

Memorandum 2007-56

**Statutory Clarification and Simplification of CID Law
(Draft Recommendation)**

A staff draft of the recommendation on *Statutory Clarification and Simplification of CID Law* is attached for Commission review.

The draft implements all of the staff's recommendations for changes from the June 2007 tentative recommendation, with one exception. As will be discussed in a supplement to Memorandum 2007-55, the staff withdraws its recommendations on two issues: (1) Changing the standard for an award of attorneys fees to a prevailing association in proposed Civil Code Sections 4555(c), 4685(f), and 4735(g). (2) Deleting proposed Civil Code Section 4905(h) (relating to the temporary commingling of funds by a managing agent). The attached draft does not make any changes to those provisions.

The staff also evaluated all of the technical and stylistic suggestions that were submitted in response to the tentative recommendation. Plain improvements were implemented in the attached draft.

Finally, a paragraph was added at the end of the preliminary part noting that the Commission received a number of suggestions for substantive changes to existing law that were deferred for possible later study.

The staff recommends that the Commission approve the attached draft as a final recommendation, with instructions to the staff to make whatever changes are required to implement decisions made at the December meeting. Implementing legislation could then be introduced in 2008.

Respectfully submitted,

Brian Hebert
Executive Secretary

#H-855

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Statutory Clarification and Simplification of CID Law

December 2007

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

SUMMARY OF TENTATIVE RECOMMENDATION

The Law Revision Commission recommends that the existing Davis-Stirling Common Interest Development Act be repealed and replaced with a new statute that continues the substance of existing law in a more user-friendly form.

The new statute would provide the following advantages for homeowners 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 logical organization for any future changes in the law.
- (2) Where there is significant overlap between the Corporations Code and the Davis-Stirling Act, the substance of the Corporations Code would be added to the Davis-Stirling Act and the Corporations Code provision would be made expressly inapplicable. This would consolidate relevant law in one location and minimize inconsistencies between the two sources of law.
- (3) Sections that are excessively long or complex would be restated in simpler and shorter sections.
- (4) Consistent terminology would be used throughout.
- (5) Some governance procedures would be standardized so as to simplify routine matters.
- (6) Various minor substantive improvements would be made.

This recommendation was prepared pursuant to Resolution Chapter 100 of the Statutes of 2007.

STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

BACKGROUND

1
2 A common interest development (“CID”) is a housing¹ development
3 characterized by (1) separate ownership of dwelling space (or a right of exclusive
4 occupancy) coupled with an interest in common property,² (2) covenants,
5 conditions, and restrictions that limit use of both the common area and separate
6 ownership interests, and (3) management of common property and enforcement of
7 restrictions by a community association. CIDs include condominiums, community
8 apartment projects, housing cooperatives, and planned developments.³

9 There are over 41,000 CIDs in California, ranging in size from three to 27,000
10 units each.⁴ These developments comprise over four million total housing units.⁵
11 Most CIDs are relatively small, with over half consisting of 25 or fewer separate
12 interests.⁶

13 Homeowner associations are run by volunteer directors who may have little or
14 no prior experience in managing real property, governing a nonprofit association
15 or corporation, complying with the laws regulating CIDs, and interpreting and
16 enforcing the restrictions and rules imposed by the governing documents.⁷

17 Association management is made more difficult by the complexity of the law
18 that governs CIDs. The governing law has two main sources, which overlap and
19 are not entirely consistent with one another:

- 20 • *The Corporations Code*. If an association is incorporated, it is typically
21 governed by the Nonprofit Mutual Benefit Corporation Law.⁸ An
22 unincorporated homeowner association is subject to both the general law on

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 CIDs. See Civ. Code § 1373.

2. The interest in the common property may either be an undivided ownership interest, or membership in an entity that owns the common property.

3. See Civ. Code § 1351.

4. Levy & Co., 2005 California Community Association Statistics 1 (2005).

5. *Id.*

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

7. 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.

8. Corp. Code § 7110 *et seq.*

1 unincorporated associations,⁹ and specific provisions of the Nonprofit
2 Mutual Benefit Corporation Law.¹⁰

- 3 • *The Davis-Stirling Common Interest Development Act* (hereafter the “Davis-
4 Stirling Act”).¹¹ That act provides a body of law specific to CIDs.

5 In order to determine what law applies to a particular issue, a CID homeowner
6 must read both sources of law together and attempt to resolve any inconsistencies
7 between the two.

8 OVERVIEW OF PROPOSED LAW

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

12 The proposed law would provide the following advantages for homeowners who
13 must read, understand, and apply the law governing CIDs:

- 14 (1) Related provisions would be grouped together in a logical order. This would
15 make relevant law easier to find and use. It would also provide a logical
16 organization for any future changes in the law.¹²
- 17 (2) Where there is significant overlap between the Corporations Code and the
18 Davis-Stirling Act, the substance of the Corporations Code would be added
19 to the Davis-Stirling Act and the Corporations Code provision would be
20 made expressly inapplicable. This would consolidate relevant law in one
21 location and minimize inconsistencies between the two sources of law.
- 22 (3) Sections that are excessively long or complex would be restated in simpler
23 and shorter sections.
- 24 (4) Consistent terminology would be used throughout.
- 25 (5) Some governance procedures would be standardized so as to simplify
26 routine matters.
- 27 (6) Various minor substantive improvements would be made.

9. Corp. Code § 18000 *et seq.*

10. Specific provisions of the Corporations Code are applied to an unincorporated homeowner association by Civil Code Sections 1355.5, 1357.140, 1363, 1363.03, 1363.5, 1365.2, 1365.5, 1365.6, 1366, 1367.1, and 1369.590.

11. Civ. Code §§ 1350-1378.

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

1 For the most part, the proposed law would be a nonsubstantive cleanup of
2 existing law. However, there are a number of instances where minor substantive
3 improvements are proposed. Those changes are discussed more fully below.

