

DRAFT REPORT OF THE  
CALIFORNIA LAW REVISION COMMISSION  
ON CHAPTER 557 OF THE STATUTES OF 2003  
(ASSEMBLY BILL 512)

Chapter 557 of the Statutes of 2003 was introduced as Assembly Bill 512 by Assembly Member Patricia Bates. It implements two California Law Revision Commission recommendations: *Organization of Davis-Stirling Common Interest Development Act*, 33 Cal. L. Revision Comm'n Reports 1 (2003), *Common Interest Development Law: Procedural Fairness in Association Rulemaking and Decisionmaking*, 33 Cal. L. Revision Comm'n Reports 81 (2003). The new and revised Comments set out below supersede the comparable Comments in the recommendations and reflect amendments made to the bill in the legislative process.

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

**Comment.** Section 1350.7 is new. It provides general document delivery rules that apply where this section is incorporated by reference in this title. For provisions incorporating this section by reference, see Sections 1357.130 (rulemaking), 1357.140 (rule change reversal).

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

**Civ. Code § 1357.110 (added). Validity of operating rule**

**Comment.** Section 1357.110 is new. Subdivisions (b) and (c) provide that an ultra vires operating rule is invalid. See *MaJor v. Miraverde Homeowners Ass'n, Inc.*, 7 Cal. App. 4th 618, 628, 9 Cal. Rptr. 2d 237, 243 (1992) (“Where the association exceeds its scope of authority, any rule or decision resulting from such an ultra vires act is invalid whether or not it is a ‘reasonable’ response to a particular circumstance.”).

Nothing in this section affects the burden of proof a party bears when asserting a claim for relief or a defense. See Evid. Code § 500 (burden of proof).

See also Sections 1351(a) (“association” defined), 1351(h) (“declaration” defined), 1357.100(a) (“operating rule” defined).

**Civ. Code § 1357.120 (added). Application of rulemaking provisions**

**Comment.** Subdivision (a) of Section 1357.120 specifies the types of operating rules that are governed by Sections 1357.130 and 1357.140.

Subdivision (b) provides a list of actions by an association board of directors that are not subject to Sections 1357.130 and 1357.140. Subdivision (b)(2) excludes decisions that are adjudicative or executive in nature. Subdivision (b)(3) excludes the setting of generally applicable assessments. Budgeting and the setting of assessments are governed by other law. See Sections 1365-1365.5, 1366. Subdivision (b)(4) reflects the fact that a board of directors may be legally required to make a specific rule change. Subdivision (b)(5) recognizes that mere repetition of an existing rule is not the making of a new rule.

See also Sections 1351(b) (“common area” defined), 1351(i) (“exclusive use common area” defined), 1351(j) (“governing documents” defined), 1351(l) (“separate interest” defined), 1357.100(a) (“operating rule” defined).

**Civ. Code § 1357.130 (added). Rulemaking procedure**

**Comment.** Section 1357.130 provides the procedure to be followed when making a rule change.

Subdivisions (a) and (c) require that notice be provided to every member. Failure to provide notice to every member will not invalidate a rule change if the failure is minor and inadvertent. See Section 1357.110(d) (substantial compliance with rulemaking procedure, in good faith, required).

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

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

**Civ. Code § 1357.140 (added). Rule change reversal**

**Comment.** Section 1357.140 authorizes member reversal of a recent rule change. This authority is limited to cases where members owning five percent or more of the separate interests call a meeting for that purpose within the specified time. The governing documents of an association may provide other additional procedures for member participation in rulemaking.

Subdivision (a) makes clear that organizing a special meeting to reverse a rule change is a proper purpose for access to an association’s membership records. Nothing in subdivision (a) affects other limitations on member access to membership records. See, e.g., Corp. Code §§ 8330(c) (board may offer reasonable alternative), 8332 (access limited to protect constitutional rights of members).

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

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

**Civ. Code § 1357.150 (added). Prospective application**

**Comment.** Section 1357.150 provides for prospective application of this article. A rule change commenced before January 1, 2004 would not be subject to this article, regardless of when the rulemaking process is completed.

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

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

**Comment.** Subdivision (f) of Section 1363 is amended to make clear that an association’s operating rules are subject to inspection by members. The subdivision is also amended to reference two types of records that are subject to inspection under existing law.

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

**Civ. Code § 1373 (amended). Nonresidential developments**

**Comment.** Section 1373 is amended to exempt exclusively industrial and exclusively commercial common interest developments from application of the specified provisions governing association rulemaking.