken proportionately from the shares of the other beneficiaries, based on the value of the estate at the date of death.<sup>2</sup> The “date of death valuation” clause could be construed in such a way as to cause unintended results. If estate property declines substantially in value between the date of death and the date of distribution, that could result in the omitted spouse taking a larger portion of the estate, and the direct beneficiaries of the decedent taking a smaller portion of the estate, than they would otherwise be entitled to.

That is not the intention of the date of death valuation provision. Date of death valuation is used to determine the relative portion of each decedent’s share that will be obligated, not the total value of the property to be distributed. The statute (and Comment) should be revised to state this more clearly:

- 
1. Prob. Code §§ 21610-21611.
  2. Prob. Code § 21612(a)(2).

**Prob. Code § 21612 (amended). Share of omitted spouse**

21612. (a) Except as provided in subdivision (b), in satisfying a share provided by this chapter:

(1) The share will first be taken from the decedent's estate not disposed of by will or trust, if any.

(2) If that is not sufficient, so much as may be necessary to satisfy the share shall be taken from all beneficiaries of decedent's testamentary instruments in proportion to the value they may respectively receive. ~~This value shall be determined~~ *The proportion of each beneficiary's share that may be taken pursuant to this subdivision shall be determined based on values* as of the date of the decedent's death.

(b) If the obvious intention of the decedent in relation to some specific gift or devise or other provision of a testamentary instrument would be defeated by the application of subdivision (a), the specific devise or gift or provision may be exempted from the apportionment under subdivision (a), and a different apportionment, consistent with the intention of the decedent, may be adopted.

**Comment.** Subdivision (a)(2) of Section 21612 is amended to make clear that it is the proportionate obligation of each beneficiary, rather than the total amount of the obligation, that is determined based on the date of death valuation. Thus for example if there are two beneficiaries entitled to receive property valued equally as of the date of death, the proportionate amount that will be taken from each is one-half the value of property distributed to each, regardless of the relative value of the property on the date of the distribution.

In a case where the share of the omitted spouse is partially satisfied pursuant to subdivision (a)(1), the obligation of the beneficiaries for the remainder abates proportionately. Thus if half the share of the omitted spouse is satisfied pursuant to subdivision (a)(1), the amount for which each of the beneficiaries is otherwise responsible pursuant to subdivision (a)(2) is reduced by half.

A parallel change should be made to Probate Code Section 21623, governing the share of an omitted child.

## PROPOSED LEGISLATION

### **Prob. Code § 1004 (amended). Lis pendens**

SECTION 1. Section 1004 of the Probate Code is amended to read:

1004. If a proceeding under this code affects the title to or the right of possession of real property, notice of the pendency of the proceeding may be filed pursuant to ~~Section 409~~ *Title 4.5 (commencing with Section 405) of Part 2* of the Code of Civil Procedure.

**Comment.** Section 1004 is amended to reflect relocation of the lis pendens statutes from former Code of Civil Procedure Section 409 to Code of Civil Procedure Section 405 *et seq.* See 1992 Cal. Stat. ch. 883, §§ 1, 2.

### **Prob. Code § 2356.5 (amended). Conservatee with dementia**

SEC. 2. Section 2356.5 of the Probate Code is amended to read:

2356.5. (a) The Legislature hereby finds and declares:

(1) That people with dementia, as defined in the last published edition of the “Diagnostic and Statistical Manual of Mental Disorders,” should have a conservatorship to serve their unique and special needs.

(2) That, by adding powers to the probate conservatorship for people with dementia, their unique and special needs can be met. This will reduce costs to the conservatee and the family of the conservatee, reduce costly administration by state and county government, and safeguard the basic dignity and rights of the conservatee.

(3) That it is the intent of the Legislature to recognize that the administration of psychotropic medications has been, and can be, abused by caregivers and, therefore, granting powers to a conservator to authorize these medications for the

treatment of dementia requires the protections specified in this section.

(b) Notwithstanding any other provision of law, a conservator may authorize the placement of a conservatee in a secured perimeter residential care facility for the elderly operated pursuant to Section 1569.698 of the Health and Safety Code, or a locked and secured nursing facility which specializes in the care and treatment of people with dementia pursuant to subdivision (c) of Section 1569.691 of the Health and Safety Code, and which has a care plan that meets the requirements of Section 87724 of Title 22 of the California Code of Regulations, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to this placement and has at least one mental function deficit pursuant to subdivision (a) of ~~Section 812~~ *Section 811*, and this deficit significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of ~~Section 812~~ *Section 811*.

(3) The conservatee needs or would benefit from a restricted and secure environment, as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(4) The court finds that the proposed placement in a locked facility is the least restrictive placement appropriate to the needs of the conservatee.

(c) Notwithstanding any other provision of law, a conservator of a person may authorize the administration of medications appropriate for the care and treatment of

dementia, upon a court's finding, by clear and convincing evidence, of all of the following:

(1) The conservatee has dementia, as defined in the last published edition of the "Diagnostic and Statistical Manual of Mental Disorders."

(2) The conservatee lacks the capacity to give informed consent to the administration of medications appropriate to the care of dementia, and has at least one mental function deficit pursuant to subdivision (a) of ~~Section 812~~ *Section 811*, and this deficit or deficits significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of ~~Section 812~~ *Section 811*.

(3) The conservatee needs or would benefit from appropriate medication as demonstrated by evidence presented by the physician or psychologist referred to in paragraph (3) of subdivision (f).

(d) Pursuant to subdivision (b) of Section 2355, in the case of a person who is an adherent of a religion whose tenets and practices call for a reliance on prayer alone for healing, the treatment required by the conservator under subdivision (c) shall be by an accredited practitioner of that religion in lieu of the administration of medications.

(e) A conservatee who is to be placed in a facility pursuant to this section shall not be placed in a mental health rehabilitation center as described in Section 5675 of the Welfare and Institutions Code, or in an institution for mental disease as described in Section 5900 of the Welfare and Institutions Code.

(f) A petition for authority to act under this section shall be governed by Section 2357, except:

(1) The conservatee shall be represented by an attorney pursuant to Chapter 4 (commencing with Section 1470) of Part 1.

(2) The conservatee shall be produced at the hearing, unless excused pursuant to Section 1893.

(3) The petition shall be supported by a declaration of a licensed physician, or a licensed psychologist within the scope of his or her licensure, regarding each of the findings required to be made under this section for any power requested, except that the psychologist has at least two years of experience in diagnosing dementia.

(4) The petition may be filed by any of the persons designated in Section 1891.

(g) The court investigator shall annually investigate and report to the court every two years pursuant to Sections 1850 and 1851 if the conservator is authorized to act under this section. In addition to the other matters provided in Section 1851, the conservatee shall be specifically advised by the investigator that the conservatee has the right to object to the conservator's powers granted under this section, and the report shall also include whether powers granted under this section are warranted. If the conservatee objects to the conservator's powers granted under this section, or the investigator determines that some change in the powers granted under this section is warranted, the court shall provide a copy of the report to the attorney of record for the conservatee. If no attorney has been appointed for the conservatee, one shall be appointed pursuant to Chapter 4 (commencing with Section 1470) of Part 1. The attorney shall, within 30 days after receiving this report, do one of the following:

(1) File a petition with the court regarding the status of the conservatee.

(2) File a written report with the court stating that the attorney has met with the conservatee and determined that the petition would be inappropriate.

(h) A petition to terminate authority granted under this section shall be governed by Section 2359.

(i) Nothing in this section shall be construed to affect a conservatorship of the estate of a person who has dementia.

(j) Nothing in this section shall affect the laws that would otherwise apply in emergency situations.

(k) Nothing in this section shall affect current law regarding the power of a probate court to fix the residence of a conservatee or to authorize medical treatment for any conservatee who has not been determined to have dementia.

(l)(1) Until such time as the conservatorship becomes subject to review pursuant to Section 1850, this section shall not apply to a conservatorship established on or before the effective date of the adoption of Judicial Council forms that reflect the procedures authorized by this section, or January 1, 1998, whichever occurs first.

(2) Upon the adoption of Judicial Council forms that reflect the procedures authorized by this section or January 1, 1998, whichever occurs first, this section shall apply to any conservatorships established after that date.

**Comment.** Section 2356.5 is amended to correct incorrect section references.

**Prob. Code § 3121 (amended). Petition**

SEC. 3. Section 3121 of the Probate Code is amended to read:

3121. The petition shall set forth all of the following information:

(a) The name, age, and residence of each spouse.

(b) If one or both spouses is alleged to lack legal capacity for the proposed transaction, a statement that the spouse has a conservator or a statement of the facts upon which the allegation is based.

(c) If there is a conservator of a spouse, the name and address of the conservator, the county in which the

conservatorship proceeding is pending, and the court number of the proceeding.

(d) If a spouse alleged to lack legal capacity for the proposed transaction is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the name and address of the institution.

(e) The names and addresses of all of the following persons:

(1) Relatives within the second degree of each spouse alleged to lack legal capacity for the proposed transaction.

(2) If the petition is to provide gifts or otherwise affect estate planning of the spouse who is alleged to lack capacity, as would be properly the subject of a petition under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 (substituted judgment) in the case of a conservatorship, the names and addresses of the persons identified in Section 2581.

(f) A sufficient description of the property that is the subject of the proposed transaction.

(g) An allegation that the property is community property *and, if the proposed transaction involves property in which a spouse also has a separate property interest, an allegation of good cause to include that separate property in the transaction.*

(h) The estimated value of the property.

(i) The terms and conditions of the proposed transaction, including the names of all parties thereto.

(j) The relief requested.

**Comment.** Section 3121 is amended to implement Section 3100(b) (transaction involving separate property interest).

**Prob. Code § 3144 (amended). Court order**

SEC. 4. Section 3144 of the Probate Code is amended to read:

3144. (a) The court may authorize the proposed transaction if the court determines all of the following:

(1) The property that is the subject of the proposed transaction is community property of the spouses *and, if the proposed transaction involves property in which a spouse also has a separate property interest, that there is good cause to include that separate property in the transaction.*

(2) One of the spouses then has a conservator or otherwise lacks legal capacity for the proposed transaction.

(3) The other spouse either has legal capacity for the proposed transaction or has a conservator.

(4) Each of the spouses either (i) joins in or consents to the proposed transaction, (ii) has a conservator, or (iii) is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved by isolated incidents of negligence or improvidence.

(5) The proposed transaction is one that should be authorized under this chapter.

(b) If the proposed transaction is to provide gifts or otherwise affect estate planning of the spouse who is alleged to lack capacity, as would be properly the subject of a petition under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 (substituted judgment) in the case of a conservatorship, the court may authorize the transaction under this chapter only if the transaction is one that the court would authorize under that article.

(c) If the court determines under subdivision (a) that the transaction should be authorized, the court shall so order and may authorize the petitioner to do and perform all acts and to execute and deliver all papers, documents, and instruments necessary to effectuate the order.

(d) In an order authorizing a transaction, the court may prescribe such terms and conditions as the court in its

discretion determines appropriate, including, but not limited to, requiring joinder or consent of another person.

**Comment.** Section 3144 is amended to implement Section 3100(b) (transaction involving separate property interest).

**Prob. Code § 6327 (amended). Appealable orders**

SEC. 5. Section 6327 of the Probate Code is amended to read:

6327. An appeal may be taken from any of the following:

(a) Any order described in ~~Section 7240~~ *Part 3 (commencing with Section 1300) of Division 3* made pursuant to this chapter.

(b) An order making or refusing to make a determination specified in paragraph (1), (2), or (8) of subdivision (a) of Section 6325.

(c) As provided in ~~Section 17207~~ *1304* for an order made pursuant to Section 6326.

**Comment.** Subdivision (a) of Section 6327 is amended to reflect relocation of the estate administration appeals statutes from former Section 7240 to Section 1300 *et seq.* See 1997 Cal. Stat. ch. 724, §§ 11, 18.

Subdivision (c) is amended to reflect relocation of the trust appeals statute from former Section 17207 to Section 1304. See 1997 Cal. Stat. ch. 724, §§ 11, 29.

**Prob. Code § 8852 (amended). Inventory oath**

SEC. 6. Section 8852 of the Probate Code is amended to read:

8852. (a) The personal representative shall take and subscribe an oath that the inventory contains a true statement of the property to be administered in the decedent's estate of which the personal representative has knowledge, and particularly of money of the decedent and debts or demands of the decedent against the personal representative. The oath shall be endorsed upon or attached to the inventory.

(b) If there is more than one personal representative, each shall take and subscribe the oath. If the personal representatives are unable to agree as to property to be included in the inventory, any personal representative may petition for a court order determining whether the property is to be administered in the decedent's estate. The determination shall be made pursuant to the procedure provided in ~~Chapter 11 (commencing with Section 9860) of Part 5~~ *Part 19 (commencing with Section 850) of Division 2* or, if there is an issue of property belonging or passing to the surviving spouse, pursuant to Chapter 5 (commencing with Section 13650) of Part 2 of Division 8.

**Comment.** Section 8852 is amended to reflect relocation (from former Section 9860 *et seq.* to Section 850 *et seq.*) of the statutes relating to conveyance or transfer of property claimed to belong to the decedent or another person. See 2001 Cal. Stat. ch. 49, §§ 1, 4.

**Prob. Code § 9761 (amended). Partnership account**

SEC. 7. Section 9761 of the Probate Code is amended to read:

9761. If a partnership existed between the decedent and another person at the time of the decedent's death, on application of the personal representative, the court may order any surviving partner to render an account pursuant to Section 15043, 15510, ~~or~~ 15634, *or 16807* of the Corporations Code. An order under this section may be enforced by the court's power to punish for contempt.

**Comment.** Section 9761 is amended to reflect the repeal of former Corporations Code Section 15043 and its replacement by provisions of the Uniform Partnership Act of 1994 relating to winding up partnership business. See 1996 Cal. Stat. ch. 1003, §§ 1.2, 2.

**Prob. Code § 9884 (amended). Purchase of estate property**

SEC. 8. Section 9884 of the Probate Code is amended to read:

9884. This chapter does not prohibit the purchase of property of the estate by the personal representative or the personal representative's attorney pursuant to a contract in writing made during the lifetime of the decedent if the contract is one that can be specifically enforced and the requirements of ~~Chapter 11 (commencing with Section 9860) Part 19 (commencing with Section 850) of Division 2~~ are satisfied.

**Comment.** Section 9884 is amended to reflect relocation (from former Section 9860 *et seq.* to Section 850 *et seq.*) of the statutes relating to conveyance or transfer of property claimed to belong to the decedent or another person. See 2001 Cal. Stat. ch. 49, §§ 1, 4.

**Prob. Code § 10151 (amended). Public auction sale contract**

SEC. 9. Section 10151 of the Probate Code is amended to read:

10151. (a) The personal representative may enter into a written contract with any of the following:

(1) Where the public auction sale will be held in this state, an auctioneer who ~~holds a valid license under Chapter 3.7 (commencing with Section 5700) of Division 3 of the Business and Professions Code to conduct a public auction sale and to secure purchasers by that method for any personal property of the estate to the extent authorized under Chapter 3.7 (commencing with Section 5700) of Division 3 of the Business and Professions Code~~ *is qualified to conduct business under Title 2.95 (commencing with Section 1812.600) of Part 4 of Division 3 of the Civil Code.*

(2) Where the public auction sale will be held outside this state pursuant to an order made under Section 10254, an auctioneer who is legally permitted in the jurisdiction where the sale will be held to conduct a public auction sale and to secure purchasers by that method for the personal property authorized to be sold by public auction sale in that jurisdiction under the court order.

(b) The contract shall be one that is legally enforceable under the law of the jurisdiction where made.

(c) The contract may provide for payment to the auctioneer of a fee, commission, or other compensation out of the proceeds of sale and for reimbursement of expenses, but the contract is binding and valid as against the estate only for such amounts as the court allows pursuant to Section 10167. No liability of any kind is incurred by the estate under the contract or a sale unless the sale is approved by the court, except for the obligations of the estate to the purchaser of personal property as to which title passes pursuant to Section 10259 without court confirmation or approval. The personal representative is not personally liable on the contract by reason of execution of the contract.

(d) The contract may provide that personal property of two or more estates being administered by the same personal representative may be sold at the same public auction sale. Items of personal property may be sold separately or in a lot with other items from the same estate. A sale pursuant to the contract shall be with reserve. The auctioneer shall comply with the instructions of the personal representative with respect to withdrawal of items, risk of loss, place of delivery, warranties, and other matters.

**Comment.** Section 10151 is amended to reflect repeal of the Auctioneer and Auction Licensing Act (Bus. & Prof. Code § 5700 *et seq.*) and its replacement by the Auctioneer and Auction Companies law (Civ. Code § 1812.600 *et seq.*). See 1993 Cal. Stat. ch. 1170, §§ 1, 2.

**Prob. Code § 10534 (amended). Continuation of partnerships and businesses**

SEC. 10. Section 10534 of the Probate Code is amended to read:

10534. (a) Subject to the partnership agreement and the provisions of the Uniform Partnership Act (~~Chapter 1 (commencing with Section 15001) of 1994 (Chapter 5~~

(commencing with Section 16100) of Title 2 of the Corporations Code), the personal representative has the power to continue as a general partner in any partnership in which the decedent was a general partner at the time of death.

(b) The personal representative has the power to continue operation of any of the following:

(1) An unincorporated business or venture in which the decedent was engaged at the time of the decedent's death.

(2) An unincorporated business or venture which was wholly or partly owned by the decedent at the time of the decedent's death.