4 A table following the proposed legislation shows the proposed location of each
5 affected provision of the Davis-Stirling Act.

6 GENERAL PROVISIONS

7 The proposed law would begin with a chapter of general provisions (i.e.,
8 provisions that apply to the act as a whole).¹³ The general provisions include rules
9 governing the application of the Davis-Stirling Act and the Corporations Code, (2)
10 procedures used to deliver notices, and (3) definitions for commonly used terms.
11 For the most part, those provisions would continue existing law. Any significant
12 changes to existing law are discussed below.

13 APPLICATION OF DAVIS-STIRLING ACT AND CORPORATIONS CODE

14 **Nonresidential CIDs**

15 Under existing law, an entirely nonresidential CID is exempt from specified
16 requirements of the Davis-Stirling Act, on the grounds that those requirements
17 “may not be necessary to protect purchasers in commercial or industrial
18 developments” and could simply add unnecessary costs and burdens.¹⁴

19 The proposed law would continue those exemptions. In addition, a
20 nonresidential CID would be exempt from the member election provisions of the
21 Davis-Stirling Act.¹⁵ Such an association would instead be governed by the
22 Corporations Code member election procedures.¹⁶

23 **Corporations Code**

24 Proposed Civil Code Section 4025 would define the relationship between the
25 Corporations Code and the Davis-Stirling Act, in two ways:

- 26 (1) It would make clear that where there is an inconsistency between the two
27 sources of law, the Davis-Stirling Act prevails.
- 28 (2) It would list specific provisions of the Corporations Code that are entirely
29 superseded by the Davis-Stirling Act. Those provisions reflect subjects
30 where the substance of applicable Corporations Code provisions would be
31 imported into the Davis-Stirling Act. Readers would no longer need to
32 consult the Corporations Code on those matters.

13. See proposed Chapter 1 (commencing with Section 4000) of Part 5 of Division 4 of the Civil Code.

14. Civ. Code § 1373.

15. See proposed Civ. Code § 4020(a)(3).

16. See Corp. Code § 7510 *et seq.*

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NOTICE PROCEDURES

Drawing from existing law, the proposed law would standardize the procedure for the delivery of various statutory notices.

Method of Delivery

The proposed law would recognize three classes of notices and would specify the manner of delivery for each:

- (1) “Individual notice” would be delivered individually to a specific named person.¹⁷ Individual notice is appropriate where a member’s individual property interests would be affected.
- (2) “General notice” would be provided to all members and could be provided by various forms of general publication.¹⁸ General notice would be less costly than individual notice. It would be appropriate for matters of more general interest, such as the time, place, and agenda for a pending board meeting. A member who wants to be assured of receipt of a general notice could request delivery of a general notice by one of the methods authorized for delivery of an individual notice.¹⁹
- (3) A notice that is to be “delivered to the board” would be delivered in the manner specified.²⁰ This would give greater certainty as to how to communicate with the board regarding official matters.

These provisions would regularize notice delivery procedures and provide for cost savings.

Proof of Notice and Delivery Failure

The Corporations Code provides rules for proving delivery of notice of a member meeting (by affidavit) and for handling failed delivery (e.g., a mailed notice returned as undeliverable).²¹

The proposed law would generalize the substance of those provisions, with one significant change.²²

The exception relates to undeliverable mail: Under existing law, if a mailed notice is returned as undeliverable, the corporation is excused from all future notice delivery to that member, provided that the corporation keeps a copy of any notices to that member for a year.

17. See proposed Civ. Code § 4040. Individual delivery can be made electronically, if the recipient assents to that form of delivery.
18. See proposed Civ. Code § 4045.
19. See, e.g., proposed Civ. Code § 4520 (board meeting notice given by general notice, unless member requests individual notice).
20. See proposed Civ. Code § 4035.
21. Corp. Code § 7511(b).
22. See proposed Civ. Code §§ 4050(d) (proof of delivery by affidavit), 4055(a) (delivery failure).

1 That rule makes sense in a typical nonprofit corporation, where a member could
2 live anywhere. If the member moves without giving a forwarding address, the
3 corporation has no way, short of conducting an investigation at its own expense, of
4 determining where to send notice to that member.

5 A CID is different. Each member necessarily owns a unit in the CID. That
6 provides a straightforward alternative. When a mailed notice is returned as
7 undeliverable, future notices should be delivered to the separate interest owned by
8 the member.²³

9 **Date of Delivery**

10 Under existing law, some time periods are measured from the date of delivery of
11 a notice, while others are measured from the date of receipt. The proposed law
12 would provide a uniform rule. All time periods would be measured from the date
13 on which a notice is sent.²⁴ Where that could result in a response deadline of 10
14 days or fewer, the proposed law would add five days to the specified period.

15 TERMINOLOGY

16 **Parenthetical Reference**

17 The Corporations Code defines certain common procedural requirements and
18 then invokes those requirements by use of a parenthetical reference. For example,
19 Corporations Code Section 7150(b) provides in part: “Bylaws may be adopted,
20 amended, or repealed by approval of the members (Section 5034)...”²⁵ That
21 approach simplifies drafting and facilitates the use of standardized rules for
22 common procedures.

23 The proposed law takes a similar approach with regard to the rules on voting
24 thresholds²⁶ forms of notice delivery,²⁷ and the content of the member handbook.²⁸

25 **“Common Interest Development” Defined**

26 The Davis-Stirling Act defines the term “common interest development” by
27 reference to the four specific types of CID:²⁹

28 “Common interest development” means any of the following:

23. See proposed Civ. Code § 4055.

24. See *id.*

25. Corporations Code Section 5034 specifies the number of affirmative votes required in order for an action to be “approved by the members.”

26. See proposed Civ. Code §§ 4060 (approved by board), 4065 (approved by majority of all members), 4070 (approved by majority of quorum of members).

