

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

## **Statutory Clarification and Simplification of CID Law**

February 2011  
(as subsequently revised to incorporate  
legislation enacted in 2011)

California Law Revision Commission  
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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 *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010).

STATE OF CALIFORNIA

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February 10, 2011

*To: The Honorable Edmund G. Brown, Jr.  
Governor of California, and  
The Legislature of California*

The Law Revision Commission recommends that the existing Davis-Stirling Common Interest Development Act be repealed and replaced with a new statute that continues the substance of existing law in a more logical and user-friendly form.

The new statute would provide the following advantages for property owners who must read, understand, and apply the law governing common interest developments:

- (1) Related provisions would be grouped together in a logical order. This would make relevant law easier to find and use. It would also provide a clear organization to guide the future development of the law.
- (2) Sections that are unclear or confusing would be revised for clarity, without any change to their substantive effect.
- (3) Sections that are excessively long would be divided into shorter sections.

- (4) To the extent practical, terminology would be standardized.
- (5) Various noncontroversial substantive improvements would be made.

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

Respectfully submitted,

Associate Justice  
John Zebrowski (Ret.)  
*Chairperson*

## ACKNOWLEDGMENTS

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

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## STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

### BACKGROUND

A common interest development (“CID”) is a housing<sup>1</sup> development characterized by (1) separate ownership of dwelling space (or a right of exclusive occupancy) coupled with an undivided interest in common property, (2) covenants, conditions, and restrictions that limit use of both the common area and separate ownership interests, and (3) management of common property and enforcement of restrictions by an owners’ association. CIDs include condominiums, community apartment projects, stock cooperatives, and planned unit developments.<sup>2</sup>

There are over 49,000 CIDs in California, ranging in size from three to 27,000 units each.<sup>3</sup> These developments comprise over 4.9 million total housing units.<sup>4</sup> Most CIDs are relatively small, with over half consisting of 25 or fewer separate interests.<sup>5</sup>

An owners’ association is run by volunteer directors who may have little or no prior experience in managing real property, operating a nonprofit association or corporation, complying with the laws regulating CIDs, and interpreting and enforcing the

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1. Although most CIDs are residential, a CID may also include commercial units. An entirely nonresidential CID is exempt from many of the laws that govern residential or mixed use CIDs. See Civ. Code § 1373.

2. See Civ. Code § 1351.

3. Levy & Erlanger, *2010 California Community Association Statistics* 1 (2010).

4. *Id.*

5. Over two-thirds of associations have 50 separate interests or fewer. *Id.*

restrictions and rules imposed by the governing documents of an association.<sup>6</sup>

Association management is made more difficult by the complexity of the law that governs CIDs. The main body of statutory law governing CIDs is the Davis-Stirling Common Interest Development Act.<sup>7</sup> That statute is not well organized or easy to use. Related provisions are not always grouped together in a coherent order. Some provisions are overly long and complex. Others are phrased or structured in ways that make them difficult to understand. The terminology used in the statute is not always consistent. These shortcomings can make it difficult for homeowners to understand their rights and obligations under the law.

### OVERVIEW OF PROPOSED LAW

The Law Revision Commission recommends that the existing Davis-Stirling Common Interest Development Act be repealed and replaced with a new statute that would continue the substance of existing law in a more logical and user-friendly form.

The proposed law would provide the following advantages for property owners who must read, understand, and apply the law governing CIDs:

- (1) Related provisions would be grouped together in a logical order. This would make relevant law easier to find and use. It would also provide a clear

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6. Many associations contract for professional management, accounting, and legal assistance. However, most associations are small and may not be able to afford those services. See *supra* note 5.

7. Civ. Code §§ 1350-1378. Note that an association formed as a nonprofit corporation is also subject to the relevant provisions of the Corporations Code. On some issues, the Davis-Stirling Common Interest Development Act expressly supersedes any conflicting provision of the Corporations Code. See, e.g., Civ. Code §§ 1363.03(n), 1365.2(l). The proposed law would make some changes to reflect the supremacy of Section 1363.03. See proposed Civ. Code § 4365 *infra*.

organization to guide the future development of the law.<sup>8</sup>

- (2) Sections that are unclear or confusing would be revised for clarity, without any change in their substantive effect.
- (3) Sections that are excessively long would be divided into shorter sections.
- (4) To the extent practical, terminology would be standardized.
- (5) Various noncontroversial substantive improvements would be made.

For the most part, this would be a nonsubstantive reform. However, the proposed law also includes a number of minor substantive improvements. All of those proposed changes are specifically described in this recommendation. In addition, the official Comments that follow each section of the proposed law identify any substantive changes that the section would make.

A “disposition table” following the proposed law shows the precise relationship between every provision of the existing Davis-Stirling Common Interest Development Act and the provision of the proposed law that would continue it. In a few instances, an existing provision would not be continued in the proposed law because it is unnecessary. Those provisions would be listed in the disposition table as “omitted.”

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8. One of the sources of the complexity of the Davis-Stirling Common Interest Development Act is the lack of a comprehensive organizational structure. As changes are made to the law, it is not always clear where to add new provisions, which perpetuates the poor organization of the law. That problem was partially addressed by the addition of chapter and article headings, pursuant to a Law Revision Commission recommendation. See *Organization of Davis-Stirling Common Interest Development Act*, 33 Cal. L. Revision Comm’n Reports 1 (2003); 2003 Cal. Stat. ch. 557.

## ORGANIZATIONAL AND DRAFTING IMPROVEMENTS

There are a number of problems with the organization and drafting of the existing Davis-Stirling Common Interest Development Act:

- Some provisions on similar topics are not in close proximity to each other, making it difficult to find all of the law that governs a particular topic.<sup>9</sup>
- Some sections are overly long and complex.<sup>10</sup>
- Some sections are difficult to understand, because of their phrasing.<sup>11</sup>
- Inconsistencies in the terminology used in the existing statute may lead to misunderstandings.<sup>12</sup>

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9. For example, two existing provisions that determine the application of the Davis-Stirling Common Interest Development Act are located near the very beginning and end of the Act. See Civ. Code §§ 1352, 1374. In the proposed law, those provisions are adjacent, in a chapter entitled “Application of Act.” See proposed Civ. Code §§ 4200, 4201 *infra*.

10. For example, the principal existing provision on member elections in a CID is a single section comprised of over 1,840 words, divided into 41 separate subdivisions and paragraphs. See Civ. Code § 1363.03. In the proposed law, that section would be recast as an article entitled “Member Election,” comprised of seven shorter sections, each addressing a single topic. See proposed Civ. Code §§ 5100 (application of article), 5105 (election rules), 5110 (inspector of elections), 5115 (voting procedure), 5120 (counting ballots), 5125 (ballot custody and inspection), 5130 (proxies) *infra*.

11. For example, existing Civil Code Section 1367.6(a) refers to the jurisdiction of the small claims division of the superior court by referencing two sections of the Code of Civil Procedure. This reference will be difficult for a layperson to understand. In the proposed law, an express reference to the “small claims court” is added to make the meaning of the provision clearer. See proposed Civ. Code § 5658 *infra*.

12. For example, existing law uses the terms “director,” “board member,” and “member” to refer to a member of an association’s board of directors. Such inconsistent terminology can lead to confusion (especially with respect to the term “member,” which can also refer to a member of the association who is not

The proposed law would address those problems, as described below.

### **Improved Organization**

The proposed law would reorganize the provisions of existing law so as to group provisions by subject matter, in a coherent and logical order.

The proposed law would be divided into 11 chapters, beginning with provisions that govern the operation of the proposed law itself. It would continue with provisions governing the creation of a CID and the character of a CID as a form of property ownership. It would conclude with provisions governing the operation of the governing association of a CID.

The structure of the proposed law would be as follows:

- CHAPTER 1. GENERAL PROVISIONS
  - Article 1. Preliminary Provisions
  - Article 2. Definitions
- CHAPTER 2. APPLICATION OF ACT
- CHAPTER 3. GOVERNING DOCUMENTS
  - Article 1. General Provisions
  - Article 2. Declaration
  - Article 3. Articles of Incorporation
  - Article 4. Condominium Plan
  - Article 5. Operating Rules
- CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS
  - Article 1. Ownership Rights and Interests
  - Article 2. Transfer Disclosure
  - Article 3. Transfer Fee
  - Article 4. Restrictions on Transfers
  - Article 5. Transfer of Separate Interest

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on the board of directors). To address the problem, the proposed law would add a statutory definition of the term “director,” and revise a number of provisions to replace inconsistent variants with the defined term. See proposed Civ. Code § 4140 *infra*. Similarly, the proposed law would standardize the terminology used to refer to the board, board meetings, common area, the declarant, governing documents, a managing agent, or a member.

## CHAPTER 5. PROPERTY USE AND MAINTENANCE

- Article 1. Protected Uses
- Article 2. Modification of Separate Interest
- Article 3. Maintenance

## CHAPTER 6. ASSOCIATION GOVERNANCE

- Article 1. Association Existence and Powers
- Article 2. Board Meeting
- Article 3. Member Meeting
- Article 4. Member Election
- Article 5. Record Inspection
- Article 6. Record Keeping
- Article 7. Annual Reports
- Article 8. Conflict of Interest
- Article 9. Managing Agent
- Article 10. Government Assistance

## CHAPTER 7. FINANCES

- Article 1. Accounting
- Article 2. Use of Reserve Funds
- Article 3. Reserve Planning

## CHAPTER 8. ASSESSMENTS AND ASSESSMENT COLLECTION

- Article 1. Establishment and Imposition of Assessments
- Article 2. Assessment Payment and Delinquency
- Article 3. Assessment Collection

## CHAPTER 9. INSURANCE AND LIABILITY

## CHAPTER 10. DISPUTE RESOLUTION AND ENFORCEMENT

- Article 1. Discipline and Cost Reimbursement
- Article 2. Internal Dispute Resolution
- Article 3. Alternative Dispute Resolution Prerequisite to Civil Action
- Article 4. Civil Actions

## CHAPTER 11. CONSTRUCTION DEFECT LITIGATION

This new organization would make the law easier to use, especially for the many non-attorneys who must read and understand the law in order to protect their property rights and manage their communities. (As noted above, the majority of CIDs

are quite small.<sup>13</sup> Most property owners in these small CIDs will need to read and understand the Davis-Stirling Common Interest Development Act without the benefit of professional managers or legal counsel.)

### **Shorter, Simpler Sections**

Some sections of the existing Act are excessively long. Excessively long sections can obscure relevant details of law, especially if a single section addresses several different subjects.

A better approach is to divide the law into a larger number of smaller sections, with each section limited to a single subject. Short sections have numerous advantages. They enhance readability and understanding of the law, and make it easier to locate and refer to pertinent material. In contrast to a long section, a short section can be amended without undue technical difficulties and new material can be inserted where logically appropriate. This facilitates sound development of the law. The use of short sections is the preferred drafting technique of the California Code Commission,<sup>14</sup> the Legislature,<sup>15</sup> the Legislative Counsel,<sup>16</sup> and the Law Revision Commission.<sup>17</sup>

### **Clarifying Revisions**

The proposed law would revise a number of provisions of the Davis-Stirling Common Interest Development Act, to make their meaning clearer without changing their substantive effect.<sup>18</sup> Other technical clarifying revisions would add or adjust subdivision or

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13. See *supra* note 5.

14. California Code Commission, *Drafting Rules and Principles for Use of California Code Commission Draftsmen*, 1947-48 Report, app. G, at 4.

15. Senate & Assembly Joint Rule 8 (May 14, 2009).

16. Legislative Counsel of California, *Legislative Drafting Manual* 26-28 (1975).

17. Commission Staff Memorandum 76-24 (Feb. 17, 1976); First Supplement to Commission Staff Memorandum 85-64 (May 31, 1985).

18. See proposed Civ. Code §§ 4095(b), 4175, 4201, 4255, 4785(c), 5110(b), 5225, 5230, 5240(b), 5510, 5515, 5520, 5620, 5658, 5700(a), 5965 *infra*.

paragraph designators to facilitate reference,<sup>19</sup> or correct cross-reference errors.<sup>20</sup>

### **Consistent Terminology**

The terminology used in existing law is not consistent. In many cases, two or more different terms are used to describe the same thing. This can lead to misunderstanding and unnecessary litigation to resolve ambiguities. The proposed law would standardize terminology to the extent practical.

The proposed law would also add new definitions for commonly used terms or concepts, to facilitate reference and increase familiarity with common concepts.<sup>21</sup>

Some of the existing definitions in the Davis-Stirling Common Interest Development Act have expressly limited application. This creates uncertainty as to the meaning of the defined terms when they are used in sections that are not subject to the definitions. Where appropriate, the proposed law would generalize these definitions, so that they apply to the Act as a whole.<sup>22</sup> This will simplify understanding of the law, lead to more uniform results, and provide a settled definition for the future development of the law.

There are also some existing definition sections that contain non-definitional rules. This creates a risk that the embedded rules will be overlooked. The proposed law would relocate substantive rules that are currently embedded in definitions.<sup>23</sup>

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19. See proposed Civ. Code §§ 4185, 4190, 4270, 4930 *infra*.

20. See proposed Civ. Code §§ 5300(b)(3), 5565, 5720(c), 5730, 6000 *infra*.

21. See proposed Civ. Code §§ 4076 (“annual budget report”), 4078 (“annual policy statement”), 4148 (“general notice”), 4153 (“individual notice”), 4160 (“member”), 4170 (“person”) *infra*. See also proposed Civ. Code §§ 4065 (“approved by majority of all members”), 4070 (“approved by majority of quorum of members”) *infra*.

22. See proposed Civ. Code §§ 4090 (“board meeting”), 4158 (“managing agent”), 4177 (“reserve accounts”), 4178 (“reserve account requirements”) *infra*.

23. For example, the existing definition of the term “condominium plan” includes detailed procedures that must be followed when creating or amending a

## SUBSTANTIVE IMPROVEMENTS

Although the primary goal of the proposed law is the nonsubstantive reorganization of the existing Davis-Stirling Common Interest Development Act, in order to make it is easier to use and understand, the proposed law would also include a number of minor substantive improvements.<sup>24</sup> Those minor improvements are discussed below.

### Improvements Relating to Governing Documents

#### *Authority of Law and Governing Documents*

The proposed law would provide guidance on two fundamental aspects of CID governance that are not clearly addressed in the existing statute: (1) The general supremacy of the law over a CID's governing documents,<sup>25</sup> and (2) the relative authority of different types of governing documents.<sup>26</sup> This guidance will help to avoid

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condominium plan. Those procedures are not part of the definition and should be located elsewhere. In the proposed law, the procedures would be relocated to an article collecting provisions governing the creation and amendment of condominium plans. See proposed Civ. Code §§ 4290, 4295 *infra*. See also proposed Civ. Code § 5205(g) *infra*.

24. Because of the magnitude and mostly technical character of the proposed law, the Commission adopted a conservative approach in deciding which substantive reforms would be included. If a possible substantive change was found to be significantly controversial, it was not included. Substantive changes that were not included in the proposed law were noted by the Commission for possible future study.

25. The existing statute addresses this issue in a piecemeal fashion. See Civ. Code §§ 1352.5 (governing documents may not contain illegal discriminatory restriction), 1353.7 (governing documents may not require violation of Health & Safety Code § 13132.7), 1357.110 (operating rule must be consistent with law), 1378(a)(3) (architectural standards must be consistent with law). The proposed law would expressly provide that the law is superior to an association's governing documents. See proposed Civ. Code § 4205(a) *infra*.

26. Existing law addresses this issue in a piecemeal fashion. See Civ. Code § 1357.110 (declaration, articles, and bylaws superior to operating rules); Corp. Code § 7151(c) (articles superior to bylaws). The proposed law would expressly

disputes that might arise if an association's governing documents are inconsistent with the law or with each other.

***Text of Proposed Governing Document Amendment***

The proposed law would add a new requirement that an association provide members with the text of a proposed amendment of the governing documents when holding a member election to approve the proposed amendment.<sup>27</sup> This will ensure that the members have the information necessary to make an informed decision when voting on a proposed governing document amendment.

***Content of Declaration***

Existing law specifies what information must be included in a CID's recorded declaration.<sup>28</sup> The declaration may also include any other information that the "original signator of the declaration or the owners consider appropriate."<sup>29</sup>

The proposed law would replace the phrase "original signator of the declaration" with the defined term "declarant."<sup>30</sup> This change would permit a successor-in-interest to the original signator to add material to the declaration as that person deems appropriate (using proper procedures for amendment of the declaration). The Commission sees no policy reason to limit that power to the original signator.

***Amendment of Declaration***

Existing law provides similar but slightly different procedures for amendment of the declaration, depending on the purpose of the

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declare the relative authority of the most common types of governing documents. See proposed Civ. Code § 4205(b)-(d) *infra*.

27. See proposed Civ. Code § 5115(e) *infra*.

28. See Civ. Code § 1353.

29. See Civ. Code § 1353(b).

30. See proposed Civ. Code § 4250(b) *infra*.

amendment.<sup>31</sup> The proposed law would harmonize those requirements in a general procedure for amendment of the declaration.<sup>32</sup> That procedure would also include two minor improvements: (1) It would expressly recognize that some declarations require that a person other than a member of the association approve an amendment, and (2) it would make clear that a governing document of less dignity than the declaration cannot specify procedures for amendment of the declaration.<sup>33</sup>

#### ***Court Authorized Amendment of Declaration***

Existing law authorizes the superior court, in specified circumstances, to approve an amendment of a declaration, even if the required member approval was not obtained.<sup>34</sup> To make such a decision, the court must find, among other things, that an election was held to approve the amendment and that the election complied with the association's governing documents. The proposed law would also require the court to find that the election was conducted in accordance with the election provisions of the Davis-Stirling Common Interest Development Act and any other applicable law.<sup>35</sup>

#### ***Amendment or Revocation of Condominium Plan***

Existing law specifies a number of persons (unit owners and others with an interest in the condominium property) who must sign and acknowledge a certificate when creating an original condominium plan.<sup>36</sup>

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31. See Civ. Code §§ 1355(a) (general procedure), (b) (amendment of declaration that is silent as to whether it can be amended), 1357 (amendment to extend term of declaration with fixed term).

32. See proposed Civ. Code § 4270 *infra*.

33. For example, a board-adopted operating rule should not be able to change the procedure for amendment of the declaration, which is the founding document of a CID.

34. See Civ. Code § 1356.

35. See proposed Civ. Code § 4275(c)(2) *infra*.

36. See Civ. Code § 1351(e)(3).

A condominium plan may be amended or revoked by recordation of an instrument executed “by all of the persons” whose signatures are required on the original certificate.<sup>37</sup>

That language is somewhat ambiguous. It is not entirely clear whether an instrument amending or revoking a condominium plan must be signed by the same individuals who signed the original certificate, or by their successors in interest.

The proposed law would clarify that the instrument must be executed by those persons who hold the specified interests in the property at the time of the amendment or revocation.<sup>38</sup> In other words, if an original signator no longer holds the specified interest in the property, it must be signed by that person’s current successor.

### ***Reversal of Operating Rule Change***

Existing law permits the members of an association to call a meeting to vote on whether to reverse a recent change to an operating rule.<sup>39</sup> That provision was enacted before detailed election provisions were added to the Davis-Stirling Common Interest Development Act.<sup>40</sup> Consequently, the existing provision refers to election procedures in the Corporations Code, rather than to the new procedures in the Davis-Stirling Common Interest Development Act. The proposed law would modernize the provision, by replacing outdated references to the Corporations Code with references to the equivalent provisions of the Davis-Stirling Common Interest Development Act.<sup>41</sup>

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37. See Civ. Code § 1351(e).

38. See proposed Civ. Code § 4295 *infra*.

39. See Civ. Code § 1357.140.

40. See Civ. Code § 1363.03.

41. See proposed Civ. Code § 4365 *infra*.

## **Improvements Relating to Property Use, Ownership, and Transfer**

### ***Right of Access to Separate Interest***

Existing law prohibits an association (except as otherwise authorized by law) from denying an owner physical access to the owner's separate interest.<sup>42</sup> The existing provision also appears to protect a non-owner occupant's physical access to the separate interest occupied by that person. However, the provision could be clearer on that point.

The proposed law would revise the provision to unambiguously provide protection for both owners and occupants.<sup>43</sup>

### ***Protected Uses of Separate Interest Property***

Existing law includes a number of provisions that limit an association's ability to restrict certain specified uses of a separate interest. For example, Civil Code Section 1353.5 protects the right to display the United States flag on separate interest property.

The proposed law would collect these provisions together and would add a new provision that cross-refers to other similar protections that exist outside of the Davis-Stirling Common Interest Development Act.<sup>44</sup> The new provision would provide CID property owners with a more complete understanding of their property use rights.<sup>45</sup>

### ***Modification of Separate Interest Property***

Existing law includes a provision that guarantees the right of an owner in a condominium project to make changes to the owner's separate interest "unit," within specified limitations.<sup>46</sup> Special rules

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42. See Civ. Code § 1361.5.

43. See proposed Civ. Code § 4510 *infra*.

44. See proposed Civ. Code § 4700 *infra*.

45. The proposed law would also make minor improvements to the scope of application of one property use provision. See proposed Civ. Code § 4730 *infra*.

46. See Civ. Code § 1360.

are provided for a modification necessary to accommodate a disability.<sup>47</sup>

The existing provision is limited by its terms to a unit in a condominium project. The Commission finds no good policy reason for that limitation. The proposed law would generalize the provision so that it applies to a separate interest in any type of CID.<sup>48</sup>

***Grant of Exclusive Use of Common Area***

With a number of exceptions, existing law requires the approval of members representing at least 67 percent of the association's separate interests before the board may grant an individual member a right of exclusive use of part of the common area.<sup>49</sup>

The proposed law would make a number of minor improvements to that provision, as explained below:<sup>50</sup>

- (1) The existing provision only applies to common area that is owned directly by the association as an entity. Thus, it does not apply to common area that is owned by the members as tenants in common (a common arrangement in condominiums and planned unit developments).<sup>51</sup> The Commission found no good policy reason for that limitation. The proposed law would apply the provision to any grant of exclusive use of common area, regardless of how the common area is owned.
- (2) A new exception would be added for a grant that is necessary to accommodate a disability.
- (3) A new exception would be added for a grant that is required by law.

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47. *Id.*

48. See proposed Civ. Code § 4760 *infra*.

49. See Civ. Code § 1363.07.

50. See proposed Civ. Code § 4600 *infra*.

51. See Civ. Code § 1351(f), (k).

- (4) A new exception would be added for the assignment of a parking space, storage unit, or other amenity, if the declaration expressly provides for its assignment.

### **Improvements Relating to Board of Directors**

#### ***Board Meeting with Fixed Time and Place***

Existing law requires advance notice of a board meeting,<sup>52</sup> requires that the notice include the agenda for the meeting,<sup>53</sup> and generally restricts the board to discussing the topics listed in the agenda.<sup>54</sup>

Under existing law, if the time and place of board meetings is fixed in an association's governing documents, the association is not required to give advance notice of a meeting. This exception made sense when it was enacted, because the only purpose of the notice was to inform members of the meeting time and location.

However, after the subsequent enactment of the agenda requirements, the exception became problematic. It could be read to excuse an association from providing an advance agenda for a board meeting, simply by adopting a fixed meeting schedule. This would undermine the policy purpose of the agenda requirements — ensuring that members have advance notice of the business to be conducted at a meeting.

The proposed law would delete the existing exception. All associations would be required to provide advance notice of a meeting, including an agenda for the meeting, regardless of whether the time and place of the meeting is fixed in the governing documents.<sup>55</sup>

#### ***Definition of “Board Meeting”***

The existing advance notice and open meeting requirements only apply to a “board meeting,” as that term is defined in the Davis-

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52. See Civ. Code § 1363.05(f).

53. *Id.*

54. See Civ. Code § 1363.05(i).

55. See proposed Civ. Code § 4920 *infra*.

Stirling Common Interest Development Act. The current statute defines a “board meeting” as a gathering of a majority of the directors to consider board business (other than matters that may be considered in executive session).<sup>56</sup>

The proposed law would make a minor change to the definition of “board meeting.” Rather than requiring that a majority of the directors be present, the proposed law would instead require the presence of a number of directors sufficient to establish a quorum.<sup>57</sup> This would reflect the fact that in some associations the quorum for a board meeting may be more or less than a simple majority. As a matter of policy, the rules governing board meetings should apply to any gathering of the number of directors that is sufficient to conduct board business.

***Posted Notice of Board Meeting***

Existing law requires that notice of a board meeting be “posted” in a prominent place in the common area, and delivered by mail to any member who has requested mailed notice.<sup>58</sup> Some associations cannot comply with the posting requirement because they do not have common area that is appropriate for the posting of notices. The proposed law would delete the posting requirement and instead require “general delivery”<sup>59</sup> of board meeting notices.<sup>60</sup> This would continue to allow posting, but would increase flexibility by providing alternatives to posting (e.g., publication in a newsletter). It would continue a member’s right to receive mailed notices on request.

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56. See Civ. Code § 1363.05(j).

57. See proposed Civ. Code § 4090 *infra*.

58. See Civ. Code § 1363.05(f).

59. See proposed Civ. Code § 4045 *infra*.

60. See proposed Civ. Code § 4920 *infra*.

### ***Interested Director Disqualification***

Existing law provides that an association director is subject to the rules governing self-interested contracting in for-profit corporations.<sup>61</sup>

The proposed law would continue that provision with two changes. First, it would replace the existing reference to for-profit corporations law with a reference to the equivalent provisions of nonprofit corporations law (most associations are organized as nonprofit corporations).<sup>62</sup> Second, the proposed law would expressly prohibit a self-interested director from voting on specified types of matters.<sup>63</sup> This new provision would be similar in effect to the law requiring that government officials disqualify themselves from making decisions that affect their economic interests,<sup>64</sup> but it would be expressed in terms that are easier for non-lawyers to understand and apply.

### **Improvements Relating to Member Elections**

#### ***Scope of Member Election Procedure***

Under existing law, the election procedure only applies to specified types of elections.<sup>65</sup> The proposed law would authorize an association to elect to use the statutory procedure for any type of member election.<sup>66</sup> This would allow an association to take advantage of standardized procedures, to the extent appropriate to its circumstances.

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61. See Civ. Code §1365.6.

62. See proposed Civ. Code § 5350(a) *infra*.

63. See proposed Civ. Code § 5350(b) *infra*.

64. See Gov't Code § 87100.

65. See Civ. Code § 1363.03(b).

66. A decision to use the statutory procedure in other types of elections would need to be expressed in an operating rule. See proposed Civ. Code § 5100(b) *infra*.

### ***Notification of Election Results***

Existing law requires that the results of a member election be “publicized” in a “communication directed to all members.”<sup>67</sup> That ambiguous requirement would be replaced with a requirement that “general notice” of the election results be provided.<sup>68</sup> “General notice” is a defined term, so using it will eliminate any uncertainty as to what is required and will allow an association to use standardized notice procedures.<sup>69</sup>

### ***Ballot Custody***

Existing law requires that the election inspector maintain custody of ballots “until the time allowed by Section 7527 of the Corporations Code for challenging the election has expired....”<sup>70</sup> That time is nine months after the election.

That rule is problematic, because the Davis-Stirling Common Interest Development Act provides a period of 12 months to challenge an election.<sup>71</sup> Thus, the existing law would appear to sanction the destruction of ballots three months before the end of the period in which an election can be challenged.

The Commission sees no good policy reason for that rule. Ballots are typically crucial evidence in an election contest and should be retained for as long as a judicial challenge can still be filed. The proposed law would require that the ballots be retained for the full 12-month challenge period provided in the Davis-Stirling Common Interest Development Act.<sup>72</sup>

### ***Campaign Communications***

Existing law restricts the use of association funds for campaign communications in connection with a pending board election.<sup>73</sup>

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67. See Civ. Code § 1363.03(g).

68. See proposed Civ. Code § 5120(b) *infra*.

69. See proposed Civ. Code § 4045 *infra*.

70. See Civ. Code § 1363.03(h).

71. See Civ. Code § 1363.09.

72. See proposed Civ. Code § 5125 *infra*.

73. See Civ. Code § 1363.04.

Campaign communications are defined to include any communication that features the name or photograph of a candidate.<sup>74</sup> That provision is overbroad, because it could prohibit the distribution of routine documents that happen to include the name of a candidate (e.g., meeting minutes).

The proposed law would address that problem by adding an exception for communications that are required by law (e.g., meeting minutes).<sup>75</sup>

### **Improvements Relating to Records and Notices**

#### ***Scope of Record Inspection Right***

Existing law provides that members may inspect and copy association records.<sup>76</sup> The scope of that right is prescribed in a provision that defines the term “association records.”<sup>77</sup>

The existing definition of “association records” does not include the governing documents. The Commission believes that the governing documents of an association should be subject to member inspection. The proposed law would add governing documents to the statutory definition of “association records.”<sup>78</sup>

The proposed law would also clarify an existing ambiguity, by stating expressly that the term “association records” includes those records defined as “enhanced association records.”<sup>79</sup>

#### ***Annual Reports***

Existing law requires that an association distribute specified information to its membership on an annual basis. This information includes:

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74. *Id.*

75. See proposed Civ. Code § 5135(b)(2) *infra*.

76. See Civ. Code § 1365.2.

77. See Civ. Code § 1365.2(a).

78. See proposed Civ. Code § 5200(a)(11) *infra*.

79. See proposed Civ. Code § 5200(a)(12) *infra*.

- (1) A pro forma operating budget that must be delivered from 30 to 90 days before the end of the fiscal year.<sup>80</sup>
- (2) In an association with \$75,000 or more in annual gross income, an accountant's review of the association's financial statement must be distributed, within 120 days after the end of the fiscal year.<sup>81</sup>
- (3) Numerous other pieces of information that must be included with the pro forma operating budget.<sup>82</sup>

The proposed law would organize that information into three annual reports, based on subject matter: (1) an annual budget report,<sup>83</sup> which would include only the budget and related financial disclosures, (2) an annual financial statement review, if required,<sup>84</sup> and (3) an annual policy statement, which would aggregate all other informational disclosures that an association is required to make each year.<sup>85</sup>

Existing law permits an association to send notice of the availability of the annual budget, rather than the budget itself. Members may receive the full document on request, at no cost.<sup>86</sup> The proposed law would preserve that option, and extend it to the annual policy statement as well.<sup>87</sup>

These changes would locate all annual reporting requirements in one place in the code and would provide greater flexibility on how

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80. See Civ. Code § 1365(a).

81. See Civ. Code § 1365(c).

82. See, e.g., Civ. Code §§ 1363.850 (notice of informal dispute resolution process), 1365(d) (assessment collection policy), 1365(e) (summary of insurance coverage), 1365.1 (assessment collection policy), 1365.2.5 (assessment and reserve summary), 1369.490 (notice of alternative dispute resolution requirements), 1378 (architectural review procedure).

83. See proposed Civ. Code § 5300 *infra*.

84. See proposed Civ. Code § 5305 *infra*.

85. See proposed Civ. Code § 5310 *infra*.

86. See Civ. Code § 1365(d).

87. See proposed Civ. Code § 5320 *infra*.

those materials are distributed. That flexibility should lead to cost savings in many associations.<sup>88</sup>

### ***Standardized Notice Procedures***

Existing law includes numerous notice requirements, with inconsistent rules on the manner in which notice must be delivered. The proposed law would provide standardized notice delivery procedures, in order to increase operational efficiency and certainty.<sup>89</sup> Provisions requiring delivery by certified mail would be left unchanged.<sup>90</sup>

### **Improvements Relating to Assessments**

#### ***Assessment Increase***

Under existing law, an association may not increase regular assessments unless it has either distributed a pro forma budget in compliance with Civil Code Section 1365(a) or obtained the approval of the members in a member election.<sup>91</sup>

In addition, the association must obtain the approval of the members before increasing regular assessments by more than 20% or imposing a special assessment that is more than 5% of the association's budgeted gross expenses for the fiscal year.<sup>92</sup>

The proposed law would make one minor improvement to those provisions. Existing law requires that the members' approval be obtained in an election conducted pursuant to specified provisions of the Corporations Code. Those provisions have been expressly superseded by the member election provisions in the Davis-Stirling Common Interest Development Act.<sup>93</sup> The proposed law would

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88. The new procedural alternatives provided in the proposed law would be optional. Consequently, the proposed law would not add any new operating costs.

89. See proposed Civ. Code §§ 4035-4050, 5260 *infra*.

90. See, e.g., proposed Civ. Code § 5660 (pre-lien notice) *infra*.

91. See Civ. Code § 1366(a).

92. See Civ. Code § 1366(b).

93. See Civ. Code § 1363.03(n).

remove the superseded reference to the Corporations Code election procedure.

***Assessment Payment Priority***

Existing law provides that a member's payment for assessments should be applied first to the assessments owed, before being applied to any collection costs, interest, or penalties.<sup>94</sup> This is important, because the amount of principal owed determines whether nonjudicial foreclosure can be used to collect the delinquent amount.<sup>95</sup>

Under the existing provision, it is not entirely clear whether the payment priority rule is conditioned on the association having provided the member with a written notice of delinquency.

The proposed law would make clear that the payment priority rule applies in all cases, regardless of whether or when the member has received a notice of delinquency.<sup>96</sup>

***Lien Release***

Under existing law, if it is discovered through alternative dispute resolution that the association has recorded an assessment lien in error, the association is required to release the lien and reverse all costs, fees, and interest associated with the error.<sup>97</sup>

There is no good policy reason to limit that rule to situations in which the error is discovered through alternative dispute resolution. The proposed law would continue the rule, but expand its application so that it applies whenever the association has recorded an assessment lien in error, without regard for how the error is discovered.<sup>98</sup>

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94. See Civ. Code § 1367.1(b).

95. See Civ. Code § 1367.4(b).

96. See proposed Civ. Code § 5655 *infra*.

97. See Civ. Code § 1367.5.

98. See proposed Civ. Code § 5685 *infra*.

## **Improvements Relating to Enforcement and Dispute Resolution**

### ***Schedule of Monetary Penalties***

If an association policy authorizes the imposition of a monetary penalty for a violation of the governing documents, existing law requires that the association adopt a schedule of monetary penalties and deliver it to the members.<sup>99</sup> If the penalty schedule is later amended, the amended penalty schedule must be delivered to the members.<sup>100</sup>

The proposed law would require that the schedule be included in the policy statement that is delivered to the members annually.<sup>101</sup> This would eliminate the need for a separate mailing and would remind members of the penalties for governing document violations on an annual basis.<sup>102</sup>

The proposed law would also make clear that the penalty imposed for a violation of the governing documents is limited to the penalty in effect at the time of the violation. This prevents an association from increasing a penalty amount without prior notice to an offender.<sup>103</sup>

### ***Notice and Opportunity to be Heard***

Before disciplining a member for a violation of the governing documents, the association must provide the member with notice of the alleged violation and an opportunity to be heard by the board.<sup>104</sup>

The proposed law would broaden that notice and hearing requirement to also apply when an association attempts to impose a monetary charge as a means of reimbursing the association for costs incurred by the association in the repair of damage to common area and facilities caused by a member or the member's

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99. See Civ. Code § 1363(g).

100. *Id.*

101. See proposed Civ. Code § 5850 *infra*.

102. See proposed Civ. Code § 5740 *infra*.

103. See proposed Civ. Code § 5850 *infra*.

104. See Civ. Code § 1363(h).

guest or tenant.<sup>105</sup> In both cases, a property owner should have a chance to know the nature of the allegation and to dispute it.

#### ***Alternative Dispute Resolution***

Existing law requires that alternative dispute resolution (“ADR”) be offered before a civil action is filed by or against an association to enforce a provision of the governing documents, the Davis-Stirling Common Interest Development Act, or a provision of the Corporations Code.<sup>106</sup>

The non-filing party is not required to accept the offer. However, in an action in which fees and costs may be awarded, the court may consider whether the refusal of ADR was reasonable, when determining the amount of the award.<sup>107</sup>

Under existing law, that rule only applies in an action to enforce the association’s governing documents. The proposed law would broaden the rule, to apply in any action in which fees and costs may be awarded.<sup>108</sup> That would further the policy purpose of the section, to encourage participation in ADR where it is reasonable to do so.

#### **Commercial and Industrial Developments**

Under existing law, an entirely commercial or industrial CID is exempt from specified provisions of the Davis-Stirling Common Interest Development Act, on the grounds that those provisions are appropriate in residential developments but are not needed in entirely commercial or industrial developments, where they add unnecessary costs and burdens.<sup>109</sup>

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105. See proposed Civ. Code § 5855(a) *infra*.

106. See Civ. Code §§ 1369.510-1369.590.

107. See Civ. Code § 1369.580.

108. See proposed Civ. Code § 5960 *infra*.

109. Civ. Code § 1373. The Commission is currently conducting a separate study of the application of the Davis-Stirling Common Interest Development Act to commercial and industrial CIDs. The change proposed in this recommendation is not intended to affect or supersede any conclusions that might eventually be reached in that separate study.

The proposed law would continue the existing exemptions,<sup>110</sup> with one change. Existing law exempts commercial and industrial CIDs from certain assessment setting provisions, including a special rule to be used in emergencies.<sup>111</sup> The exemption of commercial and industrial CIDs from the emergency provision does not make policy sense<sup>112</sup> and was probably inadvertent. The proposed law would not exempt commercial CIDs from the special emergency provision.<sup>113</sup>

### TRANSITIONAL PROVISIONS

Because the proposed law would comprehensively reorganize the Davis-Stirling Common Interest Development Act, all of the existing code section numbers would be changed. Each provision continued in the proposed law would have a new number.

This will impose some transitional costs on those who are already familiar with the existing numbering scheme. It will also require that court decisions and other documents referencing the former section numbers be correlated to the new numbers. These transitional costs will fall most heavily on CID professionals, such as property managers and attorneys, who have expertise with the current statute. Most homeowners are not experts in the Davis-Stirling Common Interest Development Act and so will not be directly affected by these transitional costs.<sup>114</sup>

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110. See proposed Civ. Code § 4202 *infra*.

111. See Civ. Code § 1373(a)(6).

112. The emergency exception provides necessary flexibility to address unforeseen circumstances that should be available to all CIDs, regardless of type. See proposed Civ. Code § 5610 *infra*.

113. See proposed Civ. Code § 4202(a)(10) *infra*.

114. As noted earlier, half of all CIDs in California have 25 units or fewer units; two-thirds have 50 units or fewer. See *supra* note 5. Homeowners in these small associations typically operate without professional assistance. These homeowners have little investment in the current numbering scheme. They would benefit from a statute that is well-organized and easy to use.

This recommendation includes a number of features that would help to ease the transition to the reorganized statute. They are discussed below.

**Deferred Operation**

The proposed law would be given a one-year deferred operation date. That would give affected persons and organizations time to adjust to the new organization of the law.

**Prospective Application**

The proposed law would expressly provide that any substantive changes in the new law would not retroactively invalidate actions and documents that were completed prior to the operation of the new law and that were proper under the former law.<sup>115</sup>

**Simplified Cross-Reference Updating**

Some governing documents include references to provisions of the Davis-Stirling Common Interest Development Act. The proposed law would provide a simplified procedure that an association could use to update such references, to reflect the new section numbers.<sup>116</sup>

**Commission Comments**

In preparing a recommendation, the Commission drafts an explanatory “Comment” for every section that is added, amended, or repealed.<sup>117</sup> A Comment indicates the derivation of a section and often explains its purpose, its relation to other law, and potential issues concerning its meaning or application.

These Comments will help readers to determine the relationship between a new provision of the proposed law, and the provision of former law that it continues. Each Comment will also identify any

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115. See proposed Civ. Code § 4010 *infra* (note that “documents” does not include a common interest development’s governing documents).

116. See proposed Civ. Code § 4235 *infra*.

117. The Comments follow each section of the proposed legislation *infra*.

changes from former law and expressly state whether the change is technical or substantive.

On completion of a final recommendation, the full recommendation, including the proposed legislation and the Comments, will be presented to the Legislature and the Governor. If legislation is introduced to effectuate the proposed law, the full recommendation will be provided to each member of every policy committee that reviews the legislation.

Commission materials that have been placed before the Legislature are considered evidence of legislative intent,<sup>118</sup> and are entitled to great weight in construing statutes.<sup>119</sup> The materials are a key interpretive aid for practitioners as well as courts,<sup>120</sup> and courts may judicially notice and rely on them.<sup>121</sup> Courts at all

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118. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) (“The Commission’s official comments are deemed to express the Legislature’s intent.”); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) (“The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.”).

119. See, e.g., *Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d 585, 593 n.9 (2006) (Commission’s official comments are persuasive evidence of Legislature’s intent); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal. App. 3d 391, 400, fn. 8, 276 Cal. Rptr. 524; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal. App. 3d 524, 535, fn. 7, 260 Cal. Rptr. 713.) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal. App. 4th 23, 30, fn. 10, 17 Cal. Rptr. 2d 340.)

120. Cf. 7 B. Witkin, *Summary of California Law Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

121. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing

levels of the state<sup>122</sup> and federal<sup>123</sup> judicial systems use Commission materials to construe statutes enacted on Commission recommendation.<sup>124</sup>

### Disposition Table

This recommendation includes a disposition table showing, for every provision of the Davis-Stirling Common Interest Development Act, the new provision that would continue it. This

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overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

122. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. & Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 5-6, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

123. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

124. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight), *overruled on other grounds*, *Privette v. Superior Court*, 5 Cal. 4th 689, 696, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

table will assist the public and the Legislature in reviewing the proposed law.

If legislation to implement this recommendation is enacted, the disposition table will be provided to legal publishers, who would typically make the table available in the annotated codes and in their online legal research tools.

The disposition table would then help to correlate a court decision or other document that cites an existing provision, with the new provision that would continue the existing provision. This would ease the transition from existing law to the new law.

### CONFORMING REVISIONS

The proposed law would change the numbering of every provision of the Davis-Stirling Common Interest Development Act. If the proposed law is enacted, all existing statutory references to provisions of the Davis-Stirling Common Interest Development Act would need to be corrected to use the new section numbers.

The “Conforming Revisions” portion of the proposed law includes the technical amendments necessary to correct those cross-references.

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## PROPOSED LEGISLATION

### **Civ. Code §§ 1350-1378 (repealed). Davis-Stirling Common Interest Development Act**

SECTION 1. Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code is repealed.

### **Civ. Code §§ 4000-6150 (added). Davis-Stirling Common Interest Development Act**

SEC. 2. Part 5 (commencing with Section 4000) is added to Division 4 of the Civil Code, to read:

## PART 5. COMMON INTEREST DEVELOPMENTS

### CHAPTER 1. GENERAL PROVISIONS

#### Article 1. Preliminary Provisions

##### **§ 4000. Short title**

4000. This part shall be known and may be cited as the Davis-Stirling Common Interest Development Act. In a provision of this part, the part may be referred to as the act.

**Comment.** The first sentence of Section 4000 continues former Section 1350 without change. The second sentence is added for drafting convenience.

##### **§ 4005. Effect of headings**

4005. Division, part, title, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of this act.

**Comment.** Section 4005 continues former Section 1350.5 without change, except as indicated below.

The following nonsubstantive changes are made:

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

Section 4005 is a standard provision found in many codes. See, e.g., Evid. Code § 5; Fam. Code § 5; Prob. Code § 4.

**§ 4010. Application of act**

4010. Nothing in the act that added this part shall be construed to invalidate a document prepared or action taken before January 1, 2014, if the document or action was proper under the law governing common interest developments at the time that the document was prepared or the action was taken. For the purposes of this section, “document” does not include a governing document.

**Comment.** Section 4010 is new. It makes clear that any changes to former law made by enactment of this act shall not be construed to retroactively invalidate documents prepared or actions taken prior to the operative date of the act.

The term “documents” is used to describe notices, forms, and other procedural or transactional instruments. It is not meant to include the governing documents of the association. Governing documents must conform to the law. See Section 4205.

See also Section 4100 (“common interest development”), 4150 (“governing documents”).

**§ 4020. Construction of zoning ordinance**

4020. Unless a contrary intent is clearly expressed, a local zoning ordinance is construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless of the form of the common interest development.

**Comment.** Section 4020 continues former Section 1372 without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Section 4100 (“common interest development”).