(c) Except as provided in subdivision (d), the personal representative may exercise the powers described in subdivisions (a) and (b) without giving notice of proposed action under Chapter 4 (commencing with Section 10580).

(d) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) if the personal representative continues as a general partner under subdivision (a), or continues the operation of any unincorporated business or venture under subdivision (b), for a period of more than six months from the date letters are first issued to a personal representative.

**Comment.** Section 10534 is amended to reflect repeal of the Uniform Partnership Act and its replacement by the Uniform Partnership Act of 1994. See 1996 Cal. Stat. ch. 1003, §§ 1.2, 2.

**Prob. Code § 11952 (amended). Hearing on petition**

SEC. 11. Section 11952 of the Probate Code is amended to read:

11952. (a) Notice of the hearing on the petition shall be given as provided in Section 1220 to the personal representative and to the persons entitled to distribution of the undivided interests.

(b) At the hearing the persons entitled to distribution of the undivided interests shall be considered the parties to the

proceeding whether or not they have appeared or filed a responsive pleading. No one shall be considered as a plaintiff or as a defendant.

(c) Any objection to the jurisdiction of the court shall be made and resolved in the manner prescribed in ~~Chapter 11 (commencing with Section 9860) of Part 5~~ *Part 19 (commencing with Section 850) of Division 2.*

**Comment.** Section 11952 is amended to reflect relocation (from former Section 9860 *et seq.* to Section 850 *et seq.*) of the statutes relating to conveyance or transfer of property claimed to belong to the decedent or another person. See 2001 Cal. Stat. ch. 49, §§ 1, 4.

**Prob. Code § 13601 (amended). Collection of salary or other compensation**

SEC. 12. Section 13601 of the Probate Code is amended to read:

13601. (a) To collect salary or other compensation under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the employer of the deceased spouse stating all of the following:

- (1) The name of the decedent.
- (2) The date and place of the decedent's death.
- (3) Either of the following, as appropriate:

(A) "The affiant or declarant is the surviving spouse of the decedent."

(B) "The affiant or declarant is the guardian or conservator of the estate of the surviving spouse of the decedent."

(4) "The surviving spouse of the decedent is entitled to the earnings of the decedent under the decedent's will or by intestate succession and no one else has a superior right to the earnings."

(5) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(6) "Sections 13600 to 13605, inclusive, of the California Probate Code require that the earnings of the decedent,

including compensation for unused vacation, not in excess of five thousand dollars (\$5,000) net, be paid promptly to the affiant or declarant.”

(7) “Neither the surviving spouse, nor anyone acting on behalf of the surviving spouse, has a pending request to collect compensation owed by another employer for personal services of the decedent under Sections 13600 to 13605, inclusive, of the California Probate Code.”

(8) “Neither the surviving spouse, nor anyone acting on behalf of the surviving spouse, has collected any compensation owed by an employer for personal services of the decedent under Sections 13600 to 13605, inclusive, of the California Probate Code except the sum of \_\_\_\_ dollars (\$\_\_\_\_) which was collected from \_\_\_\_.”

(9) “The affiant or declarant requests that he or she be paid the salary or other compensation owed by you for personal services of the decedent, including compensation for unused vacation, not to exceed five thousand dollars (\$5,000) net, less the amount of \_\_\_\_ dollars (\$\_\_\_\_) which was previously collected.”

(10) “The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”

(e) (b) Reasonable proof of the identity of the surviving spouse shall be provided to the employer. If a guardian or conservator is acting for the surviving spouse, reasonable proof of the identity of the guardian or conservator shall also be provided to the employer. Proof of identity that is sufficient under Section 13104 is sufficient proof of identity for the purposes of this subdivision.

(d) (c) If a person presenting the affidavit or declaration is a person claiming to be the guardian or conservator of the estate of the surviving spouse, the employer shall be provided with reasonable proof, satisfactory to the employer, of the

appointment of the person to act as guardian or conservator of the estate of the surviving spouse.

**Comment.** Section 13601 is amended to correct subdivision enumeration. It was incorrectly enumerated on enactment. See 1990 Cal. Stat. ch. 79, § 14.

**Prob. Code § 19054 (amended). When notice is excused**

SEC. 13. Section 19054 of the Probate Code is amended to read:

19054. Notwithstanding Section 19050, the trustee need not give notice to a creditor even though the trustee has knowledge of the creditor if either of the following conditions is satisfied:

(a) The creditor has filed a claim as provided in this part.

(b) The creditor has demanded payment and the trustee elects to treat the demand as a claim under Section ~~19153~~ 19154.

**Comment.** Section 19054 is amended to correct an incorrect cross-reference. See Section 19154 (election to treat demand as claim).

**Prob. Code § 21401 (amended). Abatement**

SEC. 14. Section 21401 of the Probate Code is amended to read:

21401. Except as provided in Sections ~~6562~~ 21612 (omitted spouse) and ~~6573~~ 21623 (omitted children) and in Division 10 (commencing with Section 20100) (proration of taxes), shares of beneficiaries abate as provided in this part for all purposes, including payment of the debts, expenses, and charges specified in Section 11420, satisfaction of gifts, and payment of expenses on specifically devised property pursuant to Section 12002, and without any priority as between real and personal property.

**Comment.** Section 21401 is amended to reflect relocation of former Section 6562 to Section 21612 (via former Section 26112) (share of omitted spouse) and of former Section 6573 to Section 21623 (share of omitted child). See 1997 Cal. Stat. ch. 724, §§ 17, 34.

**Prob. Code § 26112 (renumbered and amended). Share of omitted spouse**

SEC. 15. Section 26112 of the Probate Code is renumbered and amended, to read:

26112 21612. (a) Except as provided in subdivision (b), in satisfying a share provided by this chapter:

(1) The share will first be taken from the decedent's estate not disposed of by will or trust, if any.

(2) If that is not sufficient, so much as may be necessary to satisfy the share shall be taken from all beneficiaries of decedent's testamentary instruments in proportion to the value they may respectively receive. ~~This value shall be determined~~ *The proportion of each beneficiary's share that may be taken pursuant to this subdivision shall be determined based on values* as of the date of the decedent's death.

(b) If the obvious intention of the decedent in relation to some specific gift or devise or other provision of a testamentary instrument would be defeated by the application of subdivision (a), the specific devise or gift or provision may be exempted from the apportionment under subdivision (a), and a different apportionment, consistent with the intention of the decedent, may be adopted.

**Comment.** Former Section 26112 is renumbered as 21612. It was incorrectly numbered on enactment. See 1997 Cal. Stat. ch. 724, § 34.

Subdivision (a)(2) of Section 21612 is amended to make clear that it is the proportionate obligation of each beneficiary, rather than the total amount of the obligation, that is determined based on the date of death valuation. Thus for example if there are two beneficiaries entitled to receive property valued equally as of the date of death, the proportionate amount that will be taken from each is one-half the value of property distributed to each, regardless of the relative value of the property on the date of the distribution.

In a case where the share of the omitted spouse is partially satisfied pursuant to subdivision (a)(1), the obligation of the beneficiaries for the remainder abates proportionately. Thus if half the share of the omitted spouse is satisfied pursuant to subdivision (a)(1), the amount for which each of the beneficiaries is otherwise responsible pursuant to subdivision (a)(2) is reduced by half.

**Prob. Code § 21623 (amended). Share of omitted child**

SEC. 16. Section 21623 of the Probate Code is amended to read:

21623. (a) Except as provided in subdivision (b), in satisfying a share provided by this chapter:

(1) The share will first be taken from the decedent's estate not disposed of by will or trust, if any.

(2) If that is not sufficient, so much as may be necessary to satisfy the share shall be taken from all beneficiaries of decedent's testamentary instruments in proportion to the value they may respectively receive. ~~This value shall be determined~~ *The proportion of each beneficiary's share that may be taken pursuant to this subdivision shall be determined based on values* as of the date of the decedent's death.

(b) If the obvious intention of the decedent in relation to some specific gift or devise or other provision of a testamentary instrument would be defeated by the application of subdivision (a), the specific devise or gift or provision of a testamentary instrument may be exempted from the apportionment under subdivision (a), and a different apportionment, consistent with the intention of the decedent, may be adopted.

**Comment.** Subdivision (a)(2) of Section 21623 is amended to make clear that it is the proportionate obligation of each beneficiary, rather than the total amount of the obligation, that is determined based on the date of death valuation. Thus for example if there are two beneficiaries entitled to receive property valued equally as of the date of death, the proportionate amount that will be taken from each is one-half the value of property distributed to each, regardless of the relative value of the property on the date of the distribution.

In a case where the share of the omitted child is partially satisfied pursuant to subdivision (a)(1), the obligation of the beneficiaries for the remainder abates proportionately. Thus if half the share of the omitted child is satisfied pursuant to subdivision (a)(1), the amount for which each of the beneficiaries is otherwise responsible pursuant to subdivision (a)(2) is reduced by half.



STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

## **Statutes Made Obsolete by Trial Court Restructuring: Part 2**

March 2003

California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm'n Reports 169 (2003). This is part of publication #215 [2002-2003 Recommendations].

STATE OF CALIFORNIA

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CALIFORNIA LAW REVISION COMMISSION

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March 7, 2003

To: The Honorable Gray Davis  
*Governor of California*, and  
The Legislature of California

In 2002, the Law Revision Commission proposed the amendment or repeal of numerous obsolete constitutional and statutory provisions to reflect the restructuring of the trial court system that occurred in California during the late 1990's. Many other statutes were in need of amendment or repeal but were not included in the 2002 recommendation because they were not yet ripe for revision or, although ripe for revision, they required more time and care to address. This recommendation proposes additional cleanup of statutes made obsolete by trial court restructuring.

This recommendation was prepared pursuant to Government Code Section 71674.

Respectfully submitted,

David Huebner  
*Chairperson*



## STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING: PART 2

### BACKGROUND

#### **Trial Court Restructuring<sup>1</sup>**

The trial court system in California was significantly restructured during the late 1990's. The first major trial court restructuring event occurred in 1997 with the passage of the Lockyer-Isenberg Trial Court Funding Act.<sup>2</sup> That legislation consolidated funding of trial court operations at the state level and established a decentralized system of trial court management.<sup>3</sup>

The next major event occurred on June 2, 1998, when the voters of California approved Proposition 220,<sup>4</sup> providing for the unification of municipal and superior courts in a county.<sup>5</sup> As of February 8, 2001, the courts in all of California's 58 counties have unified.<sup>6</sup>

Effective January 1, 2001, a statewide employment structure for trial court employees, officers and other personnel was implemented. Under the Trial Court Employment Protec-

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1. For a more detailed review of the major trial court restructuring events, see *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002).

2. 1997 Cal. Stat. ch. 850.

3. See generally Gov't Code §§ 77000-77655.

4. Proposition 220 became operative the day after the election. Cal. Const. art. XVIII, § 4.

5. Former Cal. Const. art. VI, § 5(e).

6. On November 5, 2002, the voters approved Proposition 48 (operative Nov. 6, 2002), amending the California Constitution to reflect unification of the trial courts. See Cal. Const. art. VI, §§ 1 (judicial power), 6 (Judicial Council), 8 (Commission on Judicial Performance), 10 (original jurisdiction), 15 (qualifications of judges), 16 (election of judges), and 23 (transitional provision); see also former Cal. Const. art. VI, § 5 (municipal court).

tion and Governance Act,<sup>7</sup> trial court employees are employees of the court (not of the state or county) and each trial court has control over personnel matters.

#### **Role of Law Revision Commission**

As part of the Trial Court Employment Protection and Governance Act, the Legislature directed the California Law Revision Commission to recommend the repeal of statutes made obsolete by trial court funding reform, trial court unification, and trial court employment reform.<sup>8</sup> The recommendation was due by January 1, 2002.

The Commission submitted its Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part I*<sup>9</sup> (hereafter the “2002 recommendation”) in response to the legislative directive. The recommendation proposed the amendment and repeal of hundreds of obsolete constitutional and statutory provisions. It was not possible, however, to deal with all statutes made obsolete by trial court restructuring. Some provisions were not addressed because stakeholders had not yet reached agreement on key issues, further research was necessary in light of the complexity of the law, or additional time was required to prepare appropriate revisions due to the large volume of material involved. Consequently, the January 1, 2002, deadline was removed from the statute to allow the Commission to continue its work in this area and

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7. See Gov’t Code §§ 71600-71675.

8. Gov’t Code § 71674.

9. 32 Cal. L. Revision Comm’n Reports 1 (2002). Legislation implementing the Commission’s statutory recommendations was enacted in 2002, effective January 1, 2003. See 2002 Cal. Stat. ch. 784 (SB 1316). A resolution implementing the Commission’s recommended constitutional revisions was adopted by the Legislature (ACA 15) and approved by the voters on November 5, 2002 (Prop. 48, operative Nov. 6, 2002).

recommend further cleanup of the statutes from time to time.<sup>10</sup>

This recommendation proposes additional reforms to statutes made obsolete by trial court restructuring. As before, the recommendation addresses some but not all of the statutes in need of revision. The stakeholders have made significant progress in resolving a number of substantive and fiscal issues. However, some key issues remain unsettled.<sup>11</sup> In addition, several of the remaining issues and references are complex and require additional research and analysis.<sup>12</sup> The Commission will recommend further reforms from time to time as warranted.

## MATTERS COVERED IN THIS RECOMMENDATION

### **Trial Court Sessions and Facilities**

*Sessions.* Government Code Section 69645, effective January 1, 2003,<sup>13</sup> authorizes each trial court to determine the number and location of sessions of the court.<sup>14</sup> With this general grant of authority to superior courts, most of the existing sessions statutes can be repealed or amended.

Section 69645 was inadvertently located in an article pertaining to superior court districts. Only Los Angeles County is divided into superior court districts.<sup>15</sup> Therefore, the proposed

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10. See 2002 Cal. Stat. ch. 784, § 360.

11. For example, court reporter compensation, judicial benefits, and court-related fees and fines paid to counties.

12. For example, concurrent jurisdiction and local venue.

13. 2002 Cal. Stat. ch. 1008, § 25.

14. It also authorizes a session of the superior court to be held outside of the county of the court under certain circumstances.

15. The proposed law would repeal the existing article pertaining to superior court districts (Gov't Code §§ 69640-69650) and replace it with a new article

law would renumber Section 69645 as Government Code Section 69740.<sup>16</sup>

The proposed law would also repeal Government Code Section 69741 and Sections 69790 through 69800 as obsolete. Section 69741 requires that regular sessions be held commencing on the first Mondays of January, April, July, and October. That statute further provides that a superior court may hold special sessions at such other times as may be prescribed by the judges of the court, except that in the City and County of San Francisco the presiding judge shall prescribe the times of holding special sessions. Sections 69790 through 69800 authorize extra sessions of the superior court. Historically, extra sessions were held when a need arose in a particular county for a judge from another county to preside over a session of the hosting court.

The distinction among regular, special, and extra sessions is contrary to the modern concept that courts are continuously open and may hold session at any time except as specifically prohibited by law.<sup>17</sup> The times specified for the holding of regular sessions are anachronistic and do not reflect the current realities of the judicial system in California. In addition, Article VI, Section 6, of the California Constitution authorizes the Chief Justice of the California Supreme Court, as Chair of the Judicial Council, to assign judges to sit on courts in other counties.<sup>18</sup>

*Facilities.* The location of a particular session is dependent, to a large degree, on the existence and maintenance of a court facility in the area. The availability and adequacy of facilities

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(Gov't Code § 69640) authorizing the Los Angeles County Superior Court to establish superior court districts by local rule. See "Proposed Legislation" *infra*.

16. See proposed addition of Gov't Code § 69740 *infra*.

17. See Code Civ. Proc. §§ 74, 133, 134.

18. See also Gov't Code § 69741.5 ("There may be as many sessions of a superior court, at the same time, as there are judges elected, appointed or assigned thereto.").

for holding a court session at a specific location is a consideration that Section 69645 requires a court to take into account.

Court facilities have historically been county structures. In 2002, however, the Legislature enacted the Trial Court Facilities Act,<sup>19</sup> which will unite responsibility for trial court operations and facilities in the state. Under the Act, the transfer of responsibility for the funding and operation of trial court facilities will be negotiated on a building-by-building basis between the state and each county from July 1, 2003, through June 30, 2007.<sup>20</sup>

Inasmuch as the transfer of responsibility will be county and building specific — and may not be completed until 2007 — it is premature to revise facilities provisions at this time. Until the transfers are complete, the existing statutes are not obsolete. Furthermore, even though general policies have been established, the details of each transfer are still subject to negotiation and may vary from county to county. The Commission will continue to monitor the situation and propose appropriate revisions in the future.

#### **Trial Court Coordination**

Several statutes pertain to the coordination of operations of the municipal and superior courts in a county.<sup>21</sup> The statutes are no longer necessary due to unification of the courts. They would be repealed.<sup>22</sup>

#### **Jury Commissioners**

Pursuant to Code of Civil Procedure Section 195, every county has a jury commissioner who is appointed by the

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19. 2002 Cal. Stat. ch. 1082, § 4 (eff. Jan. 1, 2003).

20. *Id.*

21. Gov't Code §§ 68112, 68112.5, 68114, 68114.5, 68114.6, 68114.7, 68114.9.

22. Government Code Section 68114.7 is not proposed for repeal. It includes provisions regarding judicial benefits, which are still unsettled.

judges of the superior court. The jury commissioner is primarily responsible for managing the trial court jury system, but may also perform duties with regard to the selection of jurors for grand juries and juries of inquest.