27. See proposed Civ. Code §§ 4035 (“delivered to the board”), 4040 (individual notice), 4045 (general notice).

28. See proposed Civ. Code § 4810.

29. Civ. Code § 1351(c).

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

5 That definition facilitates drafting, but is not very informative. A person who
6 wants a general understanding of what is meant by “common interest
7 development” would need to compare the definitions of the four specific types of
8 CID, in order to determine what they have in common.³⁰ In addition, a person
9 would need to consider Civil Code Section 1352, which provides that a CID must
10 have common area.

11 The proposed law would include a definition of “common interest development”
12 that states all of the substantive elements that define the term.³¹

13 **CID Types**

14 The four types of CID are distinguished primarily by the nature of the
15 homeowner’s interest in the common area and the nature of the homeowner’s
16 separate interest.

17 The proposed law restates the definitions of the different types of CIDs to
18 emphasize the essential differences.³²

19 **“Member” v. “Owner”**

20 The Davis-Stirling Act uses the terms “member” and “owner” interchangeably,
21 with about the same frequency. Neither term is defined in the Act. The Nonprofit
22 Mutual Benefit Corporation Law uses “member” exclusively.

23 In the interest of consistency, the proposed law would use the term “member”
24 exclusively. It defines that term so as to preserve the ownership aspect of
25 membership.³³

26 In addition, the definition of “member” would expressly recognize that a non-
27 owner may be granted some membership rights under an association’s governing
28 documents. Such an arrangement may arise when a development has an affiliated
29 relationship with another entity.

30 **ASSOCIATION GOVERNANCE**

31 The proposed law would include a chapter on the governance of an association
32 by its board and members.³⁴ It would include provisions relating to board

30. See Civ. Code § 1351(d) (“community apartment project”), (f) (“condominium project”), (k) (“planned development”), (m) (“stock cooperative”).

31. See proposed Civ. Code § 4100.

32. See proposed Civ. Code §§ 4105 (“community apartment project”), 4125 (“condominium project”), 4175 (“planned development”), 4190 (“stock cooperative”).

33. See proposed Civ. Code § 4160.

1 meetings, member meetings, member elections, record inspection, record keeping,
2 annual reports, director conflicts of interest, managing agents, and government
3 assistance. For the most part, those provisions would continue existing law. Any
4 significant changes to existing law are discussed below.

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6 **BOARD MEETINGS**

6 The Davis-Stirling Act includes a provision entitled the “Common Interest
7 Development Open Meeting Act.”³⁵ Though much simpler than the state and local
8 government open meeting laws,³⁶ it borrows some language from those laws and
9 has a similar thrust.

10 The CID Open Meeting Act has the following effect:

- 11 (1) Require advance notice of a meeting of the association’s board.
- 12 (2) Guarantee a member’s right to appear and speak at a meeting of the board.
- 13 (3) Define which matters may be considered by the board in closed executive
14 session.
- 15 (4) Require the preparation and availability of board meeting minutes.

16 Those rules are continued in the proposed law³⁷ with a number of minor
17 improvements, which are discussed below.

18 **Committees**

19 A board of directors may form a committee to exercise powers delegated to it by
20 the board.³⁸ It is not clear that the existing open meeting requirements apply to
21 such a committee.

22 The proposed law would expressly apply the open meeting requirements to a
23 meeting of a committee that exercises any power of the board.³⁹ If the law requires
24 openness when a board meets to exercise one of its powers, then openness should
25 also be required if the same power is exercised by a committee created by the
26 board.

27 **Adjournment to Another Time and Place**

28 The Corporations Code provides for adjournment of a board meeting to another
29 time and place.⁴⁰ That provision would be continued in the proposed law.⁴¹

34. See proposed Chapter 3 (commencing with Section 4400) of Part 5 of Division 4 of the Civil Code.

35. Civ. Code § 1363.05.

36. See Gov’t Code §§ 11120-11132 (Bagley-Keene Open Meeting Act); 54950-54963 (Ralph M. Brown Act).

37. See proposed Article 2 (commencing with Section 4500) of Part 5 of Division 4 of the Civil Code.

38. See Corp. Code §§ 7151(c)(4), 7212.

39. See proposed Civ. Code § 4560(a).

40. Corp. Code § 7211(a)(4).

1 If the meeting is adjourned for more than 24 hours, then notice of the time and
2 place at which the meeting will resume must be given to a director who was not
3 present at the time of adjournment.⁴²

4 The proposed law would also require that notice be given to members.⁴³

5 **Meeting Location**

6 Existing statutory law is silent on where a CID board meeting may be held. The
7 Department of Real Estate’s regulations include a requirement that a board
8 meeting be held within the development, unless the available meeting space is too
9 small, in which case the meeting must be held as close to the development as is
10 practicable.⁴⁴

11 The proposed law would codify that rule.⁴⁵

12 **Teleconference**

13 The Corporations Code specifically authorizes the use of teleconferencing in a
14 nonprofit mutual benefit corporation board meeting.⁴⁶ Government open meeting
15 laws also provide for teleconferencing.⁴⁷

16 The Davis-Stirling Act does not specifically address teleconferencing at a board
17 meeting. The existing definition of a meeting as “any congregation of a majority
18 of the members of the board *at the same time and place*”⁴⁸ could preclude a
19 teleconference in some cases.

20 The proposed law authorizes the use of teleconferencing in board meetings.⁴⁹ It
21 expressly provides that a director who participates in a meeting by teleconference
22 is deemed to be “present,” thus avoiding any conflict with the definitional
23 requirement that a majority of members be present in the same location. The
24 proposed law would also state basic procedural requirements that are drawn from
25 the teleconference provisions of the Corporations Code and the government open
26 meeting laws.

41. See proposed Civ. Code § 4505(b).

42. Corp. Code § 7211(a)(4).

43. See proposed Civ. Code § 4520(d).

44. 10 Cal. Code Regs. § 2792.20(b).