**§ 4035. Delivered to an association**

4035. (a) If a provision of this act requires that a document be delivered to an association, the document shall be delivered to the person designated in the annual policy statement, prepared pursuant to Section 5310, to receive documents on behalf of the association. If no person has been designated to receive documents, the document shall be delivered to the president or secretary of the association.

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

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

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

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

**Comment.** Section 4035 is new. It provides a standard rule for delivery of a document to the association.

See also Sections 4078 (“annual policy statement”), 4080 (“association”), 4170 (“person”).

#### § 4040. Individual notice

4040. (a) If a provision of this act requires that an association deliver a document by “individual delivery” or “individual notice,” the document shall be delivered by one of the following methods:

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

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

(b) Upon receipt of a request by a member, pursuant to Section 5260, identifying a secondary address for delivery of notices of the following types, the association shall deliver an additional copy of those notices to the secondary address identified in the request:

(1) The documents to be delivered to the member pursuant to Article 7 (commencing with Section 5300) of Chapter 6.

(2) The documents to be delivered to the member pursuant to Article 2 (commencing with Section 5650) of Chapter 8, and Section 5710.

(c) For the purposes of this section, an unrecorded provision of the governing documents providing for a particular method of

delivery does not constitute agreement by a member to that method of delivery.

**Comment.** Section 4040 is new. It specifies acceptable methods for delivery of a notice to an individual member, as distinguished from a notice that is to be delivered to every member. See Section 4045 (general notice). The methods listed in subdivision (a) are drawn from former Section 1350.7(b)(2)-(3).

Subdivision (b) continues part of the substance of former Sections 1365.1(c) and 1367.1(k). See also Section 5260.

Subdivision (c) continues former Section 1350.7(d). It precludes use of electronic delivery methods when the recipient has not consented to use of those methods or has withdrawn such consent.

See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

#### § 4045. General notice

4045. (a) If a provision of this act requires “general delivery” or “general notice,” the document shall be provided by one or more of the following methods:

(1) Any method provided for delivery of an individual notice pursuant to Section 4040.

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

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

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

(b) Notwithstanding subdivision (a), if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to Section 4040. The option provided in this subdivision shall be described in the annual policy statement, prepared pursuant to Section 5310.

**Comment.** Section 4045 is new. It specifies acceptable methods for delivery of a notice to the membership generally, as distinguished from a notice that is to be delivered to a specific member. See Section 4040 (individual notice). Nothing in this section prevents an association from using supplemental notice

methods, such as posting on an Internet website, so long as a method authorized by this section is also used.

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

See also Sections 4078 (“annual policy statement”), 4080 (“association”), 4160 (“member”).

#### **§ 4050. Time and proof of delivery**

4050. (a) This section governs the delivery of a document pursuant to this act.

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

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

**Comment.** Section 4050 is new. Subdivision (b) generalizes the second sentence of former Section 1350.7(b)(2).

Subdivision (c) generalizes the second sentence of former Section 1350.7(b)(3).

#### **§ 4065. Approved by majority of all members**

4065. If a provision of this act requires that an action be approved by a majority of all members, the action shall be approved or ratified by an affirmative vote of a majority of the votes entitled to be cast.

**Comment.** Section 4065 is new. It is added for drafting convenience. This section only governs an election conducted pursuant to a provision of this act (i.e., the Davis-Stirling Common Interest Development Act). An election that is not required by this act would be governed by the association’s governing documents.

See also Section 4160 (“member”).

#### **§ 4070. Approved by majority of quorum of members**

4070. If a provision of this act requires that an action be approved by a majority of a quorum of the members, the action shall be approved or ratified by an 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.

**Comment.** Section 4070 is new. It is added for drafting convenience. This section only governs an election conducted pursuant to a provision of this act (i.e., the Davis-Stirling Common Interest Development Act). An election that is not required by this act would be governed by the association's governing documents.

See also Section 4160 ("member").

## Article 2. Definitions

### § 4075. Application of definitions

4075. The definitions in this article govern the construction of this act.

**Comment.** Section 4075 continues the substance of the introductory clause of former Section 1351.

### § 4076. "Annual Budget Report"

4076. "Annual budget report" means the report described in Section 5300.

**Comment.** Section 4076 is new. It is added for drafting convenience.

### § 4078. "Annual Policy Statement"

4078. "Annual policy statement" means the statement described in Section 5310.

**Comment.** Section 4078 is new. It is added for drafting convenience.

### § 4080. "Association"

4080. "Association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

**Comment.** Section 4080 continues former Section 1351(a) without change. See also Section 4100 ("common interest development").

### § 4085. "Board"

4085. "Board" means the board of directors of the association.

**Comment.** Section 4085 is new. See also Sections 4080 ("association"), 4140 ("director").

### § 4090. "Board meeting"

4090. "Board meeting" means either of the following:

(a) A congregation at the same time and place, of a sufficient number of directors to establish a quorum of the board, to hear, discuss, or deliberate upon any item of business that is within the authority of the board.

(b) A teleconference in which a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this act. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend and at least one member of the board of directors shall be present at that location. Participation by directors in a teleconference meeting constitutes presence at that meeting as long as all directors participating in the meeting are able to hear one another and members of the association speaking on matters before the board.

**Comment.** Section 4090 continues former Section 1363.05(k)(2) without change, except as indicated below.

The following substantive change is made:

- The number of directors required to establish a board meeting is changed from a majority of the members to a number constituting a quorum.
- The definition is generalized so that it applies to the entire act.

The following nonsubstantive changes are made:

- The word “meeting” is replaced with “board meeting,” to distinguish between a board meeting and a member meeting. See Section 4090 (“board meeting”).
- The words “board member” are replaced with “director.” See Section 4140 (“director”).
- The provision in subdivision (a) is restated for clarity.
- The word “title” is replaced with “act.”

See also Section 4085 (“board”), 4155 (“item of business”).

#### § 4095. “Common area”

4095. (a) “Common area” means the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing.

(b) Notwithstanding subdivision (a), in a planned development described in subdivision (b) of Section 4175, the common area may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

**Comment.** Subdivision (a) of Section 4095 continues the first two sentences of former Section 1351(b) without change.

Subdivision (b) continues the substance of the third sentence of former Section 1351(b), but restates it for clarity.

See also Sections 4100 (“common interest development”), 4175 (“planned development”), 4185 (“separate interest”).

#### **§ 4100. “Common interest development”**

4100. “Common interest development” means any of the following:

- (a) A community apartment project.
- (b) A condominium project.
- (c) A planned development.
- (d) A stock cooperative.

**Comment.** Section 4100 continues former Section 1351(c) without change.

See also Sections 4105 (“community apartment project”), 4125 (“condominium project”), 4175 (“planned development”), 4190 (“stock cooperative”).

#### **§ 4105. “Community apartment project”**

4105. “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.

**Comment.** Section 4105 continues former Section 1351(d) without change.

#### **§ 4110. “Community service organization or similar entity”**

4110. (a) “Community service organization or similar entity” means a nonprofit entity, other than an association, that is organized to provide services to residents of the common interest development or to the public in addition to the residents, to the extent community common area or facilities are available to the public.

(b) “Community service organization or similar entity” does not include an entity that has been organized solely to raise moneys and contribute to other nonprofit organizations that are qualified as

tax exempt under Section 501(c)(3) of the Internal Revenue Code and that provide housing or housing assistance.

**Comment.** Section 4110 continues former Section 1368(c)(3) without change, except as indicated below.

The following nonsubstantive changes are made:

- The former section is divided into subdivisions.
- The phrase “common areas” is singularized.

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”).

#### **§ 4120. “Condominium plan”**

4120. “Condominium plan” means a plan described in Section 4285.

**Comment.** Section 4120 is new. It is added for drafting convenience.

#### **§ 4125. “Condominium project”**

4125. (a) A “condominium project” means a real property development consisting of condominiums.

(b) 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, water, or fixtures, 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.

(c) 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, water, or fixtures, or any

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

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

**Comment.** Section 4125 continues former Section 1351(f), without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Sections 4120 (“condominium plan”), 4185 (“separate interest”).

#### § 4130. “Declarant”

4130. “Declarant” means the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.

**Comment.** Section 4130 continues former Section 1351(g) without change.

See also Sections 4135 (“declaration”), 4170 (“person”).

#### § 4135. “Declaration”

4135. “Declaration” means the document, however denominated, that contains the information required by Sections 4250 and 4255.

**Comment.** Section 4135 continues former Section 1351(h) without change, except as indicated below.

The following nonsubstantive changes are made:

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

**§ 4140. “Director”**

4140. “Director” means a natural person who serves on the board.

**Comment.** Section 4140 is new. It is added for drafting convenience. See also Section 4085 (“board”).

**§ 4145. “Exclusive use common area”**

4145. (a) “Exclusive use common area” means a portion of the common area designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

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

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

**Comment.** Section 4145 continues former Section 1351(i) without change, except as indicated below.

The following nonsubstantive change is made:

- The phrase “common areas” is singularized.

See also Sections 4095 (“common area”), 4135 (“declaration”), 4185 (“separate interest”).

**§ 4148. “General notice”**

4148. “General notice” means the delivery of a document pursuant to Section 4045.

**Comment.** Section 4148 is new. It is added for drafting convenience.

**§ 4150. “Governing documents”**

4150. “Governing documents” means the declaration and any other documents, such as bylaws, operating rules, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.

**Comment.** Section 4150 continues former Section 1351(j) without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Sections 4080 (“association”), 4100 (“common interest development”), 4135 (“declaration”).

**§ 4153. “Individual notice”**

4153. “Individual notice” means the delivery of a document pursuant to Section 4040.

**Comment.** Section 4153 is new. It is added for drafting convenience.

**§ 4155. “Item of business”**

4155. “Item of business” means any action within the authority of the board, except those actions that the board has validly delegated to any other person or persons, managing agent, officer of the association, or committee of the board comprising less than a quorum of the board.

**Comment.** Section 4155 continues former Section 1363.05(k)(1) without change, except as indicated below.

The following substantive change is made:

- The number of directors required to establish a board meeting is changed from a majority of the members to a number constituting a quorum.

See also Sections 4080 (“association”), 4085 (“board”), 4158 (“managing agent”), 4170 (“person”).

**§ 4158. “Managing agent”**

4158. (a) A “managing agent” is a person who, for compensation or in expectation of compensation, exercises control over the assets of a common interest development.

(b) A “managing agent” does not include any of the following:

(1) A regulated financial institution operating within the normal course of its regulated business practice.

(2) An attorney at law acting within the scope of the attorney's license.

**Comment.** Section 4158 continues former Sections 1363.1(b) and 1363.2(f) without change, except as indicated below.

The following substantive change is made:

- The definition is generalized so that it applies to the entire act.

The following nonsubstantive changes are made:

- The words "or entity" are not continued. See Section 4170 ("person").
- An exception for a full-time employee of the association is not continued in the generalized definition. That exception is continued without change in Section 5385.

See also Sections 4080 ("association"), 4100 ("common interest development"), 4170 ("person").

#### **§ 4160. "Member"**

4160. "Member" means an owner of a separate interest.

**Comment.** Section 4160 is new. It is added for drafting convenience.

See also Section 4185 ("separate interest").

#### **§ 4170. "Person"**

4170. "Person" means a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity.

**Comment.** Section 4170 is new. It is added for drafting convenience.

#### **§ 4175. "Planned development"**

4175. "Planned development" means a real property development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(a) Common area that 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.

(b) Common area and an association that maintains the common area with the power to levy assessments that may become a lien upon the separate interests in accordance with Article 2 (commencing with Section 5650) of Chapter 8.

**Comment.** Section 4175 continues the substance of former Section 1351(k), except as indicated below.

The following nonsubstantive changes are made:

- In the introductory clause, the word “development” is replaced with “real property development.”
- Subdivision (a) is restated for clarity.
- Subdivision (b) is restated for clarity and to update a cross-reference.

See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment project”), 4125 (“condominium project”), 4185 (“separate interest”), 4190 (“stock cooperative”).

#### § 4177. “Reserve accounts”

4177. “Reserve accounts” means both of the following:

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

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

**Comment.** Section 4177 continues former Section 1365.5(f) without change, except as indicated below.

The following substantive change is made:

- The definition is generalized so that it applies to the entire act.

The following nonsubstantive changes are made:

- A cross-reference is updated to reflect the new location of the referenced provisions.
- The words “association’s board of directors” are replaced with “board.” See Section 4085 (“board”).
- The words “or entity” are not continued. See Section 4170 (“person”).

See also Sections 4080 (“association”), 4085 (“board”).

#### § 4178. “Reserve account requirements”

4178. “Reserve account requirements” means the estimated funds that the board has determined are required to be available at a specified point in time to repair, replace, or restore those major components that the association is obligated to maintain.

**Comment.** Section 4178 continues former Section 1365.5(g) without change, except as indicated below.

The following substantive change is made:

- The definition is generalized so that it applies to the entire act.

The following nonsubstantive change is made:

- The words “association’s board of directors” are replaced with “board.” See Section 4085 (“board”).

See also Section 4080 (“association”).

#### **§ 4185. “Separate interest”**

4185. (a) “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 Section 4105.

(2) In a condominium project, “separate interest” means a separately owned unit, as specified in Section 4125.

(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 Section 4190.

(b) 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 area.

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

**Comment.** Section 4185 continues former Section 1351(*l*) without change, except as indicated below.

The following nonsubstantive changes are made:

- In subdivision (a)(2), the words “individual unit” are replaced with “separately owned unit.”
- The last two unnumbered paragraphs of former Section 1351(*l*) are designated as subdivisions (b) and (c).
- Cross-references are updated to reflect the new locations of referenced provisions.
- The phrase “common areas” is singularized.

See also Sections 4095 (“common area”), 4105 (“community apartment project”), 4120 (“condominium plan”), 4125 (“condominium project”), 4135 (“declaration”), 4175 (“planned development”), 4190 (“stock cooperative”).

**§ 4190. “Stock cooperative”**

4190. (a) “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.

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

**Comment.** Section 4190 continues former Section 1351(m) without change, except as indicated below.

The following nonsubstantive change is made:

- The unnumbered paragraphs are designated as subdivisions.

See also Section 4100 (“common interest development”).

## CHAPTER 2. APPLICATION OF ACT

**§ 4200. Application of act**

4200. This act 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.

**Comment.** Section 4200 continues former Section 1352 without change, except as indicated below.

The following nonsubstantive change is made:

- The word “title” is replaced with “act.”

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4120 (“condominium plan”), 4135 (“declaration”), 4185 (“separate interest”).

#### **§ 4201. Exemption of development without common area**

4201. Nothing in this act may be construed to apply to a real property development that does not contain common area. This section is declaratory of existing law.

**Comment.** Section 4201 continues the substance of former Section 1374 without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Section 4095 (“common area”).

#### **§ 4202. Commercial and industrial developments**

4202. (a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located:

(1) Section 4275.

(2) Article 5 (commencing with Section 4340) of Chapter 3.

(3) Article 2 (commencing with Section 4525), and Article 3 (commencing with Section 4575), of Chapter 4.

(4) Section 4600.

(5) Section 4740.

(6) Section 4765.

(7) Sections 5300, 5305, 5565, and 5810, and paragraph (7) of subdivision (a) of Section 5310.

(8) Sections 5500 through 5560, inclusive.

(9) Subdivision (b) of Section 5600.

(10) Subdivision (b) of Section 5605.

(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to protect purchasers in residential common

interest developments, however, the provisions may not be necessary to protect purchasers in commercial or industrial developments since the application of those provisions could result in unnecessary burdens and costs for these types of developments.

**Comment.** Section 4202 continues former Section 1373 without change, except as indicated below.

The following nonsubstantive changes are made:

- Former Section 1373(a)(3) is superfluous and is not continued.
- Cross-references are updated to reflect the new locations of the referenced provisions.
- Subdivision (a)(4) is added to continue the substance of former Section 1363.07(a)(3)(F).
- Subdivision (a)(10) refers only to Section 5605(b). It does not refer to the emergency exception provisions of Section 5610, which were also part of former Section 1366(b).

See also Sections 4100 (“common interest development”), 4135 (“declaration”).

## CHAPTER 3. GOVERNING DOCUMENTS

### Article 1. General Provisions

#### § 4205. Document authority

4205. (a) The governing documents may not include a provision that is inconsistent with the law. To the extent of any inconsistency between the governing documents and the law, the law controls.

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

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

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

rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration control.

**Comment.** Subdivisions (a) and (b) of Section 4205 are new.

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

Subdivision (d) is consistent with Section 4350(c), providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

See also Sections 4135 (“declaration”), 4150 (“governing documents”).

#### **§ 4210. Record notice of agent to receive payments**

4210. In order to facilitate the collection of regular assessments, special assessments, transfer fees, and similar charges, the board 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:

(a) The name of the association as shown in the declaration or the current name of the association, if different.

(b) 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.

(c) A daytime telephone number of the authorized party identified in subdivision (b) if a telephone number is available.

(d) 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.

(e) The recording information identifying the declaration governing the association.

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

**Comment.** Section 4210 continues former Section 1366.2(a) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “of any association” are not continued.
- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).
- In subdivisions (a) and (e), the words “conditions, covenants, and restrictions” are replaced with “declaration. See Section 4135 (“declaration”).

See also Sections 4080 (“association”), 4158 (“managing agent”), 4185 (“separate interest”).

#### **§ 4215. Liberal construction of instruments**

4215. 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 Division 2 shall operate to invalidate any provisions of the governing documents.

**Comment.** Section 4215 continues former Section 1370 without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Sections 4100 (“common interest development”), 4120 (“condominium plan”), 4135 (“declaration”), 4150 (“governing documents”).

#### **§ 4220. Boundaries of units**

4220. 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.

**Comment.** Section 4220 continues former Section 1371 without change.

See also Sections 4120 (“condominium plan”), 4125 (“condominium project”).

#### **§ 4225. Deletion of unlawful restrictive covenants**

4225. (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, without approval of the

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

(d) If after providing written notice to an association, pursuant to Section 4035, requesting that the association delete a restrictive covenant that violates subdivision (a), and the association fails to delete the restrictive covenant within 30 days of receiving the notice, the Department of Fair Employment and Housing, a city or county in which a common interest development is located, or any person may bring an action against the association for injunctive relief to enforce subdivision (a). The court may award attorney's fees to the prevailing party.

**Comment.** Section 4225 continues former Section 1352.5 without change, except as indicated below.

The following nonsubstantive changes are made:

- In subdivision (b), the words "board of directors of an association" are replaced with "board." See Section 4085 ("board").
- In subdivision (b), the word "owners" is replaced with "members." See Section 4160 ("member").
- Subdivision (c) is added.
- Subdivision (d) is revised to include a reference to the provision governing notice to an association (Section 4035).

See also Sections 4080 ("association"), 4085 ("board"), 4100 ("common interest development"), 4135 ("declaration"), 4150 ("governing documents"), 4170 ("person").

#### **§ 4230. Deletion of declarant provisions in governing documents**

4230. (a) Notwithstanding any provision of the governing documents to the contrary, the board may, after the developer has completed construction of the development, has terminated

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

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

(c) At least 30 days prior to taking action pursuant to subdivision (a), the board shall deliver to all members, by individual delivery, pursuant to Section 4040, (1) a copy of all amendments to the governing documents proposed to be adopted under subdivision (a), and (2) a notice of the time, date, and place the board will consider adoption of the amendments. The board may consider adoption of amendments to the governing documents pursuant to subdivision (a) only at a meeting that is open to all members, who shall be given opportunity to make comments thereon. All deliberations of the board on any action proposed under subdivision (a) shall only be conducted in an open meeting.

(d) The board may not amend the governing documents pursuant to this section without the approval of a majority of a quorum of the members, pursuant to Section 4070. For the purposes of this section, "quorum" means more than 50 percent of the members who own no more than two separate interests in the development.

**Comment.** Section 4230 continues former Section 1355.5 without change, except as indicated below.

The following substantive change is made:

- Subdivision (c) is revised to provide for individual delivery of the specified notice. See Section 4040.

The following nonsubstantive changes are made:

- The words “his or her” are not continued in subdivision (a).
- The words “of a common interest development” are not continued in subdivision (a).
- The words “board of directors” and “board of directors of the association” are replaced throughout with “board.” See Section 4085 (“board”).
- Subdivision (b) is revised to use numerals to number the listed items, rather than letters.
- Subdivisions (c) and (d) are revised to use “member.” See Section 4160 (“member”).
- Subdivision (c) is revised to delete the unnecessary word “such.”
- Subdivision (c) is revised to replace the word “which” with “that.”
- Subdivision (d) is revised to use the standard term “approval of a majority of a quorum of the members.” See Section 4070.

See also Sections 4095 (“common area”), 4150 (“governing documents”), 4185 (“separate interest”).

#### **§ 4235. Correction of statutory cross-reference**

4235. (a) Notwithstanding any other provision of law or provision of the governing documents, if the governing documents include a reference to a provision of the Davis Stirling Common Interest Development Act that was repealed and continued in a new provision by the act that added this section, the board may amend the governing documents, solely to correct the cross-reference, by adopting a board resolution that shows the correction.

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

**Comment.** Section 4235 is new. It is intended to provide a simplified method to correct statutory cross-references in an association’s governing documents that are required as a result of the enactment of the act that added this section. No other amendment can be made under this section.

See also Sections 4085 (“board”), 4135 (“declaration”), 4150 (“governing documents”).

## Article 2. Declaration

### § 4250. Content of declaration

4250. (a) A declaration, recorded on or after January 1, 1986, shall contain a legal description of the common interest development, and a statement that the common interest development is a community apartment project, condominium project, planned development, stock cooperative, or combination thereof. The declaration shall additionally set forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.

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

**Comment.** Subdivision (a) of Section 4250 continues the first two sentences of former Section 1353(a)(1) without change.

Subdivision (b) continues former Section 1353(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- The word “owners” is replaced with “members.” See Section 4160 (“member”).
- The words “original signator of the declaration” are replaced with “declarant.” See Section 4130 (“declarant”).

See also Sections 4080 (“association”), 4100 (“common interest development”), 4105 (“community apartment project”), 4125 (“condominium project”), 4135 (“declaration”), 4175 (“planned development”), 4190 (“stock cooperative”).

### § 4255. Special disclosures

4255. (a) If a common interest development 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.

(b) 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.

(c) If a common interest development is within the San Francisco Bay Conservation and Development Commission jurisdiction, as described in Section 66610 of the Government Code, a declaration recorded on or after January 1, 2006, shall contain the following notice:

NOTICE OF SAN FRANCISCO BAY  
CONSERVATION AND DEVELOPMENT  
COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission’s jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

(d) The statement in a declaration acknowledging that a property is located in an airport influence area or within the jurisdiction of the San Francisco Bay Conservation and Development Commission does not constitute a title defect, lien, or encumbrance.

**Comment.** Section 4255 continues all but the first two sentences of former Section 1353(a)(1)-(4) without change, except as indicated below.

The following nonsubstantive change is made:

- The words “the property” are replaced with “a common interest development” to improve clarity. See also Bus. & Prof. Code § 11010 (disclosure of property within airport influence area); Pub. Util. Code § 21675 (designation of “airport influence area” by county airport land use commission).

See also Sections 4100 (“common interest development”), 4135 (“declaration”).

#### **§ 4260. Amendment authorized**

4260. Except to the extent that a declaration provides by its express terms that it is not amendable, in whole or in part, a declaration that fails to include provisions permitting its amendment at all times during its existence may be amended at any time.

**Comment.** Section 4260 continues the first sentence of former Section 1355(b) without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Section 4135 (“declaration”).

#### **§ 4265. Amendment to extend term of declaration authorized**

4265. (a) The Legislature finds that there are common interest developments that have been created with deed restrictions that do not provide a means for the members to extend the term of the declaration. The Legislature further finds that covenants and restrictions, contained in the declaration, are an appropriate method for protecting the common plan of developments and to provide for a mechanism for financial support for the upkeep of common area including, but not limited to, roofs, roads, heating systems, and recreational facilities. If declarations terminate prematurely, common interest developments may deteriorate and the 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 the extension is approved by a majority of all members, pursuant to Section 4065.

(b) A declaration that specifies a termination date, but that contains no provision for extension of the termination date, may be extended, before its termination date, by the approval of members pursuant to Section 4270.

(c) 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.

**Comment.** Subdivision (a) of Section 4265 continues former Section 1357(a) without change, except as indicated below.

The following nonsubstantive changes are made:

- The defined term “member” is used. See Section 4160 (“member”).
- The phrase “common areas” is singularized.
- The word “which” is replaced with “that.”
- A reference to approval by “members having more than 50 percent of the votes in the association” is replaced with standard terminology.

Subdivision (b) continues part of the substance of former Section 1357(b), authorizing extension of the termination date of a declaration that does not provide for extension of the termination date, except as indicated below.

The following nonsubstantive change is made:

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

The procedure for extension of the termination date provided in former Section 1357(b)-(c) is not continued. An extension would instead be made pursuant to the general procedure for amendment of a declaration. See Section 4270.

Subdivision (c) continues former Section 1357(d) without change.

See also Sections 4095 (“common area”), 4100 (“common interest development”), 4135 (“declaration”).

#### **§ 4270. Amendment procedure**

4270. (a) A declaration may be amended pursuant to the declaration or this act. Except as provided in Section 4275, an amendment is effective after all of the following requirements have been met:

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

(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.

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

(b) If the declaration does not specify the percentage of members who must approve an amendment of the declaration, an amendment may be approved by a majority of all members, pursuant to Section 4065.

**Comment.** Subdivision (a) of Section 4270 continues former Section 1355(a) without change, except as indicated below.

The following substantive changes are made:

- The term “governing documents” is replaced with the term “declaration.” See Section 4135 (“declaration”).
- Paragraph (a)(1) is revised to recognize that a declaration may require that an amendment be approved by a non-member.

The following nonsubstantive changes are made:

- The first word is replaced with “A.”
- The word “title” is replaced with “act.”
- The defined term “member” is used. See Section 4160 (“member”).
- The subdivision is divided into paragraphs, with conforming technical adjustments to the language.

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

See also Sections 4080 (“association”), 4100 (“common interest development”), 4170 (“person”).

#### **§ 4275. Judicial authorization of amendment**

4275. (a) If in order to amend a declaration, the declaration requires members having more than 50 percent of the votes in the association, in a single class voting structure, or members 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 member, 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 member 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 the governing documents, this act, and any other applicable law.

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

(4) Members 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, members 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 members having more than 50 percent of the votes in more than one class to vote in favor of an amendment, unless members 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 deliver to each member, by individual delivery, pursuant to Section 4040, a copy of the amendment, together with a statement that the amendment has been recorded.

**Comment.** Section 4275 continues former Section 1356 without change, except as indicated below.

The following substantive change is made:

- Language is added to paragraph (c)(2) to require a finding that a vote is held in accordance with “this act, and any other applicable law.”

The following nonsubstantive changes are made:

- Subdivision (g) is revised to specify the procedure for individual delivery of notice and to use “member.” See Section 4160 (“member”).

An incorporated association may also petition the court under Corporations Code Section 7515 with respect to actions governed by that provision.

See also Sections 4080 (“association”), 4100 (“common interest development”), 4130 (“declarant”), 4135 (“declaration”), 4150 (“governing documents”), 4170 (“person”).

### Article 3. Articles of Incorporation

#### § 4280. Content of articles

4280. (a) The articles of incorporation of an association filed with the Secretary of State shall include a statement, which shall be in addition to the statement of purposes of the corporation, that does all of the following:

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

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

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

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

**Comment.** Section 4280 continues former Section 1363.5 without change, except as indicated below.

The following nonsubstantive changes are made:

- A cross-reference to the definition of “managing agent” is not continued. See Section 4158 (“managing agent”).
- References to “common interest development association” have been standardized.

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

See also Sections 4080 (“association”), 4100 (“common interest development”).

## Article 4. Condominium Plan

### § 4285. “Condominium plan”

4285. A condominium plan shall contain all of the following:

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

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

(c) A certificate consenting to the recordation of the condominium plan pursuant to this act that is signed and acknowledged as provided in Section 4290.

**Comment.** Section 4285 continues the introduction of former Section 1351(e) without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Sections 4095 (“common area”), 4125 (“condominium project”), 4185 (“separate interest”).

### § 4290. Recordation of condominium plan

4290. (a) The certificate consenting to the recordation of a condominium plan that is required by subdivision (c) of Section

4120 shall be signed and acknowledged by all of the following persons:

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

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

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

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

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

(c) In the event a conversion to condominiums of a 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.

**Comment.** Section 4290 continues the substance of former Section 1351(e)(3), except as indicated below.

The following nonsubstantive changes are made:

- The last paragraph of former Section 1351(e) is not continued in this section.
- A cross-reference to Section 4120(c) is added to the first paragraph.
- Subdivision (b) is revised to make clear that it states an exception to who must sign the certificate of consent to recordation, rather than the condominium plan itself.

See also Sections 4105 (“community apartment project”), 4120 (“condominium plan”), 4125 (“condominium project”), 4170 (“person”), 4190 (“stock cooperative”).

#### **§ 4295. Amendment or revocation of condominium plan**

4295. A condominium plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the persons who, at the time of amendment or revocation, are persons whose signatures are required under Section 4290.

**Comment.** Section 4295 continues the last paragraph of former Section 1351(e) without change, except as indicated below.

The following nonsubstantive change is made:

- Language is added to make clear that the persons whose signatures are required for amendment or revocation of a condominium plan are the persons who fall within the groups described in Section 4290 at the time of amendment or revocation.

See also Sections 4120 (“condominium plan”), 4170 (“person”).

## Article 5. Operating Rules

### § 4340. “Operating rule”

4340. For the purposes of this article:

(a) “Operating rule” means a regulation adopted by the board that applies generally to the management and operation of the common interest development or the conduct of the business and affairs of the association.

(b) “Rule change” means the adoption, amendment, or repeal of an operating rule by the board.

**Comment.** Section 4340 continues former Section 1357.100 without change, except as indicated below.

The following nonsubstantive change is made:

- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).

See also Sections 4080 (association), 4100 (common interest development).

### § 4350. Requirements for validity and enforceability

4350. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

(a) The rule is in writing.

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

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

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

(e) The rule is reasonable.

**Comment.** Section 4350 continues former Section 1357.110 without change, except as indicated below.

The following nonsubstantive change is made:

- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4135 (“declaration”), 4340(a) (“operating rule”).

#### **§ 4355. Application of rulemaking procedures**

4355. (a) Sections 4360 and 4365 only apply to an operating rule that relates to one or more of the following subjects:

- (1) Use of the common area or of an exclusive use common area.
- (2) Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest.
- (3) Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties.
- (4) Any standards for delinquent assessment payment plans.
- (5) Any procedures adopted by the association for resolution of disputes.
- (6) Any procedures for reviewing and approving or disapproving a proposed physical change to a member’s separate interest or to the common area.
- (7) Procedures for elections.

(b) Sections 4360 and 4365 do not apply to the following actions by the board:

- (1) A decision regarding maintenance of the common area.
- (2) A decision on a specific matter that is not intended to apply generally.
- (3) A decision setting the amount of a regular or special assessment.
- (4) A rule change that is required by law, if the board has no discretion as to the substantive effect of the rule change.
- (5) Issuance of a document that merely repeats existing law or the governing documents.

**Comment.** Section 4355 continues former Section 1357.120 without change, except as indicated below.

The following nonsubstantive change is made:

- The words “board of directors” and “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4095 (“common area”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4160 (“member”), 4340(a) (“operating rule”), 4340(b) (“rule change”), 4185 (“separate interest”).

**§ 4360. Approval of rule change by board**

4360. (a) The board shall provide general notice pursuant to Section 4045 of a proposed rule change at least 30 days before making the rule change. The notice shall include the text of the proposed rule change and a description of the purpose and effect of the proposed rule change. Notice is not required under this subdivision if the board determines that an immediate rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the association.

(b) A decision on a proposed rule change shall be made at a board meeting, after consideration of any comments made by association members.

(c) As soon as possible after making a rule change, but not more than 15 days after making the rule change, the board shall deliver general notice pursuant to Section 4045 of the rule change. If the rule change was an emergency rule change made under subdivision (d), the notice shall include the text of the rule change, a description of the purpose and effect of the rule change, and the date that the rule change expires.

(d) If the board determines that 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, it may make an emergency rule change, and no notice is required, as specified in subdivision (a). An emergency rule change is effective for 120 days, unless the rule change provides for a shorter effective period. A rule change made under this subdivision may not be readopted under this subdivision.

**Comment.** Section 4360 continues former Section 1357.130 without change, except as indicated below.

The following substantive changes are made:

- A reference to former Section 1350.7 is replaced with references to the provision governing general notice. Delivery of “general notice” under Section 4045 preserves most of the substance of former law governing

delivery of notice under this section, except that Section 4045 permits the posting of notices and requires that individual notice delivery methods be used for a member who has requested that form of delivery. *Cf.* former Section 1350.7. See Sections 4085 (“board”), 4090 (“board meeting”).

The following nonsubstantive changes are made:

- The words “to the members” are not continued in subdivision (a).
- The words “board of directors” are replaced throughout with the “board.” See Section 4085 (“board”).
- The words “meeting of the board of directors” are replaced with “board meeting.” See Section 4090 (“board meeting”).
- In subdivision (d), a semi-colon is replaced with a comma, for grammatical reasons.

See also Sections 4080 (“association”), 4160 (“member”), 4340(b) (“rule change”).

### **§ 4365. Reversal of rule change by members**

4365. (a) Members of an association owning 5 percent or more of the separate interests may call a special vote of the members to reverse a rule change.

(b) A special vote of the members may be called by delivering a written request to the president or secretary of the board. Not less than 35 days nor more than 90 days after receipt of a proper request, the association shall hold a vote of the members on whether to reverse the rule change, pursuant to Article 4 (commencing with Section 5100) of Chapter 6. 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) For the purposes of Section 5225 of this code and Section 8330 of the Corporations Code, collection of signatures to call a special vote under this section is a purpose reasonably related to the interests of the members of the association. A member request to copy or inspect the membership list solely for that purpose may not be denied on the grounds that the purpose is not reasonably related to the member’s interests as a member.

(d) The rule change may be reversed by the affirmative vote of a majority of a quorum of the members, pursuant to Section 4070, or

if the declaration or bylaws require a greater percentage, by the affirmative vote of the percentage required.

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

(f) A rule change reversed under this section may not be readopted for one year after the date of the vote reversing the rule change. Nothing in this section precludes the board from adopting a different rule on the same subject as the rule change that has been reversed.

(g) As soon as possible after the close of voting, but not more than 15 days after the close of voting, the board shall provide general notice pursuant to Section 4045 of the results of the member vote.

(h) This section does not apply to an emergency rule change made under subdivision (d) of Section 4360.

**Comment.** Section 4365 continues former Section 1357.140 without change, except as indicated below.

The following substantive changes are made:

- A reference to former Section 1350.7 is replaced with references to the provision governing general notice pursuant to Section 4045.
- A reference to voting pursuant to Corporations Code Section 7513 is replaced with a reference to the voting provisions of this act.

The following nonsubstantive changes are made:

- Cross-references are updated to reflect the new locations of referenced provisions.
- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4135 (“declaration”), 4340(b) (“rule change”), 4185 (“separate interest”).

#### **§ 4370. Applicability of article to changes commenced before and after January 1, 2004**

4370. (a) This article applies to a rule change commenced on or after January 1, 2004.

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

(c) For the purposes of this section, a rule change is commenced when the board takes its first official action leading to adoption of the rule change.

**Comment.** Section 4370 continues former Section 1357.150 without change, except as indicated below.

The following nonsubstantive change is made:

- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).

See also Section 4340(b) (“rule change”).

## CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS

### Article 1. Ownership Rights and Interests

#### § 4500. Ownership of common area

4500. Unless the declaration otherwise provides, in a condominium project, or in a planned development in which the common area is owned by the owners of the separate interests, the common area is owned as tenants in common, in equal shares, one for each separate interest.

**Comment.** Section 4500 continues former Section 1362 without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Sections 4095 (“common area”), 4125 (“condominium project”), 4135 (“declaration”), 4175 (“planned development”), 4185 (“separate interest”).

#### § 4505. Appurtenant rights and easements

4505. Unless the declaration otherwise provides:

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

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

**Comment.** Section 4505 continues former Section 1361 without change, except as indicated below.

The following nonsubstantive change is made:

- The phrase “common areas” is singularized.

See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment project”), 4125 (“condominium project”), 4135 (“declaration”), 4175 (“planned development”), 4185 (“separate interest”), 4190 (“stock cooperative”).

### **§ 4510. Access to separate interest property**

4510. Except as otherwise provided in law, an order of the court, or an order pursuant to a final and binding arbitration decision, an association may not deny a member or occupant physical access to the member’s or occupant’s separate interest, either by restricting access through the common area to the separate interest, or by restricting access solely to the separate interest.

**Comment.** Section 4510 continues former Section 1361.5 without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “his or her” are replaced with “the member’s or occupant’s.”
- References to the “owner’s” separate interest are revised to omit the word “owner’s.” This will help to avoid any implication that the reference does not also apply to an “occupant” of a separate interest.
- The word “owner” is replaced with “member” throughout. See Section 4160 (“member”).
- The phrase “common areas” is singularized.

See also Sections 4080 (“association”), 4095 (“common area”), 4185 (“separate interest”).

## Article 2. Transfer Disclosure

### **§ 4525. Disclosure to prospective purchaser**

4525. (a) The owner of a separate interest shall provide the following documents to a prospective purchaser of the separate interest, as soon as practicable before the transfer of title or the

execution of a real property sales contract, as defined in Section 2985:

(1) A copy of all governing documents. If the association is not incorporated, this shall include 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 Article 7 (commencing with Section 5300) of Chapter 6.

(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 Article 2 (commencing with Section 5650) of Chapter 8.

(5) A copy or a summary of any notice previously sent to the owner pursuant to Section 5855 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 initial list of defects provided to each member pursuant to Section 6000, unless the association and the builder subsequently enter into a settlement agreement or otherwise

resolve the matter and the association complies with Section 6100. Disclosure of the initial list of defects pursuant to this paragraph does not waive any privilege attached to the document. The initial 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 6100.

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

(9) If there is a provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant, a statement describing the prohibition and its applicability.

(10) If requested by the prospective purchaser, a copy of the minutes of board meetings, excluding meetings held in executive session, conducted over the previous 12 months, that were approved by the board.

(b) This section does not apply to an owner that is subject to the requirements of Section 11018.6 of the Business and Professions Code.

**Comment.** Section 4525 continues the substance of subdivision (a) of former Section 1368 without change, except as indicated below.

The following nonsubstantive changes are made:

- Cross-references are updated to reflect the new locations of the referenced provisions.
- The words "association's board of directors" are replaced with "board." See Section 4085 ("board").
- Subdivision (a)(1) is revised to make clear that all governing documents must be provided. See Section 4150 ("governing documents").
- The words "member of the association" are replaced with "member." See Section 4160 ("member").
- The words "meetings... of the association's board of directors" are replaced with "board meetings." See Section 4090 ("board meeting").

See also Sections 4080 ("association"), 4100 ("common interest development"), 4185 ("separate interest").

**§ 4528. Document disclosure summary form**

4528. The form for billing disclosures required by Section 4530 shall be in substantially the following form:

**CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED  
BY SECTION 4525\***

Property Address \_\_\_\_\_

Owner of Property \_\_\_\_\_

Owner's Mailing Address \_\_\_\_\_  
(If known or different from property address.)

Provider of the Section 4525 Items:

Print Name \_\_\_\_\_

Position or Title \_\_\_\_\_

Association or Agent \_\_\_\_\_

Date Form Completed \_\_\_\_\_

**Check or Complete Applicable Column or Columns Below**

Document	Civil Code Section	Included	Not Available (N/A) or Not Applicable (N/App)
Articles of Incorporation or statement that not incorporated	Section 4525(a)(1)	_____	_____
CC&Rs	Section 4525(a)(1)	_____	_____
Bylaws	Section 4525(a)(1)	_____	_____
Operating Rules	Section 4525(a)(1)	_____	_____
Age restrictions, if any	Section 4525(a)(2)	_____	_____
Annual budget report or summary, including reserve study	Sections 5300 and 4525(a)(3)	_____	_____
Assessment and reserve funding disclosure summary	Sections 5300 and 4525(a)(4)	_____	_____
Financial statement review	Sections 5305 and 4525(a)(3)	_____	_____
Assessment enforcement policy	Sections 5310 and 4525(a)(4)	_____	_____
Insurance summary	Sections 5300 and 4525(a)(3)	_____	_____
Regular assessment	Section 4525(a)(4)	_____	_____

Special assessment	Section 4525(a)(4)	_____	_____
Emergency assessment	Section 4525(a)(4)	_____	_____
Other unpaid obligations of seller	Sections 5675 and 4525(a)(4)	_____	_____
Approved changes to assessments	Sections 5300 and 4525(a)(4), (8)	_____	_____
Settlement notice regarding common area defects	Sections 4525(a)(6), (7) and 6100	_____	_____
Preliminary list of defects	Sections 4525(a)(6), 6000, and 6100	_____	_____
Notice(s) of violation	Sections 5855 and 4525(a)(5)	_____	_____
Required statement of fees	Section 4525	_____	_____
Minutes of regular board meetings conducted over the previous 12 months, if requested	Section 4525(a)(10)	_____	_____
Total fees for these documents:		_____	

\* The information provided by this form may not include all fees that may be imposed before the close of escrow. Additional fees that are not related to the requirements of Section 4525 may be charged separately.

**Comment.** Section 4528 continues former Section 1368.2 without change, except as indicated below.

The following nonsubstantive changes are made:

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

- The words “meetings of the board of directors” are replaced with “board meetings.” See Section 4090 (“board meeting”).
- The words “pro forma operating budget” are replaced with “annual budget report.” See Section 4076 (“annual budget report”).
- An erroneous statutory reference in the form to former Section 1368(a)(9), which should have referred to former Section 1368(a)(10), is corrected.

See also Sections 4080 (“association”), 4340(a) (“operating rule”).

**§ 4530. Information to be provided by association**

4530. (a) Upon written request, the association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest, or any other recipient authorized by the owner, with a copy of the requested documents specified in Section 4525.

(b)(1) Upon receipt of a written request, the association shall provide, on the form described in Section 4528, a written or electronic estimate of the fees that will be assessed for providing the requested documents. The documents required to be made available pursuant to this section may be maintained in electronic form, and may be posted on the association’s Internet Web site. Requesting parties shall have the option of receiving the documents by electronic transmission if the association maintains the documents in electronic form. The association may collect a reasonable fee based upon the association’s actual cost for the procurement, preparation, reproduction, and delivery of the documents requested pursuant to the provisions of this section.

(2) No additional fees may be charged by the association for the electronic delivery of the documents requested.

(3) Fees for any documents required by this section shall be distinguished from other fees, fines, or assessments billed as part of the transfer or sales transaction. Delivery of the documents required by this section shall not be withheld for any reason nor subject to any condition except the payment of the fee allowed pursuant to paragraph (1).

(4) An association may contract with any person or entity to facilitate compliance with the requirements of this subdivision on behalf of the association.

(5) The association shall also provide a recipient authorized by the owner of a separate interest with a copy of the completed form

specified in Section 4528 at the time the required documents are delivered.

**Comment.** Section 4530 continues former Section 1368(b) without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Sections 4080 (“association”), 4185 (“separate interest”).

#### **§ 4535. Related requirements**

4535. In addition to the requirements of this article, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

**Comment.** Section 4535 continues former Section 1368(f) without change, except as indicated below.

The following nonsubstantive change is made:

- “Section” is replaced with “article” to reflect that former Section 1368 is continued in this article.

See also Section 4185 (“separate interest”).

#### **§ 4540. Enforcement of article**

4540. Any person who willfully violates this article is liable to the purchaser of a separate interest that 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 attorney’s fees.

**Comment.** Section 4540 continues former Section 1368(d) without change, except as indicated below.

The following nonsubstantive changes are made:

- “Section” is replaced with “article.”
- The words “or entity” are not continued. See Section 4170 (“person”).

See also Section 4185 (“separate interest”).