Jury commissioner references appear in provisions of the Code of Civil Procedure, Government Code, and Penal Code. The proposed legislation includes revisions to the jury commissioner provisions and to Penal Code statutes relating to grand jury selection.<sup>23</sup> The proposed revisions would lodge selection-related functions with the jury commissioner rather than with the county clerk or court clerk. Designation of the jury commissioner as the responsible officer with regard to all grand jury selection functions is consistent with other grand jury selection provisions,<sup>24</sup> the Trial Court Funding Act,<sup>25</sup> Code of Civil Procedure Section 195, and Judicial Council standards.<sup>26</sup>

#### **Other Issues**

*Bail schedules.* Penal Code Section 1269b establishes a procedure for the preparation, adoption, and annual revision of uniform countywide bail schedules by superior and municipal court judges. The proposed law would remove the municipal court references and provide for one bail schedule for all bailable crimes (except Vehicle Code infractions). The proposal would also permit superior court judges to adopt a local rule

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23. See proposed amendments to Penal Code §§ 896, 900, 904, 908, 908.1, 908.2 *infra*.

24. Penal Code §§ 903-903.4.

25. See Gov't Code § 77003. Under Rule 810(d), Function 2, of the California Rules of Court, the "salaries, wages, and benefits of jury commissioner and jury services staff (including selection of grand jury)" are allowable court operations costs. See also Cal. R. Ct. 810(b) (grand jury *selection* not excluded from definition of "court operations").

26. Section 17 of the Standards of Judicial Administration (selection of regular grand jury) provides for the jury commissioner to prepare a list of qualified candidates to be considered for nomination.

of court governing the procedures for the preparation, adoption, and annual revision of the bail schedule, subject to a default procedure in the event a local rule is not adopted.<sup>27</sup>

*Juvenile court referees.* Welfare and Institutions Code Section 247 provides for the appointment of a juvenile court referee by the presiding judge of the juvenile court.<sup>28</sup> The proposed law would repeal that statute. Under the Trial Court Employment Protection and Governance Act, the trial court appoints subordinate judicial officers who serve at the pleasure of the court.<sup>29</sup> That statute also requires the Judicial Council to prescribe minimum qualifications and training requirements for subordinate judicial officers.<sup>30</sup> A conforming change would be made to Government Code Section 71622 to make clear that the court's authority to appoint and terminate a subordinate judicial officer includes the authority to delegate the appointment or termination decisions (e.g., to the presiding judge of the juvenile court).<sup>31</sup>

*Local court rules.* Code of Civil Procedure Section 575.1 governs the preparation and distribution of local rules of court. The proposed law would amend Section 575.1 to be consistent with the approach used in California Rule of Court 981, as amended effective January 1, 2003, regarding the preparation of and public access to local rules. The proposed law would also eliminate a municipal court reference to reflect trial court unification.<sup>32</sup>

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27. See proposed amendment to Penal Code § 1269b *infra*.

28. The section also provides that the referee serves at the pleasure of the presiding judge. With exceptions, the section requires that the referee have been admitted to practice law in California for at least five years.

29. Gov't Code § 71622.

30. The Judicial Council has promulgated a rule governing the qualifications of a subordinate judicial officer, which is effective January 1, 2003. See Cal. R. Ct. 6.660.

31. See proposed amendment to Gov't Code § 71622 *infra*.

32. See proposed amendment to Code Civ. Proc. § 575.1 *infra*.

*Traffic hearing officers.* References to “traffic hearing officers” in a number of statutes would be revised to reflect the redesignation of traffic hearing officers as “juvenile hearing officers.”<sup>33</sup>

*Chaptered out provisions.* Some revisions that were proposed in the Commission’s 2002 recommendation and included in the implementing legislation were “chaptered out” by conflicting bills introduced in the same legislative session. Those proposed revisions are reintroduced in this recommendation.<sup>34</sup>

*Technical revisions.* Other technical cleanup revisions would be made.<sup>35</sup>

## CONCLUSION

This recommendation does not purport to deal with all remaining statutes made obsolete by trial court restructuring. The Commission will continue to propose reforms addressing obsolete statutes as issues are resolved and time warrants. The fact that this recommendation does not address a particular statute should not be construed to indicate that the Commission has decided that the statute should be preserved over the general restructuring provisions. The statute may be the subject of a future recommendation by the Commission.

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33. See 1997 Cal. Stat. ch. 679.

34. See proposed amendments to Gov’t Code §§ 20437, 71081, 71601 & Penal Code §§ 830.1, 3075 *infra*.

35. For example, the proposed law would continue an effort begun in the 2002 recommendation to fix references to “the judge or judges” of the superior court. As a result of unification, every superior court now has at least two judge-ships. See Gov’t Code § 69580 *et seq.* (number of judges). Where a court has only one judge due to a vacancy or otherwise, a reference to the judges of the court means the sole judge of the court. See Gov’t Code § 13 (plural includes singular).

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## PROPOSED LEGISLATION

## CODE OF CIVIL PROCEDURE

**Code Civ. Proc. § 73c (amended). Place of hearings relating to sale, exchange, or disposition of property of savings and loan association**

SEC. \_\_\_\_ . Section 73c of the Code of Civil Procedure is amended to read:

73c. Notwithstanding anything to the contrary contained in Sections ~~73 and 142~~ of this code, or contained in any other law of this State, the ~~judge or~~ judges of the superior court of the county in which is located the principal office in this State of any ~~building~~ *savings* and loan association of whose business, property and assets possession shall have been taken by the ~~Building and Loan~~ Commissioner of *Financial Institutions*, may, in ~~his or~~ their discretion, whenever such ~~judge or~~ judges deem it necessary or advisable, hold hearings relating to the sale, exchange or other disposition of any parcel of real property or any item of personal property of such association, regardless of the location of such property, at the county seat of any county in this State or at such places in the county in which the principal office in this State of such association is located at which sessions of such superior court ~~shall be~~ *are* held as ~~provided in this code~~.

**Comment.** Section 73c is amended to reflect enactment of Government Code Section 69740(a) (number and location of trial court sessions).

The section is also amended to delete language referring to “the judge” of the court. Every superior court has at least two judgeships as a result of trial court unification. See Gov’t Code § 69580 *et seq.* (number of judges). Where a court has only one judge due to a vacancy or otherwise, a reference to the judges of the court means the sole judge of the court. See Gov’t Code § 13 (plural includes singular).

The section is also amended to delete the references to former Sections 73 and 142.

The section is also amended to replace the reference to the former “Building and Loan Commissioner” with a reference to the “Commissioner of Financial Institutions.” See 1955 Cal. Stat. ch. 40, § 1; Fin. Code § 210.5(c).

The section is also amended to replace the reference to “building and loan association” with a reference to “savings and loan association.” See 1955 Cal. Stat. ch. 40, § 1.

**Code Civ. Proc. § 73d (amended). Expenses of court officials in attending hearings relating to sale, exchange, or disposition of property of savings and loan association**

SEC. \_\_\_\_ . Section 73d of the Code of Civil Procedure is amended to read:

73d. Whenever, under the provisions of Section 73c of this code, it becomes necessary for a judge, clerk, deputy clerk, court reporter or bailiff of or sitting in the superior court of the county in this State in which is located the principal office of any ~~building~~ *savings* and loan association whose business, property and assets are in the possession of the ~~Building and Loan Commissioner of Financial Institutions~~, to travel to another county, there temporarily to attend hearings relating to the sale, exchange or other disposition of real or personal property of such association, each such judge, clerk, deputy clerk, court reporter or bailiff shall be allowed ~~his~~ *the* necessary expenses in going to, returning from and attending upon the business of such court. Such expenses shall upon order of such court, be a charge against the funds of such association and paid out of such funds by the ~~Building and Loan Commissioner of Financial Institutions~~.

**Comment.** Section 73d is amended to replace references to the former “Building and Loan Commissioner” with references to the “Commissioner of Financial Institutions.” See 1955 Cal. Stat. ch. 40, § 1; Fin. Code § 210.5(c).

The section is also amended to replace the reference to “building and loan association” with a reference to “savings and loan association.” See 1955 Cal. Stat. ch. 40, § 1.

**Code Civ. Proc. § 90 (amended). Limitation of general law by economic litigation procedures**

SEC. \_\_\_\_\_. Section 90 of the Code of Civil Procedure is amended to read:

90. Except where changed by the provisions of this Article and Part 3.5 (~~commencing with Section 1823~~) *article*, all provisions of law applicable to civil actions generally apply to actions subject to this article.

**Comment.** Section 90 is amended to reflect the repeal of former Part 3.5 (commencing with Section 1823) of the Code of Civil Procedure, relating to pilot projects. See 1994 Cal. Stat. ch. 146, § 26; 1996 Cal. Stat. ch. 124, § 15.

**Code Civ. Proc. § 116.250 (amended). Small claims court sessions**

SEC. \_\_\_\_\_. Section 116.250 of the Code of Civil Procedure is amended to read:

116.250. (a) Sessions of the small claims court may be scheduled at any time and on any day, including Saturdays, but excluding other judicial holidays. ~~They may also be scheduled at any public building within the county, including places outside the courthouse.~~

(b) Each small claims division of a superior court with seven or more judicial officers shall conduct at least one night session or Saturday session each month for the purpose of hearing small claims cases other than small claims appeals. The term “session” includes, but is not limited to, a proceeding conducted by a member of the State Bar acting as a mediator or referee.

**Comment.** Subdivision (a) of Section 116.250 is amended to reflect enactment of Government Code Section 69740(a) (number and location of trial court sessions).

**Code Civ. Proc. § 116.310 (amended). Pleadings and pretrial discovery in small claims case**

SEC. \_\_\_\_\_. Section 116.310 of the Code of Civil Procedure is amended to read:

116.310. (a) No formal pleading other than the claim described in Section 116.320 or ~~116.380~~ 116.360, is necessary to initiate a small claims action.

(b) The pretrial discovery procedures described in subdivision (a) of Section 2019 are not permitted in small claims actions.

**Comment.** Subdivision (a) of Section 116.310 is amended to correct the cross-reference. See 1991 Cal. Stat. ch. 915, § 11.

**Code Civ. Proc. § 196 (amended). Inquiry into qualifications**

SEC. \_\_\_\_\_. Section 196 of the Code of Civil Procedure is amended to read:

196. (a) The jury commissioner or the court shall inquire as to the qualifications of persons on the master list or source list who are or may be summoned for jury service. The commissioner or the court may require any person to answer, under oath, orally or in written form, all questions as may be addressed to that person, regarding the person's qualifications and ability to serve as a prospective trial juror. The commissioner and his or her assistants, shall have power to administer oaths and shall be allowed actual traveling expenses incurred in the performance of their duties. ~~Such traveling expenses shall be audited, allowed, and paid out of the general fund of the county.~~

(b) Response to the jury commissioner or the court concerning an inquiry or summons may be made by any person having knowledge that the prospective juror is unable to respond to such inquiry or summons.

(c) Any person who fails to respond to jury commissioner or court inquiry as instructed, may be summoned to appear before the jury commissioner or the court to answer such inquiry, or may be deemed to be qualified for jury service in the absence of a response to the inquiry. Any information thus acquired by the court or jury commissioner shall be noted in jury commissioner or court records.

**Comment.** Subdivision (a) of Section 196 is amended to reflect enactment of the Trial Court Funding Act. See Gov't Code §§ 77003 (“court operations” defined), 77200 (state funding of trial court operations). *Cf.* Cal. R. Ct. 810(d), Function 2 (jury services). Subdivision (a) is also amended to reflect enactment of Government Code Section 69505 (business-related travel expenses of trial court judges and employees).

**Code Civ. Proc. § 208 (amended). Summoning prospective jurors**

SEC. \_\_\_\_ . Section 208 of the Code of Civil Procedure is amended to read:

208. The jury commissioner shall estimate the number of prospective jurors that may be required to serve the needs of the ~~trial courts~~ *court*, and shall summon such prospective jurors for service. Prospective jurors shall be summoned by mailing a summons by first-class mail or by personal service or, in urgency situations, as elsewhere provided by law. The summons, when served by mail, shall be mailed at least 10 days prior to the date of required appearance. Once a prospective juror has been summoned, the date, time, or place of appearance may be modified or further specified by the jury commissioner, by means of written, telegraphic, telephonic, or direct oral communication with the prospective juror.

**Comment.** Section 208 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

**Code Civ. Proc. § 431.30 (amended). Form and content of answer**

SEC. \_\_\_\_ . Section 431.30 of the Code of Civil Procedure is amended to read:

431.30. (a) As used in this section:

- (1) “Complaint” includes a cross-complaint.
  - (2) “Defendant” includes a person filing an answer to a cross-complaint.
- (b) The answer to a complaint shall contain:

(1) The general or specific denial of the material allegations of the complaint controverted by the defendant.

(2) A statement of any new matter constituting a defense.

(c) Affirmative relief may not be claimed in the answer.

(d) If the complaint is subject to Article 2 (commencing with Section 90) of ~~Chapter 5~~ *Chapter 5.1* of Title 1 of Part 1 or is not verified, a general denial is sufficient but only puts in issue the material allegations of the complaint. If the complaint is verified, unless the complaint is subject to Article 2 (commencing with Section 90) of ~~Chapter 5~~ *Chapter 5.1* of Title 1 of Part 1, the denial of the allegations shall be made positively or according to the information and belief of the defendant. However, if the cause of action is a claim assigned to a third party for collection and the complaint is verified, the denial of the allegations shall be made positively or according to the information and belief of the defendant, even if the complaint is subject to Article 2 (commencing with Section 90) of ~~Chapter 5~~ *Chapter 5.1* of Title 1 of Part 1.

(e) If the defendant has no information or belief upon the subject sufficient to enable him or her to answer an allegation of the complaint, he or she may so state in his or her answer and place his or her denial on that ground.

(f) The denials of the allegations controverted may be stated by reference to specific paragraphs or parts of the complaint; or by express admission of certain allegations of the complaint with a general denial of all of the allegations not so admitted; or by denial of certain allegations upon information and belief, or for lack of sufficient information or belief, with a general denial of all allegations not so denied or expressly admitted.

(g) The defenses shall be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

**Comment.** Subdivision (d) of Section 431.30 is amended to correct the reference to former Chapter 5.

**Code Civ. Proc. § 575.1 (amended). Local court rules**

SEC. \_\_\_\_ . Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior and ~~municipal~~ court may prepare, with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar and others, as specified by the Judicial Council, for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, ~~61 copies or a greater number as specified by Judicial Council rule,~~ *they* shall be filed with the Judicial Council as required by Section 68071 of the Government Code *and as specified in rules adopted by the Judicial Council*. The Judicial Council shall ~~deposit a copy of each rule and amendment with each county law library or county clerk where it shall be~~ *prescribe rules to ensure that a complete current set of local rules and amendments, for each county in the state, is* made available for public examination *in each county*. The local rules shall also be published for general distribution in accordance with rules adopted by the Judicial Council. Each court shall make its local rules available for inspection and copying in every location of the court that generally accepts filing of papers. The court may impose a reasonable charge for copying the rules and may

impose a reasonable page limit on copying. The rules shall be accompanied by a notice indicating where a full set of the rules may be purchased.

(c) If a judge of a court adopts a rule that applies solely to cases in that judge's courtroom, or a particular branch or district of a court adopts a rule that applies solely to cases in that particular branch or district of a court, the court shall publish these rules as part of the general publication of rules required by the California Rules of Court. The court shall organize the rules so that rules on a common subject, whether individual, branch, district, or courtwide appear sequentially. Individual judges' rules and branch and district rules are local rules of court for purposes of this section and for purposes of the adoption, publication, comment, and filing requirements set forth in the Judicial Council rules applicable to local court rules.

**Comment.** Subdivision (a) of Section 575.1 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

Subdivision (b) is amended to be consistent with the approach used in California Rule of Court 981, as amended effective January 1, 2003, regarding preparation of and public access to local rules. Rules of Court adopted by the Judicial Council pursuant to this section cannot be inconsistent with statute. See Cal. Const. art. VI, § 6.

## ELECTIONS CODE

### **Elec. Code § 16603 (amended). Judgment**

SEC. \_\_\_\_ . Section 16603 of the Elections Code is amended to read:

16603. The court shall continue in special session to hear and determine all issues arising in contested elections. After hearing the proofs and allegations of the parties and within 10 days after the submission thereof, the court shall file its findings of fact and conclusions of law, and immediately thereafter shall pronounce judgment in the premises, either

confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

**Comment.** Section 16603 is amended to reflect the repeal of Government Code Section 69741 (regular and special sessions).

## FAMILY CODE

### **Fam. Code § 1811 (amended). Assignment of judges**

SEC. \_\_\_\_\_. Section 1811 of the Family Code is amended to read:

1811. ~~In counties having more than one judge of the superior court, the~~ *The* presiding judge of the superior court shall annually, in the month of January, designate at least one judge to hear all cases under this part. ~~The judge or judges so designated shall hold as many sessions of the family conciliation court in each week as are necessary for the prompt disposition of the business before the court.~~

**Comment.** Section 1811 is amended to reflect enactment of Government Code Section 69740(a) (number and location of trial court sessions).

The section is also amended to reflect the fact that every superior court has at least two judgeships as a result of trial court unification. See Gov't Code § 69580 *et seq.* (number of judges).