45. See proposed Civ. Code § 4530.

46. Corp. Code § 7211(a)(6).

47. See Gov’t Code §§ 11123(b), 54953(b).

48. Civ. Code § 1363.05(f) (emphasis added).

49. See proposed Civ. Code § 4535.

1 **Executive Session**

2 Although board meetings are generally open to the members of an association,
3 there are circumstances in which the board may meet privately, in closed
4 “executive session.”⁵⁰

5 Executive session is permitted when the board considers member discipline, an
6 assessment dispute, or a member request for an assessment payment plan.⁵¹

7 A board must meet in closed executive session when the member who is the
8 subject of a disciplinary matter requests that the matter be closed.⁵² Executive
9 session is also required when a board considers a request for a payment plan⁵³ or
10 votes to foreclose to enforce an assessment lien.⁵⁴

11 Under existing law, a member who is disputing an assessment debt does not
12 have the right to compel that the matter be discussed in executive session.
13 Arguably, the same privacy considerations that apply to member discipline, a
14 payment plan request, or a decision to foreclose, would also apply to consideration
15 of an assessment dispute.

16 The proposed law would require that an assessment dispute be considered in
17 closed executive session when requested by the member who raised the dispute.⁵⁵

18 **Board Action by Written Assent**

19 The Corporations Code allows the board to act without holding a meeting, if all
20 members of the board assent to the action in writing.⁵⁶

21 The Davis-Stirling Act does not specifically address board action by unanimous
22 written assent. However, the circulation of a written proposal to the directors for
23 their assent would not constitute a “meeting” and would therefore not trigger the
24 various open meeting requirements.

25 The proposed law would generalize the Corporations Code procedure so that it
26 applies to any homeowner association, whether incorporated or unincorporated.⁵⁷

27 **MEMBER MEETING**

28 Existing law includes a number of provisions that regulate the conduct of a
29 meeting of the membership. Some are in the Davis-Stirling Act;⁵⁸ others are in the
30 Corporations Code.⁵⁹

50. Civ. Code § 1363.05(b).

51. *Id.*

52. *Id.*

53. Civ. Code § 1367.1(c)(3).

54. Civ. Code § 1367.4(c)(2).

55. See proposed Civ. Code § 4540(b).

56. Corp. Code § 7211(b).

57. See proposed Civ. Code § 4545.

1 It would be easier for homeowners if all of the provisions relating to member
2 meetings were located in the Davis-Stirling Act. Such a change would have two
3 other benefits: (1) it would generalize the Corporations Code provisions so that
4 they also apply to an unincorporated homeowner association, and (2) it would
5 provide an opportunity to make minor improvements to procedures and drafting.

6 That is the approach taken in the proposed law.⁶⁰ Specific issues relating to the
7 proposed member meeting provisions are discussed below.

8 **Meeting Location**

9 The Corporations Code allows a member meeting to be held anywhere, provided
10 that the location is designated in the bylaws.⁶¹ If no location is designated, the
11 meeting is to be held at the “principal executive office” of the corporation.

12 The proposed law would instead require that a member meeting be held in the
13 development, if space allows. If there is no suitable meeting space, then the
14 meeting is to be held as near to the development as is practicable.⁶² That would
15 parallel the rule proposed for board meetings.⁶³

16 The proposed rule would work well in an association that is comprised mostly of
17 primary residences. It would work less well in an association in which the units
18 are primarily second homes (e.g., a condominium complex in a resort area).
19 However, in such a case it is unlikely that any single meeting location would be
20 convenient to all members. A meeting in the development itself would at least be
21 convenient to those members who are resident year-round.

22 Note too that a CID with a scattered member population could use a mailed
23 ballot in lieu of a meeting⁶⁴ or could use teleconferencing to provide satellite
24 locations for participation in the meeting.⁶⁵

25 **Teleconference**

26 The Corporations Code authorizes the use of teleconferencing in conducting a
27 member meeting.⁶⁶ The proposed law continues that policy,⁶⁷ but it does so with

58. See Civ. Code §§ 1363(d) (parliamentary procedure), (e) (notice of matters to be considered).

59. See Corp. Code §§ 7510(a) (meeting place), (b) (meeting time), (c)-(d) (court ordered meeting), (e) (special meeting), (f) (electronic participation); 7511 (meeting notice); 7512 (quorum).

60. See proposed Civ. Code §§ 4575-4620. Those provisions would supersede the comparable Corporations Code provisions. See proposed Civ. Code § 4025(b)(2).

61. Corp. Code § 7510(a).

62. See proposed Civ. Code § 4575(c).

63. See proposed Civ. Code § 4530; 10 Cal. Code Regs. § 2792.20(b).

64. See proposed Civ. Code § 4640.

65. See proposed Civ. Code § 4590.

66. Corp. Code § 7510(f).

67. See proposed Civ. Code § 4590.

1 language that is drawn from the proposed board meeting teleconferencing
2 provision.⁶⁸ Use of the same standards for both types of meetings should simplify
3 compliance with the law.

4 MEMBER ELECTIONS

5 **Sealed Ballot Voting Procedure**

6 Existing law provides a detailed mandatory procedure for the use of sealed
7 ballots in certain types of elections.⁶⁹ The proposed law would continue that
8 procedure.⁷⁰ Under the proposed law, an association could, by rule, apply the
9 sealed ballot procedure to any member election.⁷¹

10 Under the sealed ballot procedure, an anonymous ballot is sealed within an
11 anonymous envelope. That envelope is then sealed within a mailing envelope, on
12 which the identity of the member is printed.

13 The member's identity and voting rights are determined from the outside
14 envelope. The inside envelope is extracted and set aside for eventual counting of
15 the enclosed ballot. The anonymity of the ballot is preserved.

16 Vote counting is to be conducted at a properly noticed board or member
17 meeting, which must be open to the public. Any member has the right to observe
18 the process of ballot counting.⁷² This guarantee of transparency is in tension with
19 the secrecy of the balloting process, and it is not entirely clear how the two goals
20 are reconciled in practice.