#### **§ 4545. Validity of title unaffected**

4545. Nothing in this article affects the validity of title to real property transferred in violation of this article.

**Comment.** Section 4545 continues former Section 1368(e) without change, except as indicated below.

The following nonsubstantive change is made:

- “Section” is replaced with “article.”

### Article 3. Transfer Fee

#### § 4575. Transfer fee

4575. Except as provided in Section 4580, neither an association nor a community service organization or similar entity may impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:

- (a) An amount not to exceed the association’s actual costs to change its records.
- (b) An amount authorized by Section 4530.

**Comment.** Section 4575 continues former Section 1368(c)(1) without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Sections 4080 (“association”), 4110 (“community service organization or similar entity”).

#### § 4580. Exemption from transfer fee limitations

4580. The prohibition in Section 4575 does not apply to a community service organization or similar entity, or to a nonprofit entity that provides services to a common interest development under a declaration of trust, of either of the following types:

(a) An organization or entity that satisfies both of the following conditions:

(1) It was established before February 20, 2003.

(2) It exists and operates, in whole or in part, to fund or perform environmental mitigation or to restore or maintain wetlands or native habitat, as required by the state or local government as an express written condition of development.

(b) An organization or entity that satisfies all of the following conditions:

(1) It is not an organization or entity described by subdivision

(a).

(2) It was established and received a transfer fee before January 1, 2004.

(3) On and after January 1, 2006, it offers a purchaser the following payment options for the fee or charge it collects at time of transfer:

(A) Paying the fee or charge at the time of transfer.

(B) Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the organization or entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount owed. If the purchaser sells the separate interest before the end of the installment payment plan period, the purchaser shall pay the remaining balance before the transfer.

**Comment.** Section 4580 continues the substance of former Section 1368(c)(2).

See also Sections 4100 (“common interest development”), 4110 (“community service organization or similar entity”), 4185 (“separate interest”).

#### Article 4. Restrictions on Transfers

##### § 4600. Grant of exclusive use

4600. (a) Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board may grant exclusive use of any portion of the common area to a member.

(b) Subdivision (a) does not apply to the following actions:

(1) A reconveyance of all or any portion of that common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report.

(2) Any grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report or in accordance with the governing documents approved by the Real Estate Commissioner.

(3) Any grant of exclusive use that is for any of the following reasons:

(A) To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(B) To eliminate or correct encroachments due to errors in construction of any improvements.

(C) To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(D) To fulfill the requirement of a public agency.

(E) To transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the association.

(F) To accommodate a disability.

(G) To assign a parking space, storage unit, or other amenity, that is designated in the declaration for assignment, but is not assigned by the declaration to a specific separate interest.

(H) To comply with governing law.

(c) Any measure placed before the members requesting that the board grant exclusive use of any portion of the common area shall specify whether the association will receive any monetary consideration for the grant and whether the association or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.

**Comment.** Section 4600 continues former Section 1363.07 without change, except as indicated below.

The following substantive changes are made:

- The section is no longer limited in its application to a common area that the association owns or in which the association has an easement right. It now also applies to common area that is owned by the members as tenants in common.
- Paragraphs (b)(3)(F)-(H) are new.

The following nonsubstantive changes are made:

- An introductory clause is added in subdivision (b), to introduce the list of exceptions.
- The substance of former subdivision (a)(3)(F) is continued in Section 4202.
- The words “board of directors” are replaced throughout with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4135 (“declaration”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

#### **§ 4605. Civil action to enforce Section 4600**

4605. (a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of Section 4600 by the association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues.

(b) A member who prevails in a civil action to enforce the member’s rights pursuant to Section 4600 shall be entitled to reasonable attorney’s fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

**Comment.** Section 4605 continues former Section 1363.09(a)-(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “an association of which he or she is a member” are replaced with “the association.”
- The words “this article” are replaced with “Section 4600.”
- The words “his or her” are replaced with “the member’s.”
- The second sentence of former Section 1363.09(a) is not continued because it is irrelevant to judicial enforcement of this article.
- The words “member of the association” are replaced with “member.” See Section 4160 (“member”).

See also Section 4080 (“association”).

#### **§ 4610. Partition of condominium project**

4610. (a) Except as provided in this section, the common area in a condominium project shall remain undivided, and there shall be no judicial partition thereof. Nothing in this section shall be deemed to prohibit partition of a cotenancy in a condominium.

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

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

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

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

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

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

**Comment.** Section 4610 continues former Section 1359 without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Sections 4095 (“common area”), 4125 (“condominium project”), 4135 (“declaration”), 4185 (“separate interest”).

#### **§ 4615. Lien for work performed in condominium project**

4615. (a) In a condominium project, no labor performed or services or materials furnished with the consent of, or at the request of, an owner in the condominium project or the owners’ agent or contractor shall be the basis for the filing of a lien against any other property of any other owner in the condominium project unless that other owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by

the owner of any condominium in the case of emergency repairs thereto.

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

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

**Comment.** Section 4615 continues former Section 1369 without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Sections 4080 ("association"), 4095 ("common area"), 4125 ("condominium project").

## Article 5. Transfer of Separate Interest

### § 4625. Community apartment project

4625. In a community apartment project, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the community apartment project. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

**Comment.** Section 4625 continues former Section 1358(a) without change.

See also Sections 4080 ("association"), 4105 ("community apartment project"), 4185 ("separate interest").

### § 4630. Condominium project

4630. In a condominium project the common area is not subject to partition, except as provided in Section 4610. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common

area. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

**Comment.** Section 4630 continues former Section 1358(b) without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Sections 4080 ("association"), 4095 ("common area"), 4125 ("condominium project"), 4185 ("separate interest").

#### **§ 4635. Planned development**

4635. In a planned development, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the undivided interest in the common area, if any exists. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

**Comment.** Section 4635 continues former Section 1358(c) without change, except as indicated below.

The following nonsubstantive change is made:

- The phrase "common areas" is singularized.

See also Sections 4080 ("association"), 4095 ("common area"), 4175 ("planned development"), 4185 ("separate interest").

#### **§ 4640. Stock cooperative**

4640. In a stock cooperative, any conveyance, judicial sale, or other voluntary or involuntary transfer of the separate interest includes the ownership interest in the corporation, however evidenced. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the owner's entire estate also includes the owner's membership interest in the association.

**Comment.** Section 4640 continues former Section 1358(d) without change.

See also Sections 4080 ("association"), 4185 ("separate interest"), 4190 ("stock cooperative").

**§ 4645. Transfer of exclusive use common area**

4645. Nothing in this article prohibits the transfer of exclusive use areas, independent of any other interest in a common interest subdivision, if authorization to separately transfer exclusive use areas is expressly stated in the declaration and the transfer occurs in accordance with the terms of the declaration.

**Comment.** Section 4645 continues the next to last paragraph of former Section 1358 without change, except as indicated below.

The following nonsubstantive change is made:

- “Section” is replaced with “article.”

See also Section 4135 (“declaration”).

**§ 4650. Severability of interests**

4650. Any restrictions upon the severability of the component interests in real property which are contained in the declaration shall not be deemed conditions repugnant to the interest created within the meaning of Section 711. However, these restrictions shall not extend beyond the period in which the right to partition a project is suspended under Section 4610.

**Comment.** Section 4650 continues the last paragraph of former Section 1358 without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Section 4135 (“declaration”).

## CHAPTER 5. PROPERTY USE AND MAINTENANCE

### Article 1. Protected Uses

**§ 4700. Application of article**

4700. This article includes provisions that limit the authority of an association or the governing documents to regulate the use of a member’s separate interest. Nothing in this article is intended to affect the application of any other provision that limits the authority of an association to regulate the use of a member’s

separate interest, including, but not limited to, the following provisions:

- (a) Sections 712 and 713, relating to the display of signs.
- (b) Sections 714 and 714.1, relating to solar energy systems.
- (c) Section 714.5, relating to structures that are constructed offsite and moved to the property in sections or modules.
- (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the Government Code, relating to racial restrictions.
- (e) Section 12927 of the Government Code, relating to the modification of property to accommodate a disability.
- (f) Section 1597.40 of the Health and Safety Code, relating to the operation of a family day care home.

**Comment.** Section 4700 is new. It provides a non-exclusive list of provisions outside of this act that limit the authority of an association to regulate separate interest property use.

See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

#### **§ 4705. Display of U.S. flag**

4705. (a) Except as required for the protection of the public health or safety, no governing document shall limit or prohibit, or be construed to limit or prohibit, the display of the flag of the United States by a member on or in the member’s separate interest or within the member’s exclusive use common area.

(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 attorney’s fees and costs.

**Comment.** Section 4705 continues former Section 1353.5 without change, except as indicated below.

The following nonsubstantive changes are made:

- A superfluous cross-reference to governing definitions is not continued.
- A superfluous reference to a declaration is not continued.

- The word “owner” is replaced with “member.” See Section 4160 (“member”).

See also Sections 4095 (“common area”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4185 (“separate interest”).

#### § 4710. Noncommercial sign

4710. (a) The governing documents may not prohibit posting or displaying of noncommercial signs, posters, flags, or banners on or in a member’s separate interest, except as required for the protection of public health or safety or if the posting or display would violate a local, state, or federal law.

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

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

**Comment.** Section 4710 continues former Section 1353.6 without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “including the operating rules” are not continued.
- The word “owner” is replaced with “member.” See Section 4160 (“member”).
- In subdivision (c), the numeral “9” is replaced with “nine” for stylistic reasons.

See also Sections 4080 (“association”), 4150 (“governing documents”), 4185 (“separate interest”).

#### § 4715. Pets

4715. (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 the owner’s 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.

**Comment.** Section 4715 continues former Section 1360.5 without change, except as indicated below.

The following nonsubstantive change is made:

- The words “his or her” are replaced with “the owner’s” in subdivision (c).

See also Sections 4080 (“association”), 4100 (“common interest development”), 4150 (“governing documents”), 4185 (“separate interest”).

#### **§ 4720. Roofing materials**

4720. (a) No association may require a homeowner to install or repair a roof in a manner that is in violation of Section 13132.7 of the Health and Safety Code.

(b) Governing documents of a common interest development located within a very high fire severity zone, as designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, shall allow for at least one type of fire retardant roof covering material that meets

the requirements of Section 13132.7 of the Health and Safety Code.

**Comment.** Section 4720 continues former Section 1353.7 without change, except as indicated below.

The following nonsubstantive change is made:

- In subdivision (a), the words “common interest development” are replaced with “association.”

See also Section 4765(a)(3) (“Notwithstanding a contrary provision of the governing documents, a decision on a proposed change may not violate any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety.”).

See also Sections 4100 (“common interest development”), 4150 (“governing documents”).

#### **§ 4725. Television antenna or satellite dish**

4725. (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 a member 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.

**Comment.** Section 4725 continues former Section 1376 without change, except as indicated below.

The following nonsubstantive change is made:

- The word "owner" is replaced with "member." See Section 4160 ("member").

See also 47 C.F.R. § 1.4000.

See also Sections 4080 ("association"), 4095 ("common area"), 4100 ("common interest development"), 4185 ("separate interest").

### **§ 4730. Marketing restriction**

4730. (a) Any provision of a governing document that arbitrarily or unreasonably restricts an owner's ability to market the owner's interest in a common interest development is void.

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

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

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

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

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

**Comment.** Section 4730 continues former Section 1368.1 without change, except as indicated below.

The following substantive changes are made:

- The introductory clause is revised to make clear that a void provision does not void the entire governing document that contains it.
- The words "rule or regulation" are replaced with "governing document." See Section 6552 ("governing documents"). This broadens the application of the section so that it governs any provision in the governing documents and not just an operating rule.

The following nonsubstantive changes are made:

- The words "his or her" are replaced with "the owner's" in subdivision (a).
- The phrase "common areas" is singularized.
- The words "of an association" are not continued.

See also Sections 4080 ("association"), 4095 ("common area"), 4100 ("common interest development"), 4185 ("separate interest").

#### **§ 4735. Low water-using plants**

4735. (a) Notwithstanding any other law, a provision of the governing documents shall be void and unenforceable if it does any of the following:

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

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

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

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

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

**Comment.** Section 4735 continues former Section 1353.8 without change, except as indicated below.

The following nonsubstantive change is made:

- Surplus language is not continued (i.e., the phrases “of any,” “of a common interest development,” and “and regulations”). The term “governing documents” includes all governing documents of a common interest development. See Section 4150 (“governing documents”).

See also Section 4080 (“association”).

#### **§ 4740. Rental restriction**

4740. (a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to his or her separate interest.

(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.

(c) For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

(d) Prior to renting or leasing his or her separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or the prospective tenant's representative.

(e) Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.

(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.

**Comment.** Section 4740 continues former Section 1360.2 without change.

See also Sections 4080 ("association"), 4100 ("common interest development"), 4150 ("governing documents"), 4185 ("separate interest").

#### **§ 4745. Electric vehicle charging station**

4745. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, and any provision of a governing document, as defined in Section 4150, that effectively prohibits or restricts the installation or use of an electric vehicle charging station is void and unenforceable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Comment.** Section 4745 continues former Section 1353.9 without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Section 4080 ("association"), 4095 ("common area"), 4100 ("common interest development"), 4135 ("declaration"), 4145 ("exclusive use common area"), 4150 ("governing documents").

## Article 2. Modification of Separate Interest

### § 4760. Improvements to separate interest

4760. (a) Subject to the governing documents and applicable law, a member may do the following:

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

(2) Modify the member's separate interest, at the member's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the separate interest for the purposes of this paragraph if the separate interest 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 member when the separate interest is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(D) Any member who intends to modify a separate interest pursuant to this paragraph shall submit plans and specifications to the association 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.

**Comment.** Section 4760 continues former Section 1360 without change, except as indicated below.

The following substantive change is made:

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

The following nonsubstantive changes are made:

- The words “his or her” are not continued in subdivision (a)(2)(D).
- The word “owner” is replaced with “member” throughout. See Section 4160 (“member”).

See also Section 4765 (association decision on modification of separate interest must comply with Fair Employment and Housing Act); Gov’t Code § 12927 (accommodation of disability under Fair Employment and Housing Act).

See also Sections 4080 (“association”), 4100 (“common interest development”), 4150 (“governing documents”), 4185 (“separate interest”).

### **§ 4765. Architectural review and decision making**

4765. (a) This section applies if the governing documents require association approval before a member may make a physical change to the member’s separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

(1) The association shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall be included in the association’s governing documents. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the board.

(2) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) Notwithstanding a contrary provision of the governing documents, a decision on a proposed change may not violate any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved

and a description of the procedure for reconsideration of the decision by the board.

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board or a body that has the same membership as the board, at a meeting that satisfies the requirements of Article 2 (commencing with Section 4900) of Chapter 6. Reconsideration by the board does not constitute dispute resolution within the meaning of Section 5905.

(b) Nothing in this section authorizes a physical change to the common area in a manner that is inconsistent with an association's governing documents, unless the change is required by law.

(c) An association shall annually provide its members with notice of any requirements for association approval of physical changes to property. The notice shall describe the types of changes that require association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

**Comment.** Section 4765 continues former Section 1378 without change, except as indicated below.

The following nonsubstantive changes are made:

- The words "board of directors" and "board of directors of the association" are replaced with "board." See Sections 4085 ("board").
- A reference to the "association's" governing documents is not continued. See Section 4150 ("governing documents").
- The word "owner" is replaced with "member." See Section 4160 ("member").

See also Sections 4080 ("association"), 4095 ("common area"), 4185 ("separate interest").

### Article 3. Maintenance

#### § 4775. Maintenance responsibility generally

4775. (a) Unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, 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) 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.

**Comment.** Subdivision (a) of Section 4775 continues former Section 1364(a) without change, except as indicated below.

The following nonsubstantive change is made:

- The phrase “common areas” is singularized.

Subdivision (b) continues former Section 1364(c) without change.

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4135 (“declaration”), 4145 (“exclusive use common area”), 4185 (“separate interest”).

#### **§ 4780. Wood-destroying pests or organisms**

4780. (a) In a community apartment project, condominium project, or stock cooperative, 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.

(b) In a planned development, 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, pursuant to Section 4065, that responsibility may be delegated to the association, which shall be entitled to recover the cost thereof as a special assessment.

**Comment.** Subdivision (a) of Section 4780 continues former Section 1364(b)(1) without change, except as indicated below.

The following nonsubstantive change is made:

- A superfluous cross-reference to governing definitions is not continued.

Subdivision (b) continues former Section 1364(b)(2) without change, except as indicated below.

The following nonsubstantive changes are made:

- A superfluous cross-reference to a governing definition is not continued.
- A cross-reference to Section 4065 is added.
- The last sentence is revised to avoid use of the word “such.”

See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment project”), 4125 (“condominium project”), 4135 (“declaration”), 4160 (“member”), 4175 (“planned development”), 4185 (“separate interest”), 4190 (“stock cooperative”).

**§ 4785. Temporary removal of occupant to perform treatment of wood-destroying pests**

4785. (a) 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.

(b) 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.

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

(1) Personal delivery of a copy of the notice to the occupants, and if an occupant is not the owner, individual delivery pursuant to Section 4040, of a copy of the notice to the owner.

(2) Individual delivery pursuant to Section 4040 to the occupant at the address of the separate interest, and if the occupant is not the owner, individual delivery pursuant to Section 4040, of a copy of the notice to the owner.

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

**Comment.** Section 4785 continues former Section 1364(d)-(e) without change, except as indicated below.

The following substantive change is made:

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

The following nonsubstantive changes are made:

- Subdivision (c) is revised to improve its clarity.
- A typographical error is corrected in subdivision (d).

See also Sections 4080 (“association”), 4100 (“common interest development”), 4185 (“separate interest”).

**§ 4790. Exclusive use communication wiring**

4790. Notwithstanding the provisions of the declaration, a member is entitled to reasonable access to the common area for the purpose of maintaining the internal and external telephone wiring made part of the exclusive use common area of the member’s separate interest pursuant to subdivision (c) of Section 4145. 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 area, and other conditions as the association determines reasonable.

**Comment.** Section 4790 continues former Section 1364(f) without change, except as indicated below.

The following nonsubstantive changes are made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- The word “owner” is replaced with “member.” See Section 4160 (“member”).
- The phrase “common areas” is singularized.

See also Sections 4080 (“association”), 4095 (“common area”), 4135 (“declaration”), 4145 (“exclusive use common area”), 4185 (“separate interest”).

## CHAPTER 6. ASSOCIATION GOVERNANCE

### Article 1. Association Existence and Powers

**§ 4800. Association**

4800. A common interest development shall be managed by an association that may be incorporated or unincorporated. The association may be referred to as an owners’ association or a community association.

**Comment.** Section 4800 continues former Section 1363(a) without change, except as indicated below.

The following nonsubstantive change is made:

- Use of the term “owners’ association” to describe the association is expressly authorized.

See also Sections 4080 (“association”), 4100 (“common interest development”).

#### **§ 4805. Association powers**

4805. (a) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

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

**Comment.** Section 4805 continues former Section 1363(c) without change, except as indicated below.

The following nonsubstantive changes are made:

- The provision is divided into subdivisions for ease of reference.
- The word “title” is replaced with “act.”

See also Sections 4080 (“association”), 4150 (“governing documents”).

#### **§ 4820. Joint neighborhood association**

4820. 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 (a) entitled to attend all meetings of the joint association other than executive sessions, (b) given reasonable opportunity for participation in those meetings, and (c) entitled to the same access to the joint association’s records as they are to the participating association’s records.

**Comment.** Section 4820 continues former Section 1363(h) without change.

See also Sections 4080 (“association”), 4160 (“member”).

## Article 2. Board Meeting

#### **§ 4900. Short title**

4900. This article shall be known and may be cited as the Common Interest Development Open Meeting Act.

**Comment.** Section 4900 continues former Section 1363.05(a) without change, except as indicated below.

The following nonsubstantive change is made:

- The word “section” is replaced with “article.”

#### **§ 4910. Board action outside of meeting prohibited**

4910. (a) The board shall not take action on any item of business outside of a board meeting.

(b)(1) Notwithstanding Section 7211 of the Corporations Code, the board shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as specified in paragraph (2).

(2) Electronic transmissions may be used as a method of conducting an emergency meeting if all directors, individually or collectively, consent in writing to that action, and if the written consent or consents are filed with the minutes of the board meeting. Written consent to conduct an emergency meeting may be transmitted electronically.

**Comment.** Section 4910 continues former Section 1363.05(j) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).
- The words “members of the board” are replaced with “directors.” See Section 4140 (“director”).
- The words “meeting” and “meeting of the board” are replaced with “board meeting.” See Section 4090 (“board meeting”).

See also Section 4155 (“item of business”).

#### **§ 4920. Notice of board meeting**

4920. (a) Except as provided in subdivision (b), the association shall give notice of the time and place of a board meeting at least four days before the meeting.

(b)(1) If a board meeting is an emergency meeting held pursuant to Section 4923, the association is not required to give notice of the time and place of the meeting.

(2) If a non-emergency board meeting is held solely in executive session, the association shall give notice of the time and place of the meeting at least two days prior to the meeting.

(3) If the association's governing documents require a longer period of notice than is required by this section, the association shall comply with the period stated in its governing documents.

(c) Notice of a board meeting shall be given by general delivery pursuant to Section 4045.

(d) Notice of a board meeting shall contain the agenda for the meeting.

**Comment.** Section 4920 continues the substance of former Section 1363.05(f), except as indicated below.

The following substantive changes are made:

- The word "bylaws" is replaced with "governing documents," to broaden the scope of the provision.
- Specific rules on delivery of notice are replaced with a functionally equivalent requirement that notice be given by "general delivery," pursuant to Section 4045.

The following nonsubstantive change is made:

- The subdivision is restated for clarity.

See also Sections 4080 ("association"), 4090 ("board meeting"), 4150 ("governing documents"), 4160 ("member").

#### **§ 4923. Emergency board meeting**

4923. An emergency board meeting may be called by the president of the association, or by any two directors 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 Section 4920.

**Comment.** Section 4923 continues the substance of former Section 1363.05(g), except as indicated below.

The following nonsubstantive changes are made:

- The words "members of the governing body" are replaced with "directors." See Section 4140 ("director").
- The words "meeting of the board" are replaced with "board meeting." See Section 4090 ("board meeting").
- A reference to "this section" is updated to reflect the new location of the referenced provision.

See also Sections 4080 ("association"), 4085 ("board").

#### **§ 4925. Board meeting open**

4925. (a) Any member may attend board meetings, except when the board adjourns to, or meets solely in, executive session. As

specified in subdivision (b) of Section 4090, a member of the association shall be entitled to attend a teleconference meeting or the portion of a teleconference meeting that is open to members, and that meeting or portion of the meeting shall be audible to the members in a location specified in the notice of the meeting.

(b) The board shall permit any member to speak at any meeting of the association or the board, 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 or before a meeting of the association shall be established by the board.

**Comment.** Subdivision (a) of Section 4925 continues the substance of part of the first sentence of former Section 1363.05(b), and the third sentence of former Section 1363.05(b), except as indicated below.

The following nonsubstantive changes are made:

- The words “member of the association” are replaced with “member.” See Section 4160 (“member”).
- The words “meetings of the board of directors of the association” are replaced with “board meetings.” See Section 4090 (“board meeting”).
- Subdivision (a) does not continue language specifying when a board may meet in executive session. The substance of that language is continued in Section 4935.
- A cross-reference is updated to reflect the new location of the referenced provision.

Subdivision (b) continues former Section 1363.05(h) without change, except as indicated below.

The following nonsubstantive change is made:

- The words “board of directors” and “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).
- The words “member of the association” are replaced with “member.” See Section 4160 (“member”).

See also Section 4080 (“association”).

### **§ 4930. Limitation on meeting content**

4930. (a) Except as described in subdivisions (b) to (e), inclusive, the board may not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda included in the notice that was distributed pursuant to subdivision (a) of Section 4920. This subdivision does not prohibit a member or resident who is not a director from speaking on issues not on the agenda.

(b) Notwithstanding subdivision (a), a director, a managing agent or other agent of the board, or a member of the staff of the board, may do any of the following:

(1) Briefly respond to statements made or questions posed by a person speaking at a meeting as described in subdivision (b) of Section 4925.

(2) Ask a question for clarification, make a brief announcement, or make a brief report on the person's own activities, whether in response to questions posed by a member or based upon the person's own initiative.

(c) Notwithstanding subdivision (a), the board or a director, subject to rules or procedures of the board, may do any of the following:

(1) Provide a reference to, or provide other resources for factual information to, its managing agent or other agents or staff.

(2) Request its managing agent or other agents or staff to report back to the board at a subsequent meeting concerning any matter, or take action to direct its managing agent or other agents or staff to place a matter of business on a future agenda.

(3) Direct its managing agent or other agents or staff to perform administrative tasks that are necessary to carry out this section.

(d) Notwithstanding subdivision (a), the board may take action on any item of business not appearing on the agenda distributed pursuant to subdivision (a) of Section 4920 under any of the following conditions:

(1) Upon a determination made by a majority of the board present at the meeting that an emergency situation exists. An emergency situation exists if there are circumstances that could not have been reasonably foreseen by the board, that require immediate attention and possible action by the board, and that, of necessity, make it impracticable to provide notice.

(2) Upon a determination made by the board by a vote of two-thirds of the directors present at the meeting, or, if less than two-thirds of total membership of the board is present at the meeting, by a unanimous vote of the directors present, that there is a need to take immediate action and that the need for action came to the

attention of the board after the agenda was distributed pursuant to subdivision (a) of Section 4920.

(3) The item appeared on an agenda that was distributed pursuant to subdivision (a) of Section 4920 for a prior meeting of the board that occurred not more than 30 calendar days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken.

(e) Before discussing any item pursuant to subdivision (d), the board shall openly identify the item to the members in attendance at the meeting.

**Comment.** Section 4930 continues former Section 1363.05(i) without change, except as indicated below.

The following nonsubstantive changes are made:

- References to “posting” of notice are not continued. Section 4920 does not require that notice be “posted.”
- The numbering of the paragraphs of the former provision is simplified.
- Statutory references are updated to reflect the new locations of the referenced provisions.
- In subdivision (b)(2), the words “his or her” are replaced with “the person’s.”
- Subdivision (d)(2) is revised to make clear that the “members” referenced in that paragraph are members of the board.
- The words “board of directors” are replaced throughout with “board.” See Section 4085 (“board”).
- The words “board member” are replaced with “director” throughout. See Section 4140 (“director”).
- The word “member” is added to the second sentence of subdivision (a) to make clear that the section applies to nonresident members. See Section 4160 (“member”).

See also Sections 4155 (“item of business”), 4158 (“managing agent”).

#### **§ 4935. Executive session**

4935. (a) The board may meet in or adjourn 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 5665.

(b) The board shall meet in executive session to discuss member discipline, if requested by the member who is the subject of the

discussion. That member shall be entitled to attend the executive session.

(c) The board shall meet in executive session to discuss a payment plan pursuant to Section 5665.

(d) The board shall meet in executive session to decide whether to foreclose on a lien pursuant to subdivision (b) of Section 5705.

(e) 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.

**Comment.** Subdivision (a) of Section 4935 continues the substance of part of the first sentence of former Section 1363.05(b). The substance of the remainder of the former sentence is continued in Section 4925(a).

Subdivision (b) continues the substance of the second sentence of former Section 1363.05(b).

Subdivision (c) is new. It provides a cross-reference to a provision requiring that the board meet in executive session when discussing a proposed payment plan.

Subdivision (d) is new. It provides a cross-reference to a provision requiring that the board meet in executive session when deciding whether to foreclose on a lien for overdue assessments.

Subdivision (e) continues former Section 1363.05(c) without change.

See also Sections 4085 (“board”), 4160 (“member”).

#### § 4950. Minutes

4950. (a) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any board meeting, 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 upon request and upon reimbursement of the association’s costs for making that distribution.

(b) The annual policy statement, prepared pursuant to Section 5310, shall inform the members of their right to obtain copies of board meeting minutes and of how and where to do so.

**Comment.** Subdivision (a) of Section 4950 continues former Section 1363.05(d) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “any meeting of the board of directors of the association” are replaced with “board meeting.” See Section 4090 (“board meeting”).
- The words “member of the association” are replaced with “member.” See Section 4160 (“member”).

Subdivision (b) is consistent with the substance of former Section 1363.05(e), but recasts it to be consistent with the annual distribution of the policy statement pursuant to Section 5310.

See also Sections 4078 (“annual policy statement”), 4080 (“association”).

#### **§ 4955. Civil action to enforce article**

4955. (a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by the association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues.

(b) A member who prevails in a civil action to enforce the member’s rights pursuant to this article shall be entitled to reasonable attorney’s fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

**Comment.** Section 4955 continues former Section 1363.09(a)-(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “an association of which he or she is a member” are replaced with “the association.”
- The second sentence of former Section 1363.09(a) is not continued because it is irrelevant to judicial enforcement of this article.
- The words “his or her” are replaced with “the member’s.”
- The words “member of the association” are replaced with “member.” See Section 4160 (“member”).

See also Section 4080 (“association”).

### Article 3. Member Meeting

#### **§ 5000. Member meeting**

5000. (a) 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.

(b) The board shall permit any member to speak at any meeting of the membership of the association. A reasonable time limit for all members to speak at a meeting of the association shall be established by the board.

**Comment.** Subdivision (a) of Section 5000 continues former Section 1363(d) without change.

Subdivision (b) continues the substance of former Section 1363.05(h), as that provision applied to member meetings.

See also Sections 4080 (“association”), 4085 (“board”), 4160 (“member”).

## Article 4. Member Election

### § 5100. Application of article

5100. (a) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area pursuant to Section 4600 shall be held by secret ballot in accordance with the procedures set forth in this article.

(b) This article also governs an election on any topic that is expressly identified in the operating rules as being governed by this article.

(c) The provisions of this article apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

(d) The procedures set forth in this article shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

(e) In the event of a conflict between this article and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this article shall prevail.

**Comment.** Subdivision (a) of Section 5100 continues the first sentence of former Section 1363.03(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- “Section” is replaced with “article.”
- A cross-reference is updated to reflect the new location of the referenced provision.

- “Association board of directors” is replaced with “board.” See Section 4085 (“board”).
- The words “board member” are replaced with “director.” See Section 4140 (“director”).
- The words “common area property” are replaced with “common area.”

Subdivision (b) is new. It permits an association to adopt an operating rule applying the requirements of this article to an election that would not otherwise be governed by this article.

Subdivisions (c)-(e) continue former Section 1363.03(l)-(n), respectively, without change, except as indicated below.

The following nonsubstantive change is made:

- The word “section” is replaced with “article” throughout.

Former Section 1363.03(o), stating the operative date of the former section, is obsolete and is not continued.

See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing documents”).

### **§ 5105. Election rules**

5105. (a) An association shall adopt rules, in accordance with the procedures prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the association, is responsible for that content.

(2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

(3) Specify the qualifications for candidates for the board and any other elected position, and procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if

it disallows any member from nominating himself or herself for election to the board.

(4) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.

(5) Specify a method of selecting one or three independent third parties as inspector or inspectors of elections utilizing one of the following methods:

(A) Appointment of the inspector or inspectors by the board.

(B) Election of the inspector or inspectors by the members of the association.

(C) Any other method for selecting the inspector or inspectors.

(6) Allow the inspector or inspectors to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties.

(b) Notwithstanding any other provision of law, the rules adopted pursuant to this section may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write-in candidates for ballots.

**Comment.** Subdivision (a) of Section 5105 continues former Section 1363.03(a) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).
- The words “member of the association” are replaced with “member.” See Section 4160 (“member”).

Subdivision (b) continues former Section 1363.03(j) without change.

See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing documents”).

### **§ 5110. Inspector of elections**

5110. (a) The association shall select an independent third party or parties as an inspector of elections. The number of inspectors of elections shall be one or three.

(b) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services unless expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a) of Section 5105.

(c) The inspector or inspectors of elections shall do all of the following:

(1) Determine the number of memberships entitled to vote and the voting power of each.

(2) Determine the authenticity, validity, and effect of proxies, if any.

(3) Receive ballots.

(4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(5) Count and tabulate all votes.

(6) Determine when the polls shall close, consistent with the governing documents.

(7) Determine the tabulated results of the election.

(8) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.

(d) An inspector of elections shall perform all duties impartially, in good faith, to the best of the inspector of election's ability, and as expeditiously as is practical. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

**Comment.** Section 5110 continues former Section 1363.03(c) without change, except as indicated below.

The following nonsubstantive changes are made:

- “Section” is replaced with “article” throughout.
- A cross-reference is updated to reflect the new location of the referenced provision.
- The words “his or her” are replaced in subdivision (d).
- The second sentence of subdivision (b) is reworded to clarify its meaning.
- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).
- The words “board member” is replaced with “director.” See Section 4140 (“director”).
- The words “member of the association” are replaced with “member.” See Section 4160 (“member”).

See also Sections 4080 (“association”), 4150 (“governing documents”).

### **§ 5115. Voting procedure**

5115. (a) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:

(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign the voter’s name, indicate the voter’s name, and indicate the address or separate interest identifier that entitles the voter to vote.

(2) The second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery.

(b) A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required by

the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.

(c) An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

(d) Except for the meeting to count the votes required in subdivision (a) of Section 5120, an election may be conducted entirely by mail unless otherwise specified in the governing documents.

(e) In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot.

**Comment.** Subdivision (a) of Section 5115 continues former Section 1363.03(e) without change, except as indicated below.

The following nonsubstantive change is made:

- The words “his or her” are replaced throughout.

Subdivision (b) continues the second and third sentences of former Section 1363.03(b) without change, except as indicated below.

The following nonsubstantive change is made:

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

Subdivision (c) continues the fourth sentence of former Section 1363.03(b) without change.

Subdivision (d) continues former Section 1363.03(k) without change, except as indicated below.

The following nonsubstantive change is made:

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

Subdivision (e) is new. It generalizes part of former Section 1355(b)(1), which required distribution of the text of a proposed amendment when amending the declaration.

See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

### **§ 5120. Counting ballots**

5120. (a) All votes shall be counted and tabulated by the inspector or inspectors of elections, or the designee of the inspector of elections, in public at a properly noticed open meeting of the board or members. Any candidate or other member of the association may witness the counting and tabulation of the votes.

No person, including a member of the association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. The inspector of elections, or the designee of the inspector of elections, may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspector of elections, it shall be irrevocable.

(b) The tabulated results of the election shall be promptly reported to the board and shall be recorded in the minutes of the next meeting of the board and shall be available for review by members of the association. Within 15 days of the election, the board shall give general notice pursuant to Section 4045 of the tabulated results of the election.

**Comment.** Section 5120 continues former Section 1363.03(f)-(g) without change, except as indicated below.

The following substantive change is made:

- Ambiguous language requiring that election results be "publicized" is replaced with a reference to the requirements for giving general notice pursuant to Section 4045.

The following nonsubstantive changes are made:

- The words "his or her designee" are replaced with "the designee of the inspector of elections" throughout.
- The words "board of directors" and "board of directors of the association" are replaced with "board." See Section 4085 ("board").

See also Sections 4080 ("association"), 4160 ("member").

### **§ 5125. Ballot retention**

5125. (a) The sealed ballots at all times shall be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 5145 for challenging the election has expired, at which time custody shall be transferred to the association. If there is a recount or other challenge to the election process, the inspector or inspectors of elections shall, upon written request, make the ballots available for inspection and review by an association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

(b) After the transfer of the ballots to the association, the ballots shall be stored by the association in a secure place for no less than one year after the date of the election.

**Comment.** Section 5125 continues former Section 1363.03(h)-(i) without change, except as indicated below.

The following substantive change is made:

- The reference to the time for filing an action under Corporations Code Section 7527 is replaced with a reference to the time for filing an action under Section 5145.

The following nonsubstantive change is made:

- The words “his or her” are replaced with “the members” in subdivision (a).

See also Sections 4080 (“association”), 4160 (“member”).

### § 5130. Proxies

5130. (a) For purposes of this article, the following definitions shall apply:

(1) “Proxy” means a written authorization signed by a member or the authorized representative of the member that gives another member or members the power to vote on behalf of that member.

(2) “Signed” means the placing of the member’s name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the member or authorized representative of the member.

(b) Proxies shall not be construed or used in lieu of a ballot. An association may use proxies if permitted or required by the bylaws of the association and if those proxies meet the requirements of this article, other laws, and the governing documents, but the association shall not be required to prepare or distribute proxies pursuant to this article.

(c) Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder shall cast the member’s vote by secret ballot. The proxy may be revoked by the member prior to the receipt of the ballot by the inspector of elections as described in Section 7613 of the Corporations Code.

**Comment.** Section 5130 continues former Section 1363.03(d) without change, except as indicated below.

The following nonsubstantive changes are made:

- “Section” is replaced with “article” throughout.
- A reference to the “association’s” governing documents is not continued.

See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

### **§ 5135. Campaign-related information**

5135. (a) Association funds shall not be used for campaign purposes in connection with any association board election. Funds of the association shall not be used for campaign purposes in connection with any other association election except to the extent necessary to comply with duties of the association imposed by law.

(b) For the purposes of this section, “campaign purposes” includes, but is not limited to, the following:

(1) Expressly advocating the election or defeat of any candidate that is on the association election ballot.

(2) Including the photograph or prominently featuring the name of any candidate on a communication from the association or its board, excepting the ballot, ballot materials, or a communication that is legally required, within 30 days of an election. This is not a campaign purpose if the communication is one for which subdivision (a) of Section 5105 requires that equal access be provided to another candidate or advocate.

**Comment.** Section 5135 continues former Section 1363.04 without change, except as indicated below.

The following substantive change is made:

- An exception is added to the definition of “campaign purposes” for the inclusion of a candidate’s name or photograph in a communication that is legally required. For example, preparation of meeting minutes would not be barred merely because the minutes include the name of a candidate in a pending election. See Section 4950 (board meeting minutes).

The following nonsubstantive change is made:

- A cross-reference in former Section 1363.04(b)(2) is updated to reflect the new location of the referenced provision.

See also Sections 4080 (“association”), 4085 (“board”).

**§ 5145. Judicial enforcement**

5145. (a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by the association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues. Upon a finding that the election procedures of this article, or the adoption of and adherence to rules provided by Article 5 (commencing with Section 4340) of Chapter 3, were not followed, a court may void any results of the election.

(b) A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of the association equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

(c) A cause of action under Sections 5100 to 5130, inclusive, with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

**Comment.** Subdivision (a) of Section 5145 continues former Section 1363.09(a) without change, except as indicated below.

The following nonsubstantive changes are made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- The words "an association of which he or she is a member" are replaced with "the association."

Subdivision (b) continues former Section 1363.09(b) without change, except as indicated below.

The following nonsubstantive change is made:

- The words "his or her" are replaced with "the member's."

Subdivision (c) continues former Section 1363.09(c) without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Sections 4080 (“association”), 4160 (“member”).

## Article 5. Record Inspection

### § 5200. Definitions

5200. For the purposes of this article, the following definitions shall apply:

(a) “Association records” means all of the following:

(1) Any financial document required to be provided to a member in Article 7 (commencing with Section 5300) or in Sections 5565 and 5810.

(2) Any financial document or statement required to be provided in Article 2 (commencing with Section 4525) of Chapter 4.

(3) Interim financial statements, periodic or as compiled, containing any of the following:

(A) Balance sheet.

(B) Income and expense statement.

(C) Budget comparison.

(D) General ledger. A “general ledger” is a report that shows all transactions that occurred in an association account over a specified period of time.

The records described in this paragraph shall be prepared in accordance with an accrual or modified accrual basis of accounting.

(4) Executed contracts not otherwise privileged under law.

(5) Written board approval of vendor or contractor proposals or invoices.

(6) State and federal tax returns.

(7) Reserve account balances and records of payments made from reserve accounts.

(8) Agendas and minutes of meetings of the members, the board and any committees appointed by the board pursuant to Section 7212 of the Corporations Code; excluding, however, minutes and other information from executive sessions of the board as described in Article 2 (commencing with Section 4900).

(9) Membership lists, including name, property address, and mailing address, but not including information for members who have opted out pursuant to Section 5220.

(10) Check registers.

(11) The governing documents.

(12) An accounting prepared pursuant to subdivision (b) of Section 5520.

(13) An “enhanced association record” as defined in subdivision (b).

(b) “Enhanced association records” means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association.

**Comment.** Subdivision (a) of Section 5200 continues former Section 1365.2(a)(1) without change, except as indicated below.

The following substantive change is made:

- Paragraphs (a)(11)-(13) are new.

The following nonsubstantive changes are made:

- “Section” is replaced with “article” in the introductory clause.
- Cross-references are updated to reflect the new locations of the referenced provisions.
- Substantive limitations on access to the membership list are not appropriate for inclusion in a definition and are relocated, without substantive change, to Sections 5220 and 5225. A cross-reference to Section 5220 is added.
- The words “board of directors” are replaced throughout with “board.” See Section 4085 (“board”).

Subdivision (b) continues former Section 1365.2(a)(2) without change, except as indicated below.

The following nonsubstantive change is made:

- A substantive rule providing that a person submitting a reimbursement request is “solely responsible for removing all personal identification information from the request” is not appropriate for inclusion in a definition and is relocated, without substantive change, to Section 5205(g). For more information about the significance of the term “enhanced association records,” see Section 5205(g) generally.

See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”), 4177 (“reserve accounts”).

**§ 5205. Document**

5205. (a) The association shall make available association records for the time periods and within the timeframes provided in Section 5210 for inspection and copying by a member of the association, or the member's designated representative. The association may bill the requesting member for the direct and actual cost of copying requested documents. The association shall inform the member of the amount of the copying costs before copying the requested documents.

(b) A member of the association may designate another person to inspect and copy the specified association records on the member's behalf. The member shall make this designation in writing.

(c) The association shall make the specified association records available for inspection and copying in the association's business office within the common interest development.

(d) If the association does not have a business office within the development, the association shall make the specified association records available for inspection and copying at a place agreed to by the requesting member and the association.

(e) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to subdivision (d) or if the requesting member submits a written request directly to the association for copies of specifically identified records, the association may satisfy the requirement to make the association records available for inspection and copying by delivering copies of the specifically identified records to the member by individual delivery pursuant to Section 4040 within the timeframes set forth in subdivision (b) of Section 5210.

(f) The association may bill the requesting member for the direct and actual cost of copying and mailing requested documents. The association shall inform the member of the amount of the copying and mailing costs, and the member shall agree to pay those costs, before copying and sending the requested documents.

(g) In addition to the direct and actual costs of copying and mailing, the association may bill the requesting member an amount not in excess of ten dollars (\$10) per hour, and not to exceed two

hundred dollars (\$200) total per written request, for the time actually and reasonably involved in redacting the enhanced association record. If the enhanced association record includes a reimbursement request, the person submitting the reimbursement request shall be solely responsible for removing all personal identification information from the request. The association shall inform the member of the estimated costs, and the member shall agree to pay those costs, before retrieving the requested documents.

(h) Requesting parties shall have the option of receiving specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication shall be limited to the direct cost of producing the copy of a record in that electronic format. The association may deliver specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that prevents the records from being altered.

**Comment.** Subdivisions (a) through (g) of Section 5205 continue former Section 1365.2(b)-(c) without change, except as indicated below.

The following substantive change is made:

- Language is added to provide for “individual delivery” of records, rather than mailing. See Section 4040.

The following nonsubstantive changes are made:

- Cross-references are updated to reflect the new locations of the referenced provisions.
- The words “member of the association” are replaced with “member.” See Section 4160 (“member”).
- A superfluous reference to “enhanced association records” is not continued in subdivision (a). See Section 5200(a)(12) (“association records” includes “enhanced association records”).
- Subdivision (d) is rephrased to avoid ending the sentence with a preposition.
- The second sentence of subdivision (g) is added to continue the substance of the last clause of former Section 1365.2(a)(2).

Subdivision (h) continues former Section 1365.2(h) without change.

See also Sections 4080 (“association”), 4100 (“common interest development”).

**§ 5210. Time periods**

5210. (a) Association records are subject to member inspection for the following time periods:

(1) For the current fiscal year and for each of the previous two fiscal years.

(2) Notwithstanding paragraph (1), minutes of member and board meetings are subject to inspection permanently. If a committee has decision making authority, minutes of the meetings of that committee shall be made available commencing January 1, 2007, and shall thereafter be permanently subject to inspection.