## FINANCIAL CODE

### **Fin. Code § 17647 (amended). Place of hearings**

SEC. \_\_\_\_\_. Section 17647 of the Financial Code is amended to read:

17647. Regardless of any law of this State, the judge *judges* of the superior court of the county in this State in which the principal office of the licensee is located, may whenever ~~he~~ *deems the judges deem* it necessary or advisable, hold hearings relating to the sale, exchange, or other disposition of any real property or any personal property of the licensee regardless of the location of such property. The hearings shall

be held at the county seat of any county in this State or at such places in the home county of such superior court at which sessions are held as ~~provided in the Code of Civil Procedure~~.

**Comment.** Section 17647 is amended to reflect enactment of Government Code Section 69740(a) (number and location of trial court sessions).

The section is also amended to delete language referring to “the judge” of the court. Every superior court has at least two judgeships as a result of trial court unification. See Gov’t Code § 69580 *et seq.* (number of judges). Where a court has only one judge due to a vacancy or otherwise, a reference to the judges of the court means the sole judge of the court. See Gov’t Code § 13 (plural includes singular).

## FISH AND GAME CODE

### **Fish & Game Code § 12157 (amended). Forfeiture for violations**

SEC. \_\_\_\_ . Section 12157 of the Fish and Game Code is amended to read:

12157. (a) Except as provided in subdivision (b), the judge before whom any person is tried for a violation of any provision of this code, or regulation adopted pursuant thereto, may, upon the conviction of the person tried, order the forfeiture of any device or apparatus that is designed to be, or is capable of being, used to take birds, mammals, fish, reptiles, or amphibia and that was used in committing the offense charged.

(b) The judge shall, if the offense is punishable under Section 12008 of this code or under subdivision (c) of Section 597 of the Penal Code, order the forfeiture of any device or apparatus that is used in committing the offense, including, but not limited to, any vehicle that is used or intended for use in delivering, importing, or exporting any unlawfully taken, imported, or purchased species.

(c)(1) The judge may, for conviction of a violation of either of the following offenses, order forfeiture of any device or

apparatus that is used in committing the offense, including, but not limited to, any vehicle used or intended for use in committing the offense:

(A) Section 2000 relating to deer, elk, antelope, feral pigs, European wild boars, black bears, and brown or cinnamon bears.

(B) Any offense that involves the sale, purchase, or possession of abalone for commercial purposes.

(2) In considering an order of forfeiture under this subdivision, the court shall take into consideration the nature, circumstances, extent, and gravity of the prohibited act committed, the degree of culpability of the violator, the property proposed for forfeiture, and other criminal or civil penalties imposed on the violator under other provisions of law for that offense. The court shall impose lesser forfeiture penalties under this subdivision for those acts that have little significant effect upon natural resources or the property of another and greater forfeiture penalties for those acts that may cause serious injury to natural resources or the property of another, as determined by the court. In determining whether or not to order forfeiture of a vehicle, the court shall, in addition to any other relevant factor, consider whether the defendant is the owner of the vehicle and whether the owner of the vehicle had knowledge of the violation.

(3) It is the intent of the Legislature that forfeiture not be ordered pursuant to this subdivision for minor or inadvertent violations of Section 2000, as determined by the court.

(d) Any device or apparatus ordered forfeited shall be sold, used, or destroyed by the department.

(e)(1) The proceeds from all sales under this section, after payment of any valid liens on the forfeited property, shall be paid into the Fish and Game Preservation Fund.

(2) A lien in which the lienholder is a conspirator is not a valid lien for purposes of this subdivision.

(f) The provisions in this section authorizing or requiring a judge to order the forfeiture of a device or apparatus also apply to the judge, referee, or *traffic juvenile* hearing officer in a juvenile court action brought under Section 258 of the Welfare and Institutions Code.

(g) For purposes of this section, a plea of nolo contendere or no contest, or forfeiture of bail, constitutes a conviction.

(h) Neither the disposition of the criminal action other than by conviction nor the discretionary refusal of the judge to order forfeiture upon conviction impairs the right of the department to commence proceedings to order the forfeiture of fish nets or traps pursuant to Section 8630.

**Comment.** Subdivision (f) of Section 12157 is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

## FOOD AND AGRICULTURAL CODE

### **Food & Agric. Code § 21856 (amended). Forfeiture of device or apparatus**

SEC. \_\_\_\_ . Section 21856 of the Food and Agricultural Code is amended to read:

21856. (a) The judge before whom any person is tried for the wrongful taking, possessing, killing, or slaughter of cattle without the consent of the owner or the person lawfully in possession of those cattle may, upon the conviction of the person tried, order the forfeiture of any device or apparatus that is designed to be, or is capable of being, used to commit the offense charged, and which was used in committing the offense charged. "Device or apparatus" includes, but is not limited to, any vehicle that is used or intended for use in taking, possessing, harboring, or transporting the cattle.

(b) Any device or apparatus ordered forfeited shall be sold, used, or destroyed by the department.

(c) The provisions in this section authorizing a judge to order the forfeiture of a device or apparatus are also applicable to the judge, referee, or *traffic juvenile* hearing officer in a juvenile court action brought under Section 258 of the Welfare and Institutions Code.

(d) For purposes of this section, a plea of *nolo contendere* or no contest, or forfeiture of bail, constitutes a conviction.

(e) Neither the disposition of the criminal action other than by conviction nor the discretionary refusal of the judge to order forfeiture upon conviction impairs the right of the department to commence proceedings to order the forfeiture of property pursuant to any other provision of law.

**Comment.** Subdivision (c) of Section 21856 is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

## GOVERNMENT CODE

### **Gov't Code § 20437 (amended). "County peace officer" as including constable, marshal, and deputy**

SEC. \_\_\_\_\_. Section 20437 of the Government Code is amended to read:

20437. (a) "County peace officer" shall also include the constable and each regularly employed deputy constable and the marshal and each regularly employed deputy marshal of ~~any judicial district~~ *who serves the superior court*. He or she shall receive credit for service as a peace officer for any time he or she served as constable or deputy constable of a township *or justice court or marshal or deputy marshal of a municipal court* in the same county.

(b) The provisions of this section do not apply to the employees of a contracting agency nor to the agency, unless and until the contracting agency elects to be subject to this section by amendment to its contract with the board, made as

provided in Section 20474, or by express provision in its contract with the board.

(c) “County peace officer” does not include any officer or employee who is a local sheriff, as defined in Section 20432.5.

**Comment.** Subdivision (a) of Section 20437 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. Subdivision (a) is also amended to reflect elimination of the justice court pursuant to Section 1 and former Section 5(b) of Article VI of the California Constitution.

**Gov’t Code § 24151 (amended). Amount of supervisor’s bond**

SEC. \_\_\_\_\_. Section 24151 of the Government Code is amended to read:

24151. Prior to the primary election immediately preceding the election of county officers the ~~judge or~~ judges of the superior court shall prescribe the amount in which each member of the board of supervisors shall execute an official bond, before entering upon the discharge of the duties of ~~his~~ *the* office.

**Comment.** Section 24151 is amended to delete language referring to “the judge” of the court. Every superior court has at least two judgeships as a result of trial court unification. See Section 69580 *et seq.* (number of judges). Where a court has only one judge due to a vacancy or otherwise, a reference to the judges of the court means the sole judge of the court. See Section 13 (plural includes singular).

**Gov’t Code § 24250.1 (amended). Offices in cities where sessions of superior court held**

SEC. \_\_\_\_\_. Section 24250.1 of the Government Code is amended to read:

24250.1. Sheriffs ~~and clerks~~ shall also have offices in each city in which *they perform court-related services and a regular session facility* of the superior court is held pursuant to law. ~~This section does not authorize the establishment of~~

~~offices in cities in which extra sessions of the superior court are held located.~~

**Comment.** Section 24250.1 is amended to reflect enactment of Section 69740(a) (number and location of trial court sessions) and repeal of Section 69741 (regular and special sessions).

The section is also amended to reflect the fact that court-related services may not be performed by the sheriff in all counties.

The section is also amended to reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Section 26800 (county clerk acting as clerk of superior court). The powers, duties, and responsibilities formerly exercised by the county clerk as ex officio clerk of the court are delegated to the court administrative or executive officer, and the county clerk is relieved of those powers, duties, and responsibilities. See Sections 69840 (powers, duties, and responsibilities of clerk of court and deputy clerk of court), 71620 (trial court personnel).

**Gov't Code § 40230 (amended). Purpose of census**

SEC. \_\_\_\_\_. Section 40230 of the Government Code is amended to read:

40230. For the purpose of determining where ~~sessions of the superior courts shall be held and~~ county offices *shall be* established, a city legislative body may establish the population of the city pursuant to this article.

**Comment.** Section 40230 is amended to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 68079 (amended). Provision of superior court seal**

SEC. \_\_\_\_\_. Section 68079 of the Government Code is amended to read:

68079. A court for which the necessary seal has not been provided, or the ~~judge or judges of that court,~~ shall provide it. The expense shall be an item of court operations. ~~Until the seal is provided the clerk or judge of each court may use his or her private seal whenever a seal is required.~~

**Comment.** Section 68079 is amended to reflect the fact that every superior court has at least two judgeships as a result of trial court unification. See Section 69580 *et seq.* (number of judges). Where a court has only one judge due to a vacancy or otherwise, a reference to the

judges of the court means the sole judge of the court. See Section 13 (plural includes singular).

The section is also amended to delete an obsolete provision regarding the use of private seals.

**Gov't Code § 68100 (amended). Appearances at appointed location of superior court**

SEC. \_\_\_\_\_. Section 68100 of the Government Code is amended to read:

68100. When the court is held at a place appointed, pursuant to ~~Sections 68099~~ *Section 68115*, ~~69742, and 69744~~ every person held to appear at the court shall appear at the place so appointed.

**Comment.** Section 68100 is amended to correct the reference to former Section 68099 and to reflect the repeal of Sections 69742 and 69744, relating to court sessions away from the courthouse in specified circumstances.

**Gov't Code § 68108 (amended). Unpaid furlough days**

SEC. \_\_\_\_\_. Section 68108 of the Government Code is amended to read:

68108. (a) To the extent that a Memorandum of Understanding for trial court employees designates certain days as unpaid furlough days for employees assigned to regular positions in the superior court, the court shall not be in session on those days except as ordered by the presiding judge ~~upon a finding by the presiding judge of a judicial emergency as defined in Chapter 1.1 (commencing with Section 68115)~~. On these furlough days, ~~although if the court clerk's office shall~~ *is* not be open to the public, each court shall permit documents to be filed at a drop box pursuant to subdivision (b), ~~and~~ . *If the court is not in session on a furlough day*, an appropriate judicial officer shall be available to conduct arraignments and examinations as required pursuant to Section 825 of the Penal Code, and to sign any necessary documents on an emergency basis.

(b) A drop box shall provide for an automated, official time and date stamping mechanism or other means of determining the actual date on which a document was deposited in the drop box.

**Comment.** Subdivision (a) of Section 68108 is amended to reflect the fact that furlough days might not affect all court employees and therefore might not require the cessation of court sessions.

Subdivision (a) is also amended to make clear that the reference to the “clerk’s office” means the court clerk’s office, not the county clerk’s office.

**Gov’t Code § 68112 (repealed). Trial court coordination plans**

SEC. \_\_\_\_ . Section 68112 of the Government Code is repealed.

~~68112. (a) On or before March 1, 1992, each superior and municipal court in each county, in consultation with the local bar, shall prepare and submit to the Judicial Council for review and approval a trial court coordination plan designed to achieve maximum utilization of judicial and other court resources and statewide cost reductions in court operations of at least 3 percent in the 1992-93 fiscal year, a further 2 percent in the 1993-94 fiscal year, and a further 2 percent in the 1994-95 fiscal year, as applicable. The cost reduction shall be based on the prior year actual expenditures, plus any amount reduced from the budget for court operations by a county as a result of any reduction in state funding made pursuant to Section 13308, increased by the percentage change in population for the prior calendar year and the Trade and Commerce Agency implicit price deflator for state and local government for the prior calendar year. The coordination plan for each court shall be reviewed and approved by the Judicial Council on or before July 1, 1992. Thereafter, commencing in 1995 and every two years thereafter, courts in each county shall prepare, in consultation with the local bar, and submit a trial court coordination plan to the Judicial Council on or before March 1, for review and~~

approval by July 1. The plans shall comply with rules promulgated by the Judicial Council and shall be designed to achieve maximum utilization of judicial and other resources to accomplish increased efficiency in court operations and increased service to the public. Any plan disapproved by the Judicial Council shall be revised and resubmitted within 60 days of notification of disapproval. The Judicial Council may by rule exempt courts from the requirement of filing a new coordination plan for any year if all courts in the county have (1) totally consolidated administrative functions under a single administrative entity, and (2) adopted and implemented a coordination plan in which all courts share each other's work so that cases in all of the county's courts are substantially assigned without regard to whether a judge is on the superior court or the municipal court, and which provides for procedures that implement that sharing of work.

(b) The coordination plan shall take into consideration the elements specified in standards and rules adopted by the Judicial Council and applicable case processing time standards adopted by the Judicial Council. The standards adopted by the Judicial Council shall include, but not be limited to, the following:

(1) The use of blanket cross-assignments allowing judges to hear civil, criminal, or other types of cases within the jurisdiction of another court.

(2) The coordinated or joint use of subordinate judicial officers to hear or try matters.

(3) The coordinated, joint use, sharing or merger of court support staff among trial courts within a county or across counties. In a county with a population of less than 100,000 the coordination plan need not involve merger of superior and justice court staffs if the court can reasonably demonstrate that the maintenance of separate administrative staffs would be more cost-effective and provide better service.

~~(4) The assignment of civil, criminal, or other types of cases for hearing or trial, regardless of jurisdictional boundaries, to any available judicial officer.~~

~~(5) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.~~

~~(6) The establishment of separate calendars or divisions to hear a particular type of case.~~

~~(7) In rural counties, the use of all court facilities for hearings and trials of all types of cases and to accept for filing documents in any case before any court in the county participating in the coordination plan.~~

~~(8) The coordinated or joint use of alternative dispute resolution programs such as arbitration.~~

~~(9) The unification of the trial courts within a county to the maximum extent permitted by the California Constitution.~~

~~(10) The joint development of automated accounting and case processing systems, including joint use of moneys available under Section 68090.8.~~

~~(c) In preparing coordination plans a court or courts in a county may petition the Judicial Council to permit division of the court or courts into smaller administrative units where a courtwide plan would impose an undue burden because of the number of judges or the physical location of the divisions of the court or courts.~~

~~(d) In preparing coordination plans, the courts are strongly encouraged to develop a plan that includes all superior and municipal courts in the county.~~

**Comment.** Section 68112 is repealed to reflect:

(1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. See Sections 70210 (adoption of rules), 70211 (judges), 70212 (officers and employees), 70214 (commissioners and referees), 70215 (construction with other laws).

(2) Enactment of the Trial Court Employment Protection and Governance Act. See Sections 71620(a) (job classifications and

appointments), 71622 (subordinate judicial officers), 71640-71645 (employment selection and advancement).

**Gov't Code § 68112.5 (repealed). Cross-assignment of subordinate judicial officers**

SEC. \_\_\_\_\_. Section 68112.5 of the Government Code is repealed.

~~68112.5. Notwithstanding any other provision of law, in those counties with approved coordination plans pursuant to Section 68112 that so provide, the subordinate judicial officers of a trial court, by agreement between trial courts within the same county, may be cross-assigned to any other trial court within the same county and, when so assigned, shall exercise all of the powers and perform all of the duties authorized by law to be performed by any subordinate judicial officer of that court.~~

**Comment.** Section 68112.5 is repealed to reflect:

(1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

(2) Enactment of the Trial Court Employment Protection and Governance Act. See Section 71622 (subordinate judicial officers).

**Gov't Code § 68114 (repealed). Single presiding judge**

SEC. \_\_\_\_\_. Section 68114 of the Government Code is repealed.

~~68114. Notwithstanding any other provision of law, the superior and municipal court judges participating in a coordination plan approved pursuant to Section 68112 may select, if the coordination plan so provides, any one of their number to serve as the single presiding judge of all the participating courts by a majority vote of the judges from all courts sitting as a committee of the whole or in some other manner as set forth in the coordination plan.~~

~~The single presiding judge shall have all the powers and duties of the former presiding judges of each of the participating superior and municipal courts. The single~~

~~presiding judge may be empowered by the coordination plan to sit as the chair of any executive committee formed by the participating courts as part of their coordination plan.~~

**Comment.** Section 68114 is repealed to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. See Section 70215 (construction with other laws).

**Gov't Code § 68114.5 (repealed). Single executive committee**

SEC. \_\_\_\_\_. Section 68114.5 of the Government Code is repealed.

~~68114.5. Notwithstanding any other provision of law, the superior and municipal court judges participating in a coordination plan approved pursuant to Section 68112 may establish a single executive committee of judicial officers to oversee, if the coordination plan so provides, the activities of the participating courts. The committee shall include representatives of all participating courts in a manner specified in the coordination plan. The committee shall have such powers and duties as are delegated to it by each participating court in the coordination plan, which may include oversight of the administration of the courts and judicial activities.~~

**Comment.** Section 68114.5 is repealed to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

**Gov't Code § 68114.6 (repealed). Powers and duties of court executive officer**

SEC. \_\_\_\_\_. Section 68114.6 of the Government Code is repealed.