21 The proposed law adds a minor clarification on that point:

22 Any member may observe the counting of ballots, but shall not be permitted to
23 observe any information that would reveal the identity of a member casting a
24 ballot.⁷³

25 **Election Inspector**

26 Existing law requires the use of a neutral election inspector to collect and count
27 ballots.⁷⁴ The proposed law would make minor clarifying changes to the rules for
28 selection of an election inspector.⁷⁵

68. See proposed Civ. Code § 4535.

69. Civ. Code § 1363.03(b).

70. See proposed Civ. Code § 4640.

71. See proposed Civ. Code § 4640(a)(5).

72. See proposed Civ. Code §§ 4650-4655.

73. See proposed Civ. Code § 4650(c).

74. Civ. Code § 1363.03(c).

75. See proposed Civ. Code § 4635.

1 **Teleconference**

2 The proposed law would permit the use of teleconferencing at a member
3 meeting.⁷⁶ As a practical necessity, a member who participates in a meeting by
4 teleconference would be required to vote orally. That special rule would supersede
5 the general sealed ballot procedure.⁷⁷ The use of teleconferencing would be
6 optional, at the discretion of the association.

7 **Campaign Activity**

8 Both the Davis-Stirling Act and the Corporations Code include provisions that
9 govern the use of association resources in campaign activity. The general principle
10 is that an association resource may not be used for campaign advocacy unless
11 equal access to the resource is provided to all advocates or candidates.⁷⁸

12 The proposed law continues those rules, with minor improvements to clarity and
13 consistency.⁷⁹

14 A provision drawn from the Corporations Code is included in the proposed law,
15 to make clear that an association is not liable for the publication of information
16 that the association is required to publish pursuant to the equal access rules.⁸⁰

17 **Voting Rights**

18 The Davis-Stirling Act is generally silent on the number of votes that a member
19 may cast if the member owns more than one separate interest or shares ownership
20 of a separate interest with other members.

21 The proposed law includes default rules on those issues,⁸¹ which are drawn from
22 the Corporations Code⁸² and Department of Real Estate regulations.⁸³

23 **Action by Written Consent**

24 Under the Corporations Code, any action that requires the approval of the
25 members may be approved by the unanimous written consent of the members.⁸⁴
26 This provides a useful alternative where a proposal is entirely uncontroversial. The
27 proposed law would include the same rule.⁸⁵

76. See proposed Civ. Code § 4590.

77. *Id.*

78. Civ. Code §§ 1363.03(a)(1)-(2), 1363.04.

79. See proposed Civ. Code § 4670.

80. See Corp. Code § 7525; proposed Civ. Code § 4670(b).

81. See proposed Civ. Code § 4675.

82. Corp. Code §§ 7312(d), 7611(a).

83. 10 Cal. Code Regs. § 2792.18.

84. Corp. Code § 7516.

85. See proposed Civ. Code § 4680.

1 **County Model**

2 Existing law provides that an association “shall use as a model those procedures
3 used by California counties for ensuring confidentiality of voter absentee
4 ballots....”⁸⁶

5 That requirement is problematic. There appears to be no single statewide
6 standard that can serve as a model. Instead, the election official in each county
7 seems to be charged with developing local procedures to preserve the
8 confidentiality of absentee ballots.⁸⁷ The proposed law does not continue the
9 “county model” requirement.

10 **Judicial Enforcement**

11 The Corporations Code⁸⁸ and the Davis-Stirling Act⁸⁹ provide different and
12 inconsistent rules for judicial enforcement of the member election laws.

13 The proposed law would continue the Davis-Stirling Act provision,⁹⁰ with the
14 addition of some beneficial language from the Corporations Code,⁹¹ and state
15 expressly that the Corporations Code provision is inapplicable.⁹² That will help to
16 avoid uncertainty as to which law controls.

17

INSPECTION OF RECORDS

18 An important check on association governance is a member’s right to inspect
19 association records. This allows a member to monitor how the association’s
20 elected representatives are discharging their duties and spending association
21 money.

22 **Existing Law**

23 Until recently, record inspection rights were addressed exclusively by the
24 Corporations Code.⁹³ It provides for member access to the membership list and
25 “accounting books and records” of the association, as well as minutes of meetings.
26 The right to inspect the membership list is limited to a noncommercial use of the

86. Civ. Code § 1363.03(e).

87. See Elec. Code § 3017(b).

88. Corp. Code § 7616.

89. Civ. Code § 1363.09.

90. See proposed Civ. Code § 4685.

91. Proposed Civil Code Section 4685(b) would adopt the expedited hearing and notice provisions of Corporations Code Section 7616(c). The second sentence of proposed Civil Code Section 4685(d) would borrow language presuming the validity of an election that is not challenged in the time provided for a challenge.

92. See proposed Civ. Code § 4025(b)(3).

93. See Corp. Code §§ 8330-8338.

1 list that is reasonably related to the member’s interest as a member.⁹⁴ Inspection
2 may be limited in order to protect members’ privacy rights.⁹⁵ The inspection right
3 can be enforced in the superior court.⁹⁶ Costs and expenses, including reasonable
4 attorney’s fees, may be awarded to the member if the association acted unlawfully
5 in denying inspection.⁹⁷

6 The Davis-Stirling Act expressly incorporates those provisions.⁹⁸ As a result,
7 they apply to any association, even one that is unincorporated.

8 In 2003, the Legislature added Civil Code Section 1365.2 to further elaborate on
9 record inspection rights.⁹⁹ That section was repealed and replaced with another
10 section of the same number in 2005.¹⁰⁰ The new section added additional record
11 inspection rules.

12 The proposed law continues existing law on member record inspection rights,
13 except as discussed below.¹⁰¹

14 **Preemption of Corporations Code**

15 The Corporations Code provisions on record inspection are expressly applicable
16 to a CID.¹⁰² However, the main Davis-Stirling Act provision on record inspection
17 states that it supersedes two of those Corporations Code provisions, to the extent
18 of any inconsistency with those sections.¹⁰³

19 Those rules of application are potentially confusing. There is a high degree of
20 overlap between the Davis-Stirling Act and the Nonprofit Mutual Benefit
21 Corporation Law, combined with some uncertainty as to which provisions of the
22 Corporations Code are superseded as “inconsistent” with the Davis-Stirling Act.