(b) When a member properly requests access to association records, access to the requested records shall be granted within the following time periods:

(1) Association records prepared during the current fiscal year, within 10 business days following the association's receipt of the request.

(2) Association records prepared during the previous two fiscal years, within 30 calendar days following the association's receipt of the request.

(3) Any record or statement available pursuant to Article 2 (commencing with Section 4525) of Chapter 4, Article 7 (commencing with Section 5300), Section 5565, or Section 5810, within the timeframe specified therein.

(4) Minutes of member and board meetings, within the timeframe specified in subdivision (a) of Section 4950.

(5) Minutes of meetings of committees with decisionmaking authority for meetings commencing on or after January 1, 2007, within 15 calendar days following approval.

(6) Membership list, within the timeframe specified in Section 8330 of the Corporations Code.

(c) There shall be no liability pursuant to this article for an association that fails to retain records for the periods specified in subdivision (a) that were created prior to January 1, 2006.

**Comment.** Subdivisions (a) and (b) of Section 5210 continue the substance of former Section 1365.2(i)-(j).

Subdivision (c) continues former Section 1365.2(k) without change, except as indicated below.

The following nonsubstantive changes are made:

- The word “section” is replaced with “article.”
- A cross-reference is updated to reflect the new location of the referenced provision.

See also Sections 4080 (“association”), 4090 (“board meeting”), 4160 (“member”).

### **§ 5215. Withholding and redaction**

5215. (a) Except as provided in subdivision (b), the association may withhold or redact information from the association records if any of the following are true:

(1) The release of the information is reasonably likely to lead to identity theft. For the purposes of this section, “identity theft” means the unauthorized use of another person’s personal identifying information to obtain credit, goods, services, money, or property. Examples of information that may be withheld or redacted pursuant to this paragraph include bank account numbers of members or vendors, social security or tax identification numbers, and check, stock, and credit card numbers.

(2) The release of the information is reasonably likely to lead to fraud in connection with the association.

(3) The information is privileged under law. Examples include documents subject to attorney-client privilege or relating to litigation in which the association is or may become involved, and confidential settlement agreements.

(4) The release of the information is reasonably likely to compromise the privacy of an individual member of the association.

(5) The information contains any of the following:

(A) Records of a la carte goods or services provided to individual members of the association for which the association received monetary consideration other than assessments.

(B) Records of disciplinary actions, collection activities, or payment plans of members other than the member requesting the records.

(C) Any person’s personal identification information, including, without limitation, social security number, tax identification number, driver’s license number, credit card account numbers, bank account number, and bank routing number.

(D) Minutes and other information from executive sessions of the board as described in Article 2 (commencing with Section 4900), except for executed contracts not otherwise privileged. Privileged contracts shall not include contracts for maintenance, management, or legal services. (E) Personnel records other than the payroll records required to be provided under subdivision (b).

(F) Interior architectural plans, including security features, for individual homes.

(b) Except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information.

(c) No association, officer, director, employee, agent, or volunteer of an association shall be liable for damages to a member of the association or any third party as the result of identity theft or other breach of privacy because of the failure to withhold or redact that member's information under this section unless the failure to withhold or redact the information was intentional, willful, or negligent.

(d) If requested by the requesting member, an association that denies or redacts records shall provide a written explanation specifying the legal basis for withholding or redacting the requested records.

**Comment.** Section 5215 continues former Section 1365.2(d) without change, except as indicated below.

The following nonsubstantive changes are made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- The words "board of directors" are replaced with "board." See Section 4085 ("board").

See also Sections 4080 ("association"), 4140 ("director"), 4160 ("member").

### **§ 5220. Membership list opt out**

5220. A member of the association may opt out of the sharing of that member's name, property address, and mailing address by notifying the association in writing that the member prefers to be

contacted via the alternative process described in subdivision (c) of Section 8330 of the Corporations Code. This optout shall remain in effect until changed by the member.

**Comment.** Section 5220 continues former Section 1365.2(a)(1)(I)(iii) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “his or her” are replaced with “member” throughout.
- “Opt-out” is replaced with “optout” to reflect modern usage.

See also Sections 4080 (“association”), 4160 (“member”).

#### **§ 5225. Membership list request**

5225. A member requesting the membership list shall state the purpose for which the list is requested, which purpose shall be reasonably related to the requester’s interest as a member. If the association reasonably believes that the information in the list will be used for another purpose, it may deny the member access to the list. If the request is denied, in any subsequent action brought by the member under Section 5235, the association shall have the burden to prove that the member would have allowed use of the information for purposes unrelated to the member’s interest as a member.

**Comment.** Section 5225 continues former Section 1365.2(a)(1)(I)(ii) without change, except as indicated below.

The following nonsubstantive changes are made:

- A comma is added in the first sentence.
- “The member requesting the list” is replaced with “a member requesting the membership list,” to improve clarity.
- A cross-reference is updated to reflect the new location of the referenced provision.
- “His or her” is replaced with “the member’s.”

See also Sections 4080 (“association”), 4160 (“member”).

#### **§ 5230. Restriction on use of records**

5230. (a) The association records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member’s interest as a member. An association may bring an action against any person who violates this article for injunctive relief and for actual damages to the association caused by the violation.

(b) This article may not be construed to limit the right of an association to damages for misuse of information obtained from the association records pursuant to this article or to limit the right of an association to injunctive relief to stop the misuse of this information.

(c) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this article.

**Comment.** Section 5230 continues former Section 1365.2(e) without change, except as indicated below.

The following nonsubstantive change is made:

- "This section" is replaced with "this article" throughout.

See also Sections 4080 ("association"), 4160 ("member"), 4170 ("person").

### § 5235. Enforcement

5235. (a) A member may bring an action to enforce that member's right to inspect and copy the association records. If a court finds that the association unreasonably withheld access to the association records, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to five hundred dollars (\$500) for the denial of each separate written request.

(b) A cause of action under this section may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

(c) A prevailing association may recover any costs if the court finds the action to be frivolous, unreasonable, or without foundation.

**Comment.** Section 5235 continues former Section 1365.2(f) without change, except as indicated below.

The following nonsubstantive changes are made:

- The provision is divided into subdivisions for ease of reference.
- The words "member of an association" are replaced with "member." See Section 4160 ("member").

See also Section 4080 ("association").

### § 5240. Application of article

5240. (a) As applied to an association and its members, the provisions of this article are intended to supersede the provisions

of Sections 8330 and 8333 of the Corporations Code to the extent those sections are inconsistent.

(b) Except as provided in subdivision (a), members of the association shall have access to association records, including accounting books and records and membership lists, 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.

(c) The provisions of this article apply to any community service organization or similar entity that is related to the association, and to any nonprofit entity that provides services to a common interest development under a declaration of trust. This article shall operate to give a member of the organization or entity a right to inspect and copy the records of that organization or entity equivalent to that granted to association members by this article.

(d) The provisions of this article shall not apply to any common interest development in which separate interests are being offered for sale by a subdivider under the authority of a public report issued by the Department of Real Estate so long as the subdivider or all subdividers offering those separate interests for sale, or any employees of those subdividers or any other person who receives direct or indirect compensation from any of those subdividers, comprise a majority of the directors. Notwithstanding the foregoing, this article shall apply to that common interest development no later than 10 years after the close of escrow for the first sale of a separate interest to a member of the general public pursuant to the public report issued for the first phase of the development.

**Comment.** Subdivision (a) of Section 5240 continues former Section 1365.2(*l*) without change, except as indicated below.

The following nonsubstantive change is made:

- The word “section” is replaced with “article.”

Subdivision (b) continues the first sentence of former Section 1363(e) without change, except as indicated below.

The following nonsubstantive change is made:

- The introductory clause is added to clarify the relationship between this provision and subdivision (a). The second sentence of former Section 1363(e) is not continued. That provision is unnecessary because its substance is subsumed within Section 5200(a)(11), which guarantees access to all governing documents, and not just the operating rules.

Subdivision (c) continues former Section 1365.2(g) without change, except as indicated below.

The following nonsubstantive changes are made:

- “Section” is replaced with “article” throughout.
- A superfluous reference to the definition of “community service organization” is not continued. See Section 4110 (“community service organization or similar entity”).

Subdivision (d) continues former Section 1365.2(m) without change, except as indicated below.

The following nonsubstantive changes are made:

- “Section” is replaced with “article” throughout.
- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).
- The words “board member” are replaced with “director.” See Section 4140 (“director”).

See also Sections 4080 (“association”), 4100 (“common interest development”), 4110 (“community service organization or similar entity”), 4160 (“member”), 4185 (“separate interest”).

## Article 6. Record Keeping

### § 5260. Mailing-related requests

5260. To be effective, any of the following requests shall be delivered in writing to the association, pursuant to Section 4035:

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

(b) A request to add or remove a second address for delivery of individual notices to the member, pursuant to subdivision (b) of Section 4040.

(c) A request for individual delivery of general notices to the member, pursuant to subdivision (b) of Section 4045, or a request to cancel a prior request for individual delivery of general notices.

(d) A request to opt out of the membership list pursuant to Section 5220, or a request to cancel a prior request to opt out of the membership list.

(e) A request to receive a full copy of a specified annual budget report or annual policy statement pursuant to Section 5320.

(f) A request to receive all reports in full, pursuant to subdivision (b) of Section 5320, or a request to cancel a prior request to receive all reports in full.

**Comment.** Section 5260 is new. It requires that the specified requests be written and delivered to the association pursuant to Section 4035.

See also Sections 4076 (“annual budget report”), 4078 (“annual policy statement”), 4080 (“association”), 4160 (“member”).

## Article 7. Annual Reports

### § 5300. Annual budget report

5300. (a) Notwithstanding a contrary provision in the governing documents, an association shall distribute an annual budget report, 30 to 90 days before the end of its fiscal year.

(b) Unless the governing documents impose more stringent standards, the annual budget report shall include all of the following information:

(1) A pro forma operating budget, showing the estimated revenue and expenses on an accrual basis.

(2) A summary of the association’s reserves, prepared pursuant to Section 5565.

(3) A summary of the reserve funding plan adopted by the board, as specified in paragraph (5) of subdivision (b) of Section 5550. The summary shall include notice to members that the full reserve study plan is available upon request, and the association shall provide the full reserve plan to any member upon request.

(4) A statement as to whether the board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.

(5) A statement as to whether the board, consistent with the reserve funding plan adopted pursuant to Section 5560 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. If so, the statement shall also set out the estimated amount, commencement date, and duration of the assessment.

(6) A statement as to the mechanism or mechanisms by which the board will fund reserves to repair or replace major components,

including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms.

(7) 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 statement shall include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of subdivision (b) of Section 5570, and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

(8) A statement as to whether the association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

(9) A summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies. For each policy, the summary shall include the name of the insurer, the type of insurance, the policy limit, and the amount of the deductible, if any. To the extent that any of the required information 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 with the annual budget report. The summary distributed pursuant to this paragraph 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 Section 5300 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.”

(c) The annual budget report shall be made available to the members pursuant to Section 5320.

(d) The summary of the association’s reserves disclosed pursuant to paragraph (2) of subdivision (b) 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.

(e) The Assessment and Reserve Funding Disclosure Summary form, prepared pursuant to Section 5570, shall accompany each annual budget report or summary of the annual budget report that is delivered pursuant to this article.

**Comment.** Subdivision (a) of Section 5300 continues the substance of the last paragraph of former Section 1365(a).

Subdivision (b)(1) continues the substance of former Section 1365(a)(1).

Subdivision (b)(2) continues the substance of the introduction of former Section 1365(a)(2). The substance of the remainder of former Section 1365(a)(2) is continued in Section 5565.

Subdivision (b)(3) continues former Section 1365(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- The commencement date of that provision (January 1, 2009) is not continued.
- An erroneous cross-reference to former Section 1365.5(e)(4) is revised to refer to Section 5560(b)(5), which continues former Section 1365.5(e)(5).
- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).

Subdivision (b)(4) continues former Section 1365(a)(3)(A) without change, except as indicated below.

The following nonsubstantive changes are made:

- The introductory clause is added.
- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).

Subdivision (b)(5) continues former Section 1365(a)(3)(B) without change, except as indicated below.

The following nonsubstantive changes are made:

- The introductory clause is added.
- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).

Subdivision (b)(6) continues former Section 1365(a)(3)(C) without change, except as indicated below.

The following nonsubstantive changes are made:

- The introductory clause is added.
- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).

Subdivision (b)(7) continues the first paragraph of former Section 1365(a)(4) without change, except as indicated below.

The following nonsubstantive changes are made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- The word “report” is replaced with “statement,” for terminological consistency.

Subdivision (b)(8) continues former Section 1365(a)(3)(D) without change, except as indicated below.

The following nonsubstantive change is made:

- The introductory clause is added.

Subdivision (b)(9) continues former Section 1365(f)(1), (3)-(4) without change, except as indicated below.

The following nonsubstantive changes are made:

- The redundant word “any” is replaced with “the.”
- An extraneous comma is deleted from the statutory notice text.
- The substance of the second clause of the first sentence of former Section 1365(f)(1) is subsumed within subdivision (a) of Section 5300.

Subdivision (c) is consistent with former Section 1365(d).

Subdivision (d) continues the second paragraph of former Section 1365(a)(4) without change, except as indicated below.

The following nonsubstantive change is made:

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

Subdivision (e) continues the substance of former Section 1365.2.5(b)(3).

See also Sections 4080 (“association”), 4135 (“declaration”), 4150 (“governing documents”), 4160 (“member”).

### **§ 5305. Review of financial statement**

5305. Unless the governing documents impose more stringent standards, 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 to the members within 120 days after the close of each fiscal year, by individual delivery pursuant to Section 4040.

**Comment.** Section 5305 continues former Section 1365(c) without change, except as indicated below.

The following substantive change is made:

- Language is added to specify the method of delivery.

The following nonsubstantive change is made:

- An introductory clause is added, consistent with the introduction of former Section 1365.

See also Sections 4080 (“association”), 4150 (“governing documents”).

### **§ 5310. Annual policy statement**

5310. (a) Within 30 to 90 days before the end of its fiscal year, the board shall distribute an annual policy statement that provides the members with information about association policies. The annual policy statement shall include all of the following information:

(1) The name and address of the person designated to receive official communications to the association, pursuant to Section 4035.

(2) A statement explaining that a member may submit a request to have notices sent to up to two different specified addresses, pursuant to subdivision (b) of Section 4040.

(3) The location, if any, designated for posting of a general notice, pursuant to paragraph (3) of subdivision (a) of Section 4045.

(4) Notice of a member’s option to receive general notices by individual delivery, pursuant to subdivision (b) of Section 4045.

(5) Notice of a member’s right to receive copies of meeting minutes, pursuant to subdivision (b) of Section 4950.

(6) The statement of assessment collection policies required by Section 5730.

(7) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.

(8) A statement describing the association's discipline policy, if any, including any schedule of penalties for violations of the governing documents pursuant to Section 5850.

(9) A summary of dispute resolution procedures, pursuant to Sections 5920 and 5965.

(10) A summary of any requirements for association approval of a physical change to property, pursuant to Section 4765.

(11) The mailing address for overnight payment of assessments, pursuant to Section 5655.

(12) Any other information that is required by law or the governing documents or that the board determines to be appropriate for inclusion.

(b) The annual policy statement shall be made available to the members pursuant to Section 5320.

**Comment.** Section 5310 is new. It aggregates the annual non-budgetary disclosures that are required under various provisions of this act.

Subdivision (a)(7) continues the substance of former Section 1365(e).

See also Sections 4080 ("association"), 4085 ("board"), 4150 ("governing documents"), 4160 ("member").

#### **§ 5320. Notice of availability**

5320. (a) When a report is prepared pursuant to Section 5300 or 5310, the association shall deliver one of the following documents to all members, by individual delivery pursuant to Section 4040:

(1) The full report.

(2) A summary of the report. The summary shall include a general description of the content of the report. Instructions on how to request a complete copy of the report at no cost to the member shall be printed in at least 10-point boldface type on the first page of the summary.

(b) Notwithstanding subdivision (a), if a member has requested to receive all reports in full, the association shall deliver the full report to that member, rather than a summary of the report.

**Comment.** Subdivision (a) of Section 5320 generalizes former Section 1365(d), so that the former optional "summary" approach to distributing the annual pro forma budget is extended to the annual policy statement. Nothing in

this section prevents an association from combining multiple reports or summaries of reports in a single mailing.

Subdivision (b) is new.

See also Sections 4080 (“association”), 4160 (“member”).

## Article 8. Conflict of Interest

### § 5350. Interested director

5350. (a) Notwithstanding any other law, and regardless of whether an association is incorporated or unincorporated, the provisions of Sections 7233 and 7234 of the Corporations Code shall apply to any contract or other transaction authorized, approved, or ratified by the board or a committee of the board.

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

(1) Discipline of the director or committee member.

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

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

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

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

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

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

**Comment.** Subdivision (a) of Section 5350 continues the substance of former Section 1365.6, except as indicated below.

The following nonsubstantive change is made:

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

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

See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4140 (“director”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4185 (“separate interest”).

## Article 9. Managing Agent

### § 5375. Prospective managing agent disclosure

5375. A prospective managing agent of a common interest development shall provide a written statement to the board 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:

(a) 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.

(b) 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 subdivision (a). If a license is currently held by any of those persons, the statement shall contain the following information:

- (1) What license is held.
- (2) The dates the license is valid.
- (3) The name of the licensee appearing on that license.

(c) 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 subdivision (a), 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:

- (1) What the certification or designation is and what entity issued it.
- (2) The dates the certification or designation is valid.
- (3) The names in which the certification or designation is held.

**Comment.** Section 5375 continues former Section 1363.1(a) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “of a common interest development” are not continued.
- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).

See also Sections 4100 (“common interest development”), 4140 (“director”), 4158 (“managing agent”).

### **§ 5380. Trust fund account**

5380. (a) A managing agent of a common interest development who accepts or receives funds belonging to the association shall deposit those 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, 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 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 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 the managing agent's 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 the managing agent's own money or with the money of others that the managing agent 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 each association that the managing agent 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 each association.

(2) The managing agent discloses in the written agreement whether the managing agent 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 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, “completed payment” means funds received that clearly identify the account to which the funds are to be credited.

**Comment.** Subdivision (a) of Section 5380 continues former Section 1363.2(a) without change, except for the following nonsubstantive change: “All such” is replaced with “those” to conform to standard legislative drafting practice.

Subdivisions (b) and (c) continue former Section 1363.2(b)-(c) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “his or her” are replaced with “the managing agent’s.”
- The words “or entity” are not continued. See Section 4170 (“person”).
- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).

Subdivision (d) continues former Section 1363.2(d) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “he or she” and “his or her” are replaced with “the managing agent” or “the managing agent’s” throughout.
- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).

Subdivision (e) continues former Section 1363.2(e) without change.

Subdivision (f) continues former Section 1363.2(g) without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Sections 4080 (“association”), 4100 (“common interest development”), 4158 (“managing agent”).

### **§ 5385. Managing agent**

5385. For the purposes of this article, “managing agent” does not include a full-time employee of the association.

**Comment.** Section 5385 continues the substance of former Section 1363.1(b)(1) and the first clause of the second sentence of former Section 1363.2(f).

See also Sections 4080 (“association”), 4158 (“managing agent”).

## Article 10. Government Assistance

### § 5400. Director training course

5400. To the extent existing funds are available, the Department of Consumer Affairs and the Department of Real Estate shall develop an online education course for the board regarding the role, duties, laws, and responsibilities of directors and prospective directors, and the nonjudicial foreclosure process.

**Comment.** Section 5400 continues the substance of former Section 1363.001, except as indicated below.

The following nonsubstantive changes are made:

- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).
- The words “board member” are replaced with “director.” See Section 4140 (“director”).
- The word “on-line” is replaced with “online.”

### § 5405. State registry

5405. (a) To assist with the identification of common interest developments, each association, whether incorporated or unincorporated, shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:

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

(2) The name of the association.

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

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

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

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

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

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

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

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

(11) The number of separate interests 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 statement of principal business activity with the Secretary of State pursuant to Section 8210 of the Corporations Code.

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

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

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

(e) The statement required by this section may be filed, notwithstanding suspension of the corporate powers, rights, and

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

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

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

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

**Comment.** Section 5405 continues former Section 1363.6 without change, except as indicated below.

The following nonsubstantive changes are made:

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

See also Sections 4080 (“association”), 4100 (“common interest development”), 4158 (“managing agent”).

## CHAPTER 7. FINANCES

### Article 1. Accounting

#### § 5500. Board review

5500. Unless the governing documents impose more stringent standards, the board shall do all of the following:

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

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

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

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

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

**Comment.** Section 5500 continues former Section 1365.5(a) without change, except as indicated below.

The following nonsubstantive change is made:

- The words "board of directors of the association" are replaced with "board." See Section 4085 ("board").

See also Sections 4080 ("association"), 4150 ("governing documents"), 4177 ("reserve accounts").

### Article 2. Use of Reserve Funds

#### § 5510. Use of reserve funds

5510. (a) The signatures of at least two persons, who shall be directors, or one officer who is not a director and one who is a director, shall be required for the withdrawal of moneys from the association's reserve accounts.

(b) The board 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 that the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

**Comment.** Subdivision (a) of Section 5510 continues former Section 1365.5(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).
- The words “one who is” are added to the sentence to make its meaning clearer.
- The words “board member” are replaced with “director.” See Section 4140 (“director”).

Subdivision (b) continues former Section 1365.5(c)(1) without change, except as indicated below.

The following nonsubstantive change is made:

- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4177 (“reserve accounts”).

### **§ 5515. Temporary transfer of reserve funds**

5515. (a) Notwithstanding Section 5510, the board may authorize the temporary transfer of moneys from a reserve fund to the association’s general operating fund to meet short-term cashflow requirements or other expenses, if the board has provided notice of the intent to consider the transfer in a board meeting notice provided pursuant to Section 4920.

(b) The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered.

(c) If the board authorizes the transfer, the board shall issue a written finding, recorded in the board’s minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund.

(d) 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, after giving the same notice required for considering a transfer, and, 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.

(e) 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 5605. 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.

**Comment.** Section 5515 continues former Section 1365.5(c)(2) without change, except as indicated below.

The following nonsubstantive changes are made:

- The provision is divided into subdivisions for ease of reference.
- Cross-references are updated to reflect the new locations of the referenced provisions.
- The introductory word “However” is replaced with “Notwithstanding Section 5510.”
- The last clause of subdivision (a) is rephrased for clarity.

See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100 (“common interest development”), 4177 (“reserve accounts”).

#### **§ 5520. Use of reserve funds for litigation**

5520. (a) When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation pursuant to subdivision (b) of Section 5510, the association shall provide general notice pursuant to Section 4045 of that decision, and of the availability of an accounting of those expenses.

(b) 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 at the association’s office.

**Comment.** Section 5520 continues former Section 1365.5(d) without change, except as indicated below.

The following substantive change is made:

- A reference to notice pursuant to Corporations Code Section 5016 is replaced with a requirement of general notice pursuant to Section 4045.

The following nonsubstantive changes are made:

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

- A cross-reference to Section 5510(b) is added for clarity.
- The words “members of the association” are replaced with “members.” See Section 4160 (“member”).

See also Sections 4080 (“association”), 4085 (“board”), 4150 (“governing documents”).

### Article 3. Reserve Planning

#### § 5550. Visual inspection of major components and reserve study

5550. (a) At least once every three years, the board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that 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, excluding the association’s reserve account for that period. The board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the board’s analysis of the reserve account requirements as a result of that review.

(b) The study required by this section shall at a minimum include:

(1) Identification of the major components that the association is obligated to repair, replace, restore, or maintain that, 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).

(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.

(5) A reserve funding plan that indicates how the association plans to fund the contribution identified in paragraph (4) to meet the association’s obligation for the repair and replacement of all

major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired.

**Comment.** Section 5550 continues former Section 1365.5(e)(1)-(4) and the first sentence of (e)(5) without change, except as indicated below.

The following nonsubstantive change is made:

- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4100 (“common interest development”), 4177 (“reserve accounts”), 4177 (“reserve account requirements”).

### **§ 5560. Reserve funding plan**

5560. (a) The reserve funding plan required by Section 5550 shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan.

(b) The plan shall be adopted by the board at an open meeting before the membership of the association as described in Article 2 (commencing with Section 4900) of Chapter 6.

(c) If the board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the board that is consistent with the procedure described in Section 5605.

**Comment.** Section 5560 continues the second, third, and fourth sentences of former Section 1365.5(e)(5) without change, except as indicated below.

The following nonsubstantive changes are made:

- The introductory clause is restated, without substantive change.
- Cross-references are updated to reflect the new locations of the referenced provisions.
- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).

See also Section 4080 (“association”).

### **§ 5565. Summary of association reserves**

5565. The summary of the association’s reserves required by paragraph (2) of subdivision (b) of Section 5300 shall be based on the most recent review or study conducted pursuant to Section 5550, shall be based only on assets held in cash or cash

equivalents, shall be printed in boldface type and shall 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:

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

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

(3) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person 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 paragraph (2). Instead of complying with the requirements set forth in this paragraph, an association that is obligated to issue a review of its financial statement pursuant to Section 5305 may include in the review a statement containing all of the information required by this paragraph.

(c) The percentage that the amount determined for purposes of paragraph (2) of subdivision (b) equals the amount determined for purposes of paragraph (1) of subdivision (b).

(d) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of paragraph (2) of subdivision (b) from the amount determined for purposes of paragraph (1) of subdivision (b) and then dividing the result by the number of separate interests within the association, except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation.

**Comment.** Section 5565 continues former Section 1365(a)(2) without change, except as indicated below.

The following nonsubstantive changes are made:

- The introductory clause is revised to reflect the organization of this provision as a separate section and to make minor grammatical improvements.
- Subdivision (b)(3) corrects an erroneous cross-reference (to the financial statement required under Section 5305).
- In subdivision (b)(3), the words “or entity” are not continued. See Section 4170 (“person”).
- In subdivision (b)(3), the word “their” is replaced with “its” for grammatical reasons.
- Cross-references are updated to reflect the new locations of the referenced provisions.

See also Sections 4080 (“association”), 4185 (“separate interest”).

**§ 5570. Assessment and reserve funding disclosure summary**

5570. (a) The disclosures required by this article with regard to an association or a property shall be summarized on the following form:

ASSESSMENT AND RESERVE FUNDING DISCLOSURE SUMMARY  
FOR THE FISCAL YEAR ENDING \_\_\_\_\_

(1) The regular assessment per ownership interest is \$\_\_\_\_\_ per \_\_\_\_\_. Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page \_\_\_\_\_ of the attached summary.

(2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment will be due:	Amount per ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page \_\_\_\_ of the attached report.

(3) Based upon the most recent reserve study and other information available to the board, will currently projected reserve account balances be sufficient at the end of each year to meet the association’s obligation for repair and/or replacement of major components during the next 30 years?

Yes \_\_\_\_ No \_\_\_\_

(4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members?

Approximate date assessments will be due:	Amount per ownership interest per month or year:
	Total:

(5) All major components are included in the reserve study and are included in its calculations.

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570, the estimated amount required in the reserve fund at the end of the current fiscal year is \$\_\_\_\_, based in whole or in part on the last reserve study or update prepared by \_\_\_\_ as of \_\_\_\_ (month), \_\_\_\_ (year). The projected reserve fund cash balance at the end of the current fiscal year is \$\_\_\_\_, resulting in reserves being \_\_\_\_ percent funded at this date.

If an alternate, but generally accepted, method of calculation is also used, the required reserve amount is \$\_\_\_\_. (See attached explanation)

(7) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570 of the Civil Code, the estimated amount required in the reserve fund at the end of each of the next five budget years is \$\_\_\_\_, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is \$\_\_\_\_, leaving the reserve at \_\_\_\_ percent funding. If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years will be \$\_\_\_\_, leaving the reserve at \_\_\_\_ percent funding.

Note: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change. At the time this summary was prepared, the assumed long-term before-tax interest rate earned on reserve funds was \_\_\_\_ percent per year, and the assumed long-term inflation rate to be applied to major component repair and replacement costs was \_\_\_\_ percent per year.

(b) For the purposes of preparing a summary pursuant to this section:

(1) “Estimated remaining useful life” means the time reasonably calculated to remain before a major component will require replacement.

(2) “Major component” has the meaning used in Section 5550. Components with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or

disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

(3) The form set out in subdivision (a) shall accompany each annual budget report or summary thereof that is delivered pursuant to Section 5300. The form may be supplemented or modified to clarify the information delivered, so long as the minimum information set out in subdivision (a) is provided.

(4) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the board to fund reserves in accordance with this calculation.

**Comment.** Section 5570 continues former Section 1365.2.5 without change, except as indicated below.

The following nonsubstantive changes are made:

- A reference to distribution of the pro forma operating budget is changed to refer to the annual budget report distributed pursuant to Section 5300.
- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).
- Former Section 1365.2.5(b)(3) is continued in Section 5300(e).

See also Sections 4076 (“annual budget report”), 4080 (“association”), 4160 (“member”), 4177 (“reserve accounts”).

#### **§ 5580. Community service organization report**

5580. (a) Unless the governing documents impose more stringent standards, any community service organization whose funding from the association or its members exceeds 10 percent of the organization’s annual budget shall prepare and distribute to the association a report that meets the requirements of Section 5012 of the Corporations Code, and that describes in detail administrative costs and identifies the payees of those costs in a manner consistent with the provisions of Article 5 (commencing with Section 5200) of Chapter 6.

(b) If the community service organization does not comply with the standards, the report shall disclose the noncompliance in detail. If a community service organization is responsible for the

maintenance of major components for which an association would otherwise be responsible, the community service organization shall supply to the association the information regarding those components that the association would use to complete disclosures and reserve reports required under this article and Section 5300. An association may rely upon information received from a community service organization, and shall provide access to the information pursuant to the provisions of Article 5 (commencing with Section 5200) of Chapter 6.

**Comment.** Section 5580 continues former Section 1365.3 without change, except as indicated below.

The following nonsubstantive changes are made:

- Cross-references are updated to reflect the new locations of the referenced provisions.
- The section is divided into subdivisions for ease of reference.
- A superfluous cross-reference to the definition of “community service organization” is not continued.

See also Sections 4080 (“association”), 4110 (“community service organization or similar entity”), 4150 (“governing documents”), 4160 (“member”).

## CHAPTER 8. ASSESSMENTS AND ASSESSMENT COLLECTION

### Article 1. Establishment and Imposition of Assessments

#### § 5600. Levy of assessment

5600. (a) Except as provided in Section 5605, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this act.

(b) 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.

**Comment.** Subdivision (a) of Section 5600 continues the first sentence of former Section 1366(a) without change, except as indicated below.

The following nonsubstantive changes are made:

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

- The word “title” is replaced with “act.”

Subdivision (b) continues the substance of former Section 1366.1.

See also Sections 4080 (“association”), 4150 (“governing documents”).

### § 5605. Assessment approval requirements

5605. (a) Annual increases in regular assessments for any fiscal year shall not be imposed unless the board has complied with paragraphs (1), (2), (4), (5), (6), (7), and (8) of subdivision (b) of Section 5300 with respect to that fiscal year, or has obtained the approval of a majority of a quorum of members, pursuant to Section 4070, at a member meeting or election.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board 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 a majority of a quorum of members, pursuant to Section 4070, at a member meeting or election.

(c) For the purposes of this section, “quorum” means more than 50 percent of the members.

**Comment.** Subdivision (a) of Section 5605 continues the second sentence of former Section 1366(a) without change, except as indicated below.

The following nonsubstantive changes are made:

- Language requiring approval of a majority of members casting a vote at a meeting at which a quorum is established is replaced with a reference to the standard provision on approval by a majority of a quorum of members (Section 4070).
- A reference to an assessment increase “as authorized by subdivision (b)” is superfluous and potentially confusing, and is not continued.
- Language requiring that a meeting or election be conducted pursuant to the Corporations Code is inconsistent with former Section 1363.03 and is not continued.
- A cross-reference to former Section 1365(a) is replaced with a cross-reference to Section 5300(b)(1)-(2), (4)-(8).

Subdivision (b) continues the first sentence of former Section 1366(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- Language requiring approval of a majority of members casting a vote at a meeting at which a quorum is established is replaced with a reference

to the standard provision on approval by a majority of a quorum of members (Section 4070).

- Language requiring that a meeting or election be conducted pursuant to the Corporations Code is inconsistent with former Section 1363.03 and is not continued.
- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).

Subdivision (c) continues the substance of the last sentence of former Section 1366(a) and the second sentence of former Section 1366(b).

See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

### **§ 5610. Emergency exception to assessment approval requirements**

5610. Section 5605 does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

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

(b) 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.

(c) 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 annual budget report under Section 5300. 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.

**Comment.** Section 5610 continues the third and fourth sentences and paragraphs (1) to (3), inclusive, of former Section 1366(b), without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “pro forma operating budget” are replaced with “annual budget report.” See Section 4076 (“annual budget report”).
- Cross-references are updated to reflect the new locations of the referenced provisions.

See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest development”), 4160 (“member”).

#### **§ 5615. Notice of assessment increase**

5615. The association shall provide individual notice pursuant to Section 4040 to the members 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.

**Comment.** Proposed Section 5615 continues former Section 1366(d) without change, except as indicated below.

The following nonsubstantive changes are made:

- A requirement of delivery by first class mail is replaced with a requirement of “individual notice.”
- The word “owner” is replaced with “member.” See Section 4160 (“member”).

See also Section 4080 (“association”).

#### **§ 5620. Exemption from execution**

5620. (a) Regular assessments imposed or collected to perform the obligations of an association under the governing documents or this act 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.

(b) This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by a majority of a quorum of members, pursuant to Section 4070, at a member meeting or election, or to any state tax lien, or to any lien for labor or materials supplied to the common area.

**Comment.** Section 5620 continues former Section 1366(c) without change, except as indicated below.

The following nonsubstantive changes are made:

- The provision is divided into subdivisions for ease of reference.
- A reference to approval of a majority of members casting a vote at a meeting at which a quorum is established is replaced with a reference to the standard provision on approval by a majority of a quorum of members (Section 4070).
- Quorum-related language from former Section 1366(b)-(c) is not continued.

- The word “title” is replaced with “act.”

See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing documents”), 4160 (“member”).

#### **§ 5625. Property tax value as basis for assessments**

5625. (a) Except as provided in subdivision (b), notwithstanding any provision of this act or the governing documents to the contrary, an association shall not levy assessments on separate interests within the common interest development based on the taxable value of the separate interests unless the association, on or before December 31, 2009, in accordance with its governing documents, levied assessments on those separate interests based on their taxable value, as determined by the tax assessor of the county in which the separate interests are located.

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

**Comment.** Proposed Section 5625 continues former Section 1366.4 without change, except as indicated below.

The following nonsubstantive change is made:

- The word “title” is replaced with “act.”

See also Sections 4080 (“association”), 4100 (“common interest development”), 4150 (“governing documents”), 4185 (“separate interest”).

## Article 2. Assessment Payment and Delinquency

#### **§ 5650. Assessment debt and delinquency**

5650. (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 subdivision (b), shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied.

(b) 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.

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

**Comment.** Subdivision (a) of Section 5650 continues the first sentence of former Section 1367.1(a) without change, except as indicated below.

The following nonsubstantive change is made:

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

Subdivision (b) continues former Section 1366(e) without change.

Subdivision (c) continues former Section 1366(f) without change.

See also Sections 4080 ("association"), 4135 ("declaration"), 4150 ("governing documents"), 4185 ("separate interest").

### **§ 5655. Payments**

5655. (a) Any payments made by the owner of a separate interest toward assessments 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.

(b) 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.

(c) The association shall provide a mailing address for overnight payment of assessments. The address shall be provided in the annual policy statement.

**Comment.** Section 5655 continues the substance of former Section 1367.1(b), except as indicated below.

The following nonsubstantive changes are made:

- A superfluous comma is deleted in the first sentence.
- A superfluous reference to assessment debt “set forth, as required in subdivision (a)” is deleted to make the meaning of the provision clearer.
- The provision is divided into subdivisions for ease of reference.
- The second sentence of subdivision (c) is added to refer to the requirement of Section 5310(a)(11).

See also Sections 4078 (“annual policy statement”), 4080 (“association”), 4185 (“separate interest”).

### **§ 5658. Payment under protest**

5658. (a) If a dispute exists between the owner of a separate interest and the association regarding any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits of the small claims court stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the owner of the separate interest may, in addition to pursuing dispute resolution pursuant to Article 3 (commencing with Section 5925) of Chapter 10, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney’s fees, late charges, and interest, if any, pursuant to subdivision (b) of Section 5650, and commence an action in small claims court pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure.

(b) Nothing in this section shall impede an association’s ability to collect delinquent assessments as provided in this article or Article 3 (commencing with Section 5700).

**Comment.** Section 5658 continues former Section 1367.6 without change, except as indicated below.

The following nonsubstantive changes are made:

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

- A reference to the “small claims court” is added for clarity.  
See also Sections 4080 (“association”), 4185 (“separate interest”).

**§ 5660. Pre-lien notice**

5660. 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 Section 5650, the association shall notify the owner of record in writing by certified mail of the following:

(a) 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 5205, 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.”

(b) 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.

(c) 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.

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

(e) The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association’s “meet and confer” program required in Article 2 (commencing with Section 5900) of Chapter 10.

(f) The right to request alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing with Section 5925) of Chapter 10 before the association may initiate foreclosure against the owner’s separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

**Comment.** Section 5660 continues the second sentence of former Section 1367.1(a), and paragraphs (1) to (6) of that provision, inclusive, without change, except as indicated below.

The following nonsubstantive changes are made:

- The reference to inspection of records under Corporations Code Section 8333 is replaced with a reference to inspection of records under Section 5205.
- Cross-references are updated to reflect the new locations of the referenced provisions.

See also Sections 4080 (“association”), 4085 (“board”), 4185 (“separate interest”).

### **§ 5665. Payment plan**

5665. (a) An owner, other than an owner of any interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7 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 Section 5660. The association shall provide the owners the standards for payment plans, if any exist.

(b) 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 directors to meet with the owner.

(c) Payment plans may incorporate any assessments that accrue during the payment plan period. Additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan.

(d) Payment plans shall not impede an association’s ability to record a lien on the owner’s separate interest to secure payment of delinquent assessments.

(e) In the event of a default on any payment plan, the association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

**Comment.** Section 5665 continues former Section 1367.1(c)(3) without change, except as indicated below.

The following nonsubstantive changes are made:

- Cross-references are updated to reflect the new locations of the referenced provisions.
- The provision is divided into subdivisions for ease of reference.
- The words “board member” are replaced with “director.” See Section 4140 (“director”).
- In subdivision (a), the cross-reference is revised to refer to the Business and Professions Code.

See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4185 (“separate interest”).

### **§ 5670. Pre-lien dispute resolution**

5670. Prior to recording a lien for delinquent assessments, an association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association’s “meet and confer” program required in Article 2 (commencing with Section 5900) of Chapter 10.

**Comment.** Section 5670 continues former Section 1367.1(c)(1)(A) without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Section 4080 (“association”).

### **§ 5673. Decision to lien**

5673. For liens recorded on or after January 1, 2006, the decision to record a lien for delinquent assessments shall be made only by the board and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the directors in an open meeting. The board shall record the vote in the minutes of that meeting.

**Comment.** Section 5673 continues former Section 1367.1(c)(2) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).
- The word “board member” is replaced with “director.” See Section 4140 (“director”).

See also Section 4080 (“association”).

**§ 5675. Notice of delinquent assessment**

5675. (a) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with subdivision (b) of Section 5650, shall be a lien on the owner's separate 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 subdivision (b) of Section 5650, a legal description of the owner's separate interest in the common interest development against which the assessment and other sums are levied, and the name of the record owner of the separate interest in the common interest development against which the lien is imposed.

(b) The itemized statement of the charges owed by the owner described in subdivision (b) of Section 5660 shall be recorded together with the notice of delinquent assessment.

(c) In order for the lien to be enforced by nonjudicial foreclosure as provided in Sections 5700 to 5710, inclusive, the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale.

(d) 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.

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

**Comment.** Section 5675 continues the first five sentences of former Section 1367.1(d) without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Sections 4080 ("association"), 4100 ("common interest development"), 4135 ("declaration"), 4170 ("person"), 4185 ("separate interest").

**§ 5680. Lien priority**

5680. A lien created pursuant to Section 5675 shall be prior to all other liens recorded subsequent to the notice of delinquent assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

**Comment.** Section 5680 continues former Section 1367.1(f) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “notice of assessment” are replaced with the more specific “notice of delinquent assessment.”
- A cross-reference is updated to reflect the new location of the referenced provision.

See also Section 4135 (“declaration”).

**§ 5685. Lien release**

5685. (a) Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied.

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

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

**Comment.** Subdivision (a) of Section 5685 continues the sixth sentence of former Section 1367.1(d) without change.

Subdivision (b) continues former Section 1367.1(i) without change.

Subdivision (c) continues former Section 1367.5 without change, except as indicated below.

The following substantive change is made:

- The requirement that the error be discovered as a result of alternative dispute resolution is not continued.

The following nonsubstantive change is made:

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

See also Sections 4080 (“association”), 4185 (“separate interest”).

### **§ 5690. Procedural noncompliance**

5690. An association that fails to comply with the procedures set forth in this article shall, prior to recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

**Comment.** Section 5690 continues former Section 1367.1(*l*) without change, except as indicated below.

The following nonsubstantive change is made:

- The word “section” is replaced with “article.”

See also Section 4080 (“association”), 4185 (“separate interest”).

## **Article 3. Assessment Collection**

### **§ 5700. Collection generally**

5700. (a) Except as otherwise provided in this article, after the expiration of 30 days following the recording of a lien created pursuant to Section 5675, 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.

(b) Nothing in Article 2 (commencing with Section 5650) 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 Article 2 (commencing with Section 5650) or prohibits an association from taking a deed in lieu of foreclosure.

**Comment.** Subdivision (a) of Section 5700 continues the substance of the second sentence of former Section 1367.1(g), except as indicated below.

The following nonsubstantive changes are made:

- The introductory clause is broadened to recognize the application of all restrictions on collection that are provided in this article. See, e.g., Sections 5720 (limitation on foreclosure), 5735 (limitation on assignment).
- Cross-references are updated to reflect the new locations of the referenced provisions.

Subdivision (b) continues former Section 1367.1(h) without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Sections 4080 (“association”), 4185 (“separate interest”).

### **§ 5705. Decision to foreclose**

5705. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) Prior to initiating a foreclosure on an owner’s separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association’s “meet and confer” program required in Article 2 (commencing with Section 5900) of Chapter 10 or alternative dispute resolution as set forth in Article 3 (commencing with Section 5925) of Chapter 10. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(c) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the directors in an executive session. The board shall record the vote in the minutes of the next meeting of the board open to all members. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name

of the owner or owners. A board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(d) The board shall provide notice by personal service in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an owner of a separate interest who occupies the separate interest or to the owner's legal representative, if the board votes to foreclose upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association. In the absence of written notification by the owner to the association, the address of the owner's separate interest may be treated as the owner's mailing address.

**Comment.** Subdivision (a) of Section 5705 continues former Section 1367.4(a), as it related to the substance of this section, without change.

Subdivision (b) continues former Section 1367.4(c)(1) without change, except as indicated below.

The following nonsubstantive change is made:

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

Subdivision (b) is also consistent with former Section 1367.1(c)(1)(B).

Subdivision (c) continues former Section 1367.4(c)(2) without change, except as indicated below.

The following nonsubstantive changes are made:

- The words "board of directors of the association" are replaced with "board." See Section 4085 ("board").
- The words "board member" are replaced with "director." See Section 4140 ("director").

Subdivision (d) continues former Section 1367.4(c)(3) without change.

See also Sections 4080 ("association"), 4150 ("governing documents"), 4160 ("member"), 4185 ("separate interest").

### **§ 5710. Foreclosure**

5710. (a) 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 trust.