~~68114.6. Notwithstanding any other provision of law, the superior and municipal court judges participating in a coordination plan approved pursuant to Section 68112 may appoint, if the coordination plan so provides, an executive officer to serve as the chief administrative officer of the~~

~~participating courts. The executive officer shall hold office at the pleasure of a majority vote of the judges from all of the participating courts sitting as a committee of the whole or as set forth in the coordination plan. The courts shall fix the qualifications of the executive officer. The salary of the executive officer shall be fixed by the participating courts and shall be paid by the county in which the executive officer serves. Each such position shall be exempt from civil service laws.~~

~~The participating courts may delegate to the executive officer any administrative powers and duties required to be exercised by the participating courts. The executive officer shall exercise such administrative powers and perform such other duties as may be required of him or her by the participating courts. Any executive officer appointed under this section has the authority of a clerk of any participating superior or municipal court. The executive officer shall perform, or supervise the performance of, the duties of a jury commissioner in the county of any participating superior court. The executive officer shall supervise the secretaries of the judges of the participating courts.~~

~~Notwithstanding any other provision of law, any participating superior court may, by local rule, specify which of the powers, duties, and responsibilities required or permitted to be exercised or performed by the county clerk in connection with judicial actions, proceedings, and records shall be exercised or performed by the executive officer appointed under this section. The county clerk shall be relieved of any obligation imposed on him or her by law with respect to these specified powers, duties, and responsibilities, to the extent the local rule imposes on the executive officer the same powers, duties, and responsibilities.~~

~~Any participating superior court having specific statutory authorization to appoint an executive or administrative officer~~

~~may elect to proceed under its specific authorization or under this section, but not under both.~~

**Comment.** Section 68114.6 is repealed to reflect:

(1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. See Section 70215 (construction with other laws).

(2) Enactment of the Trial Court Employment Protection and Governance Act. See Section 71620 (trial court personnel). See also Code Civ. Proc. § 195 (jury commissioner).

(3) Enactment of the Trial Court Funding Act. See Sections 77003 (“court operations” defined), 77200 (state funding of trial court operations).

**Gov’t Code § 68114.9 (repealed). Cross-deputization**

SEC. \_\_\_\_\_. Section 68114.9 of the Government Code is repealed.

~~68114.9. To facilitate implementation of a coordination plan approved pursuant to Section 68112:~~

~~(a) The clerk of the municipal court may authorize personnel of the municipal court to be cross-deputized by the clerk of the superior court to perform comparable court duties. Personnel deputized pursuant to this section shall serve without additional compensation.~~

~~(b) The clerk of the superior court may authorize personnel of the clerk of the superior court to be cross-deputized by the clerk of the municipal court to perform comparable court duties. Personnel deputized pursuant to this section shall serve without additional compensation.~~

**Comment.** Section 68114.9 is repealed to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

**Gov’t Code § 68620 (amended). Delay reduction program**

SEC. \_\_\_\_\_. Section 68620 of the Government Code is amended to read:

68620. (a) Each superior court shall establish a delay reduction program for limited civil cases in consultation with

the local bar that is consistent with the provisions of this article. In its discretion, the Judicial Council may assist in the development of, or may develop and adopt, any or all procedures, standards, or policies for a delay reduction program for limited civil cases in superior courts on a statewide basis which are consistent with the provisions of the Trial Court Delay Reduction Act.

(b) Actions and proceedings subject to the provisions of Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure or provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure shall not be assigned to or governed by the provisions of any delay reduction program established pursuant to the section.

(c) It is the intent of the Legislature that the civil discovery in actions and proceedings subject to a program established pursuant to Article 2 (commencing with Section 90) of ~~Chapter 5~~ *Chapter 5.1* of Title 1 of Part 1 of the Code of Civil Procedure shall be governed by the times and procedures specified in that article. Civil discovery in these actions and proceedings shall not be affected by the provisions of any delay reduction program adopted pursuant to this section.

**Comment.** Subdivision (c) of Section 68620 is amended to correct the reference to former Chapter 5.

**Gov't Code § 69595.5 (repealed). Sessions in San Diego County**

SEC. \_\_\_\_\_. Section 69595.5 of the Government Code is repealed.

~~69595.5. Notwithstanding the provisions of Article 5 (commencing with Section 69740) of Chapter 5 of Title 8, in the County of San Diego, one or more judges of the superior court shall hold concurrent daily sessions in the City of Vista, two or more judges of the superior court shall hold concurrent daily sessions in the City of El Cajon, and one judge of the~~

~~superior court shall hold concurrent daily sessions within the former South Bay Municipal Court District.~~

**Comment.** Section 69595.5 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code §§ 69640-69650 (repealed). Superior court districts**

SEC. \_\_\_\_ . Article 4 (commencing with Section 69640) of Chapter 5 of Title 8 of the Government Code is repealed.

**Comment.** Sections 69640-69650 are repealed to reflect:

(1) Enactment of Section 69740(a) (number and location of trial court sessions). See also Section 69508(a) (presiding judge shall distribute business of court); Cal. R. Ct. 6.603 (duties of presiding judge). It should be noted that Section 69740 continues with revisions former Section 69645. See Comment to Section 69740.

(2) Enactment of the Trial Court Facilities Act of 2002. See Section 70301 *et seq.* The repeal of Section 69647 is not intended to affect a county's responsibility under Section 70311 (formerly Section 68073) (responsibility for court operations and facilities) and the Trial Court Facilities Act with regard to existing superior court facilities.

**Gov't Code § 69640 (added). Superior court districts in Los Angeles County**

SEC. \_\_\_\_ . Article 4 (commencing with Section 69640) is added to Chapter 5 of Title 8 of the Government Code, to read:

Article 4. Superior Court Districts in Los Angeles County

69640. (a) The superior court in Los Angeles County may by local rule establish superior court districts within which one or more sessions of the court shall be held.

(b) The superior court districts established by county ordinance and in effect as of January 1, 2003, shall continue to be recognized as the superior court districts until the court enacts a local rule as provided in subdivision (a).

**Comment.** Section 69640 supersedes former Section 69641. It reflects enactment of the Trial Court Funding Act. See Section 77001 (local trial

court management). See also Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69740 (repealed). Population of city**

SEC. \_\_\_\_\_. Section 69740 of the Government Code is repealed.

~~69740. The determination of whether a city has the population prescribed in this article shall be made on the basis of the last preceding census taken under the authority of the Congress or the Legislature.~~

**Comment.** Section 69740 is repealed to reflect enactment of new Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69740 (added). Number and location of trial court sessions**

SEC. \_\_\_\_\_. Section 69740 is added to the Government Code, to read:

69740. (a) Notwithstanding any other provision of law, each trial court shall determine the number and location of sessions of the court necessary for the prompt disposition of the business before the court. In making this determination, the court shall consider, among other factors, the impact of this provision on court employees pursuant to Section 71634, the availability and adequacy of facilities for holding the court session at the specific location, the efficiency and cost of holding the session at the specific location, any applicable security issues, and the convenience to the parties and the public served by the court. Nothing in this section precludes a session from being held in a building other than a courthouse.

(b) In appropriate circumstances, upon agreement of the presiding judges of the courts, and in the discretion of the court, the location of a session may be outside the county, except that the consent of the parties shall be necessary to the holding of a criminal jury trial outside the county. The venue of a case whose session is held outside the county pursuant to

this section shall be deemed to be the home county of the court in which the matter was filed. Nothing in this section shall provide a party with the right to seek a change of venue unless otherwise provided by statute. No party shall have any right to request the court to exercise its discretion under this section.

(c) The Judicial Council may adopt rules that address an appropriate mechanism for sharing of expenses and resources between the court holding the session and the court hosting the session.

**Comment.** Section 69740 continues the substance of former Section 69645 and adds language to subdivision (a) to make clear that a session may be held outside of the courthouse in a private or public building. See former Code Civ. Proc. § 116.250 (small claims court sessions) (1998 Cal. Stat. ch. 931, § 40). The clause “necessary for the prompt disposition of the business before the court” is also added to subdivision (a). It is drawn from former Family Code Section 1811 (assignment of judges) (1992 Cal. Stat. ch. 162, § 10).

For provisions relating to restatements and continuations of existing law, see Section 2.

**Gov’t Code § 69741 (repealed). Regular and special sessions**

SEC. \_\_\_\_\_. Section 69741 of the Government Code is repealed.

~~69741. Except as otherwise provided by Section 68115, each superior court shall hold its sessions:~~

~~(a) At the location or locations in each superior court district specified by ordinance adopted pursuant to Article 4 (commencing at Section 69640) of this chapter.~~

~~(b) In every county in which such an ordinance is not in effect, at the county seat and at such other locations, if any, as provided in this article.~~

~~The superior court shall hold regular sessions commencing on the first Mondays of January, April, July, and October, and special sessions at such other times as may be prescribed by the judges of the court, except that in the City and County of~~

~~San Francisco the presiding judge shall prescribe the times of holding such special sessions.~~

**Comment.** Section 69741 is repealed to reflect:

(1) Enactment of Section 69740(a) (number and location of trial court sessions).

(2) Repeal of Article 4 (commencing with former Section 69640).

(3) The fact that the references to regular and special sessions are obsolete. Code of Civil Procedure Sections 74, 133, and 134 authorize superior courts to hold sessions at all times, unless specifically prohibited by law.

**Gov't Code § 69742 (repealed). Sessions in cities of 35,000 and eight miles distant**

SEC. \_\_\_\_\_. Section 69742 of the Government Code is repealed.

~~69742. A session of the superior court shall be held at each city with a population of not less than 35,000 and in which the city hall is not less than eight miles from the site of the county courthouse. If such a city has a population of more than 125,000, at least three regular sessions of the superior court shall be held concurrently.~~

**Comment.** Section 69742 is repealed to reflect:

(1) Enactment of Section 69740(a) (number and location of trial court sessions).

(2) Repeal of Section 69741 (regular and special sessions).

**Gov't Code § 69743 (repealed). Additional sessions**

SEC. \_\_\_\_\_. Section 69743 of the Government Code is repealed.

~~69743. By an order filed with the clerk of the court and published as a majority of the judges of the superior court of the county prescribe, such a majority, when it deems it necessary or convenient, may provide for and direct the holding of additional sessions in each of the cities described in Section 69742.~~

**Comment.** Section 69743 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69744 (repealed). Sessions at other locations**

SEC. \_\_\_\_\_. Section 69744 of the Government Code is repealed.

~~69744. When the judges of the superior court of a county deem it necessary or advisable, by order filed with the clerk of the court and published as they prescribe, they may direct that the court be held or continued:~~

~~(a) At any place in the county, not less than 120 miles distant from the county seat.~~

~~(b) At any other city in the county with a population of not less than 7,000, in which the city hall is not less than 55 miles from the site of the county courthouse.~~

~~(c) At any other city in the county with a population of not less than 2,200 in which the city hall is not less than 60 miles from the site of the county courthouse.~~

**Comment.** Section 69744 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69744.5 (repealed). Sessions in unincorporated territory**

SEC. \_\_\_\_\_. Section 69744.5 of the Government Code is repealed.

~~69744.5. When a majority of the judges of the superior court deem it necessary or advisable, by order filed with the clerk of the court and published as the judges prescribe, the judges may direct that the court be held at least once a week at any designated place in the county, not less than 45 miles distant from the county seat, measured by air line. The place designated shall be within a former judicial district composed wholly of unincorporated territory, with a population of more than 40,000 as determined pursuant to Section 71043. A majority of the judges may limit the type of judicial proceedings which may be heard by the court at such place to probate matters and matters relating to domestic relations.~~

**Comment.** Section 69744.5 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions). See also Section 69508(a) (presiding judge shall distribute business of court); Cal. R. Ct. 6.603 (duties of presiding judge).

**Gov't Code § 69745 (repealed). Sessions in cities of 7,000 and 55 miles distant**

SEC. \_\_\_\_\_. Section 69745 of the Government Code is repealed.

~~69745. A session of the superior court may be held for a period not exceeding two weeks in any one month at each city with a population of not less than 7,000 in which the city hall is not less than 55 miles from the site of the county courthouse.~~

**Comment.** Section 69745 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69745.5 (repealed). Sessions in unincorporated area and 55 miles distant**

SEC. \_\_\_\_\_. Section 69745.5 of the Government Code is repealed.

~~69745.5. A session of the superior court may be held for a period not exceeding two weeks in any month at any location within the county, not less than 55 miles from the site of the county courthouse, with the permission of the county board of supervisors and the approval of either the presiding judge or the majority of the judges of such court, except that such two-week period may be extended as necessary to complete any trial or hearing which is in progress and is not completed within the initial two-week period.~~

**Comment.** Section 69745.5 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69746 (repealed). Sessions in cities of 20,000 and 30 miles distant**

SEC. \_\_\_\_\_. Section 69746 of the Government Code is repealed.

~~69746. At least one session of the superior court shall be held in each city with a population of not less than 20,000 in which the city hall is not less than 30 miles from the site of the county courthouse.~~

**Comment.** Section 69746 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69746.5 (repealed). Sessions in judicial district in Kern County**

SEC. \_\_\_\_\_. Section 69746.5 of the Government Code is repealed.

~~69746.5. In a county of the 14th class, at least one session of the superior court may be held at a location designated by the board of supervisors which is not less than 40 miles, nor more than 50 miles, from the site of the county courthouse. However, at such time on or after July 1, 1990, as the board of supervisors finds that there are sufficient funds for this purpose, the board of supervisors shall designate a location therefor which is within a judicial district, or former district in a county in which there is no municipal court, with a population of more than 40,000 as determined pursuant to Section 71043.~~

**Comment.** Section 69746.5 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69747 (repealed). Sessions in cities of 50,000 and six miles distant**

SEC. \_\_\_\_\_. Section 69747 of the Government Code is repealed.

~~69747. At least one session of the superior court shall be held in each city with a population of not less than 50,000 in which the city hall is not less than six miles from the site of the county courthouse.~~

**Comment.** Section 69747 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69748 (repealed). Sessions in cities of 10,000 and 18 miles distant**

SEC. \_\_\_\_\_. Section 69748 of the Government Code is repealed.

~~69748. At least one session of the superior court shall be held in each city to which all of the following conditions apply:~~

~~(a) The city hall is not less than 18 miles from the site of the county courthouse.~~

~~(b) The city has a population of not less than 10,000.~~

~~(c) Within the 10-mile radius from the city hall there is a population of not less than 50,000.~~

~~(d) There are residing in the county at least 18 miles from the county courthouse not less than 15,000 persons, some of whom would be required to travel 50 miles to attend court at such city and at least 10 miles farther in order to attend the superior court at the county courthouse, or any other place where sessions of the superior court have been established.~~

~~(e) Other than subdivision (c) of this section, the distances provided for in this section shall be measured by following the shortest road or roads connecting the points in question.~~

**Comment.** Section 69748 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69748.1 (repealed). Sessions in cities of 9,700 and 70 miles distant**

SEC. \_\_\_\_\_. Section 69748.1 of the Government Code is repealed.

~~69748.1. At least one session of the superior court shall be held in each city to which all of the following conditions apply:~~

~~(a) The city hall is not less than 70 miles from the site of the county courthouse.~~

~~(b) The city has a population of not less than 9,700.~~

~~(c) Within the 30-mile radius from the city hall there is a population of not less than 56,000.~~

~~(d) There are residing in the county at least 40 miles from the county courthouse not less than 69,000 persons, some of whom would be required to travel 80 miles to attend court at such city and at least 70 miles farther in order to attend the superior court at the county courthouse, or any other place where sessions of the superior court have been established.~~

~~At least four sessions of the superior court shall be held in each city to which all of the foregoing conditions apply, and which city in addition is located in a county in which there are at least 12 judges of the superior court.~~

**Comment.** Section 69748.1 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69749 (repealed). Fourteen mile limit**

SEC. \_\_\_\_ . Section 69749 of the Government Code is repealed.

~~69749. Except in those cities in which sessions of the superior court are required by law to be held and in which such sessions were being held on or before July 1, 1954, no sessions of the superior court shall be held in any city thereafter meeting the requirements of this article unless the city hall of that city is 14 miles or more from the city hall of the nearest city other than the county seat in which one or more sessions of the superior court are held.~~

~~If after October 1, 1949, such sessions are authorized by law to be held in such city for the first time, the adequacy of the proposed court's quarters in which such sessions are to be held shall be approved in advance by a majority of the judges of the superior court.~~

**Comment.** Section 69749 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69749.2 (repealed). Sessions prior to ninety-first day after adjournment of 1959 legislative session**

SEC. \_\_\_\_\_. Section 69749.2 of the Government Code is repealed.

~~69749.2. Except in those cities in which sessions of the superior court are required by law to be held and in which sessions were being held on the effective date of this section, no sessions of the superior court shall be held prior to the ninety-first day after the adjournment of the 1959 Session of the Legislature in any city meeting the requirements of this article unless the board of supervisors by resolution provides an earlier date upon which such sessions may be held.~~

**Comment.** Section 69749.2 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69749.3 (repealed). Sessions in Palm Springs**

SEC. \_\_\_\_\_. Section 69749.3 of the Government Code is repealed.

~~69749.3. Notwithstanding the provisions of this article, sessions of the superior court in Riverside County may be held in Palm Springs at such times as may be prescribed by the judges sitting pursuant to Section 69748.1.~~

**Comment.** Section 69749.3 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69749.4 (repealed). Sessions in Indian Wells Valley area of northeast Kern County**

SEC. \_\_\_\_\_. Section 69749.4 of the Government Code is repealed.