23 The proposed law would completely preempt the Corporations Code provisions
24 on record inspection.¹⁰⁴ This would provide a single clear source of law on the
25 topic. It should not result in significant substantive change in the law, as most of
26 the substance of the Corporations Code provisions is also addressed by the Davis-
27 Stirling Act.

94. Corp. Code § 8338.

95. Corp. Code § 8332.

96. Corp. Code § 8336.

97. Corp. Code § 8337.

98. See Civ. Code § 1363(f).

99. 2003 Cal. Stat. ch. 375.

100. 2005 Cal. Stat. ch. 458.

101. See proposed Civ. Code §§ 4700-4750.

102. Civ. Code § 1363(f).

103. Civ. Code § 1365.2(m).

104. See proposed Civ. Code § 4025(b)(4).

1 **Scope of Inspection Right**

2 The proposed law would broaden the scope of the member record inspection
3 right to include the governing documents of the association.¹⁰⁵

4 **Redaction**

5 The Davis-Stirling Act provides some protection against identity theft, fraud,
6 and invasion of privacy by listing certain types of information that an association
7 may redact before allowing inspection of a record.¹⁰⁶

8 Under existing law, redaction of personal information is optional. That is
9 problematic, because a failure to redact personal information can result in liability
10 for the person who provides access to the unredacted record.¹⁰⁷ The proposed law
11 would make redaction mandatory.¹⁰⁸

12 Existing law requires an association to withhold records that are privileged as a
13 matter of law.¹⁰⁹ The proposed law would continue that rule.¹¹⁰ Existing law also
14 provides that a contract for maintenance, management, or legal services is not
15 privileged.¹¹¹ The proposed law would continue that limit on evidentiary
16 privileges, but only with respect to a member's right to inspect association records.
17 Any evidentiary privilege that is otherwise applicable to such contracts would
18 continue to apply with respect to third parties.¹¹²

19 Under existing law, an association is entitled to be reimbursed for a specified
20 amount of costs incurred as a result of redacting records that are classified as
21 "enhanced association records." The proposed law would generalize that
22 requirement so that an association would be reimbursed for any required redaction,
23 regardless of the record being redacted.¹¹³

24 With that change, the special classification of some records as "enhanced"
25 would be eliminated. That change would have no substantive effect, except with
26 respect to the reimbursement rule discussed above. However, the change would
27 eliminate an existing ambiguity about the application of other record provisions
28 that, by their terms, apply to "association records" but do not expressly apply to
29 "enhanced association records."¹¹⁴

105. See proposed Civ. Code § 4700(a)(1).

106. Civ. Code § 1365.2.

107. Civ. Code § 1365.2(d)(3); proposed Civ. Code § 4745.

108. See proposed Civ. Code § 4710.

109. Civ. Code § 1365.2(d)(1)(C).

110. See proposed Civ. Code § 4700(b)(2).

111. Civ. Code § 1365.2(d)(1)(E)(iv).

112. See proposed Civ. Code § 4700(b)(2) ("*For the purposes of this section, a contract to provide maintenance, management, or legal services to an association is not privileged.*") (emphasis added).

113. See proposed Civ. Code § 4720.

114. See, e.g., Civ. Code § 1365.2(b)(2), (c)(1)-(3), (d)(1), (e)(1)-(2), (f), (i), (j).

1 **Judicial Enforcement**

2 Existing law provides a number of different mechanisms for judicial
3 enforcement of member record inspection and record privacy rights.¹¹⁵ The
4 proposed law combines and simplifies the substance of those provisions, as
5 follows:

- 6 • Proposed Civil Code Section 4725 states substantive limitations on the use
7 of association records and authorizes the association to deny a request when
8 it reasonably believes that the records will be misused or that disclosure
9 would violate a member’s constitutional rights.
- 10 • Proposed Civil Code Section 4730 provides a procedure for denial of a
11 record inspection request. It requires a formal notice of denial, which
12 includes an offer to use the association’s internal dispute resolution process.
13 If the member objects to the denial decision, the association must either
14 comply with the request or commence a proceeding to set aside the request.
15 If the member does not object in the time provided, then the request expires
16 and the association need do nothing further.
- 17 • Proposed Civil Code Section 4735 authorizes a member to bring an action in
18 the superior court to enforce a record inspection request. The action would
19 turn on a small number of fairly straightforward factual questions: is the
20 requested record subject to inspection, did the requesting member follow
21 procedures, is an action pending to set the request aside, or was the request
22 in fact set aside by the court? The action may be filed in the small claims
23 division. The court may impose a civil penalty of up to \$500 against an
24 association that withholds records unreasonably.
25 If the court finds that the requested disclosure would violate member
26 constitutional rights or that there is a reasonable likelihood that disclosure
27 would result in misuse of the records, the court may modify or set aside the
28 request. The court may toll any association deadline, postpone an
29 association meeting, or order any other relief that may be appropriate under
30 the circumstances. The court may award costs and expenses against either
31 party, under specified conditions.
- 32 • Proposed Civil Code Section 4740 provides for an action to enjoin the
33 improper use of records and award damages for harms that result from
34 misuse. An association that prevails under the section would be awarded
35 costs and expenses.

115. See Civ. Code §§ 1365.2(e) (action for damages resulting from misuse of records), (f) (action to enforce inspection right and impose penalty); Corp. Code §§ 8331(a) (action to set aside record request), (j) (writ of mandate to compel production of membership list), 8332 (petition to limit production of membership list on constitutional grounds), 8335 (action to postpone meeting on grounds of delay in complying with record request), 8336 (action to enforce valid inspection request), 8337 (award of costs and attorney’s fees to members where noncompliance unjustified), 8338 (action for damages resulting from misuse of membership list).