(b) In addition to the requirements of Section 2924, the association shall serve a notice of default on the person named as the owner of the separate interest in the association's records or, if

that person has designated a legal representative pursuant to this subdivision, on that legal representative. Service shall be in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. An owner may designate a legal representative in a writing that is mailed to the association in a manner that indicates that the association has received it.

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

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

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

**Comment.** Subdivision (a) of Section 5710 continues the third sentence of former Section 1367.1(g) without change.

Subdivision (b) continues the substance of former Section 1367.1(j).

Subdivision (c) continues the fourth sentence, and paragraphs (1) and (2), of former Section 1367.1(g) without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Sections 4080 (“association”), 4085 (“board”), 4170 (“person”), 4185 (“separate interest”).

#### **§ 5715. Right of redemption after trustee sale**

5715. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale. In addition to the requirements of Section 2924f, a notice of sale in connection with an association’s foreclosure of a separate interest in a common interest development shall include a statement that the property is being sold subject to the right of redemption created in this section.

**Comment.** Subdivision (a) of Section 5715 continues former Section 1367.4(a), as it related to the substance of this section, without change.

Subdivision (b) continues former Section 1367.4(c)(4) without change, except as indicated below.

The following nonsubstantive change is made:

- “This paragraph” is replaced with “this section.”

See also Sections 4080 (“association”), 4100 (“common interest development”), 4150 (“governing documents”), 4185 (“separate interest”).

### **§ 5720. Limitation on foreclosure**

5720. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorney’s fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Chapter 5.5 of Title 1 of Part 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount to that described in subparagraph (A) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorney’s fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments secured by the lien are more than 12 months delinquent. An association that chooses to record a lien under these provisions, prior to recording the lien, shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in Article 2 (commencing with Section 5900) of Chapter 10.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(c) The limitation on foreclosure of assessment liens for amounts under the stated minimum in this section does not apply to any of the following:

(1) Assessments secured by a lien that are more than 12 months delinquent.

(2) Assessments owed by owners of separate interests in timeshare estates, as defined in subdivision (x) of Section 11212 of the Business and Professions Code.

(3) Assessments owed by the developer.

**Comment.** Subdivision (a) of Section 5720 continues former Section 1367.4(a), as it related to the substance of this section, without change.

Subdivision (b) continues former Section 1367.4(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- Incomplete cross-references in paragraph (1) are corrected.

Subdivision (c) continues former Section 1367.4(d) without change, except as indicated below.

The following nonsubstantive changes are made:

- The first paragraph is added to reflect the rule in former Section 1367.4(c).
- The second paragraph replaces an erroneous cross-reference to Business and Professions Code Section 11112(x) with a cross-reference to Business and Professions Code Section 11212(x).

See also Sections 4080 ("association"), 4150 ("governing documents"), 4185 ("separate interest").

**§ 5725. Limitations on authority to foreclose liens for monetary penalties and damage to the common area**

5725. (a) 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 area and facilities caused by a member or the member's guest or tenant 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.

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

**Comment.** Subdivision (a) of Section 5725 continues the seventh and eighth sentences of former Section 1367.1(d) without change, except as indicated below.

The following nonsubstantive change is made:

- The phrase "common areas" is singularized.

Subdivision (b) continues former Section 1367.1(e) without change, except as indicated below.

The following nonsubstantive changes are made:

- The introductory clause "except as indicated in subdivision (d)" is not continued.
- The words "governing instruments" are replaced with "governing documents." See Section 4150 ("governing documents").
- The words "subdivision separate interest" are replaced with "separate interest." See Section 4185 ("separate interest").

See also Sections 4080 ("association"), 4095 ("common area"), 4160 ("member").

**§ 5730. Statement of collection procedure**

5730. (a) The annual policy statement, prepared pursuant to Section 5310, shall include the following notice, in at least 12-point type:

**“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 FORECLOSURE**

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Article 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 4 of the Civil Code. When using judicial or 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 amounts secured by the lien are not paid. (Sections 5700 through 5720 of the Civil Code, inclusive)

In a judicial or 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 area damaged by a member or a member's guests, if the governing documents provide for this. (Section 5725 of the Civil Code)

The association must comply with the requirements of Article 2 (commencing with Section 5650) of Chapter 8 of Part 5 of Division 4 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 5675 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, including 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 5660 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 5685 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, the owner 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. (Section 5655 of the Civil Code)

An owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of Part 5 of Division 4 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 3 (commencing with Section 5925) of Chapter 10 of Part 5 of Division 4 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

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 5685 of the Civil Code)

#### MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a timeshare 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 5665 of the Civil Code)

The board 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 5665 of the Civil Code)”

(b) An association distributing the notice required by this section to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from

this section pursuant to subdivision (a) of Section 11211.7 of the Business and Professions Code may delete from the notice described in subdivision (a) the portion regarding meetings and payment plans.

**Comment.** Section 5730 continues former Section 1365.1 without change, except as indicated below.

The following nonsubstantive changes are made:

- The introductory clause is revised to reflect distribution of this notice as part of the annual policy statement.
- A limited exception for units in time shares is moved to subdivision (b), without any substantive change.
- The substance of former Section 1365.1(c) is generalized in Section 4040(b).
- Erroneous references to “Division 2 of the Civil Code” are corrected. The references should have been to “Part 2 of Division 2 of the Civil Code.”
- An erroneous reference to former Section 1368.810 is corrected. It should have referred to former Section 1363.810.
- An erroneous reference to former Section 1367.1 in the last paragraph under the heading “Payments” is corrected. The reference should have been to former Section 1367.5.
- Cross-references are updated throughout to reflect the new locations of the referenced provisions.
- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).
- The phrase “common areas” is singularized.
- The words “he or she” are replaced with “owner.”

See also Sections 4078 (“annual policy statement”), 4080 (“association”), 4095 (“common area”), Section 4100 (“common interest development”), 4150 (“governing documents”), 4160 (“member”), 4170 (“person”), 4185 (“separate interest”).

### **§ 5735. Assignment or pledge**

5735. (a) 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.

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

**Comment.** Section 5735 continues the first sentence of former Section 1367.1(g) without change, except as indicated below.

The following nonsubstantive changes are made:

- The provision is divided into subdivisions for ease of reference.
- An introductory clause is added in subdivision (b) to make the relationship between the two provisions clearer.

See also Sections 4080 (“association”), 4160 (“member”).

#### **§ 5740. Application of article**

5740. (a) Except as otherwise provided, this article applies to a lien created on or after January 1, 2003.

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

**Comment.** Section 5740 is new. A lien created on or after January 1, 1986, and before January 1, 2003, is governed by former Section 1367. See 2002 Cal. Stat. ch. 111, § 7.

### CHAPTER 9. INSURANCE AND LIABILITY

#### **§ 5800. Limitation of director and officer liability**

5800. (a) A volunteer officer or volunteer director of an association that 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 that 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, or who received either direct or indirect compensation as an employee from the declarant, or from a financial institution that purchased a separate interest 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.

**Comment.** Section 5800 continues former Section 1365.7 without change, except as indicated below.

The following nonsubstantive changes are made:

- Superfluous cross-references to governing definitions are not continued.
- Subdivision (a) is revised in two places to replace “which” with “that.”

See also Corp. Code § 7231 (standard of care and liability of director of nonprofit mutual benefit corporation).

See also Sections 4080 (“association”), 4100 (“common interest development”), 4130 (“declarant”), 4140 (“director”), 4170 (“person”), 4185 (“separate interest”).

### **§ 5805. Limitation of member liability**

5805. (a) It is the intent of the Legislature to offer civil liability protection to owners of the separate interests in a common interest development that have common area owned in tenancy-in-common if the association carries a certain level of prescribed insurance that covers a cause of action in tort.

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

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

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

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

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

**Comment.** Section 5805 continues former Section 1365.9 without change, except as indicated below.

The following nonsubstantive changes are made:

- A superfluous cross-reference to a governing definition is not continued.
- The phrase “common areas” is singularized.
- In subdivision (b)(1), the word “which” is replaced with “that.”

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4185 (“separate interest”).

#### **§ 5810. Notice of change in coverage**

5810. The association shall, as soon as reasonably practicable, provide individual notice pursuant to Section 4040 to all members if any of the policies described in the annual budget report pursuant to Section 5300 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 the annual budget report pursuant to Section 5300, the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

**Comment.** Section 5810 continues former Section 1365(f)(2) without change, except as indicated below.

The following substantive change is made:

- The reference to delivery by first-class mail is replaced with a reference to individual delivery pursuant to Section 4040.

The following nonsubstantive change is made:

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

See also Sections 4076 (“annual budget report”), 4080 (“association”), 4160 (“member”).

## CHAPTER 10. DISPUTE RESOLUTION AND ENFORCEMENT

### Article 1. Discipline and Cost Reimbursement

#### **§ 5850. Schedule of monetary penalties**

5850. (a) 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, including any monetary penalty relating to the activities of a guest or tenant of the member, the board shall adopt and distribute to each member, in the annual policy statement prepared pursuant to Section 5310, 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.

(b) Any new or revised monetary penalty that is adopted after complying with subdivision (a) may be included in a supplement that is delivered to the members individually, pursuant to Section 4040.

(c) A monetary penalty for a violation of the governing documents shall not exceed the monetary penalty stated in the schedule of monetary penalties or supplement that is in effect at the time of the violation.

(d) An association shall provide a copy of the most recently distributed schedule of monetary penalties, along with any applicable supplements to that schedule, to any member on request.

**Comment.** Subdivision (a) of Section 5850 continues the first sentence of former Section 1363(f) without change, except as indicated below.

The following substantive changes are made:

- A reference to delivery by personal delivery or first class mail is changed to refer to delivery by inclusion in the annual policy statement prepared pursuant to Section 5310.
- The word “invitee” is replaced with “tenant,” to make clear that the provision applies to tenants.

The following nonsubstantive changes are made:

- A reference to the “rules of the association” is superfluous and is not continued. The term “governing documents” encompasses rules. See Section 4150 (“governing documents”).
- The words “board of directors” are replaced with “board.” See Section 4085 (“board”).

Subdivisions (b)-(d) are new.

See also Sections 4078 (“annual policy statement”), 4080 (“association”), 4160 (“member”).

**§ 5855. Hearing**

5855. (a) When the board is to meet to consider or impose discipline upon a member, or to impose a monetary charge as a means of reimbursing the association for costs incurred by the association in the repair of damage to common area and facilities caused by a member or the member's guest or tenant, the board shall notify the member in writing, by either personal delivery or individual delivery pursuant to Section 4040, at least 10 days prior to the meeting.

(b) 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 or the nature of the damage to the common area and facilities for which a monetary charge may be imposed, and a statement that the member has a right to attend and may address the board at the meeting. The board shall meet in executive session if requested by the member.

(c) If the board imposes discipline on a member or imposes a monetary charge on the member for damage to the common area and facilities, the board shall provide the member a written notification of the decision, by either personal delivery or individual delivery pursuant to Section 4040, within 15 days following the action.

(d) A disciplinary action or the imposition of a monetary charge for damage to the common area shall not be effective against a member unless the board fulfills the requirements of this section.

**Comment.** Section 5855 continues former Section 1363(g) without change, except as indicated below.

The following substantive changes are made:

- The scope of the provision is expanded to include an action to impose a monetary charge on a member for damage to the common area.
- "Individual delivery" is substituted for first class mailing. See Section 4040.

The following nonsubstantive changes are made:

- The provision is divided into subdivisions for ease of reference.
- The word "subdivision" is replaced with "section."
- The words "board of directors" and "board of directors of the association" are replaced with "board." See Section 4085 ("board").

See also Sections 4080 ("association"), 4095 ("common area"), 4160 ("member").

**§ 5865. No effect on authority of board**

5865. Nothing in Sections 5850 or 5855 shall be construed to create, expand, or reduce the authority of the board to impose monetary penalties on a member for a violation of the governing documents.

**Comment.** Section 5865 continues the substance of former Section 1363(i), except as indicated below.

The following nonsubstantive changes are made:

- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).
- The words “or rules of the association” are not continued.
- The words “an association member” are replaced with “member.” See Section 4160 (“member”).
- The reference to Sections 5850 and 5855 is narrower than the reference in former Section 1363(i), which encompassed the entirety of former Section 1363.

See also Section 4150 (“governing documents” includes the operating rules of the association).

## Article 2. Internal Dispute Resolution

**§ 5900. Application of article**

5900. (a) This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this act, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the governing documents of the common interest development or association.

(b) This article supplements, and does not replace, Article 3 (commencing with Section 5925), relating to alternative dispute resolution as a prerequisite to an enforcement action.

**Comment.** Section 5900 continues former Section 1363.810 without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Sections 4080 (“association”), 4100 (“common interest development”), 4150 (“governing documents”), 4160 (“member”).

**§ 5905. Fair, reasonable, and expeditious dispute resolution procedure required**

5905. (a) An association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article.

(b) In developing a procedure pursuant to this article, an association shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development.

(c) If an association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article, the procedure provided in Section 5915 applies and satisfies the requirement of subdivision (a).

**Comment.** Section 5905 continues former Section 1363.820 without change, except as indicated below.

The following nonsubstantive change is made:

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

See also Section 4080 (“association”).

**§ 5910. Minimum requirements of association procedure**

5910. A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

(a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.

(b) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the association to act on a request invoking the procedure.

(c) If the procedure is invoked by a member, the association shall participate in the procedure.

(d) If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the board.

(e) A resolution of a dispute pursuant to the procedure, which is not in conflict with the law or the governing documents, binds the association and is judicially enforceable. An agreement reached pursuant to the procedure, which is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable.

(f) The procedure shall provide a means by which the member and the association may explain their positions.

(g) A member of the association shall not be charged a fee to participate in the process.

**Comment.** Section 5910 continues former Section 1363.830 without change, except as indicated below.

The following nonsubstantive changes are made:

- Subdivision (e) is revised to replace “that” with “which.”
- The words “association’s board of directors” are replaced with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

#### **§ 5915. Default meet and confer procedure**

5915. (a) This section applies to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(2) A member of an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.

(3) The board shall designate a director to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

(d) A member may not be charged a fee to participate in the process.

**Comment.** Section 5915 continues former Section 1363.840 without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “in an association” are replaced with “to an association.”
- The words “association’s board of directors” are replaced with “board.”
- The words “of the association” and “of the common interest development or association” are not continued.
- The words “board member” are replaced with “director.” See Section 4140 (“director”).

See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest development”), 4160 (“member”), 4150 (“governing documents”).

### **§ 5920. Notice in policy statement**

5920. The annual policy statement prepared pursuant to Section 5310 shall include a description of the internal dispute resolution process provided pursuant to this article.

**Comment.** Section 5920 continues former Section 1363.850 without change, except as indicated below.

The following nonsubstantive change is made:

- A reference to a notice delivered pursuant to former Section 1369.590 is changed to refer to distribution as part of the annual policy statement prepared pursuant to Section 5310.

See also Section 4078 (“annual policy statement”).

## **Article 3. Alternative Dispute Resolution Prerequisite to Civil Action**

### **§ 5925. Definitions**

5925. As used in this article:

(a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

(b) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this act.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents.

**Comment.** Section 5925 continues former Section 1369.510 without change, except as indicated below.

The following nonsubstantive changes are made:

- Subdivision (b)(1) is revised to replace “title” with “act.”
- The words “of a common interest development” are not continued in subdivision (b)(3).

See also Section 4150 (“governing documents”).

### § 5930. ADR prerequisite to enforcement action

5930. (a) An association or a member may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.

(c) This section does not apply to a small claims action.

(d) Except as otherwise provided by law, this section does not apply to an assessment dispute.

**Comment.** Section 5930 continues former Section 1369.520 without change, except as indicated below.

The following nonsubstantive changes are made:

- The words “of a common interest development” are not continued.
- The word “owner” is replaced with “member.” See Section 4160 (“member”).

See also Section 4080 (“association”).

**§ 5935. Request for resolution**

5935. (a) Any party to a dispute may initiate the process required by Section 5930 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

- (1) A brief description of the dispute between the parties.
- (2) A request for alternative dispute resolution.
- (3) A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected.
- (4) If the party on whom the request is served is the member, a copy of this article.

(b) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(c) A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

**Comment.** Section 5935 continues former Section 1369.530 without change, except as indicated below.

The following nonsubstantive change is made:

- The word “owner” is replaced with “member.” See Section 4160 (“member”).

**§ 5940. ADR process**

5940. (a) If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the alternative dispute resolution within 90 days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

(b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration.

(c) The costs of the alternative dispute resolution shall be borne by the parties.

**Comment.** Section 5940 continues former Section 1369.540 without change.

#### **§ 5945. Tolling of statute of limitations**

5945. If a Request for Resolution is served before the end of the applicable time limitation for commencing an enforcement action, the time limitation is tolled during the following periods:

(a) The period provided in Section 5935 for response to a Request for Resolution.

(b) If the Request for Resolution is accepted, the period provided by Section 5940 for completion of alternative dispute resolution, including any extension of time stipulated to by the parties pursuant to Section 5940.

**Comment.** Section 5945 continues former Section 1369.550 without change, except as indicated below.

The following nonsubstantive change is made:

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

#### **§ 5950. Certification of efforts to resolve dispute**

5950. (a) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions is satisfied:

(1) Alternative dispute resolution has been completed in compliance with this article.

(2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.

(3) Preliminary or temporary injunctive relief is necessary.

(b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless the court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

**Comment.** Section 5950 continues former Section 1369.560 without change.

**§ 5955. Stay of litigation for dispute resolution**

5955. (a) After an enforcement action is commenced, on written stipulation of the parties, the matter may be referred to alternative dispute resolution. The referred action is stayed. During the stay, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

(b) The costs of the alternative dispute resolution shall be borne by the parties.

**Comment.** Section 5955 continues former Section 1369.570 without change.

**§ 5960. Attorney's fees**

5960. In an enforcement action in which attorney's fees and costs may be awarded, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

**Comment.** Section 5960 generalizes former Section 1369.580 so that it applies to any enforcement action in which fees and costs may be awarded and not just to an action to enforce the governing documents.

**§ 5965. Notice in annual policy statement**

5965. (a) An association shall annually provide its members a summary of the provisions of this article that specifically references this article. The summary shall include the following language:

“Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of the member's right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.”

(b) The summary shall be included in the annual policy statement prepared pursuant to Section 5310.

**Comment.** Subdivision (a) of Section 5965 continues former Section 1369.590(a), except as indicated below.

The following nonsubstantive changes are made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- The pronoun “your” is replaced with “the member's” to improve the clarity of the notice.

Subdivision (b) is similar to the first sentence of former Section 1369.590(b). See also Sections 4078 (“annual policy statement”), 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

## Article 4. Civil Actions

### § 5975. Enforcement of governing documents

5975. (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

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

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

**Comment.** Section 5975 continues former Section 1354 without change.

See also Sections 4080 (“association”), 4135 (“declaration”), 4150 (“governing documents”), 4185 (“separate interest”).

### § 5980. Standing

5980. An association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the members, in matters pertaining to the following:

(a) Enforcement of the governing documents.

(b) Damage to the common area.

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

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

**Comment.** Section 5980 continues former Section 1368.3 without change, except as indicated below.

The following nonsubstantive changes are made:

- The word “owner” is replaced with “member.” See Section 4160 (“member”).
- The words “established to manage a common interest development” are not continued.

See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing documents”), 4185 (“separate interest”).

### § 5985. Comparative fault

5985. (a) In an action maintained by an association pursuant to subdivision (b), (c), or (d) of Section 5980, the amount of damages recovered by the association shall be reduced by the amount of damages allocated to the association or its managing agents in direct proportion to their percentage of fault based upon principles of comparative fault. The comparative fault of the association or its managing agents may be raised by way of defense, but shall not be the basis for a cross-action or separate action against the association or its managing agents for contribution or implied indemnity, where the only damage was sustained by the association or its members. It is the intent of the Legislature in enacting this subdivision to require that comparative fault be pleaded as an affirmative defense, rather than a separate cause of action, where the only damage was sustained by the association or its members.

(b) In an action involving damages described in subdivision (b), (c), or (d) of Section 5980, the defendant or cross-defendant may allege and prove the comparative fault of the association or its managing agents as a setoff to the liability of the defendant or cross-defendant even if the association is not a party to the litigation or is no longer a party whether by reason of settlement, dismissal, or otherwise.

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

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

**Comment.** Section 5985 continues former Section 1368.4 without change.

See also Sections 4080 (“association”), 4158 (“managing agent”), 4160 (“member”), 4170 (“person”).

## CHAPTER 11. CONSTRUCTION DEFECT LITIGATION

### § 6000. Actions for damages

6000. (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. 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 (a) of Section 4925 and subdivisions (a) and (b) of Section 4935. 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 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 subdivision 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 subdivision, 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 prefiling 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 shall meet and confer about the respondent's settlement offer.

(D) If the board 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) 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 renotify 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 Section 4080.

(2) “Builder” means the declarant, as defined in Section 4130.

(3) “Common interest development” shall have the same meaning as in Section 4100, except that it shall not include developments or projects with less than 20 units.

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

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

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

**Comment.** Section 6000 continues former Section 1375 without change, except as indicated below.

The following nonsubstantive changes are made:

- Cross-references are updated to reflect the new locations of the referenced provisions.
- The words “board of directors” and “board of directors of the association” are replaced throughout with “board.” See Section 4085 (“board”).
- Subdivision (e)(2) is revised to delete references to former Section 1375.05, which was repealed by its own terms on January 1, 2011.
- Subdivision (f)(3) is revised to correct erroneous references to “this paragraph.” The revised provision refers to “this subdivision.”
- Subdivision (l) is revised to delete a reference to former Section 1375.05, which was repealed by its own terms on January 1, 2011.

See also Sections 4080 (“association”), 4100 (“common interest development”), 4160 (“member”), 4170 (“person”), 4177 (“reserve accounts”).

**§ 6100. Notice of resolution**

6100. (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.

**Comment.** Section 6100 continues former Section 1375.1 without change.

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4160 (“member”), 4185 (“separate interest”).

### § 6150. Notice of civil action

6150. (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 shall provide a 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.

**Comment.** Section 6150 continues former Section 1368.5 without change, except as indicated below.

The following nonsubstantive change is made:

- The words “board of directors of the association” are replaced with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4130 (“declarant”), 4160 (“member”), 4185 (“separate interest”).

### Uncodified (added). Operative date

This act becomes operative on January 1, 2014.

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## CONFORMING REVISIONS

### BUSINESS AND PROFESSIONS CODE

#### **Bus. & Prof. Code § 10131.01 (amended). Exceptions to application of Section 10131**

SEC. \_\_\_\_ . Section 10131.01 of the Business and Professions Code is amended to read:

10131.01. (a) Subdivision (b) of Section 10131 does not apply to (1) the manager of a hotel, motel, auto and trailer park, to the resident manager of an apartment building, apartment complex, or court, or to the employees of that manager, or (2) any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies described in paragraphs (1) and (2) of subdivision (b) of Section 1940 of the Civil Code, in a dwelling unit in a common interest development, as defined in Section ~~4354~~ 4100 of the Civil Code, in a dwelling unit in an apartment building or complex, or in a single-family home, or (3) any person other than the resident manager or employees of that manager, performing the following functions who is the employee of the property management firm retained to manage a residential apartment building or complex or court and who is performing under the supervision and control of a broker of record who is an employee of that property management firm or a salesperson licensed to the broker who meets certain minimum requirements as specified in a regulation issued by the commissioner:

(A) Showing rental units and common areas to prospective tenants.

(B) Providing or accepting preprinted rental applications, or responding to inquiries from a prospective tenant concerning the completion of the application.

(C) Accepting deposits or fees for credit checks or administrative costs and accepting security deposits and rents.

(D) Providing information about rental rates and other terms and provisions of a lease or rental agreement, as set out in a schedule provided by an employer.

(E) Accepting signed leases and rental agreements from prospective tenants.

(b) A broker or salesperson shall exercise reasonable supervision and control over the activities of nonlicensed persons acting under paragraph (3) of subdivision (a).

(c) A broker employing nonlicensed persons to act under paragraph (3) of subdivision (a) shall comply with Section 10163 for each apartment building or complex or court where the nonlicensed persons are employed.

**Comment.** Section 10131.01 is amended to correct a cross-reference to former Civil Code Section 1351(c).

**Bus. & Prof. Code § 10153.2 (amended). Course requirements for real estate broker license**

SEC. \_\_\_\_\_. Section 10153.2 of the Business and Professions Code is amended to read:

10153.2. (a) An applicant to take the examination for an original real estate broker license shall also submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of:

(1) A three-semester unit course, or the quarter equivalent thereof, in each of the following:

- (A) Real estate practice.
- (B) Legal aspects of real estate.
- (C) Real estate appraisal.
- (D) Real estate financing.
- (E) Real estate economics or accounting.

(2) A three-semester unit course, or the quarter equivalent thereof, in three of the following:

- (A) Advanced legal aspects of real estate.
- (B) Advanced real estate finance.
- (C) Advanced real estate appraisal.
- (D) Business law.
- (E) Escrows.
- (F) Real estate principles.

(G) Property management.  
(H) Real estate office administration.  
(I) Mortgage loan brokering and lending.  
(J) Computer applications in real estate.  
(K) On and after July 1, 2004, California law that relates to common interest developments, including, but not limited to, topics addressed in the Davis-Stirling Common Interest Development Act (~~Title 6 (commencing with Section 1350) of Part 4 of Division 2 Part 5 (commencing with Section 4000) of Division 4~~ of the Civil Code).

(b) The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California and shall waive the requirements for which an applicant has successfully completed an equivalent course of study as determined under Section 10153.5.

(c) The commissioner shall extend credit under this section for any course completed to satisfy requirements of Section 10153.3 or 10153.4.

**Comment.** Section 10153.2 is amended to correct a cross-reference to former Civil Code Sections 1350-1378.

**Bus. & Prof. Code § 10177 (amended). Suspension, revocation, or denial of real estate license**

SEC. \_\_\_\_\_. Section 10177 of the Business and Professions Code, as added by Section 9 of Chapter 717 of the Statutes of 2011, is amended to read is amended to read:

10177. The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement

of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning his or her designation or certification of special education, credential, trade organization membership, or business, or concerning a business opportunity or a land or subdivision, as defined in Chapter 1 (commencing with Section 11000) of Part 2, offered for sale.

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term “realtor” or a trade name or insignia of membership in a real estate organization of which the licensee is not a member.

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the

charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Used his or her employment by a governmental agency in a capacity giving access to records, other than public records, in a manner that violates the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license.

(l)(1) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons having a characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those characteristics are defined in Sections 12926 and 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.

Subdivision (d) of Section 51 and Section ~~4360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Corporations pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Article 6 (commencing with Section 10237).

(q) Violated or failed to comply with Chapter 2 (commencing with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code, related to mortgages.

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance or delay the renewal of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation. A decision by the commissioner to delay the renewal of a real estate license shall toll the expiration of that license until the results of any pending disciplinary actions against that licensee are final, or until the

licensee voluntarily surrenders his, her, or its license, whichever is earlier.

This section shall become operative on July 1, 2012.

**Comment.** Section 10177 is amended to correct a cross-reference to former Civil Code Section 1360.

**Bus. & Prof. Code § 11003 (amended). “Planned development”**

SEC. \_\_\_\_. Section 11003 of the Business and Professions Code is amended to read:

11003. “Planned development” has the same meaning as specified in ~~subdivision (k) of Section 1351~~ Section 4175 of the Civil Code.

**Comment.** Section 11003 is amended to correct a cross-reference to former Civil Code Section 1351(k).

**Bus. & Prof. Code § 11003.2 (amended). “Stock cooperative”**

SEC. \_\_\_\_. Section 11003.2 of the Business and Professions Code is amended to read:

11003.2. “Stock cooperative” has the same meaning as specified in ~~subdivision (m) of Section 1351~~ Section 4190 of the Civil Code, except that, as used in this chapter, a “stock cooperative” does not include a limited-equity housing cooperative.

**Comment.** Section 11003.2 is amended to correct a cross-reference to former Civil Code Section 1351(m).

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

SEC. \_\_\_\_. Section 11004 of the Business and Professions Code is amended to read:

11004. “Community apartment project” has the same meaning as specified in ~~subdivision (d) of Section 1351~~ Section 4105 of the Civil Code.

**Comment.** Section 11004 is amended to correct a cross-reference to former Civil Code Section 1351(d).

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

SEC. \_\_\_\_. Section 11004.5 of the Business and Professions Code is amended to read:

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

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

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

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

(d) Any stock cooperative as defined in Section 11003.2, including any legal or beneficial interests therein, having or intended to have five or more shareholders.

(e) Any limited-equity housing cooperative, as defined in Section 11003.4.

(f) In addition, the following interests shall be subject to this chapter and the regulations of the commissioner adopted pursuant thereto:

(1) Any accompanying memberships or other rights or privileges created in, or in connection with, any of the forms of development referred to in subdivision (a), (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments, declarations of restrictions, articles of incorporation, bylaws, or contracts applicable thereto.

(2) Any interests or memberships in any owners’ association as defined in Section ~~1351~~ 4080 of the Civil Code, created in connection with any of the forms of the development referred to in subdivision (a), (b), (c), (d), or (e).

(g) Notwithstanding this section, time-share plans, exchange programs, incidental benefits, and short-term product subject to Chapter 2 (commencing with Section 11210) are not “subdivisions” or “subdivided lands” subject to this chapter.

**Comment.** Section 11004.5 is amended to correct a cross-reference to former Civil Code Section 1351(a).

**Bus. & Prof. Code § 11010.10 (amended). Application for review of declaration**

SEC. \_\_\_\_\_. Section 11010.10 of the Business and Professions Code is amended to read:

11010.10. A person who plans to offer for sale or lease lots or other interests in a subdivision which sale or lease (a) is not subject to the provisions of this chapter, (b) does not require the submission of a notice of intention as provided in Section 11010, or (c) is subject to this chapter and for which the local jurisdiction requires review and approval of the declaration, as defined in ~~subdivision (h) of Section 1351~~ Section 4135 of the Civil Code, prior to or concurrently with the recordation of the subdivision map and prior to the approval of the declaration pursuant to a notice of intention for a public report, may submit an application requesting review of the declaration, along with any required supporting documentation, to the commissioner, without the filing of a notice of intention for the subdivision for which the declaration is being prepared. Upon approval, the commissioner shall give notice to the applicant that the declaration shall be approved for a subsequent notice of intent filing for any public report for the subdivision identified in the application, provided that the subdivision setup is substantially the same as that originally described in the application for review of the declaration.

**Comment.** Section 11010.10 is amended to correct a cross-reference to former Civil Code Section 1351(h).

**Bus. & Prof. Code § 11018.1 (amended). Furnishing or posting of public report**

SEC. \_\_\_\_ . Section 11018.1 of the Business and Professions Code is amended to read:

11018.1. (a) A copy of the public report of the commissioner, when issued, shall be given to the prospective purchaser by the owner, subdivider or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision. The requirement of this section extends to lots or parcels offered by the subdivider after repossession. A receipt shall be taken from the prospective purchaser in a form and manner as set forth in regulations of the Real Estate Commissioner.

(b) A copy of the public report shall be given by the owner, subdivider or agent at any time, upon oral or written request, to any member of the public. A copy of the public report and a statement

advising that a copy of the public report may be obtained from the owner, subdivider or agent at any time, upon oral or written request, shall be posted in a conspicuous place at any office where sales or leases or offers to sell or lease lots within the subdivision are regularly made.

(c) At the same time that a public report is required to be given by the owner, subdivider, or agent pursuant to subdivision (a) with respect to a common interest development, as defined, in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code, the owner, subdivider, or agent shall give the prospective purchaser a copy of the following statement:

**“COMMON INTEREST DEVELOPMENT GENERAL INFORMATION**

The project described in the attached Subdivision Public Report is known as a common-interest development. Read the public report carefully for more information about the type of development. The development includes common areas and facilities which will be owned or operated by an owners' association. Purchase of a lot or unit automatically entitles and obligates you as a member of the association and, in most cases, includes a beneficial interest in the areas and facilities. Since membership in the association is mandatory, you should be aware of the following information before you purchase:

Your ownership in this development and your rights and remedies as a member of its association will be controlled by governing instruments which generally include a Declaration of Restrictions (also known as CC&R's), Articles of Incorporation (or association) and bylaws. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. Study these documents carefully before entering into a contract to purchase a subdivision interest.

In order to provide funds for operation and maintenance of the common facilities, the association will levy assessments against your lot or unit. If you are delinquent in the payment of assessments, the association may enforce payment through court proceedings or your lot or unit may be liened and sold through the

exercise of a power of sale. The anticipated income and expenses of the association, including the amount that you may expect to pay through assessments, are outlined in the proposed budget. Ask to see a copy of the budget if the subdivider has not already made it available for your examination.

A homeowner association provides a vehicle for the ownership and use of recreational and other common facilities which were designed to attract you to buy in this development. The association also provides a means to accomplish architectural control and to provide a base for homeowner interaction on a variety of issues. The purchaser of an interest in a common-interest development should contemplate active participation in the affairs of the association. He or she should be willing to serve on the board of directors or on committees created by the board. In short, "they" in a common interest development is "you." Unless you serve as a member of the governing board or on a committee appointed by the board, your control of the operation of the common areas and facilities is limited to your vote as a member of the association. There are actions that can be taken by the governing body without a vote of the members of the association which can have a significant impact upon the quality of life for association members.

Until there is a sufficient number of purchasers of lots or units in a common interest development to elect a majority of the governing body, it is likely that the subdivider will effectively control the affairs of the association. It is frequently necessary and equitable that the subdivider do so during the early stages of development. It is vitally important to the owners of individual subdivision interests that the transition from subdivider to resident-owner control be accomplished in an orderly manner and in a spirit of cooperation.

When contemplating the purchase of a dwelling in a common interest development, you should consider factors beyond the attractiveness of the dwelling units themselves. Study the governing instruments and give careful thought to whether you will be able to exist happily in an atmosphere of cooperative living where the interests of the group must be taken into account as well as the interests of the individual. Remember that managing a

common interest development is very much like governing a small community ... the management can serve you well, but you will have to work for its success.”

Failure to provide the statement in accordance with this subdivision shall not be deemed a violation subject to Section 10185.

**Comment.** Subdivision (c) of Section 11018.1 is amended to correct a cross-reference to former Civil Code Section 1351(c).

**Bus. & Prof. Code § 11018.12 (amended). Conditional public report for subdivision**

SEC. \_\_\_\_\_. Section 11018.12 of the Business and Professions Code is amended to read:

11018.12. (a) The commissioner may issue a conditional public report for a subdivision specified in Section 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for the issuance of a public report set forth in the regulations of the commissioner have been satisfied, except for one or more of the following requirements, as applicable:

- (1) A final map has not been recorded.
- (2) A condominium plan pursuant to ~~subdivision (e) of Section 1351~~ Section 4120 of the Civil Code has not been recorded.
- (3) A declaration of covenants, conditions, and restrictions pursuant to ~~Section 1353~~ Sections 4250 and 4255 of the Civil Code has not been recorded.
- (4) A declaration of annexation has not been recorded.
- (5) A recorded subordination of existing liens to the declaration of covenants, conditions, and restrictions or declaration of annexation, or escrow instructions to effect recordation prior to the first sale, are lacking.
- (6) Filed articles of incorporation are lacking.

(7) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(8) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(b) The commissioner may issue a conditional public report for a subdivision not referred to or specified in Section 11000.1 or 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for issuance of a public report set forth in the regulations of the commissioner have been satisfied, except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A declaration of covenants, conditions, and restrictions has not been recorded.

(3) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(4) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(c) A decision by the commissioner to not issue a conditional public report shall be noticed in writing to the applicant within five business days and that notice shall specifically state the reasons why the report is not being issued.

(d) Notwithstanding the provisions of Section 11018.2, a person may sell or lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a conditional public report if, as a

condition of the sale or lease or offer for sale or lease, delivery of legal title or other interest contracted for will not take place until issuance of a public report and provided that the requirements of subdivision (e) are met.

(e)(1) Evidence shall be supplied that all purchase money will be deposited in compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section 11013.4, and in the case of a subdivision referred to in subdivision (a) of this section, evidence shall be given of compliance with paragraphs (1) and (2) of subdivision (a) of Section 11018.5.

(2) A description of the nature of the transaction shall be supplied.

(3) Provision shall be made for the return of the entire sum of money paid or advanced by the purchaser if a subdivision public report has not been issued during the term of the conditional public report, or as extended, or the purchaser is dissatisfied with the public report because of a change pursuant to Section 11012.

(f) A subdivider, principal, or his or her agent shall provide a prospective purchaser a copy of the conditional public report and a written statement including all of the following:

(1) Specification of the information required for issuance of a public report.

(2) Specification of the information required in the public report that is not available in the conditional public report, along with a statement of the reasons why that information is not available at the time of issuance of the conditional public report.

(3) A statement that no person acting as a principal or agent shall sell or lease, or offer for sale or lease, lots or parcels in a subdivision for which a conditional public report has been issued except as provided in this article.

(4) Specification of the requirements of subdivision (e).

(g) The prospective purchaser shall sign a receipt that he or she has received and has read the conditional public report and the written statement provided pursuant to subdivision (f).

(h) The term of a conditional public report shall not exceed six months, and may be renewed for one additional term of six months

if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

(i) The term of a conditional public report for attached residential condominium units, as defined pursuant to Section 783 of the Civil Code, consisting of 25 units or more as specified on the approved tentative tract map, shall not exceed 30 months and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

**Comment.** Subdivision (a) of Section 11018.12 is amended to correct cross-references to former Civil Code Sections 1351(e) and 1353.

**Bus. & Prof. Code § 11018.6 (amended). Documents to be provided to prospective purchaser or lessee**

SEC. \_\_\_\_ . Section 11018.6 of the Business and Professions Code is amended to read:

11018.6. Any person offering to sell or lease any interest subject to the requirements of subdivision (a) of Section 11018.1 in a subdivision described in Section 11004.5 shall make a copy of each of the following documents available for examination by a prospective purchaser or lessee before the execution of an offer to purchase or lease and shall give a copy thereof to each purchaser or lessee as soon as practicable before transfer of the interest being acquired by the purchaser or lessee:

(a) The declaration of covenants, conditions, and restrictions for the subdivision.

(b) Articles of incorporation or association for the subdivision owners association.

(c) Bylaws for the subdivision owners association.

(d) Any other instrument which establishes or defines the common, mutual, and reciprocal rights, and responsibilities of the owners or lessees of interests in the subdivision as shareholders or members of the subdivision owners association or otherwise.

(e) To the extent available, the current financial information and related statements as specified in ~~subdivision (a) of Section 1365~~ Sections 5300 and 5565 of the Civil Code, for subdivisions subject to those provisions.

(f) A statement prepared by the governing body of the association setting forth the outstanding delinquent assessments and related charges levied by the association against the subdivision interests in question under authority of the governing instruments for the subdivision and association.

**Comment.** Section 11018.6 is amended to correct and broaden a cross-reference to former Civil Code Section 1365(a). As amended, the reference also includes the information provided under former Section 1365(b) (summary of reserve funding plan).

**Bus. & Prof. Code § 11211.7 (amended). Application of Davis-Stirling Common Interest Development Act to Time-Share Plan**

SEC. \_\_\_\_\_. Section 11211.7 of the Business and Professions Code is amended to read:

11211.7. (a) Any time-share plan registered pursuant to this chapter to which the Davis-Stirling Common Interest Development Act (~~Chapter 1 (commencing with Section 1350) of Part 4 of Division 2~~ Part 5 (commencing with Section 4000) of Division 4 of the Civil Code) might otherwise apply is exempt from that act, except for Sections ~~1354, 1355, 1355.5, 1356, 1357, 1358, 1361, 1361.5, 1362, 1363.05, 1364, 1365.5, 1370, and 1371~~ 4090, 4177, 4178, 4215, 4220, 4230, 4260 to 4275, inclusive, 4500 to 4510, inclusive, 4625 to 4650, inclusive, 4775 to 4790, inclusive, 4900 to 4950, inclusive, 5500 to 5560, inclusive, and 5975 of the Civil Code.

(b)(1) To the extent that a single site time-share plan or component site of a multisite time-share plan located in the state is structured as a condominium or other common interest development, and there is any inconsistency between the applicable provisions of this chapter and the Davis-Stirling Common Interest Development Act, the applicable provisions of this chapter shall control.

(2) To the extent that a time-share plan is part of a mixed use project where the time-share plan comprises a portion of a condominium or other common interest development, the applicable provisions of this chapter shall apply to that portion of the project uniquely comprising the time-share plan, and the Davis-

Stirling Common Interest Development Act shall apply to the project as a whole.

(c)(1) The offering of any time-share plan, exchange program, incidental benefit, or short term product in this state that is subject to the provisions of this chapter shall be exempt from Sections 1689.5 to 1689.14, inclusive, of the Civil Code (Home Solicitation Sales), Sections 1689.20 to 1689.24, inclusive, of the Civil Code (Seminar Sales), and Sections 1812.100 to 1812.129, inclusive, of the Civil Code (Contracts for Discount Buying Services).

(2) A developer or exchange company that, in connection with a time-share sales presentation or offer to arrange an exchange, offers a purchaser the opportunity to utilize the services of an affiliate, subsidiary, or third-party entity in connection with wholesale or retail air or sea transportation, shall not, in and of itself, cause the developer or exchange company to be considered a seller of travel subject to Sections 17550 to 17550.34, inclusive, of the Business and Professions Code, so long as the entity that actually provides or arranges the air or sea transportation is registered as a seller of travel with the California Attorney General's office or is otherwise exempt under those sections.

(d) To the extent certain sections in this chapter require information and disclosure that by their terms only apply to real property time-share plans, those requirements shall not apply to personal property time-share plans.

**Comment.** Subdivision (a) of Section 11211.7 is amended to correct cross-references to former provisions of the Davis-Stirling Common Interest Development Act (former Civil Code Sections 1350-1378).

**Bus. & Prof. Code § 11500 (amended) (to be repealed January 1, 2012). Definitions**

SEC. \_\_\_\_. Section 11500 of the Business and Professions Code is amended to read:

11500. For purposes of this chapter, the following definitions apply:

(a) "Common interest development" means a residential development identified in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code.

(b) “Association” has the same meaning as defined in ~~subdivision (a) of Section 1351~~ Section 4080 of the Civil Code.

(c) “Financial services” means acts performed or offered to be performed, for compensation, for an association, including, but not limited to, the preparation of internal unaudited financial statements, internal accounting and bookkeeping functions, billing of assessments, and related services.

(d) “Management services” means acts performed or offered to be performed in an advisory capacity for an association including, but not limited to, the following:

(1) Administering or supervising the collection, reporting, and archiving of the financial or common area assets of an association or common interest development, at the direction of the association’s board of directors.

(2) Implementing resolutions and directives of the board of directors of the association elected to oversee the operation of a common interest development.

(3) Implementing provisions of governing documents, as defined in ~~Section 1351~~ 4150 of the Civil Code, that govern the operation of the common interest development.

(4) Administering association contracts, including insurance contracts, within the scope of the association’s duties or with other common interest development managers, vendors, contractors, and other third-party providers of goods and services to an association or common interest development.

(e) “Professional association for common interest development managers” means an organization that meets all of the following:

(1) Has at least 200 members or certificants who are common interest development managers in California.

(2) Has been in existence for at least five years.

(3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

(4) Certifies that a common interest development manager has met the criteria set forth in Section 11502 without requiring membership in the association.

(5) Requires adherence to a code of professional ethics and standards of practice for certified common interest development managers.

**Comment.** Section 11500 is amended to correct cross-references to subdivisions (a), (c), and (i) of former Civil Code Section 1351.

**Note.** Section 11500 will be repealed by operation of law on January 1, 2012, unless that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as scheduled, it will not need to be revised because it would be repealed before the proposed law takes effect. However, there is a possibility that the sunset date will be eliminated or extended. For that reason, Section 11500 is included in the proposed law.

**Bus. & Prof. Code § 11502 (amended) (to be repealed January 1, 2012). Qualifications**

SEC. \_\_\_\_. Section 11502 of the Business and Professions Code is amended to read:

11502. In order to be called a “certified common interest development manager,” a person shall meet one of the following requirements:

(a) Prior to July 1, 2003, has passed a knowledge, skills, and aptitude examination as specified in Section 11502.5 or has been granted a certification or a designation by a professional association for common interest development managers, and who has, within five years prior to July 1, 2004, received instruction in California law pursuant to paragraph (1) of subdivision (b).