~~69749.4. Notwithstanding any other provision of this article, sessions of the superior court shall be held in the Indian Wells Valley area of northeast Kern County at such times as may be prescribed by the judges.~~

**Comment.** Section 69749.4 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69751.5 (repealed). Sessions in cities of 7,000 and 30 miles distant**

SEC. \_\_\_\_\_. Section 69751.5 of the Government Code is repealed.

~~69751.5. The judge or a majority of the judges of the superior court in and for any county, with the approval of the board of supervisors, may establish a session of the superior court in any city with a population in excess of seven thousand (7,000) inhabitants and in which the city hall is located more than thirty (30) miles from the county courthouse if the judge or a majority of the judges determines that such session is necessary to serve the convenience of the residents of the county and promote the ends of justice.~~

**Comment.** Section 69751.5 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 69752 (repealed). Sessions in cities other than county seat**

SEC. \_\_\_\_\_. Section 69752 of the Government Code is repealed.

~~69752. (a) Notwithstanding any other provision of this code, no superior court will hold sessions in any city other than the county seat except with the approval of the board of supervisors.~~

~~(b) The board of supervisors may terminate superior court sessions being held in any city other than the county seat.~~

~~(c) The board of supervisors of counties seeking to establish or terminate branch court sessions shall request the recommendations and advice of the Judicial Council before taking action.~~

~~The board of supervisors, under this section, may not terminate sessions of the superior court in any city in which sessions of the superior court were being held on or before January 1, 1957, in a county now having 1 million population or more which is contiguous to a county of 7 million~~

~~population or more and sessions of the superior court existing in any such county on or about January 1, 1970 are hereby reestablished if they have been terminated during 1970 and may not be terminated by the board of supervisors.~~

**Comment.** Section 69752 is repealed to reflect enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code §§ 69790-69800 (repealed). Extra sessions**

SEC. \_\_\_\_\_. Article 6 (commencing with Section 69790) of Chapter 5 of Title 8 of the Government Code is repealed.

**Comment.** Sections 69790-69800 are repealed to reflect:

(1) The fact that provisions regarding extra sessions are obsolete. Code of Civil Procedure Sections 74, 133, and 134 authorize superior courts to hold sessions at all times, unless specifically prohibited by law. See also Cal. Const. art. VI, § 6 (Chief Justice may assign judge to another court); Sections 68540.7 (compensation of assigned judge), 69508 (duties of presiding judge), 69741.5 (number of sessions equal to number of judges elected, appointed, or assigned); Code Civ. Proc. § 166 (authority of superior court judge); Cal. R. Ct. 6.603 (authority and duties of presiding judge).

(2) Enactment of Section 69740(a) (number and location of trial court sessions).

(3) The fact that every superior court has at least two judgeships as a result of trial court unification. See Section 69580 *et seq.* (number of judges). Where a court has only one judge due to a vacancy or otherwise, a reference to the judges of the court means the sole judge of the court. See Section 13 (plural includes singular).

**Gov't Code § 69841 (amended). Court clerk's attendance**

SEC. \_\_\_\_\_. Section 69841 of the Government Code is amended to read:

69841. The clerk of the superior court shall attend each session of the superior court in his *the* county and upon the judge or judges of the court in chambers when required.

**Comment.** Section 69841 is amended to delete language referring to "the judge" of the court. Every superior court has at least two judgeships as a result of trial court unification. See Section 69580 *et seq.* (number of judges). Where a court has only one judge due to a vacancy or otherwise,

a reference to the judges of the court means the sole judge of the court. See Section 13 (plural includes singular).

**Gov't Code § 69891 (repealed). Appointment and salary of stenographer or secretary**

SEC. \_\_\_\_\_. Section 69891 of the Government Code is repealed.

~~69891. In each county with a population of 65,500 or over where there is no jury commissioner provided, and with not more than three departments of the superior court in the county, to assist the court in the transaction of its judicial business, the judges of the court may appoint one competent stenographer or secretary skilled in such work for each judge of the superior court of the county, who shall render such service as the judge may require each day. The monthly salary of each such stenographer or secretary shall be three hundred dollars (\$300).~~

~~The salary shall be paid out of the salary fund of the county, or if there is none, out of such fund as other salary demands against the county are paid. The salary shall be allowed and audited in the same manner as the law requires for other salary demands against the county.~~

**Comment.** Section 69891 is repealed to reflect the fact that each county has a jury commissioner. See Code Civ. Proc. § 195 (jury commissioner).

The section is also repealed to reflect enactment of the Trial Court Funding Act and Trial Court Employment Protection and Governance Act. See Sections 71615(c)(1) (preservation of employees' job classifications), 71620 (trial court personnel), 71623 (salaries), 77003 ("court operations" defined), 77009 (Trial Court Operations Fund), 77200 (state funding of trial court operations).

**Gov't Code § 69893 (repealed). Secretary performing duties of jury commissioner**

SEC. \_\_\_\_\_. Section 69893 of the Government Code is repealed.

~~69893. In any county where there is a secretary of the judges of the superior court, a majority of the judges may require the secretary to perform the duties of jury commissioner in addition to his regular duties as secretary.~~

**Comment.** Section 69893 is repealed to reflect the fact that each county has a jury commissioner. See Code Civ. Proc. § 195 (jury commissioner).

The section is also repealed to reflect enactment of the Trial Court Employment Protection and Governance Act. See Sections 71620 (trial court personnel), 71673 (authority of court).

**Gov't Code § 69894.2 (repealed). Additional superior court commissioners, officers, and employees**

SEC. \_\_\_\_ . Section 69894.2 of the Government Code is repealed.

~~69894.2. With the approval of the board of supervisors the court may establish such additional titles and pay rates as are required and with the approval of the board of supervisors may appoint and employ such additional commissioners, officers, assistants and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon it and its members. Rates of compensation of all officers, assistants and other employees may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court.~~

~~Such appointments or changes in compensation made pursuant to this section shall be on an interim basis and shall expire 90 days after the adjournment of the next regular session of the Legislature unless ratified at such session.~~

**Comment.** Section 69894.2 is repealed to reflect:

(1) Enactment of the Trial Court Employment Protection and Governance Act. See Sections 71615(c)(1) (preservation of employees' job classifications), 71620 (trial court personnel), 71622 (subordinate judicial officers), 71623 (salaries), 71640-71645 (employment selection and advancement), 71673 (authority of court). See also Section 69941 (appointment of official reporters).

(2) Enactment of the Trial Court Funding Act. See Sections 77001 (local trial court management), 77003 (“court operations” defined), 77200 (state funding of trial court operations).

**Gov’t Code § 69902.5 (repealed). Inclusion in retirement system**

SEC. \_\_\_\_\_. Section 69902.5 of the Government Code is repealed.

~~69902.5. Any county having a retirement system for its employees may include in it the jury commissioner, deputy jury commissioners, and other assistants, attaches and employees of the office of the jury commissioner of that county whose salaries are paid by the county. Where such action is taken by any county, the included jury commissioner, deputy jury commissioners, and other assistants, attaches and employees of the office of the jury commissioner shall be subject to all of the provisions of the local retirement system.~~

**Comment.** Section 69902.5 is repealed to reflect enactment of the Trial Court Employment Protection and Governance Act. See Sections 71620 (trial court personnel), 71623 (salaries), 71624 (retirement plans), 71629 (trial court employment benefits not affected), 71673 (authority of court). See also Code Civ. Proc. § 195 (jury commissioner).

**Gov’t Code § 71081 (repealed). Eligibility of municipal court judge to multiple courts**

SEC. \_\_\_\_\_. Section 71081 of the Government Code is repealed.

~~71081. Whenever the judge of an existing court would be entitled pursuant to this article to become the judge of more than one court, he or she shall file a written statement with the county elections official electing the judicial office to which he or she will assert his or her claim of eligibility. Failure to file a statement is deemed an election by the judge to assert his or her claim of eligibility to office in the court of the district in which the existing court is located.~~

**Comment.** Section 71081 is repealed to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

**Gov't Code §§ 71340-71342 (repealed). Sessions of court**

SEC. \_\_\_\_\_. Article 9 (commencing with Section 71340) of Chapter 6 of Title 8 of the Government Code is repealed.

**Comment.** Sections 71340-71342 are repealed to reflect:

(1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. See Section 69741.5 (number of sessions permissible at same time). *Cf.* Section 71042.5 (preservation of judicial districts for purpose of publication).

(2) Enactment of Section 69740(a) (number and location of trial court sessions).

(3) Repeal of Section 68812.

**Gov't Code § 71601 (amended). Definitions**

SEC. \_\_\_\_\_. Section 71601 of the Government Code is amended to read:

71601. For purposes of this chapter, the following definitions shall apply:

(a) "Appointment" means the offer to and acceptance by a person of a position in the trial court in accordance with this chapter and the trial court's personnel policies, procedures, and plans.

(b) "Employee organization" means any organization that includes trial court employees and has as one of its primary purposes representing those employees in their relations with the trial court.

(c) "Hiring" means appointment as defined in subdivision (a).

(d) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice.

(e) “Meet and confer in good faith” means that a trial court or representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter or in a local rule, or when the procedures are utilized by mutual consent.

(f) “Personnel rules,” “personnel policies, procedures, and plans,” and “rules and regulations” mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) “Promotion” means promotion within the trial court as defined in the trial court’s personnel policies, procedures, and plans, subject to meet and confer in good faith.

(h) “Recognized employee organization” means an employee organization that has been formally acknowledged to represent trial court employees by the county under Sections 3500 to 3510, inclusive, prior to the implementation date of this chapter, or by the trial court under Rules 2201 to 2210, inclusive, of the California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to 70219, inclusive, or Article 3 (commencing with Section 71630) of this chapter.

(i) “Subordinate judicial officer” means an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, *child support commissioner*, referee, *traffic*

*trial commissioner*, traffic referee, juvenile *court* referee, *juvenile hearing officer*, and *temporary judge pro tempore*.

(j) “Transfer” means transfer within the trial court as defined in the trial court’s personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) “Trial court” means a superior court ~~or a municipal court~~.

(l) “Trial court employee” means a person who is both of the following:

(1) Paid from the trial court’s budget, regardless of the funding source. For the purpose of this paragraph, “trial court’s budget” means funds from which the presiding judge of a trial court, or his or her designee, has authority to control, authorize, and direct expenditures, including, but not limited to, local revenues, all grant funds, and trial court operations funds.

(2) Subject to the trial court’s right to control the manner and means of his or her work because of the trial court’s authority to hire, supervise, discipline, and terminate employment. For purposes of this paragraph only, the “trial court” includes the judges of a trial court or their appointees who are vested with or delegated the authority to hire, supervise, discipline, and terminate.

(m) A person is a “trial court employee” if and only if both paragraphs (1) and (2) of subdivision (l) are true irrespective of job classification or whether the functions performed by that person are identified in Rule 810 of the California Rules of Court. The phrase “trial court employee” includes those subordinate judicial officers who satisfy paragraphs (1) and (2) of subdivision (l). The phrase “trial court employee” does not include temporary employees hired through agencies, jurors, individuals hired by the trial court pursuant to an independent contractor agreement, individuals for whom the county or trial court reports income to the Internal Revenue

Service on a Form 1099 and does not withhold employment taxes, sheriffs, and judges whether elected or appointed. Any temporary employee, whether hired through an agency or not, shall not be employed in the trial court for a period exceeding 180 calendar days.

**Comment.** Subdivision (i) of Section 71601 is amended to refer to types of subordinate judicial officers. See former Section 72450 (traffic trial commissioners); Fam. Code §§ 4250-4253 (child support commissioners); Welf. & Inst. Code § 255 (juvenile hearing officers). Subdivision (i) is also amended for consistency of terminology. See Cal. Const. art. VI, § 21 (temporary judge).

Subdivision (k) is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

**Gov't Code § 71622 (amended). Subordinate judicial officers**

SEC. \_\_\_\_\_. Section 71622 of the Government Code is amended to read:

71622. (a) Each trial court may establish and may appoint such subordinate judicial officers as are deemed necessary for the performance of subordinate judicial duties as are authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court.

(b) The appointment *or termination* of a subordinate judicial officer shall be made by order *of the presiding judge or another judge or a committee to whom appointment or termination authority is delegated by the court*, entered in the minutes of the court.

(c) The Judicial Council shall promulgate rules establishing the minimum qualifications and training requirements for subordinate judicial officers.

(d) The presiding judge of a superior court may cross-assign one type of subordinate judicial officer to exercise all the

powers and perform all the duties authorized by law to be performed by another type of subordinate judicial officer, but only if the person cross-assigned satisfies the minimum qualifications and training requirements for the new assignment established by the Judicial Council pursuant to subdivision (c).

(e) The superior courts of two or more counties may appoint the same person as court commissioner.

(f) As of the implementation date of this chapter, all persons who were authorized to serve as subordinate judicial officers pursuant to other provisions of law shall be authorized by this section to serve as subordinate judicial officers at their existing salary rate, which may be a percentage of the salary of a judicial officer.

**Comment.** Subdivision (b) of Section 71622 is amended to make clear that the court's authority to appoint and terminate a subordinate judicial officer includes authority to delegate the appointment or termination decision. For example, the court may delegate to the presiding judge of the juvenile court authority to appoint or terminate a juvenile court referee. *Cf.* former Welf. & Inst. Code § 247 (juvenile court referee).

The authority to delegate a subordinate judicial officer appointment or termination decision is a specific instance of the general authority of a trial court to manage its affairs in a manner appropriate for its circumstances. *Cf.* Section 77001; Cal. R. Ct. 6.601 *et seq.* (trial court management).

**Gov't Code § 73648 (repealed). Sessions within the El Cajon Judicial District**

SEC. \_\_\_\_\_. Section 73648 of the Government Code is repealed.

~~73648. The municipal court shall hold sessions at such location, or locations, within the El Cajon Judicial District as the Board of Supervisors of the County of San Diego may designate.~~

**Comment.** Section 73648 is repealed to reflect:

(1) Unification of the municipal and superior courts in San Diego County pursuant to former Section 5(e) of Article VI of the California Constitution, effective December 1, 1998.

(2) Enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code § 74748 (repealed). Sessions within the South Bay Judicial District**

SEC. \_\_\_\_\_. Section 74748 of the Government Code is repealed.

~~74748. The municipal court shall hold sessions in the City of Chula Vista and at such other places as the board of supervisors, by ordinance, may designate.~~

**Comment.** Section 74748 is repealed to reflect:

(1) Unification of the municipal and superior courts in San Diego County pursuant to former Section 5(e) of Article VI of the California Constitution, effective December 1, 1998.

(2) Enactment of Section 69740(a) (number and location of trial court sessions).

**Gov't Code §§ 74920-74920.6 (repealed). Tulare County Municipal Court District**

SEC. \_\_\_\_\_. Article 36 (commencing with Section 74920) of Chapter 10 of Title 8 of the Government Code is repealed.

**Comment.** Sections 74920-74920.6 are repealed to reflect:

(1) Unification of the municipal and superior courts in Tulare County pursuant to former Section 5(e) of Article VI of the California Constitution, effective July 27, 1998.

(2) Enactment of Section 69740(a) (number and location of trial court sessions).

## HARBORS AND NAVIGATION CODE

**Harb. & Nav. Code § 4042 (amended). Harbor commissioners**

SEC. \_\_\_\_\_. Section 4042 of the Harbors and Navigation Code is amended to read:

4042. (a) Each commissioner shall, within 20 days after receiving notice of appointment, qualify by taking and

subscribing the constitutional oath of office, and by executing and filing with the clerk of the county wherein the commissioner is appointed, a bond in a sum to be fixed by the board of supervisors which bond, when approved by the judge or judges of the superior court of the county, shall be recorded in the office of the county recorder, as other official bonds are recorded, at any time subsequent to 20 days after the appointment.

(b) The commissioners, or a majority of them having qualified, shall meet at some convenient place in the county and organize by electing one of their number chairman.

**Comment.** Subdivision (a) of Section 4042 is amended for consistency of terminology. See Code Civ. Proc. §§ 995.020 (applicability of chapter), 995.410 (approval of bond by court). The reference to “the judge” is also obsolete since every superior court has at least two judgeships as a result of trial court unification. See Gov’t Code § 69580 *et seq.* (number of judges).

## PENAL CODE

### **Penal Code § 825 (amended). Appearance before magistrate**

SEC. \_\_\_\_ . Section 825 of the Penal Code is amended to read:

825. (a)(1) Except as provided in paragraph (2), the defendant shall in all cases be taken before the magistrate without unnecessary delay, and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays.

(2) When the 48 hours prescribed by paragraph (1) expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next regular court session on the judicial day immediately following. If the 48-hour period expires at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, when the defendant’s arrest occurs on a Wednesday after the conclusion of the day’s regular court

session, and provided that the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, provided that the Friday is not a court holiday.

(b) After the arrest, any attorney at law entitled to practice in the courts of record of California, may, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of five hundred dollars (\$500), to be recovered by action in any court of competent jurisdiction.

**Comment.** Subdivision (a)(2) of Section 825 is amended to reflect the repeal of Government Code Section 69741 (regular and special sessions).

**Penal Code § 830.1 (amended). Peace officers**

SEC. \_\_\_\_ . Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, any chief of police, or police officer of a district, including police officers of the San Diego Unified Port District Harbor Police, authorized by statute to maintain a police department, any marshal or deputy marshal of a superior *court* or county ~~court~~, any port warden or special officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is

a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves.

