

TEXT OF COMMENTS TO SECTIONS AFFECTED BY
2003 COMMISSION RECOMMENDATIONS: PART 2

CLRC Staff Note. This document, the second of two parts, sets out the text of Official Comments to two Commission-sponsored bills enacted in the 2003 legislative session — 2003 Cal. Stat. chs. 379 and 557. The source for each Comment is given in the accompanying Table of Sections Affected by 2003 Commission Legislation: Part 2.

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CIVIL CODE

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

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

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 § 1357.100 (added). Definitions

Comment. Section 1357.100 is new. See also Section 1351(a) (“association” 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 § 1368 (amended). Owner’s disclosure

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

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

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.

CODE OF CIVIL PROCEDURE

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

Comment. Paragraph (3) is added to Section 681.030(c) to reflect the automatic triennial cost-of-living adjustment of personal property exemptions from enforcement of money judgments pursuant to Section 703.150.

Code Civ. Proc. § 700.010 (amended). Notice of levy

Comment. Section 700.010 is amended to reflect the automatic triennial cost-of-living adjustment of personal property exemptions from enforcement of money judgments pursuant to Section 703.150.

Code Civ. Proc. § 703.140 (amended). Alternate bankruptcy exemptions

Comment. Section 703.140 is amended to delete subdivision (c), which is superseded by the automatic cost-of-living adjustment provided in Section 703.150.

Code Civ. Proc. § 703.150 (added). Automatic adjustment of exemption amounts

Comment. Section 703.150 provides a new automatic triennial cost-of-living adjustment (COLA) for personal property exemptions applicable to enforcement of judgments and in bankruptcy. Subdivision (a) supersedes former subdivision (c) of Section 703.140, which coordinated the bankruptcy-only exemptions in Section 703.140(b) with triennial adjustments under the federal Bankruptcy Code. The automatic COLA applicable to the bankruptcy-only exemptions in Section 703.140(b) begins in 2004.

Under subdivision (b), the automatic COLA applicable to the Article 3 enforcement of judgments exemptions (Sections 704.010-704.210) is deferred until 2007, because these amounts are adjusted by statute operative January 1, 2004. For an exception to the adjustment provided in subdivision (b), see Section 704.090(b) (inmate trust fund exemption as to crime victim's claim).

The triennial adjustment period under this section is the same as that provided under the Bankruptcy Code. See 11 U.S.C. § 104(b)(1)(A). The \$25 rounding factor in subdivision (c) is also drawn from federal law. See 11 U.S.C. § 104(b)(1)(B).

Subdivision (e) clarifies the application of adjusted exemption amounts. As to bankruptcy, the rule is the same as provided by 11 U.S.C. § 104(c). The rule as to adjusted exemption amounts in state enforcement of judgment proceedings is consistent with the general rule under this title.

See also Sections 681.030(c)(3) (list of exemption amounts published pursuant to subdivision (d) referenced in Judicial Council form), 700.010 (list of exemption amounts published pursuant to subdivision (d) served with notice of levy).

Code Civ. Proc. § 704.010 (amended). Motor vehicles

Comment. Section 704.010 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 2. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

Code Civ. Proc. § 704.030 (amended). Materials for repair or improvement of dwelling

Comment. Section 704.030 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 3. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

Code Civ. Proc. § 704.040 (amended). Jewelry, heirlooms, works of art

Comment. Section 704.040 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 4. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

Code Civ. Proc. § 704.060 (amended). Personal property used in trade, business, or profession

Comment. Section 704.060 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 5. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all

urban consumers and rounding to the nearest \$25, except that the amounts in subdivisions (a)(3) and (d)(2) are determined by doubling the amounts in subdivisions (a)(1) and (d)(1), respectively.

Code Civ. Proc. § 704.080 (amended). Deposit account in which social security or public benefit payments are directly deposited

Comment. Section 704.080 is amended to adjust the social security payments exemption amounts for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 6. The public benefits exemption amounts are also adjusted for consistency with the scheme enacted in 1998 of setting this exemption at 50% of the social security payments exemption (subject to rounding to nearest \$25). See 1998 Cal. Stat. ch. 290, § 1. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

Code Civ. Proc. § 704.090 (amended). Inmate's trust account

Comment. Subdivision (a) of Section 704.090 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 2. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

Subdivision (b) is amended to provide an exception to the automatic triennial adjustment for this special type of exemption.

Code Civ. Proc. § 704.100 (amended). Life insurance, endowment, annuity policies

Comment. Section 704.100 is amended to adjust the exemption amount for cost-of-living increases since the section was last amended in 1995. See 1995 Cal. Stat. ch. 196, § 7. Adjusted amounts were determined by applying the California Consumer Price Index (August 2002) for all urban consumers and rounding to the nearest \$25. For future automatic triennial adjustments, see Section 703.150.

WELFARE AND INSTITUTIONS CODE

Welf. & Inst. Code § 17409 (amended). Exemptions from county claim against indigent

Comment. Section 17409 is amended to double the amount of the exemption values, which were originally set in 1945 and 1959. See 1945 Cal. Stat. ch. 636, § 1 (enacting Welf. & Inst. Code § 2611) (cash and personal effects); 1959 Cal. Stat. ch. 1443, § 1 (funeral expenses, insurance cash value). This section is also amended to make technical, nonsubstantive revisions. In subdivision (f), the reference to May 21, 1963, is deleted because it is obsolete.