(b) On or after July 1, 2003, has successfully completed an educational curriculum that shall be no less than a combined 30 hours in coursework described in this subdivision and passed an examination or examinations that test competence in common interest development management in the following areas:

(1) The law that relates to the management of common interest developments, including, but not limited to, the following courses of study:

(A) Topics covered by the Davis-Stirling Common Interest Development Act, contained in ~~Title 6 (commencing with Section 1350) of Part 4 of Division 2~~ Part 5 (commencing with Section 4000) of Division 4 of the Civil Code, including, but not limited to,

the types of California common interest developments, disclosure requirements pertaining to common interest developments, meeting requirements, financial reporting requirements, and member access to association records.

(B) Personnel issues, including, but not limited to, general matters related to independent contractor or employee status, the laws on harassment, the Unruh Civil Rights Act, the California Fair Employment and Housing Act, and the Americans with Disabilities Act.

(C) Risk management, including, but not limited to, insurance coverage, maintenance, operations, and emergency preparedness.

(D) Property protection for associations, including, but not limited to, pertinent matters relating to environmental hazards such as asbestos, radon gas, and lead-based paint, the Vehicle Code, local and municipal regulations, family day care facilities, energy conservation, Federal Communications Commission rules and regulations, and solar energy systems.

(E) Business affairs of associations, including, but not limited to, necessary compliance with federal, state, and local law.

(F) Basic understanding of governing documents, codes, and regulations relating to the activities and affairs of associations and common interest developments.

(2) Instruction in general management that is related to the managerial and business skills needed for management of a common interest development, including, but not limited to, the following:

(A) Finance issues, including, but not limited to, budget preparation; management; administration or supervision of the collection, reporting, and archiving of the financial or common area assets of an association or common interest development; bankruptcy laws; and assessment collection .

(B) Contract negotiation and administration.

(C) Supervision of employees and staff.

(D) Management of maintenance programs.

(E) Management and administration of rules, regulations, and parliamentary procedures.

(F) Management and administration of architectural standards.

(G) Management and administration of the association's recreational programs and facilities.

(H) Management and administration of owner and resident communications.

(I) Training and strategic planning for the association's board of directors and its committees.

(J) Implementation of association policies and procedures.

(K) Ethics, professional conduct, and standards of practice for common interest development managers.

(L) Current issues relating to common interest developments.

(M) Conflict avoidance and resolution mechanisms.

**Comment.** Section 11502 is amended to correct a cross-reference to former Civil Code Sections 1350-1378.

**Note.** Section 11502 will be repealed by operation of law on January 1, 2012, unless that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as scheduled, it will not need to be revised because it would be repealed before the proposed law takes effect. However, there is a possibility that the sunset date will be eliminated or extended. For that reason, Section 11502 is included in the proposed law.

**Bus. & Prof. Code § 11504 (amended) (to be repealed January 1, 2012). Annual disclosure**

SEC. \_\_\_\_ . Section 11504 of the Business and Professions Code is amended to read:

11504. On or before September 1, 2003, and annually thereafter, a person who either provides or contemplates providing the services of a common interest development manager to an association shall disclose to the board of directors of the association the following information:

(a) Whether or not the common interest development manager has met the requirements of Section 11502 so he or she may be called a certified common interest development manager.

(b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification.

(c) The location of his or her primary office.

(d) Prior to entering into or renewing a contract with an association, the common interest development manager shall disclose to the board of directors of the association or common interest development whether the fidelity insurance of the common interest development manager or his or her employer covers the current year's operating and reserve funds of the association. This requirement shall not be construed to compel an association to require a common interest development manager to obtain or maintain fidelity insurance.

(e) Whether the common interest development manager possesses an active real estate license.

This section may not preclude a common interest development manager from disclosing information as required in ~~Section 1363.1~~ Section 5375 of the Civil Code.

**Comment.** Section 11504 is amended to correct a cross-reference to the disclosure requirements of former Civil Code Section 1363.1.

**Note.** Section 11504 will be repealed by operation of law on January 1, 2012, unless that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as scheduled, it will not need to be revised because it would be repealed before the proposed law takes effect. However, there is a possibility that the sunset date will be eliminated or extended. For that reason, Section 11504 is included in the proposed law.

**Bus. & Prof. Code § 11505 (amended) (to be repealed January 1, 2012). Prohibited activities**

SEC. \_\_\_\_ . Section 11505 of the Business and Professions Code is amended to read:

11505. It is an unfair business practice for a common interest development manager, a company that employs the common interest development manager, or a company that is controlled by a company that also has a financial interest in a company employing that manager, to do any of the following:

(a) On or after July 1, 2003, to hold oneself out or use the title of "certified common interest development manager" or any other term that implies or suggests that the person is certified as a common interest development manager without meeting the requirements of Section 11502.

(b) To state or advertise that he or she is certified, registered, or licensed by a governmental agency to perform the functions of a certified common interest development manager.

(c) To state or advertise a registration or license number, unless the license or registration is specified by a statute, regulation, or ordinance.

(d) To fail to comply with any item to be disclosed in Section 11504 of this code, or ~~Section 1363.1~~ Section 5375 of the Civil Code.

**Comment.** Section 11505 is amended to correct a cross-reference to the disclosure requirements of former Civil Code Section 1363.1.

**Note.** Section 11505 will be repealed by operation of law on January 1, 2012, unless that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as scheduled, it will not need to be revised because it would be repealed before the proposed law takes effect. However, there is a possibility that the sunset date will be eliminated or extended. For that reason, Section 11505 is included in the proposed law.

**Bus. & Prof. Code § 23426.5 (amended). Tennis club**

SEC. \_\_\_\_ . Section 23426.5 of the Business and Professions Code is amended to read:

23426.5. (a) For purposes of this article, “club” also means any tennis club that maintains not less than four regulation tennis courts, together with the necessary facilities and clubhouse, has members paying regular monthly dues, has been in existence for not less than 45 years, and is not associated with a common interest development as defined in Section ~~1351~~ 4100 of the Civil Code, a community apartment project as defined in Section 11004 of this code, a project consisting of condominiums as defined in Section 783 of the Civil Code, or a mobilehome park as defined in Section 18214 of the Health and Safety Code.

(b) It shall be unlawful for any club licensed pursuant to this section to make any discrimination, distinction, or restriction against any person on account of age or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

**Comment.** Section 23426.5 is amended to correct a cross-reference to former Civil Code Section 1351(c).

**Bus. & Prof. Code § 23428.20 (amended). Further definition of “club”**

SEC. \_\_\_\_\_. Section 23428.20 of the Business and Professions Code is amended to read:

23428.20. (a) For the purposes of this article, “club” also means any bona fide nonprofit corporation that has been in existence for not less than nine years, has more than 8,500 memberships issued and outstanding to owners of condominiums and owners of memberships in stock cooperatives, and owns, leases, operates, or maintains recreational facilities for its members.

(b) For the purposes of this article, “club” also means any bona fide nonprofit corporation that was formed as a condominium homeowners’ association, has at least 250 members, has served daily meals to its members and guests for a period of not less than 12 years, owns or leases, operates, and maintains a clubroom or rooms for its membership, has an annual fee of not less than nine hundred dollars (\$900) per year per member, and has as a condition of membership that one member of each household be at least 54 years old.

(c) Section 23399 and the numerical limitation of Section 23430 shall not apply to a club defined in this section.

(d) No license shall be issued pursuant to this section to any club that withholds membership or denies facilities or services to any person on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(e) Notwithstanding subdivision (d), with respect to familial status, subdivision (d) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (d).

**Comment.** Section 23428.20 is amended to correct a cross-reference to former Civil Code Section 1360.

## CIVIL CODE

### **Civ. Code § 51.11 (amended). Special living environments for senior citizens**

SEC. \_\_\_\_. Section 51.11 of the Civil Code is amended to read:

51.11. (a) The Legislature finds and declares that this section is essential to establish and preserve housing for senior citizens. There are senior citizens who need special living environments, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) “Qualifying resident” or “senior citizen” means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) “Qualified permanent resident” means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) “Qualified permanent resident” also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, “disabled” means a person who has a disability as defined in subdivision (b) of Section 54. A “disabling injury or illness” means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under paragraph (3) whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year, after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under paragraph (3) if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided, however, that action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in that hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) "Senior citizen housing development" means a residential development developed with more than 20 units as a senior community by its developer and zoned as a senior community by a local governmental entity, or characterized as a senior community in its governing documents, as these are defined in Section ~~1354~~ 4150, or qualified as a senior community under the federal Fair Housing Amendments Act of 1988, as amended. Any senior

citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code.

(5) "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.

(6) "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors, or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears

that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any ~~such~~ limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (g) of this section or subdivision (b) of Section 51.12. That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not more than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the

extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(g) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on or after January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section by Chapter 1147 of the Statutes of 1996.

(h) A housing development may qualify as a senior citizen housing development under this section even though, as of January 1, 1997, it does not meet the definition of a senior citizen housing development specified in subdivision (b), if the development complies with that definition for every unit that becomes occupied after January 1, 1997, and if the development was once within that definition, and then became noncompliant with the definition as the result of any one of the following:

(1) The development was ordered by a court or a local, state, or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(2) The development received a notice of a pending or proposed action in, or by, a court, or a local, state, or federal enforcement agency, which action could have resulted in the development being ordered by a court or a state or federal enforcement agency to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development.

(3) The development agreed to allow persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development by entering into a stipulation, conciliation agreement, or settlement agreement with a local, state, or federal enforcement agency or with a private party who had filed, or indicated an intent to file, a complaint against the development with a local, state, or federal enforcement agency, or file an action in a court.

(4) The development allowed persons other than qualifying residents, qualified permanent residents, or permitted health care residents to reside in the development on the advice of counsel in

order to prevent the possibility of an action being filed by a private party or by a local, state, or federal enforcement agency.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation.

(j) This section shall only apply to the County of Riverside.

**Comment.** Subdivision (b)(4) of Section 51.11 is amended to correct a cross-reference to former Section 1351(j).

Subdivision (c) is amended to make a stylistic revision.

**Civ. Code § 714 (amended). Unenforceability of restrictions on use of solar energy system**

SEC. \_\_\_\_ . Section 714 of the Civil Code is amended to read:

714. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document, as defined in ~~subdivision (j) of Section 1351~~ 4150, that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c)(1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit

third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

(1)(A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, “significantly” means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, “significantly” means an amount not to exceed two thousand dollars (\$2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed.

(2) “Solar energy system” has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e)(1) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(2) For an approving entity that is a homeowners’ association, as defined in ~~subdivision (a) of Section 1351~~ 4080, and that is not a public entity, both of the following shall apply:

(A) The approval or denial of an application shall be in writing.

(B) If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

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

(h)(1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program.

(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

**Comment.** Section 714 is amended to correct cross-references to former Section 1351(a), (j).

**Civ. Code § 714.1 (amended). Permissible restrictions by common interest development association**

SEC. \_\_\_\_ . Section 714.1 of the Civil Code is amended to read:

714.1. Notwithstanding Section 714, any association, as defined in Section ~~1351~~ 4080, may impose reasonable provisions which:

(a) Restrict the installation of solar energy systems installed in common areas, as defined in Section ~~1351~~ 4095, to those systems approved by the association.

(b) Require the owner of a separate interest, as defined in Section ~~1351~~ 4185, to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another.

(c) Provide for the maintenance, repair, or replacement of roofs or other building components.

(d) Require installers of solar energy systems to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system.

**Comment.** Section 714.1 is amended to correct cross-references to former Section 1351(a), (b), (l).

**Civ. Code § 782 (amended). Discriminatory provision in deed of real property**

SEC. \_\_\_\_\_. Section 782 of the Civil Code is amended to read:

782. (a) Any provision in any deed of real property in California, whether executed before or after the effective date of this section, that purports to restrict the right of any persons to sell, lease, rent, use or occupy the property to persons having any characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, by providing for payment of a penalty, forfeiture, reverter, or otherwise, is void.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

**Comment.** Section 782 is amended to correct a cross-reference to former Section 1360.

**Civ. Code § 782.5 (amended). Revision of instrument to omit provision that restricts rights based on race or color**

SEC. \_\_\_\_\_. Section 782.5 of the Civil Code is amended to read:

782.5. (a) Any deed or other written instrument that relates to title to real property, or any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, any ~~such~~ deed or instrument that relates to title to real property, ~~that~~ which contains any provision that purports to forbid, restrict, or condition the right of any person or persons to sell, buy, lease, rent, use, or occupy the property on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, with respect to any

person or persons, shall be deemed to be revised to omit that provision.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

(c) This section shall not be construed to limit or expand the powers of a court to reform a deed or other written instrument.

**Comment.** Subdivision (a) of Section 782.5 is amended to make stylistic revisions.

Subdivision (b) is amended to correct a cross-reference to former Section 1360.

#### **Civ. Code § 783 (amended). “Condominium”**

SEC. \_\_\_\_ . Section 783 of the Civil Code is amended to read:

783. A condominium is an estate in real property described in ~~subdivision (f) of Section 1351~~ 4125. A condominium may, with respect to the duration of its enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate for life, (3) an estate for years, such as a leasehold or a subleasehold, or (4) any combination of the foregoing.

**Comment.** Section 783 is amended to correct a cross-reference to former Section 1351(f).

#### **Civ. Code § 783.1 (amended). Separate and correlative interests as interests in real property**

SEC. \_\_\_\_ . Section 783.1 of the Civil Code is amended to read:

783.1. In a stock cooperative, as defined in ~~subdivision (m) of Section 1351~~ 4190, both the separate interest, as defined in paragraph (4) of subdivision ~~(f)~~ (a) of Section ~~1351~~ 4185, and the correlative interest in the stock cooperative corporation, however designated, are interests in real property.

**Comment.** Section 783.1 is amended to correct cross-references to former Section 1351(l)(4), (m).

**Civ. Code § 798.20 (amended). Discrimination prohibited**

SEC. \_\_\_\_ . Section 798.20 of the Civil Code is amended to read:

798.20. (a) Membership in any private club or organization that is a condition for tenancy in a park shall not be denied on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

**Comment.** Section 798.20 is amended to correct a cross-reference to former Section 1360.

**Civ. Code § 799.10 (amended). Political signs**

SEC. \_\_\_\_ . Section 799.10 of the Civil Code is amended to read:

799.10. A resident may not be prohibited from displaying a political campaign sign relating to a candidate for election to public office or to the initiative, referendum, or recall process in the window or on the side of a manufactured home or mobilehome, or within the site on which the home is located or installed. The size of the face of a political sign may not exceed six square feet, and the sign may not be displayed in excess of a period of time from 90 days prior to an election to 15 days following the election, unless a local ordinance within the jurisdiction where the manufactured home or mobilehome subject to this article is located imposes a more restrictive period of time for the display of such a sign. In the event of a conflict between the provisions of this section and the provisions of ~~Title 6 (commencing with Section 1350) of Part 4 of Division 2~~ Part 5 (commencing with Section

4000) of Division 4, relating to the size and display of political campaign signs, the provisions of this section shall prevail.

**Comment.** Section 799.10 is amended to correct a cross-reference to former Civil Code Sections 1350-1378.

**Civ. Code § 800.25 (amended). Nondiscrimination in private club membership**

SEC. \_\_\_\_\_. Section 800.25 of the Civil Code is amended to read:

800.25. (a) Membership in any private club or organization that is a condition for tenancy in a floating home marina shall not be denied on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

**Comment.** Section 800.25 is amended to correct a cross-reference to former Section 1360.

**Civ. Code § 895 (amended). Definitions**

SEC. \_\_\_\_\_. Section 895 of the Civil Code is amended to read:

895. (a) “Structure” means any residential dwelling, other building, or improvement located upon a lot or within a common area.

(b) “Designed moisture barrier” means an installed moisture barrier specified in the plans and specifications, contract documents, or manufacturer’s recommendations.

(c) “Actual moisture barrier” means any component or material, actually installed, that serves to any degree as a barrier against

moisture, whether or not intended as ~~such~~ a barrier against moisture.

(d) “Unintended water” means water that passes beyond, around, or through a component or the material that is designed to prevent that passage.

(e) “Close of escrow” means the date of the close of escrow between the builder and the original homeowner. With respect to claims by an association, as defined in ~~subdivision (a) of Section 1351~~ 4080, “close of escrow” means the date of substantial completion, as defined in Section 337.15 of the Code of Civil Procedure, or the date the builder relinquishes control over the association’s ability to decide whether to initiate a claim under this title, whichever is later.

(f) “Claimant” or “homeowner” includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in ~~subdivision (a) of Section 1351~~ 4080.

**Comment.** Subdivision (c) of Section 895 is amended to make a stylistic revision.

Subdivisions (e) and (f) are amended to correct cross-references to former Section 1351(a).

#### **Civ. Code § 935 (amended). Similar requirements of Section 6000**

SEC. \_\_\_\_ . Section 935 of the Civil Code is amended to read:

935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section ~~1375 of the Civil Code~~ 6000, but an action is subsequently commenced under Section ~~1375 of the Civil Code~~ 6000, the parties are excused from performing the substantially similar requirements under Section ~~1375 of the Civil Code~~ 6000.

**Comment.** Section 935 is amended to correct cross-references to former Section 1375.

#### **Civ. Code § 945 (amended). Binding effect on original purchaser or successor-in-interest**

SEC. \_\_\_\_ . Section 945 of the Civil Code is amended to read:

945. The provisions, standards, rights, and obligations set forth in this title are binding upon all original purchasers and their

successors-in-interest. For purposes of this title, associations and others having the rights set forth in Sections ~~1368.3~~ 5980 and ~~1368.4~~ 5985 shall be considered to be original purchasers and shall have standing to enforce the provisions, standards, rights, and obligations set forth in this title.

**Comment.** Section 945 is amended to correct cross-references to former Sections 1368.3 and 1368.4.

**Civ. Code § 1098 (amended). Transfer fee defined**

SEC. \_\_\_\_ . Section 1098 of the Civil Code is amended to read:

1098. A “transfer fee” is any fee payment requirement imposed within a covenant, restriction, or condition contained in any deed, contract, security instrument, or other document affecting the transfer or sale of, or any interest in, real property that requires a fee be paid upon transfer of the real property. A transfer fee does not include any of the following:

- (a) Fees or taxes imposed by a governmental entity.
- (b) Fees pursuant to mechanics’ liens.
- (c) Fees pursuant to court-ordered transfers, payments, or judgments.
- (d) Fees pursuant to property agreements in connection with a legal separation or dissolution of marriage.
- (e) Fees, charges, or payments in connection with the administration of estates or trusts pursuant to Division 7 (commencing with Section 7000), Division 8 (commencing with Section 13000), or Division 9 (commencing with Section 15000) of the Probate Code.
- (f) Fees, charges, or payments imposed by lenders or purchasers of loans, as these entities are described in subdivision (c) of Section 10232 of the Business and Professions Code.
- (g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling Common Interest Development Act (~~Title 6 (commencing with Section 1350) of Part 4 of Division 2~~ Part 5 (commencing with Section 4000) of Division 4).
- (h) Fees, charges, or payments for failing to comply with, or for transferring the real property prior to satisfying, an obligation to construct residential improvements on the real property.

(i) Any fee reflected in a document recorded against the property on or before December 31, 2007, that is separate from any covenants, conditions, and restrictions, and that substantially complies with subdivision (a) of Section 1098.5 by providing a prospective transferee notice of the following:

- (1) Payment of a transfer fee is required.
- (2) The amount or method of calculation of the fee.
- (3) The date or circumstances under which the transfer fee payment requirement expires, if any.
- (4) The entity to which the fee will be paid.
- (5) The general purposes for which the fee will be used.

**Comment.** Section 1098 is amended to correct a cross-reference to former Sections 1350-1378.

**Civ. Code § 1102.6a (amended). Additional disclosures**

SEC. \_\_\_\_ . Section 1102.6a of the Civil Code is amended to read:

1102.6a. (a) On and after July 1, 1990, any city or county may elect to require disclosures on the form set forth in subdivision (b) in addition to those disclosures required by Section 1102.6. However, this section does not affect or limit the authority of a city or county to require disclosures on a different disclosure form in connection with transactions subject to this article pursuant to an ordinance adopted prior to July 1, 1990. ~~Such an~~ An ordinance like this adopted prior to July 1, 1990, may be amended thereafter to revise the disclosure requirements of the ordinance, in the discretion of the city council or county board of supervisors.

(b) Disclosures required pursuant to this section pertaining to the property proposed to be transferred, shall be set forth in, and shall be made on a copy of, the following disclosure form:

(c) This section does not preclude the use of addenda to the form specified in subdivision (b) to facilitate the required disclosures. This section does not preclude a city or county from using the disclosure form specified in subdivision (b) for a purpose other than that specified in this section.

(d)(1) On and after January 1, 2005, if a city or county adopts a different or additional disclosure form pursuant to this section regarding the proximity or effects of an airport, the statement in

that form shall contain, at a minimum, the information in the statement “Notice of Airport in Vicinity” found in Section 11010 of the Business and Professions Code, or Section 1103.4 or ~~1353~~ 4255.

(2) On and after January 1, 2006, if a city or county does not adopt a different or additional disclosure form pursuant to this section, then the provision of an “airport influence area” disclosure pursuant to Section 11010 of the Business and Professions Code, or Section 1103.4 or ~~1353~~ 4255, or if there is not a current airport influence map, a written disclosure of an airport within two statute miles, shall be deemed to satisfy any city or county requirements for the disclosure of airports in connection with transfers of real property.

**Comment.** Subdivision (a) of Section 1102.6a is amended to make stylistic revisions.

Subdivision (d) is amended to correct cross-references to the airport disclosure provisions of former Section 1353.

**Civ. Code § 1102.6d (amended). Manufactured home and mobilehome transfer disclosure statement**

SEC. \_\_\_\_ . Section 1102.6d of the Civil Code is amended to read:

1102.6d. Except for manufactured homes and mobilehomes located in a common interest development governed by ~~Title 6 (commencing with Section 1351)~~ Part 5 (commencing with Section 4000) of Division 4, the disclosures applicable to the resale of a manufactured home or mobilehome pursuant to subdivision (b) of Section 1102 are set forth in, and shall be made on a copy of, the following disclosure form:

 **Note.** A form has been omitted to conserve resources.

**Comment.** Section 1102.6d is amended to correct a cross-reference to former Sections 1350-1378.

**Civ. Code § 1133 (amended). Sale or lease of subdivision lot subject to blanket encumbrance**

SEC. \_\_\_\_ . Section 1133 of the Civil Code is amended to read:

1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket encumbrance, as defined in Section 11013 of the Business

and Professions Code, but is exempt from a requirement of compliance with Section 11013.2 of the Business and Professions Code, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor cause it to be sold, or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a true copy of the following notice:

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined in ~~subdivision (f) of Section 1351 4125~~, a community apartment project, as defined in ~~subdivision (d) of Section 1351 4105~~, a stock cooperative, as defined in ~~subdivision (m) of Section 1351 4190~~, and a limited equity housing cooperative, as defined in ~~subdivision (m) of Section 1351 4190~~.

(c) The failure of the buyer or lessee to sign the notice shall not invalidate any grant, conveyance, lease, or encumbrance.

(d) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a lot or unit which is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars (\$500). In an action to enforce ~~such~~ the liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

**Comment.** Subdivision (b) of Section 1133 is amended to correct cross-references to former Section 1351(d), (f), (m).

Subdivision (d) is amended to make a stylistic revision.

**Civ. Code § 1633.3 (amended). Transactions governed by title**

SEC. \_\_\_\_. Section 1633.3 of the Civil Code is amended to read:

1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to transactions subject to the following laws:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1107 and 1206.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, ~~Sections 1350 to 1376, inclusive, of~~ Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, ~~or~~ Section 3071.5 of, or Part 4 (commencing with Section 4000) of Division 4 of, the Civil Code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7, 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be

substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by electronic means if the transaction may be conducted by electronic means under any other applicable law.

**Comment.** Section 1633.3 is amended to correct a cross-reference to former Sections 1350-1376. It also adds a reference to former Section 1378.

**Civ. Code § 1864 (amended). Duties of person or entity arranging for transient occupancies on behalf of others**

SEC. \_\_\_\_ . Section 1864 of the Civil Code is amended to read:

1864. Any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies described in paragraphs (1) and (2) of subdivision (b) of Section 1940, in a dwelling unit in a common interest development, as defined in Section ~~1351~~ 4100, in a dwelling unit in an apartment building or complex, or in a single-family home, shall do each of the following:

(a) Prepare and maintain, in accordance with a written agreement with the owner, complete and accurate records and books of account, kept in accordance with generally accepted accounting principles, of all reservations made and money received and spent with respect to each dwelling unit. All money received shall be kept in a trust account maintained for the benefit of owners of the dwelling units.

(b) Render, monthly, to each owner of the dwelling unit, or to that owner's designee, an accounting for each month in which there are any deposits or disbursements on behalf of that owner, however, in no event shall this accounting be rendered any less frequently than quarterly.

(c) Make all records and books of account with respect to a dwelling unit available, upon reasonable advance notice, for inspection and copying by the dwelling unit's owner. The records shall be maintained for a period of at least three years.

(d) Comply fully with all collection, payment, and recordkeeping requirements of a transient occupancy tax ordinance, if any, applicable to the occupancy.

(e) In no event shall any activities described in this section subject the person or entity performing those activities in any manner to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code. However, a real estate licensee subject to this section may satisfy the requirements of this section by compliance with the Real Estate Law.

**Comment.** Section 1864 is amended to correct a cross-reference to former Section 1351(c).

**Civ. Code § 2079.3 (amended). Inspection of unit in planned development, condominium, or stock cooperative**

SEC. \_\_\_\_\_. Section 2079.3 of the Civil Code is amended to read:

2079.3. The inspection to be performed pursuant to this article does not include or involve an inspection of areas that are reasonably and normally inaccessible to ~~such an~~ this type of inspection, nor an affirmative inspection of areas off the site of the subject property or public records or permits concerning the title or use of the property, and, if the property comprises a unit in a planned development as defined in Section 11003 of the Business and Professions Code, a condominium as defined in Section 783, or a stock cooperative as defined in Section 11003.2 of the Business and Professions Code, does not include an inspection of more than the unit offered for sale, if the seller or the broker complies with the provisions of ~~Section 1368~~ Sections 4525 to 4580, inclusive.

**Comment.** Section 2079.3 is amended to correct a cross-reference to former Section 1368.

The section is also amended to make a stylistic revision.

**Civ. Code § 2924b (amended). Request for copy of notice of default or sale**

SEC. \_\_\_\_\_. Section 2924b of the Civil Code is amended to read:

2924b. (a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the following form:

<p><b>Note.</b> A table has been omitted to conserve resources.</p>
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Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do each of the following:

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date

shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the “last known address” of each trustor or mortgagor means the last business or residence physical address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. For the purposes of this subdivision, an address is “actually known” if it is contained in the original deed of trust or mortgage, or in any subsequent written notification of a change of physical address from the trustor or mortgagor pursuant to the deed of trust or mortgage. For the purposes of this subdivision, “physical address” does not include an e-mail or any form of electronic address for a trustor or mortgagor. The beneficiary shall inform the trustee of the trustor’s last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(4) A “person authorized to record the notice of default or the notice of sale” shall include an agent for the mortgagee or beneficiary, an agent of the named trustee, any person designated in an executed substitution of trustee, or an agent of that substituted trustee.

(c) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof that is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive notice prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address that the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed that is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage

being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a “Notice of Lien for Postponed Property Taxes” has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, that has recorded, subsequent to the deed of trust or mortgage being foreclosed, a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance with Section 7425 of the Internal Revenue Code and any applicable federal regulation, if a “Notice of Federal Tax Lien under Internal Revenue Laws” has been recorded, subsequent to the deed of trust or mortgage being foreclosed, against the real property to which the notice of sale applies. The failure to provide the Internal Revenue Service with a copy of the notice of sale pursuant to this paragraph shall be sufficient cause to rescind the trustee’s sale and invalidate the trustee’s deed, at the option of either the successful bidder at the trustee’s sale or the trustee, and in either case with the consent of the beneficiary. Any option to rescind the trustee’s sale pursuant to this paragraph shall be exercised prior to any transfer of the property by the successful bidder to a bona fide purchaser for value. A rescision of the trustee’s sale pursuant to this paragraph may be recorded in a notice of rescision pursuant to Section 1058.5.

(5) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set

forth any duty to communicate the notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924, does not contain a mailing address of the trustor or mortgagor therein named, and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 business days after the filing of the notice of default. In lieu of publication, a copy of the notice of default may be delivered personally to the trustor or mortgagor within the 10 business days or at any time before publication is completed, or by posting the notice of default in a conspicuous place on the property and mailing the notice to the last known address of the trustor or mortgagor.

(e) Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed,

showing the name and residence or business address of that person, that he or she is over the age of 18 years, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

(f)(1) Notwithstanding subdivision (a), with respect to separate interests governed by an association, as defined in ~~subdivision (a) of Section 1351 4080~~, the association may cause to be filed in the office of the recorder in the county in which the separate interests are situated a request that a mortgagee, trustee, or other person authorized to record a notice of default regarding any of those separate interests mail to the association a copy of any trustee's deed upon sale concerning a separate interest. The request shall include a legal description or the assessor's parcel number of all the separate interests. A request recorded pursuant to this subdivision shall include the name and address of the association and a statement that it is a homeowners' association. Subsequent requests of an association shall supersede prior requests. A request pursuant to this subdivision shall be recorded before the filing of a notice of default. The mortgagee, trustee, or other authorized person shall mail the requested information to the association within 15 business days following the date the trustee's deed is recorded. Failure to mail the request, pursuant to this subdivision, shall not affect the title to real property.

(2) A request filed pursuant to paragraph (1) does not, for purposes of Section 27288.1 of the Government Code, constitute a document that either effects or evidences a transfer or encumbrance of an interest in real property or that releases or terminates any interest, right, or encumbrance of an interest in real property.

(g) No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in the request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title, or interest in, or lien or charge upon

the property described in the deed of trust or mortgage referred to therein.

(h) “Business day,” as used in this section, has the meaning specified in Section 9.

**Comment.** Subdivision (f) of Section 2924b is amended to correct a cross-reference to former Section 1351(a).

**Civ. Code § 2929.5 (amended). Secured lender’s right of entry and inspection**

SEC. \_\_\_\_. Section 2929.5 of the Civil Code is amended to read:

2929.5. (a) A secured lender may enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security on either of the following:

(1) Upon reasonable belief of the existence of a past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security not previously disclosed in writing to the secured lender in conjunction with the making, renewal, or modification of a loan, extension of credit, guaranty, or other obligation involving the borrower.

(2) After the commencement of nonjudicial or judicial foreclosure proceedings against the real property security.

(b) The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender’s intent to enter, and enter only during the borrower’s or tenant’s normal business hours. Twenty-four hours’ notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(c) The secured lender shall reimburse the borrower for the cost of repair of any physical injury to the real property security caused by the entry and inspection.

(d) If a secured lender is refused the right of entry and inspection by the borrower or tenant of the property, or is otherwise unable to enter and inspect the property without a breach of the peace, the

secured lender may, upon petition, obtain an order from a court of competent jurisdiction to exercise the secured lender's rights under subdivision (a), and that action shall not constitute an action within the meaning of subdivision (a) of Section 726 of the Code of Civil Procedure.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" includes all of the following:

(A) Any "hazardous substance" as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) "Real property security" means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms "separate interest," "common area," and "common interest development" are defined in ~~Section 1351~~ Sections 4095, 4100, and 4185, or real property consisting of one acre or less which contains 1 to 15 dwelling units.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) "Secured lender" means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-

interest of the beneficiary or mortgagee to the deed of trust or mortgage.

**Comment.** Section 2929.5 is amended to correct cross-references to former Section 1351(a), (b), and (l).

**Civ. Code § 2955.1 (amended). Disclosures regarding earthquake insurance requirements**

SEC. \_\_\_\_ . Section 2955.1 of the Civil Code is amended to read:

2955.1. (a) Any lender originating a loan secured by the borrower's separate interest in a condominium project, as defined in ~~subdivision (f) of Section 1351~~ 4125, which requires earthquake insurance or imposes a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third-party purchaser shall disclose all of the following to the potential borrower:

(1) That the lender or the institutional third party in question requires earthquake insurance or imposes a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third party purchaser.

(2) That not all lenders or institutional third parties require earthquake insurance or impose a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third party purchaser.

(3) Earthquake insurance may be required on the entire condominium project.

(4) That lenders or institutional third parties may also require that a condominium project maintain, or demonstrate an ability to maintain, financial reserves in the amount of the earthquake insurance deductible.

(b) For the purposes of this section, "institutional third party" means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, and other substantially similar institutions, whether public or private.

(c) The disclosure required by this section shall be made in writing by the lender as soon as reasonably practicable.

**Comment.** Section 2955.1 is amended to correct a cross-reference to former Section 1351(f).

## CODE OF CIVIL PROCEDURE

**Code Civ. Proc. § 86 (amended). Specific cases and proceedings that are limited civil cases**

SEC. \_\_\_\_\_. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) The following civil cases and proceedings are limited civil cases:

(1) A case at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars (\$25,000) or less. This paragraph does not apply to a case that involves the legality of any tax, impost, assessment, toll, or municipal fine, except an action to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) An action for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars (\$25,000); an action of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars (\$25,000).

(3) An action to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or delivered under, or in consideration of, the contract; an action to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) A proceeding in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or less.

(5) An action to enforce and foreclose a lien on personal property where the amount of the lien is twenty-five thousand dollars (\$25,000) or less.

(6) An action to enforce and foreclose, or a petition to release, a lien arising under the provisions of Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4 of the Civil Code, or to enforce and foreclose an assessment lien on a common

interest development as defined in Section ~~4354~~ 4100 of the Civil Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or less. However, if an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or if the total amount of liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a limited civil case.

(7) An action for declaratory relief when brought pursuant to either of the following:

(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding that is otherwise a limited civil case.

(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the amount in controversy is twenty-five thousand dollars (\$25,000) or less.

(8) An action to issue a temporary restraining order or preliminary injunction; to take an account, where necessary to preserve the property or rights of any party to a limited civil case; to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil case; to determine title to personal property seized in a limited civil case.

(9) An action under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding twenty-five thousand dollars (\$25,000) or the debt denied does not exceed twenty-five thousand dollars (\$25,000).

(10) An arbitration-related petition filed pursuant to either of the following:

(A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is a limited civil case under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within paragraphs (1) to (9), inclusive, of subdivision (a).

(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the arbitration award is twenty-five thousand dollars (\$25,000) or less.

(b) The following cases in equity are limited civil cases:

(1) A case to try title to personal property when the amount involved is not more than twenty-five thousand dollars (\$25,000).

(2) A case when equity is pleaded as a defensive matter in any case that is otherwise a limited civil case.

(3) A case to vacate a judgment or order of the court obtained in a limited civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

**Comment.** Section 86 is amended to correct a cross-reference to former Civil Code Section 1351(c).

**Code Civ. Proc. § 116.540 (amended). Participation by individuals other than plaintiff and defendant**

SEC. \_\_\_\_\_. Section 116.540 of the Code of Civil Procedure is amended to read:

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) Except as additionally provided in subdivision (i), a corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for

purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear and participate on his or her behalf, if (1) the plaintiff is serving on active duty in the United States Armed Forces outside this state, (2) the plaintiff was assigned to his or her duty station after his or her claim arose, (3) the assignment is for more than six months, (4) the representative is serving without compensation, and (5) the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231.

(f) A party incarcerated in a county jail, a Department of Corrections and Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim, or may authorize another individual to appear and participate on his or her behalf if that individual is serving without

compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting written declarations to serve as evidence supporting his or her defense, (2) allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and (2) the claim relates to the rental property.

(i) A party that is an association created to manage a common interest development, as defined in Section ~~4354~~ 4100 of the Civil Code, may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of that association.

(j) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party under subdivisions (b) to (i), inclusive, to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that authorization. If the representative is appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state that the individual is not employed solely to represent the party in small claims court. If the representative is appearing under subdivision (e), (f), or (g), the declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(k) A husband or wife who sues or who is sued with his or her spouse may appear and participate on behalf of his or her spouse if

(1) the claim is a joint claim, (2) the represented spouse has given his or her consent, and (3) the court determines that the interests of justice would be served.

(l) If the court determines that a party cannot properly present his or her claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

(m) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

**Comment.** Subdivision (i) of Section 116.540 is amended to correct a cross-reference to former Civil Code Section 1351(c).

**Code Civ. Proc. § 564 (amended). Cases in which appointment of receiver is authorized**

SEC. \_\_\_\_\_. Section 564 of the Code of Civil Procedure is amended to read:

564. (a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of a deed of trust or mortgage and sale of property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to the Enforcement of Judgments Law Title 9 (commencing with Section 680.010), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.

(5) Where a corporation has been dissolved, as provided in Section 565.

(6) Where a corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(7) In an action of unlawful detainer.

(8) At the request of the Public Utilities Commission pursuant to Section 855 or 5259.5 of the Public Utilities Code.

(9) In all other cases where necessary to preserve the property or rights of any party.

(10) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 129173 of the Health and Safety Code.

(11) In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. The appointment may be continued after entry of a judgment for specific performance if appropriate to protect, operate, or maintain real property encumbered by a deed of trust or mortgage or to collect rents therefrom while a pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage is being completed.

(12) In a case brought by an assignee under an assignment of leases, rents, issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court in an action brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature, and

magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security. The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter and shall enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor in interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" means any of the following:

(A) Any "hazardous substance" as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) "Real property security" means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms "separate interest," "common area," and "common interest development" are defined in ~~Section 1351~~

Sections 4095, 4100, and 4185 of the Civil Code, or real property consisting of one acre or less that contains 1 to 15 dwelling units.

(4) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor in interest of the beneficiary or mortgagee to the deed of trust or mortgage.

**Comment.** Section 564 is amended to correct cross-references to former Civil Code Section 1351(b), (c), (l).

**Code Civ. Proc. § 726.5 (amended). Election between waiver of lien and exercise of specified rights and remedies**

SEC. \_\_\_\_\_. Section 726.5 of the Code of Civil Procedure is amended to read:

726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision of law, except subdivision (d) of this section, a secured lender may elect between the following where the real property security is environmentally impaired and the borrower’s obligations to the secured lender are in default:

(1)(A) Waiver of its lien against (i) any parcel of real property security that is environmentally impaired or is an affected parcel, and (ii) all or any portion of the fixtures and personal property attached to the parcels; and

(B) Exercise of (i) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (ii) any other rights and remedies permitted by law.

(2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached to the real property security, and (ii) any other rights and remedies permitted by law.

(b) Before the secured lender may waive its lien against any parcel of real property security pursuant to paragraph (1) of subdivision (a) on the basis of the environmental impairment

contemplated by paragraph (3) of subdivision (e), (i) the secured lender shall provide written notice of the default to the borrower, and (ii) the value of the subject real property security shall be established and its environmentally impaired status shall be confirmed by an order of a court of competent jurisdiction in an action brought by the secured lender against the borrower. The complaint for a valuation and confirmation action may include causes of action for a money judgment for all or part of the secured obligation, in which case the waiver of the secured lender's liens under paragraph (1) of subdivision (a) shall result only if and when a final money judgment is obtained against the borrower.

(c) If a secured lender elects the rights and remedies permitted by paragraph (1) of subdivision (a) and the borrower's obligations are also secured by other real property security, fixtures, or personal property, the secured lender shall first foreclose against the additional collateral to the extent required by applicable law in which case the amount of the judgment of the secured lender pursuant to paragraph (1) of subdivision (a) shall be limited to the extent Section 580a or 580d, or subdivision (b) of Section 726 apply to the foreclosures of additional real property security. The borrower may waive or modify the foreclosure requirements of this subdivision provided that the waiver or modification is in writing and signed by the borrower after default.

(d) Subdivision (a) shall be inapplicable if all of the following are true:

(1) The release or threatened release was not knowingly or negligently caused or contributed to, or knowingly or willfully permitted or acquiesced to, by any of the following:

(A) The borrower or any related party.

(B) Any affiliate or agent of the borrower or any related party.

(2) In conjunction with the making, renewal, or modification of the loan, extension of credit, guaranty, or other obligation secured by the real property security, neither the borrower, any related party, nor any affiliate or agent of either the borrower or any related party had actual knowledge or notice of the release or threatened release, or if a person had knowledge or notice of the release or threatened release, the borrower made written disclosure

thereof to the secured lender after the secured lender's written request for information concerning the environmental condition of the real property security, or the secured lender otherwise obtained actual knowledge thereof, prior to the making, renewal, or modification of the obligation.

(e) For purposes of this section:

(1) "Affected parcel" means any portion of a parcel of real property security that is (A) contiguous to the environmentally impaired parcel, even if separated by roads, streets, utility easements, or railroad rights-of-way, (B) part of an approved or proposed subdivision within the meaning of Section 66424 of the Government Code, of which the environmentally impaired parcel is also a part, or (C) within 2,000 feet of the environmentally impaired parcel.

(2) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(3) "Environmentally impaired" means that the estimated costs to clean up and remediate a past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security, not disclosed in writing to, or otherwise actually known by, the secured lender prior to the making of the loan or extension of credit secured by the real property security, exceeds 25 percent of the higher of the aggregate fair market value of all security for the loan or extension of credit (A) at the time of the making of the loan or extension of credit, or (B) at the time of the discovery of the release or threatened release by the secured lender. For the purposes of this definition, the estimated cost to clean up and remediate the contamination caused by the release or threatened release shall include only those costs that would be incurred reasonably and in good faith, and fair market value shall be determined without giving consideration to the release or

threatened release, and shall be exclusive of the amount of all liens and encumbrances against the security that are senior in priority to the lien of the secured lender. Notwithstanding the foregoing, the real property security for any loan or extension of credit secured by a single parcel of real property which is included in the National Priorities List pursuant to Section 9605 of Title 42 of the United States Code, or in any list published by the Department of Toxic Substances Control pursuant to subdivision (b) of Section 25356 of the Health and Safety Code, shall be deemed to be environmentally impaired.

(4) “Hazardous substance” means any of the following:

(A) Any “hazardous substance” as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(5) “Real property security” means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms “separate interest,” “common area,” and “common interest development” are defined in ~~Section 1351~~ Sections 4095, 4100, and 4185 of the Civil Code, or real property which contains only 1 to 15 dwelling units, which in either case (A) is solely used (i) for residential purposes, or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage, for residential purposes as well as limited agricultural or commercial purposes incidental thereto, and (B) is the subject of an issued certificate of occupancy unless the dwelling is to be owned and occupied by the borrower.

(6) “Related party” means any person who shares an ownership interest with the borrower in the real property security, or is a partner or joint venturer with the borrower in a partnership or joint venture, the business of which includes the acquisition, development, use, lease, or sale of the real property security.

(7) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater. The term does not include actions directly relating to the incorporation in a lawful manner of building materials into a permanent improvement to the real property security.

(8) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

(f) This section shall not be construed to invalidate or otherwise affect in any manner any rights or obligations arising under contract in connection with a loan or extension of credit, including, without limitation, provisions limiting recourse.

(g) This section shall only apply to loans, extensions of credit, guaranties, or other obligations secured by real property security made, renewed, or modified on or after January 1, 1992.

**Comment.** Section 726.5 is amended to correct cross-references to former Civil Code Section 1351(b), (c), (l).

**Code Civ. Proc. § 729.035 (amended). Right of redemption on sale of separate interest in common interest development**

SEC. \_\_\_\_. Section 729.035 of the Code of Civil Procedure is amended to read:

729.035. Notwithstanding any provision of law to the contrary, the sale of a separate interest in a common interest development is subject to the right of redemption within 90 days after the sale if the sale arises from a foreclosure by the association of a common interest development pursuant to ~~subdivision (g) of Section 1367.1~~ Sections 5700, 5710, and 5735 of the Civil Code, subject to the conditions of ~~Section 1367.4~~ Sections 5705, 5715, and 5720 of the Civil Code.