(2) Where the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) The Attorney General and special agents and investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of the County of Los Angeles, and any deputy sheriff of the Counties of Kern, Humboldt, Imperial, Mendocino, Plumas, Riverside, San Diego, Santa Barbara, Siskiyou, Sonoma, Sutter, and Tehama who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority

extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency.

**Comment.** Subdivision (a) of Section 830.1 is amended to make clear that a marshal or deputy marshal may be employed by a superior court or by a county. Marshals and deputy marshals who are court employees are subject to the provisions of the Trial Court Employment Protection and Governance Act. See, e.g., Gov't Code §§ 71601(*l*) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial court employees), 71620 (trial court personnel).

**Penal Code § 853.6a (amended). Appearance before juvenile court**

SEC. \_\_\_\_ . Section 853.6a of the Penal Code is amended to read:

853.6a. (a) Except as provided in subdivision (b), if the person arrested appears to be under the age of 18 years, and the arrest is for a violation listed in Section 256 of the Welfare and Institutions Code, other than an offense involving a firearm, the notice under Section 853.6 shall instead provide that the person shall appear before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been committed, and the officer shall instead, as soon as practicable, file the duplicate notice with the prosecuting attorney unless the prosecuting attorney directs the officer to file the duplicate notice with the clerk of the juvenile court, the juvenile court referee, or the juvenile traffic hearing officer. If the notice is filed with the prosecuting attorney, within 48 hours before the date specified on the notice to appear, the prosecutor, within his or her discretion, may initiate proceedings by filing the notice or a formal petition with the clerk of the juvenile court, or the

juvenile court referee or juvenile traffic hearing officer, before whom the person is required to appear by the notice.

(b) A juvenile court may exercise the option of not requiring a mandatory appearance of the juvenile before the court for infractions contained in the Vehicle Code, except those related to drivers' licenses as specified in Division 6 (commencing with Section 12500), those related to financial responsibility as specified in Division 7 (commencing with Section 16000), speeding violations as specified in Division 11 (commencing with Section 21000) where the speed limit was violated by 15 or more miles per hour, and those involving the use or possession of alcoholic beverages as specified in Division 11 (commencing with Section 12500).

(c) In counties where an Expedited Youth Accountability Program is operative, as established under Section 660.5 of the Welfare and Institutions Code, a peace officer may issue a citation and written promise to appear in juvenile court or record the minor's refusal to sign the promise to appear and serve notice to appear in juvenile court, according to the requirements and procedures provided in that section.

(d) Nothing in this section shall be construed to limit the discretion of a peace officer or other person with the authority to enforce laws pertaining to juveniles to take the minor into custody pursuant to Article 15 (commencing with Section 625) of the Welfare and Institutions Code.

**Comment.** Subdivision (a) of Section 853.6a is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

**Penal Code § 896 (amended). Selection of grand jurors**

SEC. \_\_\_\_ . Section 896 of the Penal Code is amended to read:

896. (a) Immediately after such an order pursuant to Section 895 is made, the court shall select the grand jurors required by personal interview for the purpose of ascertaining

whether they possess the qualifications prescribed by subdivision (a) of Section 893. If a person so interviewed, in the opinion of the court, possesses such qualifications, in order ~~for his name~~ to be listed ~~he~~ *the person* shall sign a statement declaring that ~~he~~ *the person* will be available for jury service for the number of hours usually required of a member of the grand jury in that county.

(b) The selections shall be made of men and women who are not exempt from serving and who are suitable and competent to serve as grand jurors pursuant to Sections 893, 898, and 899. The court shall list the persons so selected and required by the order to serve as grand jurors during the ensuing fiscal year of the county, or until a new list of grand jurors is provided, and shall at once place this list in the possession of the ~~county clerk~~ *jury commissioner*.

**Comment.** Subdivision (b) of Section 896 is amended to reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Gov't Code § 26800 (county clerk acting as clerk of superior court). Subdivision (b) is also amended to reflect enactment of the Trial Court Funding Act. See Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of trial court operations); Cal. R. Ct. 810(d), Function 2 (salaries, wages, and benefits of jury commissioner and jury services staff, including grand jury selection, allowable court operations costs). See also Cal. Standards Jud. Admin. § 17(b) (list of qualified grand jury candidates prepared by jury commissioner).

**Penal Code § 900 (amended). Duties of jury commissioner**

SEC. \_\_\_\_ . Section 900 of the Penal Code is amended to read:

900. On receiving the list of persons selected by the court, the ~~county clerk~~ *jury commissioner* shall file it in ~~his~~ *the jury commissioner's* office and have such list, which shall include the name of the judge who selected each person on the list, published one time in a newspaper of general circulation, as defined in Section 6000 of the Government Code, in the

county. The ~~county clerk~~ *jury commissioner* shall thereupon do either of the following:

(a) Write down the names on the list onto separate pieces of paper of the same size and appearance, fold each piece so as to conceal the name thereon, and deposit the pieces in a box to be called the “grand jury box.”

(b) Assign a number to each name on the list and place, in a box to be called the “grand jury box,” markers of the same size, shape, and color, each containing a number which corresponds with a number on the list.

**Comment.** Section 900 is amended to reflect elimination of the county clerk’s role as ex officio clerk of the superior court. See former Gov’t Code § 26800 (county clerk acting as clerk of superior court).

The section is also amended to reflect enactment of the Trial Court Funding Act. See Gov’t Code §§ 77003 (“court operations” defined), 77200 (state funding of trial court operations); Cal. R. Ct. 810(d), Function 2 (salaries, wages, and benefits of jury commissioner and jury services staff, including grand jury selection, allowable court operations costs). See also Cal. Standards Jud. Admin. § 17(b) (list of qualified grand jury candidates prepared by jury commissioner).

**Penal Code § 903 (repealed). Applicability of article**

SEC. \_\_\_\_ . Section 903 of the Penal Code is repealed.

~~903. This article applies in each county in which a jury commissioner is appointed pursuant to Section 195 of the Code of Civil Procedure and in each county in which the secretary of the judges of the superior court performs the duties of jury commissioner pursuant to Section 69893 of the Government Code.~~

**Comment.** Section 903 is repealed to reflect:

(1) The fact that each county has a jury commissioner. See Code Civ. Proc. § 195 (jury commissioner).

(2) The repeal of Government Code Section 69893.

It should be noted that application of the article is not mandatory. See Sections 903.1 (judges may adopt written rules or instructions to guide jury commissioner), 903.4 (judges may select grand jurors without regard to list returned by jury commissioner); *People v. Goodspeed*, 22 Cal.

App. 3d 690, 701, 99 Cal. Rptr. 696 (1972) (provisions of Penal Code § 903 *et seq.* not mandatory).

**Penal Code § 904 (amended). Drawing of grand jury**

SEC. \_\_\_\_\_. Section 904 of the Penal Code is amended to read:

904. Every superior court, whenever in its opinion the public interest so requires, shall make and file with the ~~county clerk~~ *jury commissioner* an order directing a grand jury to be drawn. Such order shall designate the number of grand jurors to be drawn, which shall not be less than 29 or more than 40 in counties having a population exceeding four million and not less than 25 nor more than 30 in other counties.

**Comment.** Section 904 is amended to reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Gov't Code § 26800 (county clerk acting as clerk of superior court).

The section is also amended to reflect enactment of the Trial Court Funding Act. See Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of trial court operations); Cal. R. Ct. 810(d), Function 2 (salaries, wages, and benefits of jury commissioner and jury services staff, including grand jury selection, allowable court operations costs). See also Cal. Standards Jud. Admin. § 17(b) (list of qualified grand jury candidates prepared by jury commissioner).

**Penal Code § 908 (amended). Selection of grand jury**

SEC. \_\_\_\_\_. Section 908 of the Penal Code is amended to read:

908. If the required number of the persons summoned as grand jurors are present and not excused, such required number shall constitute the grand jury. If more than the required number of such persons are present, the ~~clerk~~ *jury commissioner* shall write their names on separate ballots, which ~~he~~ *the jury commissioner* shall fold so that the names cannot be seen, place them in a box, and draw out the required number of them. The persons whose names are on the ballots so drawn shall constitute the grand jury. If less than the required number of such persons are present, the

panel may be filled as provided in Section 226 211 of the Code of Civil Procedure. If more of the persons summoned to complete a grand jury attend than are required, the requisite number shall be obtained by writing the names of those summoned and not excused on ballots, depositing them in a box, and drawing as above provided.

**Comment.** Section 908 is amended to replace “clerk” with “jury commissioner” for consistency with trial court funding principles. See Cal. R. Ct. 810(d), Function 2 (salaries, wages, and benefits of jury commissioner and jury services staff, including grand jury selection, allowable court operations costs). See also Cal. Standards Jud. Admin. § 17(b) (list of qualified grand jury candidates prepared by jury commissioner).

The section is also amended to correct a reference to former Code of Civil Procedure Section 226.

**Penal Code § 908.1 (amended). Filling of vacancies**

SEC. \_\_\_\_ . Section 908.1 of the Penal Code is amended to read:

908.1. When, after the grand jury consisting of the required number of persons has been impaneled pursuant to law, the membership is reduced for any reason, such vacancies within an existing grand jury may be filled, so as to maintain the full membership at the required number of persons, by the ~~clerk of the superior court~~ *jury commissioner*, in the presence of the court, drawing out sufficient names to fill the vacancies from the grand jury box, pursuant to law, or from a special venire as provided in Section 226 211 of the Code of Civil Procedure. No person selected as a grand juror to fill a vacancy pursuant to this section shall vote as a grand juror on any matter upon which evidence has been taken by the grand jury prior to the time of ~~his~~ *the person's* selection.

**Comment.** Section 908.1 is amended to replace “clerk of the superior court” with “jury commissioner” for consistency with trial court funding principles. See Cal. R. Ct. 810(d), Function 2 (salaries, wages, and benefits of jury commissioner and jury services staff, including grand jury selection, allowable court operations costs). See also Cal. Standards

Jud. Admin. § 17(b) (list of qualified grand jury candidates prepared by jury commissioner).

The section is also amended to correct a reference to former Code of Civil Procedure Section 226.

**Penal Code § 908.2 (amended). Staggered selection procedure**

SEC. \_\_\_\_ . Section 908.2 of the Penal Code is amended to read:

908.2. (a) Upon the decision of the superior court pursuant to Section 901 to adopt this method of selecting grand jurors, when the required number of persons have been impaneled as the grand jury pursuant to law, the ~~clerk~~ *jury commissioner* shall write the names of each such person on separate ballots. The ~~clerk~~ *jury commissioner* shall fold the ballots so that the names cannot be seen, place them in a box, and draw out half of such ballots, or in a county where the number of grand jurors is uneven, one more than half. The persons whose names are on the ballots so drawn shall serve for 12 months until July 1 of the following year. The persons whose names are not on the ballots so drawn shall serve for six months until January 1 of the following year.

(b) Each subsequent year, on January 2 and July 2, a sufficient number of grand jurors shall be impaneled to replace those whose service concluded the previous day. Those persons impaneled on January 2, shall serve until January 1 of the following year. Those persons impaneled on July 2, shall serve until July 1 of the following year. No person shall serve on the grand jury for more than one year.

(c) The provisions of subdivisions (a) and (b) ~~shall not be applicable~~ *do not apply* to the selection of grand jurors for an additional grand jury authorized pursuant to Sections 904.5, Section 904.6, 904.7, 904.8, and 904.9.

**Comment.** Subdivision (a) of Section 908.2 is amended to replace “clerk” with “jury commissioner” for consistency with trial court funding principles. See Cal. R. Ct. 810(d), Function 2 (salaries, wages, and benefits of jury commissioner and jury services staff, including grand

jury selection, allowable court operations costs). See also Cal. Standards Jud. Admin. § 17(b) (list of qualified grand jury candidates prepared by jury commissioner).

Subdivision (c) is amended to reflect the repeal of Sections 904.5, 904.7, 904.8, and 904.9.

**Penal Code § 1269b (amended). Bail**

SEC. \_\_\_\_ . Section 1269b of the Penal Code is amended to read:

1269b. (a) The officer in charge of a jail where an arrested person is held in custody, an officer of a sheriff's department or police department of a city who is in charge of a jail or is employed at a fixed police or sheriff's facility and is acting under an agreement with the agency that keeps the jail wherein an arrested person is held in custody, an employee of a sheriff's department or police department of a city who is assigned by the department to collect bail, the clerk of the ~~municipal~~ *superior* court of the ~~judicial district~~ *county* in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance; if that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule

of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior ~~and municipal~~ court judges in each county to prepare, adopt, and annually revise, ~~by a majority vote, at a meeting called by the presiding judge of the superior court of the county,~~ a uniform countywide schedule of bail for all bailable felony offenses *and for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.*

(d) *A court may by local rule prescribe the procedure by which the uniform countywide schedule of bail is prepared, adopted, and annually revised by the judges. If a court does not adopt a local rule, the uniform countywide schedule of bail shall be prepared, adopted, and annually revised by a majority of the judges.*

(e) In adopting a uniform countywide schedule of bail for all bailable *felony* offenses the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts that would bring a person within any of the following sections:

Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9, or Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge shall assign an

additional amount of required bail for offenses involving large quantities of controlled substances.

~~(d) The municipal court judges in each county, at a meeting called by the presiding judge of the municipal court at each county seat, or the superior court judges in each county in which there is no municipal court, at a meeting called by the presiding judge of the superior court, shall prepare, adopt, and annually revise, by a majority vote, a uniform, countywide schedule of bail for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.~~

~~(e) (f) Each~~ *The* countywide bail schedule shall contain a list of the offenses and the amounts of bail applicable thereto as the judges determine to be appropriate. If the ~~schedules do~~ *schedule does* not list all offenses specifically, ~~they~~ *it* shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the ~~schedules~~ *schedule*. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior and ~~municipal~~ court judge and commissioner in the county, and to the Judicial Council.

~~(f) (g)~~ Upon posting bail, the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

All money and surety bonds so deposited with an officer authorized to receive bail shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant issued or bail schedule fixed. If, in the case of felonies, an indictment is filed, the judge or clerk of the court

shall transmit all of the money and surety bonds to the clerk of the court.

(g) (h) If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his or her release from custody, Sections 1305 and 1306 apply.

**Comment.** Section 1269b is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. *Cf.* Code Civ. Proc. § 38 (judicial districts). Under subdivision (c), a single uniform countywide schedule of bail forailable felonies, misdemeanors, and infractions (except Vehicle Code infractions) is required.

Subdivision (d) is added to permit each superior court to provide its own procedure for the preparation, adoption, and annual revision of a countywide schedule of bail by the judges. Where a court does not provide its own procedure, the schedule of bail is to be prepared, adopted, and annually revised by a majority of the judges of the court.

**Penal Code § 3075 (amended). Board of parole commissioners**

SEC. \_\_\_\_ . Section 3075 of the Penal Code is amended to read:

3075. (a) There is in each county a board of parole commissioners, consisting of each of the following:

(1) The sheriff, or his or her designee, or, in a county with a department of corrections, the director of that department.

(2) The probation officer, or his or her designee.

(3) A member, not a public official, to be selected from the public by the presiding judge, ~~if any, or, if none, by the senior judge in point of service,~~ of the superior court.

(b) The public member of the county board of parole commissioners or his or her alternate shall be entitled to his or her actual traveling and other necessary expenses incurred in the discharge of his or her duties. In addition, the public member or his or her alternate shall be entitled to per diem at any rate that may be provided by the board of supervisors. The public member or his or her alternate shall hold office for a term of one year and in no event for a period exceeding

three consecutive years. The term shall commence on the date of appointment.

**Comment.** Subdivision (a)(3) of Section 3075 is amended to delete language referring to the senior judge. Every superior court has a presiding judge. See Gov't Code §§ 69508, 69508.5.

## PUBLIC UTILITIES CODE

### **Pub. Util. Code § 7814 (amended). Penalty for overcharge of fare**

SEC. \_\_\_\_ . Section 7814 of the Public Utilities Code is amended to read:

7814. Any corporation, or agent or employee thereof, demanding or charging a greater sum of money for fare on the cars of a street railroad than that fixed as provided by law forfeits to the person from whom the sum is received, or who is thus overcharged, the sum of two hundred dollars (\$200), to be recovered in a civil action, ~~in any justice's court having jurisdiction thereof,~~ against the corporation.

**Comment.** Section 7814 is amended to eliminate an obsolete reference to the former justice's court (justice of the peace court). Cal. Const. art. VI, § 1. For small claims jurisdiction, see Code Civ. Proc. § 116.220. For limited civil cases, see Code Civ. Proc. § 85. For unlimited civil cases, see Code Civ. Proc. § 88.

## STREETS AND HIGHWAYS CODE

### **Sts. & Hy. Code § 30865 (amended). Estimate by commissioners**

SEC. \_\_\_\_ . Section 30865 of the Streets and Highways Code is amended to read:

30865. If the estimate of the board is not agreed to by the owner or keeper of the bridge or ferry, it shall be fixed by three commissioners, one to be appointed by the board, one by the owner and keeper, and the third by the *presiding* judge of the superior court, who shall hear testimony and fix the value and cost according to the facts, and report it to the board of supervisors under oath. In all estimates of the fair

cash value of the bridge or ferry the value of the franchise shall not be taken into consideration.

**Comment.** Section 30865 is amended to replace language referring to “the judge” with a reference to the presiding judge. Every superior court has a presiding judge. See Gov’t Code §§ 69508, 69508.5. Where a court has only one judge due to a vacancy or otherwise, the reference to the “presiding judge” means the sole judge of the court. See Gov’t Code § 69508.5 (presiding judge).