1 RECORD KEEPING

2 **Duty to Maintain**

3 The Corporations Code requires that the board of directors maintain accounting
4 records, meeting minutes, and the membership list.¹¹⁶

5 Under the proposed law,¹¹⁷ the list of records that must be maintained would be
6 expanded to include all of the types of records that are subject to member
7 inspection and other types of business records that should be maintained by any
8 well-run nonprofit organization.

9 In developing the proposed record retention requirements, the Commission
10 looked to common practice within the nonprofit sector. There is a wide range of
11 advice available on the topic, including some that is specific to homeowner
12 associations.¹¹⁸ The proposed law is generally consistent with that body of advice.

13 **Record Retention Period**

14 A provision requiring the maintenance of specified records raises the question of
15 how long those records must be kept. That question is not answered in the
16 Corporations Code.

17 The Davis-Stirling Act provides a partial answer. It sets out periods during
18 which records must be made available to members for inspection:

19 The time periods for which specified records shall be provided is as follows:

20 (1) Association records shall be made available for the current fiscal year and
21 for each of the previous two fiscal years.

22 (2) Minutes of member and board meetings shall be permanently made
23 available. If a committee has decision making authority, minutes of the meetings
24 of that committee shall be made available commencing January 1, 2007, and shall
25 thereafter be permanently made available.¹¹⁹

26 An association director who reads that provision might assume that it states the
27 only applicable requirement for retention of the specified records. That would be a
28 mistake. Some of the listed documents are subject to specific retention
29 requirements that exceed three years.¹²⁰ In addition, documents that could be
30 relevant in future litigation should be maintained for at least as long as the
31 applicable statute of limitations.¹²¹ As a practical matter, the governing documents

116. Corp. Code § 8320.

117. Civ. Code §4775.

118. See, e.g., Walter Grady, *Record Retention*, Echo Journal, March 2003.

119. Civ. Code § 1365.2(i).

120. See, e.g., 22 Cal. Code Regs. § 1085-2 (employment records maintained for four years).

121. See, e.g., Code Civ. Proc. §§ 318 (five year period for action relating to title to real property), 337(1) (four year period for action on written contract), 337.1 (four year period for action on patent construction defect), 337.15 (ten year period for action on latent construction defect), 338(a) (three year period for action on liability created by statute), 338(b) (three year period for trespass or injury to real property),

1 and records relating to their amendment should be kept permanently, as they are
2 fundamental to the governance of the association and the rights of members.

3 The proposed law would provide clear record retention rules. It identifies certain
4 types of records that must be retained permanently.¹²² Most other records that an
5 association is required to maintain would be retained for at least four years.¹²³ That
6 should satisfy retention requirements imposed by other law, most of which require
7 that a document be preserved for three to four years.

8 ANNUAL REPORTS

9 Existing law requires that an association distribute three different annual reports
10 to its membership:

- 11 (1) A pro forma operating budget must be delivered from 30 to 90 days before
12 the end of the fiscal year.¹²⁴ A number of other provisions require that
13 specified information be distributed with the budget.¹²⁵
- 14 (2) An annual financial report must be distributed within 120 days after the end
15 of the fiscal year.¹²⁶ In an association with \$75,000 or more in annual gross
16 income, the report must include a CPA review of the association's financial
17 statement.¹²⁷
- 18 (3) A nonprofit "community service organization" that provides services to an
19 association and receives 10 percent or more of its funding from the
20 association or its members is required to provide an annual financial
21 statement to the association.¹²⁸

22 For the most part, the proposed law would simplify those requirements without
23 making substantive changes to existing law. Significant changes are described
24 below.

338(d) (three year period for action for fraud or mistake), 338(g) (three year period for slander of title), 343 (four year period for actions not otherwise provided for), 359 (three year period for action against director or member of corporation for penalty, forfeiture, or liability created by law).

122. See proposed Civ. Code § 4780(b).

123. See proposed Civ. Code § 4780(a). There is a special rule for retention of ballots cast in a member election. See proposed Civ. Code § 4780(c).

124. Civ. Code § 1365(a).

125. 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).

126. Corp. Code §§ 8321-8322

127. Civ. Code § 1365(b).

128. Civ. Code § 1365.3.

1 **Notice of Availability**

2 Existing law recognizes that there may be members who are not interested in
3 receiving every report. For example, a summary of the pro forma operating budget
4 may be distributed rather than the budget itself.¹²⁹ The summary must include
5 instructions on how to request a copy of the complete budget. A member who
6 requests the budget will be provided with a copy at no cost.

7 Similarly, the Corporations Code provides for distribution of notice of the
8 availability of a nonprofit mutual benefit corporation’s annual report, rather than
9 the report itself.¹³⁰ Again, instructions are to be provided on how to obtain a
10 complete copy of the report at no cost.

11 The proposed law would generalize that approach so that it applies to all of the
12 annual reports.¹³¹ For each type of report, the association would only be required
13 to deliver notice of availability. However, any member who requests the full report
14 would receive it free of charge. An association would also be free to distribute the
15 complete report, rather than a notice of its availability, if that is the preferred
16 approach.

17 **Member Handbook**

18 Over time, the law has been amended to add several new disclosures to the
19 mailing of the annual budget report. The proposed law would combine the
20 nonbudgetary disclosures into a new type of report, the “member handbook.”¹³²
21 This would not diminish the information available to members, but would
22 repackage it into more thematically coherent publications. This should increase the
23 efficiency of the “notice of availability” approach described above, by offering
24 members clearer choices as to the types of information they wish to receive.