**Comment.** Section 729.035 is amended to correct cross-references to former Civil Code Sections 1367.1 and 1367.4.

**Code Civ. Proc. § 736 (amended). Action for breach of environmental provision**

SEC. \_\_\_\_\_. Section 736 of the Code of Civil Procedure is amended to read:

736. (a) Notwithstanding any other provision of law, a secured lender may bring an action for breach of contract against a borrower for breach of any environmental provision made by the borrower relating to the real property security, for the recovery of damages, and for the enforcement of the environmental provision, and that action or failure to foreclose first against collateral shall not constitute an action within the meaning of subdivision (a) of Section 726, or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of Section 726. No injunction for the enforcement of an environmental provision may be issued after (1) the obligation secured by the real property security has been fully satisfied, or (2) all of the borrower's rights, title, and interest in and to the real property security has been transferred in a bona fide transaction to an unaffiliated third party for fair value.

(b) The damages a secured lender may recover pursuant to subdivision (a) shall be limited to reimbursement or indemnification of the following:

(1) If not pursuant to an order of any federal, state, or local governmental agency relating to the cleanup, remediation, or other response action required by applicable law, those costs relating to a reasonable and good faith cleanup, remediation, or other response action concerning a release or threatened release of hazardous substances which is anticipated by the environmental provision.

(2) If pursuant to an order of any federal, state, or local governmental agency relating to the cleanup, remediation, or other response action required by applicable law which is anticipated by the environmental provision, all amounts reasonably advanced in good faith by the secured lender in connection therewith, provided that the secured lender negotiated, or attempted to negotiate, in good faith to minimize the amounts it was required to advance under the order.

(3) Indemnification against all liabilities of the secured lender to any third party relating to the breach and not arising from acts, omissions, or other conduct which occur after the borrower is no longer an owner or operator of the real property security, and provided the secured lender is not responsible for the environmentally impaired condition of the real property security in accordance with the standards set forth in subdivision (d) of Section 726.5. For purposes of this paragraph, the term “owner or operator” means those persons described in Section 101(20)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.).

(4) Attorneys’ fees and costs incurred by the secured lender relating to the breach.

The damages a secured lender may recover pursuant to subdivision (a) shall not include (i) any part of the principal amount or accrued interest of the secured obligation, except for any amounts advanced by the secured lender to cure or mitigate the breach of the environmental provision that are added to the principal amount, and contractual interest thereon, or (ii) amounts which relate to a release which was knowingly permitted, caused, or contributed to by the secured lender or any affiliate or agent of the secured lender.

(c) A secured lender may not recover damages against a borrower pursuant to subdivision (a) for amounts advanced or obligations incurred for the cleanup or other remediation of real property security, and related attorneys’ fees and costs, if all of the following are true:

(1) The original principal amount of, or commitment for, the loan or other obligation secured by the real property security did not exceed two hundred thousand dollars (\$200,000).

(2) In conjunction with the secured lender’s acceptance of the environmental provision, the secured lender agreed in writing to accept the real property security on the basis of a completed environmental site assessment and other relevant information from the borrower.

(3) The borrower did not permit, cause, or contribute to the release or threatened release.

(4) The deed of trust or mortgage covering the real property security has not been discharged, reconveyed, or foreclosed upon.

(d) This section is not intended to establish, abrogate, modify, limit, or otherwise affect any cause of action other than that provided by subdivision (a) that a secured lender may have against a borrower under an environmental provision.

(e) This section shall apply only to environmental provisions contracted in conjunction with loans, extensions of credit, guaranties, or other obligations made, renewed, or modified on or after January 1, 1992. Notwithstanding the foregoing, this section shall not be construed to validate, invalidate, or otherwise affect in any manner the rights and obligations of the parties to, or the enforcement of, environmental provisions contracted before January 1, 1992.

(f) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Environmental provision" means any written representation, warranty, indemnity, promise, or covenant relating to the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present, or future release or threatened release, of any hazardous substance into, onto, beneath, or from the real property security, or to past, present, or future compliance with any law relating thereto, made by a borrower in conjunction with the making, renewal, or modification of a loan, extension of credit, guaranty, or other obligation involving the borrower, whether or not the representation, warranty, indemnity, promise, or covenant is or was contained in or secured by the deed of trust or mortgage, and whether or not the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(3) "Hazardous substance" means any of the following:

(A) Any “hazardous substance” as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(4) “Real property security” means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms “separate interest,” “common area,” and “common interest development” are defined in ~~Section 1351~~ Sections 4095, 4100, and 4185 of the Civil Code, or real property which contains only 1 to 15 dwelling units, which in either case (A) is solely used (i) for residential purposes, or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage, for residential purposes as well as limited agricultural or commercial purposes incidental thereto, and (B) is the subject of an issued certificate of occupancy unless the dwelling is to be owned and occupied by the borrower.

(5) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater. The term does not include actions directly relating to the incorporation in a lawful manner of building materials into a permanent improvement to the real property security.

(6) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

**Comment.** Section 736 is amended to correct cross-references to former Civil Code Section 1351(b), (c), (l).

## GOVERNMENT CODE

**Gov't Code § 12191 (amended). Miscellaneous business entity filing fees**

SEC. \_\_\_\_ . Section 12191 of the Government Code is amended to read:

12191. The miscellaneous business entity filing fees are the following:

(a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations Code:

(1) Filing the statement and designation upon the qualification of a foreign association pursuant to Section 2105 of the Corporations Code: One hundred dollars (\$100).

(2) Filing an amended statement and designation by a foreign association pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

(3) Filing a certificate showing the surrender of the right of a foreign association to transact intrastate business pursuant to Section 2112 of the Corporations Code: No fee.

(b) Unincorporated Associations:

(1) Filing a statement in accordance with Section 24003 of the Corporations Code as to principal place of office or place for sending notices or designating agent for service: Twenty-five dollars (\$25).

(2) Insignia Registrations: Ten dollars (\$10).

(c) Community Associations and Common Interest Developments:

(1) Filing a statement by a community association in accordance with Section ~~1363.6~~ 5405 of the Civil Code to register the common interest development that it manages: An amount not to exceed thirty dollars (\$30).

(2) Filing an amended statement by a community association in accordance with Section ~~1363.6~~ 5405 of the Civil Code: No fee.

**Comment.** Section 12191 is amended to correct cross-references to former Civil Code Section 1363.6.

**Gov't Code § 12956.1 (amended). Restrictive covenant based on discriminatory grounds**

SEC. \_\_\_\_ . Section 12956.1 of the Government Code is amended to read:

12956.1. (a) As used in this section, “association,” “governing documents,” and “declaration” have the same meanings as set forth in ~~Section 1351~~ Sections 4080, 4135, and 4150 of the Civil Code.

(b)(1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14-point boldface type, the following:

“If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”

(2) The requirements set forth in paragraph (1) shall not apply to documents being submitted for recordation to a county recorder.

(c) Any person who records a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. The county recorder shall not incur any liability for recording the document. Notwithstanding any other provision of law, a prosecution for a violation of this subdivision shall commence within three years after the discovery of the recording of the document.

**Comment.** Section 12956.1 is amended to correct cross-references to former Civil Code Section 1351(a), (h), (j).

**Gov't Code § 12956.2 (amended). Restrictive Covenant Modification**

SEC. \_\_\_\_\_. Section 12956.2 of the Government Code is amended to read:

12956.2. (a) A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of Section 12955 may record a document titled Restrictive Covenant Modification. The county recorder may choose to waive the fee prescribed for recording and indexing instruments pursuant to Section 27361 in the case of the modification document provided for in this section. The modification document shall include a complete copy of the original document containing the unlawfully restrictive language with the unlawfully restrictive language stricken.

(b) Before recording the modification document, the county recorder shall submit the modification document and the original document to the county counsel who shall determine whether the original document contains an unlawful restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel shall return the documents and inform the county recorder of its determination. The county recorder shall refuse to record the modification document if the county counsel finds that the original document does not contain an unlawful restriction as specified in this paragraph.

(c) The modification document shall be indexed in the same manner as the original document being modified. It shall contain a recording reference to the original document in the form of a book and page or instrument number, and date of the recording.

(d) Subject to covenants, conditions, and restrictions that were recorded after the recording of the original document that contains the unlawfully restrictive language and subject to covenants, conditions, and restrictions that will be recorded after the Restrictive Covenant Modification, the restrictions in the Restrictive Covenant Modification, once recorded, are the only restrictions having effect on the property. The effective date of the

terms and conditions of the modification document shall be the same as the effective date of the original document.

(e) The county recorder shall make available to the public Restrictive Covenant Modification forms.

(f) If the holder of an ownership interest of record in property causes to be recorded a modified document pursuant to this section that contains modifications not authorized by this section, the county recorder shall not incur liability for recording the document. The liability that may result from the unauthorized recordation is the sole responsibility of the holder of the ownership interest of record who caused the modified recordation.

(g) This section does not apply to persons holding an ownership interest in property that is part of a common interest development as defined in ~~subdivision (e) of Section 4351~~ 4100 of the Civil Code if the board of directors of that common interest development is subject to the requirements of subdivision (b) of Section ~~4352.5~~ 4225 of the Civil Code.

**Comment.** Section 12956.2 is amended to correct cross-references to former Civil Code Sections 1351(c) and 1352.5(b).

**Gov't Code § 53341.5 (amended). Lot, parcel, or unit of subdivision subject to special tax**

SEC. \_\_\_\_\_. Section 53341.5 of the Government Code is amended to read:

53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax levied pursuant to this chapter, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, or permit a prospective purchaser or lessor to sign a contract of purchase or a deposit receipt or any substantially equivalent document in the event of a lease with respect to the lot, parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a written notice as provided in this section. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall be in substantially the following form. The form may be modified as needed to clearly and accurately describe the tax structure and other characteristics of districts created before

January 1, 1993, or to clearly and accurately consolidate information about the tax structure and other characteristics of two or more districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or unit:

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined by Section ~~1350~~ 4125 of the Civil Code, a community apartment project, a stock cooperative, and a limited-equity housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and Professions Code.

(c) The buyer shall have three days after delivery in person or five days after delivery by deposit in the mail of any notice required by this section, to terminate his or her agreement by delivery of written notice of that termination to the owner, subdivider, or agent.

(d) The failure to furnish the notice to the buyer or lessee, and failure of the buyer or lessee to sign the notice of a special tax, shall not invalidate any grant, conveyance, lease, or encumbrance.

(e) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a lot or unit that is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars (\$500). In an action to enforce a liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

**Comment.** Section 53341.5 is amended to correct and update an erroneous cross-reference to former Civil Code Section 1350. The section should have referred to Civil Code Section 1351(f), which is continued in Civil Code Section 4125.

**Gov't Code § 65008 (amended). Invalidation of discriminatory act**

SEC. \_\_\_\_ . Section 65008 of the Government Code is amended to read:

65008. (a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is

null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:

(1)(A) The lawful occupation, age, or any characteristic of the individual or group of individuals listed in subdivision (a) or (d) of Section 12955, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2.

(B) Notwithstanding subparagraph (A), with respect to familial status, subparagraph (A) shall not be construed to apply to housing for older persons, as defined in Section 12955.9. With respect to familial status, nothing in subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to subparagraph (A).

(2) The method of financing of any residential development of the individual or group of individuals.

(3) The intended occupancy of any residential development by persons or families of very low, low, moderate, or middle income.

(b)(1) No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to any law, including this title, prohibit or discriminate against any residential development or emergency shelter for any of the following reasons:

(A) Because of the method of financing.

(B)(i) Because of the lawful occupation, age, or any characteristic listed in subdivision (a) or (d) of Section 12955, as those characteristics are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the owners or intended occupants of the residential development or emergency shelter.

(ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not be construed to apply to housing for older persons, as defined in Section 12955.9. With respect to familial status, nothing in clause (i) shall be construed to affect Sections

51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to clause (i).

(C) Because the development or shelter is intended for occupancy by persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income.

(D) Because the development consists of a multifamily residential project that is consistent with both the jurisdiction's zoning ordinance and general plan as they existed on the date the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(2) The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or shelter because of, in whole or in part, either of the following:

(A) The method of financing.

(B) The occupancy of the development by persons protected by this subdivision, including, but not limited to, persons and families of very low, low, or moderate income.

(3) A city, county, city and county, or other local government agency may not, pursuant to subdivision (d) of Section 65589.5, disapprove a housing development project or condition approval of a housing development project in a manner that renders the project infeasible if the basis for the disapproval or conditional approval includes any of the reasons prohibited in paragraph (1) or (2).

(c) For the purposes of this section, "persons and families of middle income" means persons and families whose income does not exceed 150 percent of the median income for the county in which the persons or families reside.

(d)(1) No city, county, city and county, or other local governmental agency may impose different requirements on a residential development or emergency shelter that is subsidized, financed, insured, or otherwise assisted by the federal or state

government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, than those imposed on nonassisted developments, except as provided in subdivision (e). The discrimination prohibited by this subdivision includes the denial or conditioning of a residential development or emergency shelter based in whole or in part on the fact that the development is subsidized, financed, insured, or otherwise assisted as described in this paragraph.

(2)(A) No city, county, city and county, or other local governmental agency may, because of the lawful occupation age, or any characteristic of the intended occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 or because the development is intended for occupancy by persons and families of very low, low, moderate, or middle income, impose different requirements on these residential developments than those imposed on developments generally, except as provided in subdivision (e).

(B) Notwithstanding subparagraph (A), with respect to familial status, subparagraph (A) shall not be construed to apply to housing for older persons, as defined in Section 12955.9. With respect to familial status, nothing in subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~4360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to subparagraph (A).

(e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title do not prohibit either of the following:

(1) The County of Riverside from enacting and enforcing zoning to provide housing for older persons, in accordance with state or federal law, if that zoning was enacted prior to January 1, 1995.

(2) Any city, county, or city and county from extending preferential treatment to residential developments or emergency shelters assisted by the federal or state government or by a local public entity, as defined in Section 50079 of the Health and Safety Code, or other residential developments or emergency shelters

intended for occupancy by persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, or agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor Code, and their families. This preferential treatment may include, but need not be limited to, reduction or waiver of fees or changes in architectural requirements, site development and property line requirements, building setback requirements, or vehicle parking requirements that reduce development costs of these developments.

(f) “Residential development,” as used in this section, means a single-family residence or a multifamily residence, including manufactured homes, as defined in Section 18007 of the Health and Safety Code.

(g) This section shall apply to chartered cities.

(h) The Legislature finds and declares that discriminatory practices that inhibit the development of housing for persons and families of very low, low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern.

**Comment.** Section 65008 is amended to correct cross-references to former Civil Code Section 1360.

**Gov’t Code § 65915 (amended). Applicant seeking density bonus**

SEC. \_\_\_\_ . Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b)(1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section ~~1351~~ 4100 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, “total units” or “total dwelling units” does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c)(1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for

the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(d)(1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for

the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(e)(1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which

there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

**Note.** A table has been omitted to conserve resources.

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

**Note.** A table has been omitted to conserve resources.

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

**Note.** A table has been omitted to conserve resources.

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g)(1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

**Note.** A table has been omitted to conserve resources.

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2,

and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h)(1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) “Child care facility,” as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) “Housing development,” as used in this section, means a development project for five or more residential units. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon

individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California

Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p)(1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through

tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

**Comment.** Section 65915 is amended to correct cross-references to former Civil Code Section 1351(c).

**Gov't Code § 65995.5 (amended). Alternative calculation of amounts**

SEC. \_\_\_\_ . Section 65995.5 of the Government Code is amended to read:

65995.5. (a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after

January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be

owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1).

Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section

17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) “Residential units” and “residences” as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section ~~1351~~ 4190 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the “School Site Analysis and Development Handbook,” as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

**Comment.** Section 65995.5 is amended to correct a cross-reference to former Civil Code Section 1351(m).

**Gov’t Code § 66411 (amended). Local control of common interest developments and subdivision design and improvement**

SEC. \_\_\_\_ . Section 66411 of the Government Code is amended to read:

66411. Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies. Each local agency shall, by ordinance, regulate and control the initial design and improvement of common interest developments as defined in Section ~~1351~~ 4100 of the Civil Code and subdivisions for which this division requires a tentative and final or parcel map. In the development, adoption, revision, and application of ~~such~~ this type of ordinance, the local agency shall comply with the

provisions of Section 65913.2. The ordinance shall specifically provide for proper grading and erosion control, including the prevention of sedimentation or damage to offsite property. Each local agency may by ordinance regulate and control other subdivisions, provided that the regulations are not more restrictive than the regulations for those subdivisions for which a tentative and final or parcel map are required by this division, and provided further that the regulations shall not be applied to short-term leases (terminable by either party on not more than 30 days' notice in writing) of a portion of the operating right-of-way of a railroad corporation as defined by Section 230 of the Public Utilities Code unless a showing is made in individual cases, under substantial evidence, that public policy necessitates the application of the regulations to those short-term leases in individual cases.

**Comment.** Section 66411 is amended to correct a cross-reference to former Civil Code Section 1351(c).

Section 66411 is also amended to make a stylistic revision.

**Gov't Code § 66412 (amended). Application of Subdivision Map Act**

66412. This division shall be inapplicable to any of the following:

(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil, or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line

adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code. A local agency shall approve or disapprove a lot line adjustment pursuant to the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

(g) The conversion of a community apartment project, as defined in Section ~~1351~~ 4105 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) The property was subdivided before January 1, 1982, as evidenced by a recorded deed creating the community apartment project.

(2) Subject to compliance with ~~subdivision (e) of Section 1351~~ Sections 4290 and 4295 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the project shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the project.

(3) If subdivision, as defined in Section 66424, of the property occurred after January 1, 1964, both of the following requirements are met:

(A) A final or parcel map of that subdivision was approved by the local agency and recorded, with all of the conditions of that map remaining in effect after the conversion.

(B) No more than 49 percent of the units in the project were owned by any one person as defined in Section 17, including an incorporator or director of the community apartment project, on January 1, 1982.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(h) The conversion of a stock cooperative, as defined in Section ~~1351~~ 4190 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) The property was subdivided before January 1, 1982, as evidenced by a recorded deed creating the stock cooperative, an assignment of lease, or issuance of shares to a stockholder.

(2) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(3) Subject to compliance with ~~subdivision (e) of Section 1351~~ Sections 4290 and 4295 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the cooperative shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative.

(4) If subdivision, as defined in Section 66424, of the property occurred after January 1, 1980, both of the following requirements are met:

(A) A final or parcel map of that subdivision was approved by the local agency and recorded, with all of the conditions of that map remaining in effect after the conversion.

(B) No more than 49 percent of the shares in the project were owned by any one person as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1982.

(5) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

(j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, "agricultural purposes" means the cultivation of food or fiber, or the grazing or pasturing of livestock.

(l) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a solar electrical generation device on the land, if the project is subject to review under other local agency ordinances regulating design and improvement or, if the project is subject to other discretionary action by the advisory agency or legislative body.

(m) The leasing of, or the granting of an easement to, a parcel of land or any portion or portions of the land in conjunction with a biogas project that uses, as part of its operation, agricultural waste or byproducts from the land where the project is located and reduces overall emissions of greenhouse gases from agricultural operations on the land if the project is subject to review under other local agency ordinances regulating design and improvement or if the project is subject to discretionary action by the advisory agency or legislative body.

**Comment.** Section 66412 is amended to correct cross-references to former Civil Code Sections 1351(d) and (m), and to the substantive requirements of former Civil Code Section 1351(e).

**Gov't Code § 66424 (amended). Subdivision**

SEC. \_\_\_\_\_. Section 66424 of the Government Code is amended to read:

66424. "Subdivision" means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. "Subdivision" includes a condominium project, as defined in ~~subdivision (f) of~~ Section ~~1351~~ 4125 of the Civil Code, a community apartment project, as defined in ~~subdivision (d) of~~ Section ~~1351~~ 4105 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in ~~subdivision (m) of~~ Section ~~1351~~ 4190 of the Civil Code.

**Comment.** Section 66424 is amended to correct cross-references to former Civil Code Section 1351(d), (f), (m).

**Gov't Code § 66427 (amended). Map of condominium, community apartment project, or stock cooperative project**

SEC. \_\_\_\_\_. Section 66427 of the Government Code is amended to read:

66427. (a) A map of a condominium project, a community apartment project, or of the conversion of five or more existing

dwelling units to a stock cooperative project need not show the buildings or the manner in which the buildings or the airspace above the property shown on the map are to be divided, nor shall the governing body have the right to refuse approval of a parcel, tentative, or final map of the project on account of the design or the location of buildings on the property shown on the map that are not violative of local ordinances or on account of the manner in which airspace is to be divided in conveying the condominium.

(b) A map need not include a condominium plan or plans, as defined in ~~subdivision (e) of Section 1351~~ Section 4120 of the Civil Code, and the governing body may not refuse approval of a parcel, tentative, or final map of the project on account of the absence of a condominium plan.

(c) Fees and lot design requirements shall be computed and imposed with respect to those maps on the basis of parcels or lots of the surface of the land shown thereon as included in the project.

(d) Nothing herein shall be deemed to limit the power of the legislative body to regulate the design or location of buildings in a project by or pursuant to local ordinances.

(e) If the governing body has approved a parcel map or final map for the establishment of condominiums on property pursuant to the requirements of this division, the separation of a three-dimensional portion or portions of the property from the remainder of the property or the division of that three-dimensional portion or portions into condominiums shall not constitute a further subdivision as defined in Section 66424, provided each of the following conditions has been satisfied:

(1) The total number of condominiums established is not increased above the number authorized by the local agency in approving the parcel map or final map.

(2) A perpetual estate or an estate for years in the remainder of the property is held by the condominium owners in undivided interests in common, or by an association as defined in ~~subdivision (a) of Section 1351~~ Section 4100 of the Civil Code, and the duration of the estate in the remainder of the property is the same as the duration of the estate in the condominiums.

(3) The three-dimensional portion or portions of property are described on a condominium plan or plans, as defined in ~~subdivision (e) of Section 1351~~ 4120 of the Civil Code.

**Comment.** Section 66427 is amended to correct cross-references to former Civil Code Section 1351(a), (e).

**Gov't Code § 66452.10 (amended). Stock cooperative or community apartment project**

SEC. \_\_\_\_\_. Section 66452.10 of the Government Code is amended to read:

66452.10. A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a community apartment project, as defined in Section 11004 of the Business and Professions Code, shall not be converted to a condominium, as defined in Section 783 of the Civil Code, unless the required number of (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and mortgagees of each recorded mortgage in the cooperative or project, as specified in the bylaws, or other organizational documents, have voted in favor of the conversion. If the bylaws or other organizational documents do not expressly specify the number of votes required to approve the conversion, a majority vote of the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and mortgagees of each recorded mortgage in the cooperative or project shall be required. Upon approval of the conversion as set forth above and in compliance with ~~subdivision (e) of Section 1351~~ Sections 4290 and 4295 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative or project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances or other documents, a majority of owners in the cooperative or project shall be required to execute the conveyances and other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative or project. The provisions of Section 66499.31 shall not apply to a violation of this section.

**Comment.** Section 66452.10 is amended to correct a cross-reference to former Civil Code Section 1351(e).

**Gov't Code § 66475.2 (amended). Local transit facilities**

SEC. \_\_\_\_\_. Section 66475.2 of the Government Code is amended to read:

66475.2. (a) There may be imposed by local ordinance a requirement of a dedication or an irrevocable offer of dedication of land within the subdivision for local transit facilities such as bus turnouts, benches, shelters, landing pads and similar items that directly benefit the residents of a subdivision. The irrevocable offers may be terminated as provided in subdivisions (c) and (d) of Section 66477.2.

(b) Only the payment of fees in lieu of the dedication of land may be required in subdivisions that consist of the subdivision of airspace in existing buildings into condominium projects, stock cooperatives, or community apartment projects, as those terms are defined in ~~Section 1351~~ Sections 4105, 4125, and 4190 of the Civil Code.

**Comment.** Section 66475.2 is amended to correct a cross-reference to former Civil Code Section 1351(d), (f), (m).

**Gov't Code § 66477 (amended). Park and recreational purposes**

SEC. \_\_\_\_\_. Section 66477 of the Government Code is amended to read:

66477. (a) The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(2) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved

tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

(A) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county, or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

(B) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the records, maps, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map or at a later time as may be prescribed by local ordinance.

(3) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision.

(4) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreation facilities, and the park and recreational facilities are in accordance with definite principles and standards.

(5) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(6) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

(7) Only the payment of fees may be required in subdivisions containing 50 parcels or less, except that when a condominium project, stock cooperative, or community apartment project, as those terms are defined in ~~Section 1354~~ Sections 4105, 4125, and 4190 of the Civil Code, exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

(8) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section. However, in that event, a condition may be placed on the approval of a parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the fee may be

required to be paid by the owner of each parcel as a condition of the issuance of the permit.

(9) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

(b) Land or fees required under this section shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if that agency elects to accept the land or fee. The local agency accepting the land or funds shall develop the land or use the funds in the manner provided in this section.

(c) If park and recreational services and facilities are provided by a public agency other than a city or a county, the amount and location of land to be dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be jointly determined by the city or county having jurisdiction and that other public agency.

(d) This section does not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building that is more than five years old when no new dwelling units are added.

(e) Common interest developments, as defined in Section ~~1351~~ 4100 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses.

(f) Park and recreation purposes shall include land and facilities for the activity of "recreational community gardening," which activity consists of the cultivation by persons other than, or in addition to, the owner of the land, of plant material not for sale.

(g) This section shall be known and may be cited as the Quimby Act.

**Comment.** Subdivisions (a) and (e) of Section 66477 are amended to correct cross-references to former Civil Code Section 1351(c), (d), (f), (m).

## HEALTH AND SAFETY CODE

### **Health & Safety Code § 1597.531 (amended). Liability insurance or bond**

SEC. \_\_\_\_\_. Section 1597.531 of the Health and Safety Code is amended to read:

1597.531. (a) All family day care homes for children shall maintain in force either liability insurance covering injury to clients and guests in the amount of at least one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) in the total annual aggregate, sustained on account of the negligence of the licensee or its employees, or a bond in the aggregate amount of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or the bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home which meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or a bond according to standards established by the state. If the provider does not own the premises used as the family day care home, the affidavit shall also state that the parent has been informed that the liability insurance, if any, of the owner of the property or the homeowners' association, as appropriate, may not provide coverage for losses arising out of, or in connection with, the operation of the family day care home, except to the extent that the losses are caused by, or result from, an action or omission by the owner of the property or the homeowners' association, for which the owner of the property or the homeowners' association would otherwise be liable under the law. These affidavits shall be on a form provided by the department and shall be reviewed at each licensing inspection.

(b) A family day care home that maintains liability insurance or a bond pursuant to this section, and that provides care in premises that are rented or leased or uses premises which share common

space governed by a homeowners' association, shall name the owner of the property or the homeowners' association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:

(1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.

(2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.

(3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.

(c) As used in this section, "homeowners' association" means an association of a common interest development, as defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

**Comment.** Section 1597.531 is amended to correct cross-references to former Civil Code Section 1351(a), (c).

**Health & Safety Code § 13132.7 (amended). Fire retardant roof covering that meets building standards**

SEC. \_\_\_\_\_. Section 13132.7 of the Health and Safety Code is amended to read:

13132.7. (a) Within a very high fire hazard severity zone designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code and within a very high hazard severity zone designated by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(b) In all other areas, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class C as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(c) Notwithstanding subdivision (b), within state responsibility areas classified by the State Board of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except for those state responsibility areas designated as moderate fire hazard responsibility zones, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard severity zones designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class A as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(2) Paragraph (1) does not apply to any jurisdiction containing a very high fire hazard severity zone if the jurisdiction fulfills both of the following requirements:

(A) Adopts the model ordinance approved by the State Fire Marshal pursuant to Section 51189 of the Government Code or an ordinance that substantially conforms to the model ordinance of the State Fire Marshal.

(B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

(e) The State Building Standards Commission shall incorporate the requirements set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to the California Building Standards Code in accordance with Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13.

(f) Nothing in this section shall limit the authority of a city, county, city and county, or fire protection district in establishing more restrictive requirements, in accordance with current law, than those specified in this section.

(g) This section shall not affect the validity of an ordinance, adopted prior to the effective date for the relevant roofing standard specified in subdivisions (a) and (b), by a city, county, city and county, or fire protection district, unless the ordinance mandates a standard that is less stringent than the standards set forth in subdivision (a), in which case the ordinance shall not be valid on or after the effective date for the relevant roofing standard specified in subdivisions (a) and (b).

(h) Any qualified historical building or structure as defined in Section 18955 may, on a case-by-case basis, utilize alternative roof constructions as provided by the State Historical Building Code.

(i) The installer of the roof covering shall provide certification of the roof covering classification, as provided by the manufacturer or supplier, to the building owner and, when requested, to the agency responsible for enforcement of this part. The installer shall also install the roof covering in accordance with the manufacturer's listing.

(j) No wood roof covering materials shall be sold or applied in this state unless both of the following conditions are met:

(1) The materials have been approved and listed by the State Fire Marshal as complying with the requirements of this section.

(2) The materials have passed at least five years of the 10-year natural weathering test. The 10-year natural weathering test required by this subdivision shall be conducted in accordance with standard 15-2 of the 1994 edition of the Uniform Building Code at a testing facility recognized by the State Fire Marshal.

(k) The Insurance Commissioner shall accept the use of fire retardant wood roof covering material that complies with the requirements of this section, used in the partial repair or replacement of nonfire retardant wood roof covering material, as complying with the requirement in Section 2695.9 of Title 10 of the California Code of Regulations relative to matching replacement items in quality, color, and size.

(l) No common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code, may require a homeowner to install or repair a roof in a manner that is in violation of this section. The governing documents, as defined in Section ~~1351~~ 4150 of the Civil Code, of a common interest development within a very high fire severity zone shall allow for at least one type of fire retardant roof covering material that meets the requirements of this section.

**Comment.** Section 13132.7 is amended to correct cross-references to former Civil Code Section 1351(c), (j).

#### **Health & Safety Code § 19850 (amended). Filing of building plans**

SEC. \_\_\_\_\_. Section 19850 of the Health and Safety Code is amended to read:

19850. The building department of every city or county shall maintain an official copy, which may be on microfilm or other type of photographic copy, of the plans of every building, during the life of the building, for which the department issued a building permit.

“Building department” means the department, bureau, or officer charged with the enforcement of laws or ordinances regulating the erection, construction, or alteration of buildings.

Except for plans of a common interest development as defined in Section ~~1351~~ 4100 of the Civil Code, plans need not be filed for:

(a) Single or multiple dwellings not more than two stories and basement in height.

(b) Garages and other structures appurtenant to buildings described under subdivision (a).

(c) Farm or ranch buildings.

(d) Any one-story building where the span between bearing walls does not exceed 25 feet. The exemption in this subdivision does not, however, apply to a steel frame or concrete building.

**Comment.** Section 19850 is amended to correct a cross-reference to former Civil Code Section 1351(c).

**Health & Safety Code § 25400.22 (amended). Lien placed on contaminated property**

SEC. \_\_\_\_\_. Section 25400.22 of the Health and Safety Code is amended to read:

25400.22. (a) No later than 10 working days after the date when a local health officer determines that property is contaminated pursuant to subdivision (b) of Section 25400.20, the local health officer shall do all of the following:

(1) Except as provided in paragraph (2), if the property is real property, record with the county recorder a lien on the property. The lien shall specify all of the following:

(A) The name of the agency on whose behalf the lien is imposed.

(B) The date on which the property is determined to be contaminated.

(C) The legal description of the real property and the assessor's parcel number.

(D) The record owner of the property.

(E) The amount of the lien, which shall be the greater of two hundred dollars (\$200) or the costs incurred by the local health officer in compliance with this chapter, including, but not limited to, the cost of inspection performed pursuant to Section 25400.19 and the county recorder's fee.

(2)(A) If the property is a mobilehome or manufactured home specified in paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record with a restraint on the mobilehome, or manufactured home with the Department of Housing and Community Development, in the form prescribed by that

department, providing notice of the determination that the property is contaminated.

(B) If the property is a recreational vehicle specified in paragraph (2) of subdivision (t) of Section 25400.11, perfect by filing with the Department of Motor Vehicles a vehicle license stop on the recreational vehicle in the form prescribed by that department, providing notice of the determination that the property is contaminated.

(C) If the property is a mobilehome or manufactured home, not subject to paragraph (2) of subdivision (t) of Section 25400.11, is located on real property, and is not attached to that real property, the local health officer shall record a lien for the real property with the county recorder, and the Department of Housing and Community Development shall amend the permanent record with a restraint for the mobilehome or manufactured home, in the form and with the contents prescribed by that department.

(3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall specify all of the following:

(A) The name of the agency on whose behalf the lien, restraint, or vehicle license stop is imposed.

(B) The date on which the property is determined to be contaminated.

(C) The legal description of the real property and the assessor's parcel number, and the mailing and street address or space number of the manufactured home, mobilehome, or recreational vehicle or the vehicle identification number of the recreational vehicle, if applicable.

(D) The registered owner of the mobilehome, manufactured home, or recreational vehicle, if applicable, or the name of the owner of the real property as indicated in the official county records.

(E) The amount of the lien, if applicable, which shall be the greater of two hundred dollars (\$200) or the costs incurred by the local health officer in compliance with this chapter, including, but not limited to, the cost of inspection performed pursuant to Section 25400.19 and the fee charged by the Department of Housing and

Community Development and the Department of Motor Vehicles pursuant to paragraph (2) of subdivision (b).

(F) Other information required by the county recorder for the lien, the Department of Housing and Community Development for the restraint, or the Department of Motor Vehicles for the vehicle license stop.

(4) Issue to persons specified in subdivisions (d), (e), and (f) an order prohibiting the use or occupancy of the contaminated portions of the property.

(b)(1) The county recorder's fees for recording and indexing documents provided for in this section shall be in the amount specified in Article 5 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the Government Code.

(2) The Department of Housing and Community Development and the Department of Motor Vehicles may charge a fee to cover its administrative costs for recording and indexing documents provided for in paragraph (2) of subdivision (a).

(c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect, and priority of a judgment lien. The restraint amending the permanent record pursuant to subdivision (a) shall be displayed on any manufactured home or mobilehome title search until the restraint is released. The vehicle license stop shall remain in effect until it is released.

(2) The local health officer shall not authorize the release of a lien, restraint, or vehicle license stop made pursuant to subdivision (a), until one of the following occurs:

(A) The property owner satisfies the real property lien, or the contamination in the mobilehome, manufactured home, or recreational vehicle is abated to the satisfaction of the local health officer consistent with the notice in the restraint, or vehicle license stop and the local health officer issues a release pursuant to Section 25400.27.

(B) For a manufactured home or mobilehome, the local health officer determines that the unit will be destroyed or permanently salvaged. For the purposes of this paragraph, the unit shall not be reregistered after this determination is made unless the local health officer issues a release pursuant to Section 25400.27.

(C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in a foreclosure sale.

(d) Except as otherwise specified in this section, an order issued pursuant to this section shall be served, either personally or by certified mail, return receipt requested in the following manner:

(1) For real property, to all known occupants of the property and to all persons who have an interest in the property, as contained in the records of the recorder's office of the county in which the property is located.

(2) In the case of a mobilehome or manufactured home, the order shall be served to the legal owner, as defined in Section 18005.8, each junior lienholder, as defined in Section 18005.3, and the registered owner, as defined in Section 18009.5.

(3) In the case of a recreational vehicle, the order shall be served on the legal owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as defined in Section 505 of the Vehicle Code.

(e) If the whereabouts of the person described in subdivision (d) are unknown and cannot be ascertained by the local health officer, in the exercise of reasonable diligence, and the local health officer makes an affidavit to that effect, the local health officer shall serve the order by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, as follows:

(1) The order related to real property shall be served to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located, and to all occupants of the affected unit.

(2) In the case of a mobilehome or manufactured home, the order shall be served to the legal owner, as defined in Section 18005.8, each junior lienholder, as defined in Section 18005.3, and the registered owner, as defined in Section 18009.5, at the address appearing on the permanent record and all occupants of the affected unit at the mobilehome park space.

(3) In the case of a recreational vehicle, the order shall be served on the legal owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as defined in Section 505 of the Vehicle Code, at the address appearing on the permanent record and all

occupants of the affected vehicle at the mobilehome park or special occupancy park space.

(f)(1) The local health officer shall also mail a copy of the order required by this section to the address of each person or party having a recorded right, title, estate, lien, or interest in the property and to the association of a common interest development, as defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

(2) In addition to the requirements of paragraph (1), if the affected property is a mobilehome, manufactured home, or recreational vehicle, specified in paragraph (2) of subdivision (t) of Section 25400.11, the order issued by the local health officer shall also be served, either personally or by certified mail, return receipt requested, to the owner of the mobilehome park or special occupancy park.

(g) The order issued pursuant to this section shall include all of the following information:

(1) A description of the property.

(2) The parcel identification number, address, or space number, if applicable.

(3) The vehicle identification number, if applicable.

(4) A description of the local health officer's intended course of action.

(5) A specification of the penalties for noncompliance with the order.

(6) A prohibition on the use of all or portions of the property that are contaminated.

(7) A description of the measures the property owner is required to take to decontaminate the property.

(8) An indication of the potential health hazards involved.

(9) A statement that a property owner who fails to provide a notice or disclosure that is required by this chapter is subject to a civil penalty of up to five thousand dollars (\$5,000).

(h) The local health officer shall provide a copy of the order to the local building or code enforcement agency or other appropriate agency responsible for the enforcement of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13).

(i) The local health officer shall post the order in a conspicuous place on the property within one working day of the date that the order is issued.

**Comment.** Section 25400.22 is amended to correct a cross-reference to former Civil Code Section 1351(a), (c).

**Health & Safety Code § 25915.2 (amended). Publication and mailing of notice**

SEC. \_\_\_\_\_. Section 25915.2 of the Health and Safety Code is amended to read:

25915.2. (a) Notice provided pursuant to this chapter shall be provided in writing to each individual employee, and shall be mailed to other owners designated to receive the notice pursuant to subdivision (a) of Section 25915.5, within 15 days of the first receipt by the owner of information identifying the presence or location of asbestos-containing construction materials in the building. This notice shall be provided annually thereafter. In addition, if new information regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25915 has been obtained within 90 days after the notice required by this subdivision is provided or any subsequent 90-day period, then a supplemental notice shall be provided within 15 days of the close of that 90-day period.

(b) Notice provided pursuant to this chapter shall be provided to new employees within 15 days of commencement of work in the building.

(c) Notice provided pursuant to this chapter shall be mailed to any new owner designated to receive the notice pursuant to subdivision (a) of Section 25915.5 within 15 days of the effective date of the agreement under which a person becomes a new owner.

(d) Subdivisions (a) and (c) shall not be construed to require owners of a building or part of a building within a residential common interest development to mail written notification to other owners of a building or part of a building within the residential common interest development, if all the following conditions are met:

(1) The association conspicuously posts, in each building or part of a building known to contain asbestos-containing materials, a

large sign in a prominent location that fully informs persons entering each building or part of a building within the common interest development that the association knows the building contains asbestos-containing materials.

The sign shall also inform persons of the location where further information, as required by this chapter, is available about the asbestos-containing materials known to be located in the building.

(2) The owners or association disclose, as soon as practicable before the transfer of title of a separate interest in the common interest development, to a transferee the existence of asbestos-containing material in a building or part of a building within the common interest development.

Failure to comply with this section shall not invalidate the transfer of title of real property. This paragraph shall only apply to transfers of title of separate interests in the common interest development of which the owners have knowledge. As used in this section, “association” and “common interest development” are defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

(e) If a person contracting with an owner receives notice pursuant to this chapter, that contractor shall provide a copy of the notice to his or her employees or contractors working within the building.

(f) If the asbestos-containing construction material in the building is limited to an area or areas within the building that meet all the following criteria:

(1) Are unique and physically defined.

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials which are not replicated throughout the building.

(3) Are not connected to other areas through a common ventilation system; then, an owner required to give notice to his or her employees pursuant to subdivision (a) of Section 25915 or 25915.1 may provide that notice only to the employees working within or entering that area or those areas of the building meeting the conditions above.

(g) If the asbestos-containing construction material in the building is limited to an area or areas within the building that meet all the following criteria:

(1) Are accessed only by building maintenance employees or contractors and are not accessed by tenants or employees in the building, other than on an incidental basis.

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials which are not replicated in areas of the building which are accessed by tenants and employees.

(3) The owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from the material; then, as to that asbestos-containing construction material, an owner required to give notice to his or her employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may provide that notice only to its building maintenance employees and contractors who have access to that area or those areas of the building meeting the conditions above.

(h) In those areas of a building where the asbestos-containing construction material is composed only of asbestos fibers which are completely encapsulated, if the owner knows that no asbestos fibers are being released or have the reasonable possibility to be released from that material in its present condition and has no knowledge that other asbestos-containing material is present, then an owner required to give notice pursuant to subdivision (a) of Section 25915 shall provide the information required in paragraph (2) of subdivision (a) of Section 25915 and may substitute the following notice for the requirements of paragraphs (1), (3), (4), and (5) of subdivision (a) of Section 25915:

(1) The existence of, conclusions from, and a description or list of the contents of, that portion of any survey conducted to determine the existence and location of asbestos-containing construction materials within the building that refers to the asbestos materials described in this subdivision, and information describing when and where the results of the survey are available pursuant to Section 25917.

(2) Information to convey that moving, drilling, boring, or otherwise disturbing the asbestos-containing construction material identified may present a health risk and, consequently, should not be attempted by an unqualified employee. The notice shall identify the appropriate person the employee is required to contact if the condition of the asbestos-containing construction material deteriorates.

**Comment.** Section 25915.2 is amended to correct a cross-reference to former Civil Code Section 1351(a), (c).

**Health & Safety Code § 25915.5 (amended). Notice to co-owners**

SEC. \_\_\_\_\_. Section 25915.5 of the Health and Safety Code is amended to read:

25915.5. (a) An owner required to give notice to employees pursuant to this chapter, in addition to notifying his or her employees, shall mail, in accordance with this subdivision, a copy of that notice to all other persons who are owners of the building or part of the building, with whom the owner has privity of contract. Receipt of a notice pursuant to this section by an owner, lessee or operator shall constitute knowledge that the building contains asbestos-containing construction materials for purposes of this chapter. Notice to an owner shall be delivered by first-class mail addressed to the person and at the address designated for the receipt of notices under the lease, rental agreement, or contract with the owner.

(b) The delivery of notice under this section or negligent failure to provide that notice shall not constitute a breach of any covenant under the lease or rental agreement, and nothing in this chapter enlarges or diminishes any rights or duties respecting constructive eviction.

(c) No owner who, in good faith, complies with the provisions of this section shall be liable to any other owner for any damages alleged to have resulted from his or her compliance with the provisions of this section.