## VEHICLE CODE

### **Veh. Code § 1816 (amended). Report of offenses**

SEC. \_\_\_\_ . Section 1816 of the Vehicle Code is amended to read:

1816. Every judge of the juvenile court, juvenile traffic hearing officer, duly constituted referee of a juvenile court, or other person responsible for the disposition of cases involving traffic offenses required to be reported under Section 1803 committed by persons under 18 years of age shall keep a full record of every case in which a person is charged with such a violation, and shall report the offense to the department at its office in Sacramento not more than 30 days after the date on which it was committed, and in no case less than 10 days after adjudication. The report required by this section shall be required for any determination that a minor committed the violation, including any determination that because of the act the minor is a person described in Section 601 or 602 of the Welfare and Institutions Code or that a program of supervision should be instituted for the minor. No report shall be made if it is found that the alleged offense was not committed.

The report required by this section shall be made upon a form furnished by the department and shall contain all necessary information as to the identity of the offender, the arresting agency, the date and nature of the offense, and the date the finding was made.

**Comment.** Section 1816 is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

**Veh. Code § 13105 (amended). Definitions**

SEC. \_\_\_\_ . Section 13105 of the Vehicle Code is amended to read:

13105. For the purposes of this chapter, “convicted” or “conviction” includes a finding by a judge of a juvenile court, a juvenile traffic hearing officer, or referee of a juvenile court that a person has committed an offense, and “court” includes a juvenile court except as otherwise specifically provided.

**Comment.** Section 13105 is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

**Veh. Code § 13352 (amended). Suspension or revocation of driving privilege**

SEC. \_\_\_\_ . Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke, or record the court-administered suspension or revocation of, the privilege of any person to operate a motor vehicle upon receipt of an abstract of the record of any court showing that the person has been convicted of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. If any offense specified in this section occurs in a vehicle defined in Section 15210, the suspension or revocation specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Sections 15300 to 15302,

inclusive. For the purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23536, the privilege shall be suspended for a period of six months. The privilege shall not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code described in subdivision (b) of Section 23538.

Instead of suspending the person's driving privilege, the department shall issue a restricted license upon receipt of an abstract of record from the court certifying the court has granted probation to the person based on the conditions specified in paragraph (2) of subdivision (a) of, and subdivision (b) of, Section 23538.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23554, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in Section 23556.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23540, the privilege shall be suspended for two years. The privilege shall not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in Section 23542. For the purposes of this paragraph, enrollment, participation, and completion of an

approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after completion of 12 months of the suspension period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily provided, subsequent to the current underlying conviction, either of the following:

(i) Proof of enrollment in an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) Proof of enrollment in a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the program described in subparagraph (A).

(C) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(D) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(E) The person provides proof of financial responsibility, as defined in Section 16430.

(F) The person pays all administrative fees or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(4) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23560, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the

person gives proof of financial responsibility, and the person gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in Section 23562. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 18 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in that 30-month program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(F) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(5) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23546, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person files proof of financial responsibility and gives proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after completion of 18 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory

participation in the 30-month driving-under-the-influence program.

(B) The person submits the “Verification of Installation” form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23546 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person’s residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(6) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23566, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person’s residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section

8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 30 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(ii) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if a 30-month program is unavailable in the person's county of residence or employment.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23153 punishable under Section 23566 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program or, if available in the county of the person's residence or employment, a 30-month

program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(7) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23550 or 23550.5, or Section 23153 punishable under Section 23550.5 the privilege shall be revoked for a period of four years. The privilege shall not be reinstated until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit shall be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 24 months of the revocation period, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the current underlying conviction, either of the following:

(i) An 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23550 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if and as ordered by the court.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (f) of that section, the privilege shall be

suspended for a period of six months, if the court orders the department to suspend the privilege. The privilege shall not be reinstated until the person gives proof of financial responsibility.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction.

(c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and a conviction of an offense that, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction.

(e) For the purposes of the restriction conditions specified in paragraphs (3) to (7), inclusive, of subdivision (a), the department shall terminate the restriction imposed pursuant to this section and shall suspend or revoke the person's driving privilege upon receipt of notification from the program that the person has failed to comply with the program requirements. The person's driving privilege shall remain suspended or revoked for the remaining period of the originating suspension or revocation and until all reinstatement requirements described in this section are met.

(f) For purposes of this section, completion of a program is the following:

(1) Satisfactory completion of all program requirements approved pursuant to program licensure, as evidenced by a certificate of completion issued, under penalty of perjury, by the licensed program.

(2) Certification, under penalty of perjury, by the director of a program specified in Section 8001 of the Penal Code, that the person has completed a program specified in Section 8001 of the Penal Code.

**Comment.** Subdivisions (a), (b), and (c) of Section 13352 are amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

**Veh. Code § 13352.3 (amended). Juvenile offender**

SEC. \_\_\_\_ . Section 13352.3 of the Vehicle Code is amended to read:

13352.3. (a) Notwithstanding any other provision of law, except subdivisions (b), (c), and (d) of Section 13352 and Sections 13367 and 23521, the department immediately shall revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person was convicted of a violation of Section 23152 or 23153 while under 18 years of age, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153.

(b) The term of the revocation shall be until the person reaches 18 years of age, for one year, or for the period prescribed for restriction, suspension, or revocation specified in subdivision (a) of Section 13352, whichever is longer. The privilege shall not be reinstated until the person gives proof of financial responsibility as defined in Section 16430.

**Comment.** Subdivision (a) of Section 13352.3 is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

**Veh. Code § 13355 (amended). Suspension for violation of Section 22348(b)**

SEC. \_\_\_\_ . Section 13355 of the Vehicle Code is amended to read:

13355. The department shall immediately suspend the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of subdivision (b) of Section 22348, or upon a receipt of a report of a judge of a juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of subdivision (b) of Section 22348 under the following conditions and for the periods, as follows:

(a) Upon a conviction or finding of an offense under subdivision (b) of Section 22348 which occurred within three years of a prior offense resulting in a conviction of an offense under subdivision (b) of Section 22348, the privilege shall be suspended for a period of six months, or the privilege shall be restricted for six months to necessary travel to and from the person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving within the person's scope of employment.

(b) Upon a conviction or finding of an offense under subdivision (b) of Section 22348 which occurred within five years of two or more prior offenses resulting in convictions of offenses under subdivision (b) of Section 22348, the privilege shall be suspended for a period of one year, or the privilege shall be restricted for one year to necessary travel to and from the person's place of employment and, if driving a motor

vehicle is necessary to perform the duties of the person's employment, restricted to driving within the person's scope of employment.

**Comment.** Section 13355 is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

**Veh. Code § 23520 (amended). Alcohol or drug education program**

SEC. \_\_\_\_ . Section 23520 of the Vehicle Code is amended to read:

23520. (a) Whenever, in any county specified in subdivision (b), a judge of a juvenile court, a juvenile traffic hearing officer, or referee of a juvenile court finds that a person has committed a first violation of Section 23152 or 23153, the person shall be required to participate in and successfully complete an alcohol or drug education program, or both of those programs, as designated by the court. The expense of the person's attendance in the program shall be paid by the person's parents or guardian so long as the person is under the age of 18 years, and shall be paid by the person thereafter. However, in approving the program, each county shall require the program to provide for the payment of the fee for the program in installments by any person who cannot afford to pay the full fee at the commencement of the program and shall require the program to provide for the waiver of the fee for any person who is indigent, as determined by criteria for indigency established by the board of supervisors. Whenever it can be done without substantial additional cost, each county shall require that the program be provided for juveniles at a separate location from, or at a different time of day than, alcohol and drug education programs for adults.

(b) This section applies only in those counties that have one or more alcohol or drug education programs certified by the county alcohol program administrator and approved by the board of supervisors.

**Comment.** Subdivision (a) of Section 23520 is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

**Veh. Code § 23521 (amended). Deemed conviction of a violation of Section 23153**

SEC. \_\_\_\_\_. Section 23521 of the Vehicle Code is amended to read:

23521. Any finding of a juvenile court judge, juvenile traffic hearing officer, or referee of a juvenile court of a commission of an offense in any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of a violation of Section 23152 for the purposes of Sections 13352, 13352.3, and 13352.5, and the finding of a juvenile court judge, juvenile traffic hearing officer, or referee of a juvenile court of a commission of an offense which, if committed in this state, would be a violation of Section 23153 is a conviction of a violation of Section 23153 for the purposes of Sections 13352 and 13352.3.

**Comment.** Section 23521 is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

**Veh. Code § 40502 (amended). Place specified in notice to appear**

SEC. \_\_\_\_\_. Section 40502 of the Vehicle Code is amended to read:

40502. The place specified in the notice to appear shall be any of the following:

(a) Before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made.

(b) Upon demand of the person arrested, before a judge or other magistrate having jurisdiction of the offense at the county seat of the county in which the offense is alleged to have been committed. This subdivision applies only if the person arrested resides, or the person's principal place of employment is located, closer to the county seat than to the court or other magistrate nearest or most accessible to the place where the arrest is made.

(c) Before a person authorized to receive a deposit of bail.

The clerk and deputy clerks of the superior court are persons authorized to receive bail in accordance with a schedule of bail approved by the judges of that court.

(d) Before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been committed, if the person arrested appears to be under the age of 18 years. The juvenile court shall by order designate the proper person before whom the appearance is to be made.

In a county that has implemented the provisions of Section 603.5 of the Welfare and Institutions Code, if the offense alleged to have been committed by a minor is classified as an infraction under this code, or is a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, the citation shall be issued as provided in subdivision (a), (b), or (c); provided, however, that if the citation combines an infraction and a misdemeanor, the place specified shall be as provided in subdivision (d).

If the place specified in the notice to appear is within a county where a department of the superior court is to hold a night session within a period of not more than 10 days after the arrest, the notice to appear shall contain, in addition to the above, a statement notifying the person arrested that the person may appear before such a night session of the court.

**Comment.** Subdivision (b) of Section 40502 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

Subdivision (d) is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

## WELFARE AND INSTITUTIONS CODE

### **Welf. & Inst. Code § 247 (repealed). Juvenile court referees**

SEC. \_\_\_\_ . Section 247 of the Welfare and Institutions Code is repealed.

~~247. The judge of the juvenile court, or in counties having more than one judge of the juvenile court, the presiding judge of the juvenile court or the senior judge if there is no presiding judge, may appoint one or more referees to serve on a full-time or part-time basis. A referee shall serve at the pleasure of the appointing judge, and unless the appointing judge makes his order terminating the appointment of a referee, such referee shall continue to serve as such until the appointment of his successor. Except as otherwise provided by law, the amount and rate of compensation to be paid referees shall be fixed by the board of supervisors. Every referee first appointed on or after January 1, 1977, shall have been admitted to practice law in this state and, in addition, shall have been admitted to practice law in this state for a period of not less than five years or in any other state and this state for a combined period of not less than 10 years. Nothing in this section shall be construed to apply to the qualifications of any referee first appointed prior to January 1, 1977.~~

**Comment.** Section 247 is repealed to reflect enactment of the Trial Court Employment Protection and Governance Act. See Gov't Code §§ 71622 (subordinate judicial officers), 71623 (salaries). Under that Act, the court may delegate to the presiding judge of the juvenile court authority to appoint or terminate a juvenile court referee.

**Welf. & Inst. Code § 258 (amended). Sanctions for violation**

SEC. \_\_\_\_ . Section 258 of the Welfare and Institutions Code is amended to read:

258. (a) Upon a hearing conducted in accordance with Section 257, and upon either an admission by the minor of the commission of a violation charged, or a finding that the minor did in fact commit the violation, the judge, referee, or juvenile hearing officer may do any of the following:

(1) Reprimand the minor and take no further action.

(2) Direct that the probation officer undertake a program of supervision of the minor for a period not to exceed six months, in addition to or in place of the following orders.

(3) Order that the minor pay a fine up to the amount that an adult would pay for the same violation, unless the violation is otherwise specified within this section, in which case the fine shall not exceed two hundred fifty dollars (\$250). This fine may be levied in addition to or in place of the following orders and the court may waive any or all of this fine, if the minor is unable to pay. In determining the minor's ability to pay, the court shall not consider the ability of the minor's family to pay.

(4) Subject to the minor's right to a restitution hearing, order that the minor pay restitution to the victim, in lieu of all or a portion of the fine specified in paragraph (3). The total dollar amount of the fine, restitution, and any program fees ordered pursuant to paragraph (9) shall not exceed the maximum amount which may be ordered pursuant to paragraph (3). Nothing in this paragraph shall be construed to limit the right to recover damages, less any amount actually paid in restitution, in a civil action.

(5) Order that the driving privileges of the minor be suspended or restricted as provided in the Vehicle Code or, notwithstanding Section 13203 of the Vehicle Code or any other provision of law, when the Vehicle Code does not

provide for the suspension or restriction of driving privileges, that, in addition to any other order, the driving privileges of the minor be suspended or restricted for a period of not to exceed 30 days.

(6) In the case of a traffic related offense, order the minor to attend a licensed traffic school, or other court approved program of traffic school instruction pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5 of the Vehicle Code, to be completed by the juvenile within 60 days of the court order.

(7) Order that the minor produce satisfactory evidence that the vehicle or its equipment has been made to conform with the requirements of the Vehicle Code pursuant to Section 40150 of the Vehicle Code if the violation involved an equipment violation.

(8) Order that the minor perform community service work in a public entity or any private nonprofit entity, for not more than 50 hours over a period of 60 days, during times other than his or her hours of school attendance or employment. Work performed pursuant to this subparagraph shall not exceed 30 hours during any 30-day period. The timeframes established by this subparagraph shall not be modified except in unusual cases where the interests of justice would best be served. When the order to work is made by a referee or a traffic *juvenile* hearing officer, it shall be approved by a judge of the juvenile court.

For the purposes of this subparagraph, a judge, referee, or juvenile hearing officer shall not, without the consent of the minor, order the minor to perform work with a private nonprofit entity that is affiliated with any religion.

(9) In the case of a misdemeanor, order that the minor participate in and complete a counseling or educational program, or, if the offense involved a violation of a controlled substance law, a drug treatment program, if those programs

are available. Any fees for participation shall be subject to the right to a hearing as the minor's ability to pay and shall not, together with any fine or restitution order, exceed the maximum amount that may be ordered pursuant to paragraph (3).

(10) Require that the minor attend a school program without unexcused absence.

(11) If the offense is a misdemeanor committed between 10 p.m. and 6 a.m., require that the minor be at his or her legal residence at hours to be specified by the juvenile hearing officer between the hours of 10 p.m. and 6 a.m., except for a medical or other emergency, unless the minor is accompanied by his or her parent, guardian, or other person in charge of the minor. The maximum length of an order made pursuant to this paragraph shall be six months from the effective date of the order.

(12) Make any or all of the following orders with respect to a violation of the Fish and Game Code which is not charged as a felony:

(A) That the fishing or hunting license involved be suspended or restricted.

(B) That the minor work in a park or conservation area for a total of not to exceed 20 hours over a period not to exceed 30 days, during times other than his or her hours of school attendance or employment.

(C) That the minor forfeit, pursuant to Section 12157 of the Fish and Game Code, any device or apparatus designed to be, and capable of being, used to take birds, mammals, fish, reptiles, or amphibia and which was used in committing the violation charged. The judge, referee, or juvenile hearing officer shall, if the minor committed an offense which is punishable under Section 12008 of the Fish and Game Code, order the device or apparatus forfeited pursuant to Section 12157 of the Fish and Game Code.

(13) If the violation charged is of an ordinance of a city, county, or local agency relating to loitering, curfew, or fare evasion on a public transportation system, as defined by Section 99211 of the Public Utilities Code, or is a violation of Section 640 or 640a of the Penal Code, make the order that the minor shall perform community service for a total time not to exceed 20 hours over a period not to exceed 30 days, during times other than his or her hours of school attendance or employment.

(b) The judge, referee, or juvenile hearing officer shall retain jurisdiction of the case until all orders made under this section have been fully complied with.

**Comment.** Subdivision (a)(8) of Section 258 is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

**Welf. & Inst. Code § 654.1 (amended). Program of supervision**

SEC. \_\_\_\_ . Section 654.1 of the Welfare and Institutions Code is amended to read:

654.1. (a) Notwithstanding Section 654 or any other provision of law, in any case in which a minor has been charged with a violation of Section 23140 or 23152 of the Vehicle Code, the probation officer may, in lieu of requesting that a petition be filed by the prosecuting attorney to declare the minor a ward of the court under Section 602, proceed in accordance with Section 654 and delineate a program of supervision for the minor. However, the probation officer shall cause the citation for a violation of Section 23140 or 23152 of the Vehicle Code to be heard and disposed of by the judge, referee, or traffic *juvenile* hearing officer pursuant to Sections 257 and 258 as a condition of any program of supervision.

(b) Nothing in this section shall be construed to prevent the probation officer from requesting the prosecuting attorney to file a petition to declare the minor a ward of the court under

Section 602 for a violation of Section 23140 or 23152 of the Vehicle Code. However, when in the judgment of the probation officer, the interest of the minor and the community can be protected by adjudication of a violation of Section 23140 or 23152 of the Vehicle Code in accordance with subdivision (a), the probation officer shall proceed under subdivision (a).

**Comment.** Subdivision (a) of Section 654.1 is amended to reflect the redesignation of traffic hearing officers as juvenile hearing officers. See 1997 Cal. Stat. ch. 679.

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