(d) This section shall not be construed to apply to owners of a building or part of a building within a residential common interest development or association, if the owners comply with the

provisions of subdivision (d) of Section 25915.2. For purposes of this section, “association” and “common interest development” are defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

**Comment.** Section 25915.5 is amended to correct a cross-reference to former Civil Code Section 1351(a), (c).

**Health & Safety Code § 33050 (amended). Legislative declaration of policy in undertaking community redevelopment projects**

SEC. \_\_\_\_\_. Section 33050 of the Health and Safety Code is amended to read:

33050. (a) It is hereby declared to be the policy of the state that in undertaking community redevelopment projects under this part there shall be no discrimination because of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~4360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

**Comment.** Section 33050 is amended to correct a cross-reference to former Civil Code Section 1360.

**Health & Safety Code § 33435 (amended). Obligation of lessees and purchasers to refrain from discrimination**

SEC. \_\_\_\_\_. Section 33435 of the Health and Safety Code is amended to read:

33435. (a) Agencies shall obligate lessees and purchasers of real property acquired in redevelopment projects and owners of property improved as a part of a redevelopment project to refrain from restricting the rental, sale, or lease of the property on any basis listed in subdivision (a) or (d) of Section 12955 of the

Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of any land in a redevelopment project shall contain or be subject to the nondiscrimination or nonsegregation clauses hereafter prescribed.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~4360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

**Comment.** Section 33435 is amended to correct a cross-reference to former Civil Code Section 1360.

**Health & Safety Code § 33436 (amended). Nondiscrimination and nonsegregation clauses**

SEC. \_\_\_\_\_. Section 33436 of the Health and Safety Code is amended to read:

33436. Express provisions shall be included in all deeds, leases, and contracts that the agency proposes to enter into with respect to the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment project in substantially the following form:

(a)(1) In deeds the following language shall appear -- “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use,

occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~4360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(b)(1) In leases the following language shall appear -- “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government

Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~4360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(c) In contracts entered into by the agency relating to the sale, transfer, or leasing of land or any interest therein acquired by the agency within any survey area or redevelopment project the foregoing provisions in substantially the forms set forth shall be included and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

**Comment.** Section 33436 is amended to correct cross-references to former Civil Code Section 1360.

**Health & Safety Code § 33769 (amended). Discrimination prohibited**

SEC. \_\_\_\_\_. Section 33769 of the Health and Safety Code is amended to read:

33769. (a) An agency shall require that any residence that is constructed with financing obtained under this chapter shall be open, upon sale or rental of any portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. The agency shall also require that contractors and subcontractors engaged in residential construction financed under this chapter shall provide equal opportunity for employment, without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code. All contracts and subcontracts for residential construction financed under this chapter shall be let without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government

Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code and except as otherwise provided in Section 12940 of the Government Code. It shall be the policy of an agency financing residential construction under this chapter to encourage participation by minority contractors, and the agency shall adopt rules and regulations to implement this section.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

**Comment.** Section 33769 is amended to correct a cross-reference to former Civil Code Section 1360.

**Health & Safety Code § 35811 (amended). Consideration of ethnicity, religion, sex, marital status, or national origin**

SEC. \_\_\_\_\_. Section 35811 of the Health and Safety Code is amended to read:

35811. (a) No financial institution shall discriminate in the availability of, or in the provision of, financial assistance for the purpose of purchasing, constructing, rehabilitating, improving, or refinancing housing accommodations due, in whole or in part, to the consideration of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil

Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

**Comment.** Section 35811 is amended to correct a cross-reference to former Civil Code Section 1360.

**Health & Safety Code § 37630 (amended). Equal opportunity**

SEC. \_\_\_\_\_. Section 37630 of the Health and Safety Code is amended to read:

37630. (a) The local agency shall require that any property that is rehabilitated with financing obtained under this part shall be open, upon sale or rental of any portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. The local agency shall also require that contractors and subcontractors engaged in historical rehabilitation financed under this part provide equal opportunity for employment, without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code. All contracts and subcontracts for historical rehabilitation financed under this part shall be let without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

**Comment.** Section 37630 is amended to correct a cross-reference to former Civil Code Section 1360.

**Health & Safety Code § 37923 (amended). Equal employment opportunity**

SEC. \_\_\_\_\_. Section 37923 of the Health and Safety Code is amended to read:

37923. (a) The local agency shall require that any residence that is rehabilitated, constructed, or acquired with financing obtained under this part shall be open, upon sale or rental of any portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. The local agency shall also require that contractors and subcontractors engaged in residential rehabilitation financed under this part provide equal opportunity for employment, without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code. All contracts and subcontracts for residential rehabilitation financed under this part shall be let without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code. It shall be the policy of the local agency financing residential rehabilitation under this part to encourage participation by minority contractors, and the local agency shall adopt rules and regulations to implement this section.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~4360~~ 4760 of the Civil

Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

**Comment.** Section 37923 is amended to correct a cross-reference to former Civil Code Section 1360.

**Health & Safety Code § 50955 (amended). Civil rights and equal employment opportunity**

SEC. \_\_\_\_\_. Section 50955 of the Health and Safety Code is amended to read:

50955. (a) The agency and every housing sponsor shall require that occupancy of housing developments assisted under this part shall be open to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, that contractors and subcontractors engaged in the construction of housing developments shall provide an equal opportunity for employment, without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code, and that contractors and subcontractors shall submit and receive approval of an affirmative action program prior to the commencement of construction or rehabilitation. Affirmative action requirements respecting apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

All contracts for the management, construction, or rehabilitation of housing developments, and contracts let by housing sponsors, contractors, and subcontractors in the performance of management, construction or rehabilitation, shall be let without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code, and pursuant to an affirmative action program, which shall be at not less than the Federal Housing Administration affirmative action standards

unless the board makes a specific finding that the particular requirement would be unworkable. The agency shall periodically review implementation of affirmative action programs required by this section.

It shall be the policy of the agency and housing sponsors to encourage participation with respect to all projects by minority developers, builders, and entrepreneurs in all levels of construction, planning, financing, and management of housing developments. In areas of minority concentration the agency shall require significant participation of minorities in the sponsorship, construction, planning, financing, and management of housing developments. The agency shall (1) require that, to the greatest extent feasible, opportunities for training and employment arising in connection with the planning, construction, rehabilitation, and operation of housing developments financed pursuant to this part be given to persons of low income residing in the area of that housing, and (2) determine and implement means to secure the participation of small businesses in the performance of contracts for work on housing developments and to develop the capabilities of these small businesses to more efficiently and competently participate in the economic mainstream. In order to achieve this participation by small businesses, the agency may, among other things, waive retention requirements otherwise imposed on contractors or subcontractors by regulation of the agency and may authorize or make advance payments for work to be performed. The agency shall develop relevant selection criteria for the participation of small businesses to ensure that, to the greatest extent feasible, the participants possess the necessary nonfinancial capabilities. The agency may, with respect to these small businesses, waive bond requirements otherwise imposed upon contractors or subcontractors by regulation of the agency, but the agency shall in that case substantially reduce the risk through (1) a pooled-risk bonding program, (2) a bond program in cooperation with other federal or state agencies, or (3) development of a self-insured bonding program with adequate reserves.

The agency shall adopt rules and regulations to implement this section.

Prior to commitment of a mortgage loan, the agency shall require each housing sponsor, except with respect to mutual self-help housing, to submit an affirmative marketing program that meets standards set forth in regulations of the agency. The agency shall require ~~such a~~ each housing sponsor to conduct the affirmative marketing program so approved. Additionally, the agency shall supplement the efforts of individual housing sponsors by conducting affirmative marketing programs with respect to housing at the state level.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

**Comment.** Subdivision (a) of Section 50955 is amended to make a stylistic revision.

Subdivision (b) is amended to correct a cross-reference to former Civil Code Section 1360.

**Health & Safety Code § 51602 (amended). Nondiscrimination in occupancy of housing**

SEC. \_\_\_\_ . Section 51602 of the Health and Safety Code is amended to read:

51602. (a) The agency shall require that occupancy of housing for which a loan is insured pursuant to this part shall be open to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, and that contractors and subcontractors engaged in the construction or rehabilitation of housing funded by a loan insured pursuant to this part shall provide an equal opportunity for employment without discrimination as to any basis listed in subdivision (a) of Section 12940 of the Government Code,

as those bases are defined in Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of the Government Code.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~4360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

(c) A qualified developer shall certify compliance with this section and Section 50955 according to requirements specified by the pertinent criteria of the agency.

**Comment.** Section 51602 is amended to correct a cross-reference to former Civil Code Section 1360.

**Health & Safety Code § 116048 (amended). Public swimming pool in common interest development**

SEC. \_\_\_\_\_. Section 116048 of the Health and Safety Code is amended to read:

116048. (a) On or after January 1, 1987, for public swimming pools in any common interest development, as defined in Section ~~4354~~ 4100 of the Civil Code, that consists of fewer than 25 separate interests, as defined in ~~subdivision (l) of Section 4354~~ 4185 of the Civil Code, the person operating each such pool open for use shall be required to keep a record of the information required by subdivision (a) of Section 65523 of Title 22 of the California Administrative Code, except that the information shall be recorded at least two times per week and at intervals no greater than four days apart.

(b) On or after January 1, 1987, any rule or regulation of the department that is in conflict with subdivision (a) is invalid.

**Comment.** Section 116048 is amended to correct a cross-reference to former Civil Code Section 1351(c), (l).

The section is also amended to make a stylistic revision.

## INSURANCE CODE

**Ins. Code § 790.031 (amended). Application of Sections 790.034, 2071.1 and 10082.3**

SEC. \_\_\_\_\_. Section 790.031 of the Insurance Code is amended to read:

790.031. The requirements of subdivision (b) of Section 790.034, and Sections 2071.1 and 10082.3 shall apply only to policies of residential property insurance as defined in Section 10087, policies and endorsements containing those coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2, policies issued by the California Earthquake Authority pursuant to Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies and endorsements that insure against property damage and are issued to common interest developments or to associations managing common interest developments, as those terms are defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code, and to policies issued pursuant to Section 120 that insure against property damage to residential units or contents thereof owned by one or more persons located in this state.

**Comment.** Section 790.031 is amended to correct a cross-reference to former Civil Code Section 1351(a), (c).

## REVENUE AND TAXATION CODE

**Rev. & Tax. Code § 2188.6 (amended). Separate assessment of property divided into condominiums**

SEC. \_\_\_\_\_. Section 2188.6 of the Revenue and Taxation Code is amended to read:

2188.6. (a) Unless a request for exemption has been recorded pursuant to subdivision (d), prior to the creation of a condominium as defined in Section 783 of the Civil Code, the county assessor may separately assess each individual unit which is shown on the condominium plan of a proposed condominium project when all of the following documents have been recorded as required by law:

(1) A subdivision final map or parcel map, as described in Sections 66434 and 66445, respectively, of the Government Code.

(2) A condominium plan, as defined in ~~subdivision (e) of Section 1351~~ 4120 of the Civil Code.

(3) A declaration, as defined in ~~subdivision (h) of Section 1351~~ 4135 of the Civil Code.

(b) The tax due on each individual unit shall constitute a lien solely on that unit.

(c) The lien created pursuant to this section shall be a lien on an undivided interest in a portion of real property coupled with a separate interest in space called a unit as described in ~~subdivision (f) of Section 1351~~ 4125 of the Civil Code.

(d) The record owner of the real property may record with the condominium plan a request that the real property be exempt from separate assessment pursuant to this section. If a request for exemption is recorded, separate assessment of a condominium unit shall be made only in accordance with Section 2188.3.

(e) This section shall become operative on January 1, 1990, and shall apply to condominium projects for which a condominium plan is recorded after that date.

**Comment.** Section 2188.6 is amended to correct cross-references to former Civil Code Section 1351(e), (f), (h).

## VEHICLE CODE

### **Veh. Code § 21107.7 (amended). Private road not open to public use**

SEC. \_\_\_\_ . Section 21107.7 of the Vehicle Code is amended to read:

21107.7. (a) Any city or county may, by ordinance or resolution, find and declare that there are privately owned and maintained roads as described in the ordinance or resolution within the city or county that are not generally held open for use of the public for purposes of vehicular travel but, by reason of their proximity to or connection with highways, the interests of any residents residing along the roads and the motoring public will best be served by application of the provisions of this code to those roads. No ordinance or resolution shall be enacted unless there is first filed

with the city or county a petition requesting it by a majority of the owners of any privately owned and maintained road, or by at least a majority of the board of directors of a common interest development, as defined by Section ~~4354~~ 4100 of the Civil Code, that is responsible for maintaining the road, and without a public hearing thereon and 10 days' prior written notice to all owners of the road or all of the owners in the development. Upon enactment of the ordinance or resolution, the provisions of this code shall apply to the privately owned and maintained road if appropriate signs are erected at the entrance to the road of the size, shape, and color as to be readily legible during daylight hours from a distance of 100 feet, to the effect that the road is subject to the provisions of this code. The city or county may impose reasonable conditions and may authorize the owners, or board of directors of the common interest development, to erect traffic signs, signals, markings, and devices which conform to the uniform standards and specifications adopted by the Department of Transportation.

(b) The department shall not be required to provide patrol or enforce any provisions of this code on any privately owned and maintained road subjected to the provisions of this code under this section, except those provisions applicable to private property other than by action under this section.

(c) As used in this section, "privately owned and maintained roads" includes roads owned and maintained by a city, county or district that are not dedicated to use by the public or are not generally held open for use of the public for purposes of vehicular travel.

**Comment.** Section 21107.7 is amended to correct a cross-reference to former Civil Code Section 1351(c).

**Veh. Code § 22651 (amended). Circumstances in which removal of vehicle is permitted**

SEC. \_\_\_\_\_. Section 22651 of the Vehicle Code is amended to read:

22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a

city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances:

(a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When a vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When a vehicle is found upon a highway or public land and a report has previously been made that the vehicle is stolen or a complaint has been filed and a warrant thereon is issued charging that the vehicle was embezzled.

(d) When a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When a vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When a vehicle, except highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h)(1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389.

(i)(1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violations, or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which a certificate has not been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and all other vehicles registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most

accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When a vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of

the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(l) When a vehicle is illegally parked on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(m) When the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. Except as provided in subdivisions (v) and (w), a vehicle shall not be removed unless signs are posted giving notice of the removal.

(o)(1) When a vehicle is found or operated upon a highway, public land, or an offstreet parking facility under the following circumstances:

(A) With a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility.

(B) Displaying in, or upon, the vehicle, a registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit that was not issued for that vehicle, or is not otherwise lawfully used on that vehicle under this code.

(C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or falsified registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit.

(2) When a vehicle described in paragraph (1) is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle.

(3) For the purposes of this subdivision, the vehicle shall be released under either of the following circumstances:

(A) To the registered owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(B) To the legal owner or the legal owner's agency, without payment of any fees, fines, or penalties for parking tickets or registration and without proof of current registration, if the vehicle will only be transported pursuant to the exemption specified in Section 4022 and if the legal owner does all of the following:

(i) Pays the cost of towing and storing the vehicle.

(ii) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of an offense relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency has a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of parking penalties for any notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. Upon receipt of any surplus, the legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5.

(4) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled has a deficiency claim against the registered owner for the full amount of parking penalties for any notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(5) As used in this subdivision, “offstreet parking facility” means an offstreet facility held open for use by the public for parking vehicles and includes a publicly owned facility for offstreet parking, and a privately owned facility for offstreet parking if a fee is not charged for the privilege to park and it is held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner’s or his or her agent’s currently valid driver’s license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) When a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in ~~subdivision (c) of Section 1351~~ 4100 of the Civil Code, and signs, as required by paragraph (1) of subdivision (a) of Section 22658 of this code, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner’s expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When a vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s)(1) When a vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle that is properly permitted or otherwise authorized by the

Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) Notwithstanding paragraph (1), when a commercial motor vehicle, as defined in paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or left standing for more than 10 hours within a roadside rest area or viewpoint.

(3) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

(u) When a peace officer issues a citation for a violation of Section 11700 and the vehicle is being offered for sale.

(v)(1) When a vehicle is a mobile billboard advertising display, as defined in Section 395.5, and is parked or left standing in violation of a local resolution or ordinance adopted pursuant to subdivision (m) of Section 21100, if the registered owner of the vehicle was previously issued a warning citation for the same offense, pursuant to paragraph (2).

(2) Notwithstanding subdivision (a) of Section 22507, a city or county, in lieu of posting signs noticing a local ordinance prohibiting mobile billboard advertising displays adopted pursuant to subdivision (m) of Section 21100, may provide notice by issuing a warning citation advising the registered owner of the vehicle that he or she may be subject to penalties upon a subsequent violation of the ordinance that may include the removal of the vehicle as provided in paragraph (1). A city or county is not required to provide further notice for a subsequent violation prior to the enforcement of penalties for a violation of the ordinance.

(w)(1) When a vehicle is parked or left standing in violation of a local ordinance or resolution adopted pursuant to subdivision (p) of Section 21100, if the registered owner of the vehicle was

previously issued a warning citation for the same offense, pursuant to paragraph (2).

(2) Notwithstanding subdivision (a) of Section 22507, a city or county, in lieu of posting signs noticing a local ordinance regulating advertising signs adopted pursuant to subdivision (p) of Section 21100, may provide notice by issuing a warning citation advising the registered owner of the vehicle that he or she may be subject to penalties upon a subsequent violation of the ordinance that may include the removal of the vehicle as provided in paragraph (1). A city or county is not required to provide further notice for a subsequent violation prior to the enforcement of penalties for a violation of the ordinance.

**Comment.** Subdivision (q) of Section 22651 is amended to correct a cross-reference to former Civil Code Section 1351(c).

**Veh. Code § 22651.05 (amended). Removal of vehicle by trained volunteer in specified circumstances**

SEC. \_\_\_\_\_. Section 22651.05 of the Vehicle Code is amended to read:

22651.05. (a) A trained volunteer of a state or local law enforcement agency, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove or authorize the removal of a vehicle located within the territorial limits in which an officer or employee of that agency may act, under any of the following circumstances:

(1) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing the removal.

(2) When a vehicle is illegally parked or left standing on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(3) Wherever the use of the highway, or a portion thereof, is authorized by local authorities for a purpose other than the normal

flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(4) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle may not be removed unless signs are posted giving notice of the removal.

(5) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in ~~subdivision (c) of~~ Section ~~1351~~ 4100 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(b) The provisions of this chapter that apply to a vehicle removed pursuant to Section 22651 apply to a vehicle removed pursuant to subdivision (a).

(c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his or her own free will, provides services, without any financial gain, to a local or state law enforcement agency, and who is duly trained and certified to remove a vehicle by a local or state law enforcement agency.

**Comment.** Section 22651.05 is amended to correct a cross-reference to former Civil Code Section 1351(c).

**Veh. Code § 22658 (amended). Removal of vehicle from private property by property owner**

SEC. \_\_\_\_\_. Section 22658 of the Vehicle Code is amended to read:

22658. (a) The owner or person in lawful possession of private property, including an association of a common interest development as defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code, may cause the removal of a vehicle parked on the

property to a storage facility that meets the requirements of subdivision (n) under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the owner or person in lawful possession of the property. The sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

(b) The tow truck operator removing the vehicle, if the operator knows or is able to ascertain from the property owner, person in lawful possession of the property, or the registration records of the Department of Motor Vehicles the name and address of the registered and legal owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the registered and legal owner of the fact of the removal, the grounds for the removal, and indicate the place to which the vehicle has been removed. If the vehicle is stored in a storage facility, a copy of the notice shall be given to the proprietor of the storage facility. The notice provided for in this section shall include the amount of mileage on the vehicle at the time of removal and the time of the removal from the property. If the tow truck operator does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner as provided in this section, the tow

truck operator shall comply with the requirements of subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer removing a vehicle from private property.

(c) This section does not limit or affect any right or remedy that the owner or person in lawful possession of private property may have by virtue of other provisions of law authorizing the removal of a vehicle parked upon private property.

(d) The owner of a vehicle removed from private property pursuant to subdivision (a) may recover for any damage to the vehicle resulting from any intentional or negligent act of a person causing the removal of, or removing, the vehicle.

(e)(1) An owner or person in lawful possession of private property, or an association of a common interest development, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to comply with paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle as required by subdivision (f).

(2) A property owner or owner's agent or lessee who causes the removal of a vehicle parked on that property pursuant to the exemption set forth in subparagraph (A) of paragraph (1) of subdivision (l) and fails to comply with that subdivision is guilty of an infraction, punishable by a fine of one thousand dollars (\$1,000).

(f) An owner or person in lawful possession of private property, or an association of a common interest development, causing the removal of a vehicle parked on that property shall notify by telephone or, if impractical, by the most expeditious means available, the local traffic law enforcement agency within one hour after authorizing the tow. An owner or person in lawful possession of private property, an association of a common interest development, causing the removal of a vehicle parked on that property, or the tow truck operator who removes the vehicle, shall state the grounds for the removal of the vehicle if requested by the legal or registered owner of that vehicle. A towing company that removes a vehicle from private property in compliance with

subdivision (l) is not responsible in a situation relating to the validity of the removal. A towing company that removes the vehicle under this section shall be responsible for the following:

(1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

(2) The removal of a vehicle other than the vehicle specified by the owner or other person in lawful possession of the private property.

(g)(1)(A) Possession of a vehicle under this section shall be deemed to arise when a vehicle is removed from private property and is in transit.

(B) Upon the request of the owner of the vehicle or that owner's agent, the towing company or its driver shall immediately and unconditionally release a vehicle that is not yet removed from the private property and in transit.

(C) A person failing to comply with subparagraph (B) is guilty of a misdemeanor.

(2) If a vehicle is released to a person in compliance with subparagraph (B) of paragraph (1), the vehicle owner or authorized agent shall immediately move that vehicle to a lawful location.

(h) A towing company may impose a charge of not more than one-half of the regular towing charge for the towing of a vehicle at the request of the owner, the owner's agent, or the person in lawful possession of the private property pursuant to this section if the owner of the vehicle or the vehicle owner's agent returns to the vehicle after the vehicle is coupled to the tow truck by means of a regular hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by means of a conventional trailer, and before it is removed from the private property. The regular towing charge may only be imposed after the vehicle has been removed from the property and is in transit.

(i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section is excessive if the charge exceeds the greater of the following:

(i) That which would have been charged for that towing or storage, or both, made at the request of a law enforcement agency under an agreement between a towing company and the law

enforcement agency that exercises primary jurisdiction in the city in which is located the private property from which the vehicle was, or was attempted to be, removed, or if the private property is not located within a city, then the law enforcement agency that exercises primary jurisdiction in the county in which the private property is located.

(ii) That which would have been charged for that towing or storage, or both, under the rate approved for that towing operator by the California Highway Patrol for the jurisdiction in which the private property is located and from which the vehicle was, or was attempted to be, removed.

(B) A towing operator shall make available for inspection and copying his or her rate approved by the California Highway Patrol, if any, within 24 hours of a request without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

(2) If a vehicle is released within 24 hours from the time the vehicle is brought into the storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not more than one day's storage charge may be required for a vehicle released the same day that it is stored.

(3) If a request to release a vehicle is made and the appropriate fees are tendered and documentation establishing that the person requesting release is entitled to possession of the vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of storage, and the storage facility fails to comply with the request to release the vehicle or is not open for business during normal business hours, then only one day's storage charge may be required to be paid until after the first business day. A business day is any day in which the lienholder is open for business to the public for at least eight hours. If a request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar day basis for each day, or part thereof, that the vehicle is in storage.

(j)(1) A person who charges a vehicle owner a towing, service, or storage charge at an excessive rate, as described in subdivision

(h) or (i), is civilly liable to the vehicle owner for four times the amount charged.

(2) A person who knowingly charges a vehicle owner a towing, service, or storage charge at an excessive rate, as described in subdivision (h) or (i), or who fails to make available his or her rate as required in subparagraph (B) of paragraph (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment.

(k)(1) A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing and storage by a registered owner, the legal owner, or the owner's agent claiming the vehicle. A credit card shall be in the name of the person presenting the card. "Credit card" means "credit card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of this section, credit card does not include a credit card issued by a retail seller.

(2) A person described in paragraph (1) shall conspicuously display, in that portion of the storage facility office where business is conducted with the public, a notice advising that all valid credit cards and cash are acceptable means of payment.

(3) A person operating or in charge of a storage facility who refuses to accept a valid credit card or who fails to post the required notice under paragraph (2) is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment.

(4) A person described in paragraph (1) who violates paragraph (1) or (2) is civilly liable to the registered owner of the vehicle or the person who tendered the fees for four times the amount of the towing and storage charges.

(5) A person operating or in charge of the storage facility shall have sufficient moneys on the premises of the primary storage facility during normal business hours to accommodate, and make change in, a reasonable monetary transaction.

(6) Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies as described in subdivision (i).

(l)(1)(A) A towing company shall not remove or commence the removal of a vehicle from private property without first obtaining the written authorization from the property owner or lessee, including an association of a common interest development, or an employee or agent thereof, who shall be present at the time of removal and verify the alleged violation, except that presence and verification is not required if the person authorizing the tow is the property owner, or the owner's agent who is not a tow operator, of a residential rental property of 15 or fewer units that does not have an onsite owner, owner's agent or employee, and the tenant has verified the violation, requested the tow from that tenant's assigned parking space, and provided a signed request or electronic mail, or has called and provides a signed request or electronic mail within 24 hours, to the property owner or owner's agent, which the owner or agent shall provide to the towing company within 48 hours of authorizing the tow. The signed request or electronic mail shall contain the name and address of the tenant, and the date and time the tenant requested the tow. A towing company shall obtain, within 48 hours of receiving the written authorization to tow, a copy of a tenant request required pursuant to this subparagraph. For the purpose of this subparagraph, a person providing the written authorization who is required to be present on the private property at the time of the tow does not have to be physically present at the specified location of where the vehicle to be removed is located on the private property.

(B) The written authorization under subparagraph (A) shall include all of the following:

(i) The make, model, vehicle identification number, and license plate number of the removed vehicle.

(ii) The name, signature, job title, residential or business address and working telephone number of the person, described in subparagraph (A), authorizing the removal of the vehicle.

(iii) The grounds for the removal of the vehicle.

(iv) The time when the vehicle was first observed parked at the private property.

(v) The time that authorization to tow the vehicle was given.

(C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing company prior to payment of a towing or storage charge shall provide a photocopy of the written authorization to the vehicle owner or the agent.

(ii) If the vehicle was towed from a residential property, the towing company shall redact the information specified in clause (ii) of subparagraph (B) in the photocopy of the written authorization provided to the vehicle owner or the agent pursuant to clause (i).

(iii) The towing company shall also provide to the vehicle owner or the agent a separate notice that provides the telephone number of the appropriate local law enforcement or prosecuting agency by stating "If you believe that you have been wrongfully towed, please contact the local law enforcement or prosecuting agency at [insert appropriate telephone number]." The notice shall be in English and in the most populous language, other than English, that is spoken in the jurisdiction.

(D) A towing company shall not remove or commence the removal of a vehicle from private property described in subdivision (a) of Section 22953 unless the towing company has made a good faith inquiry to determine that the owner or the property owner's agent complied with Section 22953.

(E)(i) General authorization to remove or commence removal of a vehicle at the towing company's discretion shall not be delegated to a towing company or its affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with an entrance to, or exit from, the private property.

(ii) In those cases in which general authorization is granted to a towing company or its affiliate to undertake the removal or commence the removal of a vehicle that is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that interferes with an entrance to, or exit from, private property, the towing

company and the property owner, or owner's agent, or person in lawful possession of the private property shall have a written agreement granting that general authorization.

(2) If a towing company removes a vehicle under a general authorization described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that interferes with an entrance to, or exit from, the private property, the towing company shall take, prior to the removal of that vehicle, a photograph of the vehicle that clearly indicates that parking violation. Prior to accepting payment, the towing company shall keep one copy of the photograph taken pursuant to this paragraph, and shall present that photograph and provide, without charge, a photocopy to the owner or an agent of the owner, when that person claims the vehicle.

(3) A towing company shall maintain the original written authorization, or the general authorization described in subparagraph (E) of paragraph (1) and the photograph of the violation, required pursuant to this section, and any written requests from a tenant to the property owner or owner's agent required by subparagraph (A) of paragraph (1), for a period of three years and shall make them available for inspection and copying within 24 hours of a request without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

(4) A person who violates this subdivision is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment.

(5) A person who violates this subdivision is civilly liable to the owner of the vehicle or his or her agent for four times the amount of the towing and storage charges.

(m)(1) A towing company that removes a vehicle from private property under this section shall notify the local law enforcement agency of that tow after the vehicle is removed from the private property and is in transit.

(2) A towing company is guilty of a misdemeanor if the towing company fails to provide the notification required under paragraph (1) within 60 minutes after the vehicle is removed from the private property and is in transit or 15 minutes after arriving at the storage facility, whichever time is less.

(3) A towing company that does not provide the notification under paragraph (1) within 30 minutes after the vehicle is removed from the private property and is in transit is civilly liable to the registered owner of the vehicle, or the person who tenders the fees, for three times the amount of the towing and storage charges.

(4) If notification is impracticable, the times for notification, as required pursuant to paragraphs (2) and (3), shall be tolled for the time period that notification is impracticable. This paragraph is an affirmative defense.

(n) A vehicle removed from private property pursuant to this section shall be stored in a facility that meets all of the following requirements:

(1)(A) Is located within a 10-mile radius of the property from where the vehicle was removed.

(B) The 10-mile radius requirement of subparagraph (A) does not apply if a towing company has prior general written approval from the law enforcement agency that exercises primary jurisdiction in the city in which is located the private property from which the vehicle was removed, or if the private property is not located within a city, then the law enforcement agency that exercises primary jurisdiction in the county in which is located the private property.

(2)(A) Remains open during normal business hours and releases vehicles after normal business hours.

(B) A gate fee may be charged for releasing a vehicle after normal business hours, weekends, and state holidays. However, the maximum hourly charge for releasing a vehicle after normal business hours shall be one-half of the hourly tow rate charged for initially towing the vehicle, or less.

(C) Notwithstanding any other provision of law and for purposes of this paragraph, "normal business hours" are Monday to Friday, inclusive, from 8 a.m. to 5 p.m., inclusive, except state holidays.

(3) Has a public pay telephone in the office area that is open and accessible to the public.

(o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to assist vehicle owners or their agents by, among other things, allowing payment by credit cards for towing and storage services, thereby expediting the recovery of towed vehicles and concurrently promoting the safety and welfare of the public.

(2) It is the intent of the Legislature in the adoption of subdivision (l) to further the safety of the general public by ensuring that a private property owner or lessee has provided his or her authorization for the removal of a vehicle from his or her property, thereby promoting the safety of those persons involved in ordering the removal of the vehicle as well as those persons removing, towing, and storing the vehicle.

(3) It is the intent of the Legislature in the adoption of subdivision (g) to promote the safety of the general public by requiring towing companies to unconditionally release a vehicle that is not lawfully in their possession, thereby avoiding the likelihood of dangerous and violent confrontation and physical injury to vehicle owners and towing operators, the stranding of vehicle owners and their passengers at a dangerous time and location, and impeding expedited vehicle recovery, without wasting law enforcement's limited resources.

(p) The remedies, sanctions, restrictions, and procedures provided in this section are not exclusive and are in addition to other remedies, sanctions, restrictions, or procedures that may be provided in other provisions of law, including, but not limited to, those that are provided in Sections 12110 and 34660.

(q) A vehicle removed and stored pursuant to this section shall be released by the law enforcement agency, impounding agency, or person in possession of the vehicle, or any person acting on behalf of them, to the legal owner or the legal owner's agent upon presentation of the assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions Code; a release from the one responsible governmental agency, only if required by the agency; a government-issued photographic identification card; and any one of the following as determined by the legal owner or

the legal owner's agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The storage facility shall not require any documents to be notarized. The storage facility may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the storage facility, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

**Comment.** Subdivision (a) of Section 22658 is amended to correct a cross-reference to former Civil Code Section 1351(a), (c).

## WATER CODE

### **Water Code § 13553 (amended). Recycled water**

SEC. \_\_\_\_ . Section 13553 of the Water Code is amended to read:

13553. (a) The Legislature hereby finds and declares that the use of potable domestic water for toilet and urinal flushing in structures is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for these uses, is available to the user and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to furnish any information that may be relevant to making the determination required in subdivision (a).

(c) For purposes of this section and Section 13554, "structure" or "structures" means commercial, retail, and office buildings, theaters, auditoriums, condominium projects, schools, hotels, apartments, barracks, dormitories, jails, prisons, and reformatories, and other structures as determined by the State Department of Public Health.

(d) Recycled water may be used in condominium projects, as defined in Section ~~1354~~ 4125 of the Civil Code, subject to all of the following conditions:

(1) Prior to the indoor use of recycled water in any condominium project, the agency delivering the recycled water to the condominium project shall file a report with, and receive written approval of the report from, the State Department of Public Health. The report shall be consistent with the provisions of Title 22 of the California Code of Regulations generally applicable to dual-plumbed structures and shall include all the following:

(A) That potable water service to each condominium project will be provided with a backflow protection device approved by the State Department of Public Health to protect the agency's public water system, as defined in Section 116275 of the Health and Safety Code. The backflow protection device approved by the State Department of Public Health shall be inspected and tested annually by a person certified in the inspection of backflow prevention devices.

(B) That any plumbing modifications in the condominium unit or any physical alteration of the structure will be done in compliance with state and local plumbing codes.

(C) That each condominium project will be tested by the recycled water agency or the responsible local agency at least once every four years to ensure that there are no indications of a possible cross connection between the condominium's potable and nonpotable systems.

(D) That recycled water lines will be color coded consistent with current statutes and regulations.

(2) The recycled water agency or the responsible local agency shall maintain records of all tests and annual inspections conducted.

(3) The condominium's declaration, as defined in Section ~~1354~~ 4135 of the Civil Code, shall provide that the laws and regulations governing recycled water apply, shall not permit any exceptions to those laws and regulations, shall incorporate the report described in paragraph (1), and shall contain the following statement:

“NOTICE OF USE OF RECYCLED WATER

This property is approved by the State Department of Public Health for the use of recycled water for toilet and urinal flushing. This water is not potable, is not suitable for indoor purposes other than toilet and urinal flushing purposes, and requires dual plumbing. Alterations and modifications to the plumbing system require a permit and are prohibited without first consulting with the appropriate local building code enforcement agency and your property management company or homeowners’ association to ensure that the recycled water is not mixed with the drinking water.”

(e) The State Department of Public Health may adopt regulations as necessary to assist in the implementation of this section.

(f) This section shall only apply to condominium projects that are created, within the meaning of Section ~~1352~~ 4200 of the Civil Code, on or after January 1, 2008.

(g) This section and Section 13554 do not apply to a pilot program adopted pursuant to Section 13553.1.

**Comment.** Section 13553 is amended to correct cross-references to former Civil Code Sections 1351(h) and 1352.

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### DISPOSITION OF FORMER LAW

The table below shows the relationship between each provision of the existing Davis-Stirling Common Interest Development Act and the corresponding provision of the proposed law.

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1350.....	4000
1350.5.....	4005
1350.7.....	omitted, but see 4040, 4045, 4050
1351 (intro.) .....	4075
1351(a) .....	4080
1351(b) .....	4095
1351(c) .....	4100
1351(d) .....	4105
1351(e)(1)-(2).....	4285
1351(e)(3) (except last ¶) .....	4285, 4290
1351(e)(last ¶) .....	4295
1351(f).....	4125
1351(g) .....	4130
1351(h) .....	4135
1351(i).....	4145
1351(j).....	4150
1351(k) .....	4175
1351(l).....	4185
1351(m).....	4190
1352.....	4200
1352.5.....	4225(a)-(b), (d)
1353(a)(1) (1st & 2d sent.).....	4250(a)
1353(a)(1)-(4) (except 1st & 2d sent.) .....	4255
1353(b) .....	4250(b)
1353.5.....	4705
1353.6.....	4710
1353.7.....	4720
1353.8.....	4735
1354.....	5975
1355(a) .....	4270(a)
1355(b) (1st sent.) .....	4260
1355(b)(1) .....	5115(e)
1355(b)(2) .....	4270(b)
1355(b)(3) .....	4270(a)(3)
1355.5.....	4230
1356.....	4275

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1357(a) .....	4265(a)
1357(b) (except part of 1st sent.) .....	omitted
1357(b) (part of 1st sent.) .....	4265(b)
1357(c) .....	omitted
1357(d) .....	4265(c)
1357.100(a) .....	4340(a)
1357.100(b) .....	4340(b)
1357.110 .....	4350
1357.120 .....	4355
1357.130 .....	4360
1357.140 .....	4365
1357.150 .....	4370
1358(a) .....	4625
1358(b) .....	4630
1358(c) .....	4635
1358(d) .....	4640
1358 (last ¶) .....	4650
1358 (next to last ¶) .....	4645
1359 .....	4610
1360 .....	4760
1360.5 .....	4715
1361 .....	4505
1361.5 .....	4510
1362 .....	4500
1363(a) .....	4800
1363(b) .....	omitted
1363(c) .....	4805
1363(d) .....	5000(a)
1363(e) (1st sent.) .....	5240(b)
1363(e) (2d sent.) .....	omitted
1363(f) (1st sent.) .....	5850(a)
1363(f) (2d sent.) .....	omitted
1363(g) .....	5855
1363(h) .....	4820
1363(i) .....	5865
1363.001 .....	5400
1363.005 .....	omitted
1363.03(a) .....	5105(a)
1363.03(b) (1st sent.) .....	5100(a)
1363.03(b) (2d & 3d sents.) .....	5115(b)
1363.03(b) (4th sent.) .....	5115(c)
1363.03(c) .....	5110
1363.03(d) .....	5130

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1363.03(e) .....	5115(a)
1363.03(f) .....	5120(a)
1363.03(g) .....	5120(b)
1363.03(h) .....	5125(a)
1363.03(i) .....	5125(b)
1363.03(j) .....	5105(b)
1363.03(k) .....	5115(d)
1363.03(l) .....	5100(c)
1363.03(m) .....	5100(d)
1363.03(n) .....	5100(e)
1363.03(o) .....	omitted
1363.04 .....	5135
1363.05(a) .....	4900
1363.05(b) (1st part of 1st sent.) .....	4925(a)
1363.05(b) (2d part of 1st sent.) .....	4935(a)
1363.05(b) (2d sent.) .....	4935(b)
1363.05(b) (3d sent.) .....	4925(a)
1363.05(c) .....	4935(e)
1363.05(d) .....	4950(a)
1363.05(e) .....	4950(b)
1363.05(f) .....	4920
1363.05(g) .....	4923
1363.05(h) .....	4925(b), 5000(b)
1363.05(i) .....	4930
1363.05(j) .....	4910
1363.05(k)(1) .....	4155
1363.05(k)(2) .....	4090
1363.07 (except (a)(3)(F)) .....	4600
1363.07(a)(3)(F) .....	4202(a)(4)
1363.09 (re elections) .....	5145
1363.09(a)-(b) (re exclusive use grant) .....	4605
1363.09(a)-(b) (re open meetings) .....	4955
1363.1(a) .....	5375
1363.1(b) (except ¶ (1)) .....	4158
1363.1(b)(1) .....	5385
1363.2(a)-(e) .....	5380(a)-(e)
1363.2(f) (except 1st cl. of 2d sent.) .....	4158
1363.2(f) (1st cl. of 2d sent.) .....	5385
1363.2(g) .....	5380(f)
1363.5 .....	4280
1363.6 .....	5405
1363.810 .....	5900
1363.820 .....	5905

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1363.830.....	5910
1363.840.....	5915
1363.850.....	5920
1364(a).....	4775(a)
1364(b).....	4780
1364(c).....	4775(b)
1364(d)-(e).....	4785
1364(f).....	4790
1365 (intro. cl.).....	5300(b) (intro. cl.), 5305 (intro. cl.)
1365(a)(1).....	5300(b)(1)
1365(a)(2) (intro. cl.).....	5300(b)(2)
1365(a)(2)(A)-(D).....	5565
1365(a)(3)(A).....	5300(b)(4)
1365(a)(3)(B).....	5300(b)(5)
1365(a)(3)(C).....	5300(b)(6)
1365(a)(3)(D).....	5300(b)(8)
1365(a)(4) (1st ¶).....	5300(b)(7)
1365(a)(4) (2d ¶).....	5300(d)
1365(a)(4) (3d ¶).....	5300(a)
1365(b).....	5300(b)(3)
1365(c).....	5305
1365(d).....	5320
1365(e).....	5310(a)(7)
1365(f)(1) (except 2d cl. of 1st sent.).....	5300(b)(9) (1st & 2d sent.)
1365(f)(1) (2d cl. of 1st sent.).....	5300(a)
1365(f)(2).....	5810
1365(f)(3).....	5300(b)(9) (3d sent.)
1365(f)(4).....	5300(b)(9) (4th sent. & 2d ¶)
1365.1.....	4040(b), 5730
1365.2(a)(1) (except I(ii)-(iii)).....	5200(a)
1365.2(a)(1)(I)(ii).....	5225
1365.2(a)(1)(I)(iii).....	5220
1365.2(a)(2) (except last cl.).....	5200(b)
1365.2(a)(2) (last cl.).....	5205(g) (2d sent.)
1365.2(b).....	5205(a)-(b)
1365.2(c)(1)-(4).....	5205(c)-(f)
1365.2(c)(5).....	5205(g) (1st & 3d sents.)
1365.2(d).....	5215
1365.2(e).....	5230
1365.2(f).....	5235
1365.2(g).....	5240(c)
1365.2(h).....	5205(h)
1365.2(i)-(j).....	5210(a)-(b)

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1365.2(k) .....	5210(c)
1365.2(l) .....	5240(a)
1365.2(m) .....	5240(d)
1365.2(n) .....	omitted
1365.2.5 .....	5570
1365.2.5(b)(3) .....	5300(e)
1365.3 .....	5580
1365.5(a) .....	5500
1365.5(b) .....	5510(a)
1365.5(c)(1) .....	5510(b)
1365.5(c)(2) .....	5515
1365.5(d) .....	5520
1365.5(e) (1)-(4), (5) (1st sent.) .....	5550
1365.5(e)(5) (except 1st sent.) .....	5560
1365.5(f) .....	4177
1365.5(g) .....	4178
1365.5(h) .....	omitted
1365.6 .....	5350(a)
1365.7 .....	5800
1365.9 .....	5805
1366(a) (1st sent.) .....	5600(a)
1366(a) (2d sent.) .....	5605(a)
1366(a) (3d sent.) .....	5605(c)
1366(b) (1st sent.) .....	5605(b)
1366(b) (2d sent.) .....	5605(c)
1366(b) (3d & 4th sent.) .....	5610 (intro.)
1366(b)(1)-(3) .....	5610(a)-(c)
1366(c) .....	5620
1366(d) .....	5615
1366(e) .....	5650(b)
1366(f) .....	5650(c)
1366.1 .....	5600(b)
1366.2(a) .....	4210
1366.2(b) .....	omitted
1366.4 .....	5625
1367 .....	omitted, but see 5740
1367.1(a) (1st sent.) .....	5650(a)
1367.1(a) (2d sent.) .....	5660 (intro.)
1367.1(a)(1)-(6) .....	5660(a)-(f)
1367.1(b) .....	5655
1367.1(c)(1)(A) .....	5670
1367.1(c)(1)(B) .....	omitted, but see 5705(b)
1367.1(c)(2) .....	5673

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1367.1(c)(3).....	5665
1367.1(d) (1st - 5th sent.).....	5675
1367.1(d) (6th sent.).....	5685(a)
1367.1(d) (7th & 8th sent.).....	5725(a)
1367.1(e).....	5725(b)
1367.1(f).....	5680
1367.1(g) (1st sent.).....	5735
1367.1(g) (2d sent.).....	5700(a)
1367.1(g) (3d sent.).....	5710(a)
1367.1(g) (4th sent.).....	5710(c) (intro.)
1367.1(g)(1)-(2).....	5710(c)(1)-(2)
1367.1(h).....	5700(b)
1367.1(i).....	5685(b)
1367.1(j).....	5710(b)
1367.1(k).....	4040(b)
1367.1(l).....	5690
1367.1(m).....	omitted, but see 5740
1367.1(n).....	omitted
1367.4(a).....	5705(a), 5715(a), 5720(a)
1367.4(b).....	5720(b)
1367.4(c) (intro.).....	omitted, but see 5705, 5715
1367.4(c)(1).....	5705(b)
1367.4(c)(2).....	5705(c)
1367.4(c)(3).....	5705(d)
1367.4(c)(4).....	5715(b)
1367.4(d).....	5720(c)(2)-(3)
1367.5.....	5685(c)
1367.6.....	5658
1368(a).....	4525
1368(b).....	4530
1368(c)(1).....	4575
1368(c)(2).....	4580
1368(c)(3).....	4110
1368(d).....	4540
1368(e).....	4545
1368(f).....	4535
1368(g).....	omitted
1368.1.....	4730
1368.2.....	4528
1368.3.....	5980
1368.4.....	5985
1368.5.....	6150
1369.....	4615

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1369.510.....	5925
1369.520.....	5930
1369.530.....	5935
1369.540.....	5940
1369.550.....	5945
1369.560.....	5950
1369.570.....	5955
1369.580.....	5960
1369.590.....	5965
1370.....	4215
1371.....	4220
1372.....	4020
1373.....	4202
1374.....	4201
1375.....	6000
1375.1.....	6100
1376.....	4725
1378.....	4765

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