25 **CONFLICTS OF INTEREST**

26 The proposed law would continue a provision that incorporates Corporations
27 Code Section 310, governing contracts in which a director has a financial
28 interest.¹³³

29 In addition, the proposed law would add a new set of rules requiring recusal of a
30 director in the most common situations in which the director would have a
31 personal interest in a board decision.¹³⁴ The proposed law would make clear that

129. Civ. Code § 1365(c).

130. Corp. Code § 8321.

131. See proposed Civ. Code § 4820.

132. See proposed Civ. Code § 4810.

133. See proposed Civ. Code § 4855(a).

134. See proposed Civ. Code § 4855(b).

1 the recusal rules are not intended to be exclusive. Other provisions of law or the
2 governing documents may also govern director conflicts of interest.¹³⁵

3 MANAGING AGENT

4 Existing law generally prohibits a managing agent from commingling funds
5 from more than one association. However, there is an exception for funds that
6 were commingled prior to February 26, 1990, provided certain specified
7 safeguards are in place.¹³⁶

8 The proposed law would eliminate that grandparent clause. Beginning on the
9 operative date of the proposed law, all commingling of funds would be
10 prohibited.¹³⁷

11 DUE PROCESS HEARING

12 Existing law requires that a member have notice and an opportunity to be heard
13 by the board before the board disciplines the member for a violation of the
14 governing documents.¹³⁸

15 The proposed law would make minor improvements to the hearing requirements
16 and would generalize the requirement so that a hearing is also required before the
17 board assesses a charge against a member for having caused damage to association
18 property.¹³⁹

19 RESPONSIBILITY FOR VIOLATION OF THE
20 GOVERNING DOCUMENTS

21 Existing law provides that a member is responsible for a violation of the
22 governing documents by the member's guest or invitee.¹⁴⁰ The proposed law
23 would restate that rule to make clear that a member is also responsible for a tenant
24 or a resident of the member's unit (such as a family member who is not a member
25 of the association).¹⁴¹

135. See proposed Civ. Code § 4855(c).

136. Civ. Code § 1363.2(d).

137. See proposed Civ. Code § 4905.

138. Civ. Code § 1363(h).

139. See proposed Civ. Code § 5005.

140. Civ. Code § 1363(g).

141. See proposed Civ. Code § 5015.

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GOVERNMENT ASSISTANCE

The proposed law would continue two sections that relate to government involvement in the governance of CIDs, without substantive change.¹⁴²

In addition, the proposed law would add a new provision, authorizing the Attorney General to act on certain complaints regarding CID governance.¹⁴³ That provision would be consistent with the spirit of existing law, as discussed below.

The Corporations Code currently authorizes the Attorney General to act on a complaint that a nonprofit mutual benefit corporation is not complying with the Corporations Code provisions governing member meetings, voting, and record inspection.¹⁴⁴

However, there is a trend (which the proposed law would continue) to move the substance of Corporations Code provisions into the Davis-Stirling Act. As a result, the authority of the Attorney General to oversee *violations of the Corporations Code* has diminished relevance to CIDs.

The proposed law would restore that authority to its original dimension, by adding a provision that expressly authorizes the Attorney General to act on complaints regarding a violation of the Davis-Stirling Act provisions on member meetings, voting, and record inspection.¹⁴⁵ As under existing law, the Attorney General’s authority would be largely discretionary.

DISPUTE RESOLUTION

Existing law includes a number of provisions that relate to the resolution of a dispute within a CID. For the most part, those provisions would be continued without substantive change. Significant changes are discussed below.

Internal Dispute Resolution

Existing law requires that an association provide an internal dispute resolution procedure for use by a homeowner who has a dispute with the association.¹⁴⁶ The point of the internal dispute resolution process is to make sure that a homeowner has an opportunity to meet with a representative of the board and explain his or her side of a dispute, in the hopes that the problem can be resolved by mutual agreement.

142. See Civ. Code §§ 1363.001 (online director training course), 1363.6 (Secretary of State registry of CIDs). Those sections would be continued as proposed Civil Code Sections 4950 and 4960, respectively.
143. See proposed Civ. Code § 4955.
144. Corp. Code § 8216.
145. See proposed Civ. Code § 4955.
146. See Civ. Code §§ 1363.810-1363.850.

1 The provision requiring a due process hearing before a member is disciplined or
2 assessed for damage to the common area would serve the same purpose, by
3 providing an opportunity to be heard by the board.¹⁴⁷

4 In order to avoid procedural redundancy, the proposed law would make clear
5 that a matter resolved through a due process hearing could not be revisited under
6 the internal dispute resolution procedure.¹⁴⁸

7 **Civil Action to Enforce Statutory CID Law**

8 There are a number of existing provisions that provide for a civil action to
9 enforce a specific provision of the Davis-Stirling Act.¹⁴⁹

10 Those provisions cover much, but not all of CID statutory law. That incomplete
11 coverage may create an implication that judicial enforcement is unavailable except
12 where it is specifically authorized. For example, the Davis-Stirling Act provides
13 that an association is responsible for maintenance of the common area,¹⁵⁰ but there
14 is no specific provision authorizing a civil action to enforce that obligation. It is
15 therefore not clear whether such an action may be brought.

16 The Commission sees no policy reason to authorize judicial enforcement of the
17 specific provisions listed above, while denying judicial enforcement of other
18 important provisions of the Davis-Stirling Act (e.g., an owner's right of access to a
19 separate interest, rulemaking procedure, architectural review procedure, etc.). The
20 proposed law would generally authorize a civil action to enforce any provision of
21 the Davis-Stirling Act.¹⁵¹

22 **RESERVE FUNDS**

23 **Background**

24 The distinguishing feature of a common interest development is that the owners
25 of separate interests also have an interest in common property (either directly or
26 through an entity created for that purpose). The homeowner association exists, in
27 large part, to maintain that common property.

28 Ideally, an association will set aside funds in reserve, to provide for future
29 maintenance, repair, and replacement costs as they come due. If an association
30 fails to do so, the members may need to pay a special assessment in order to pay
31 for a needed repair or the replacement of a failed component. A large unexpected

147. See proposed Civ. Code §§ 5000-5015.

148. See proposed Civ. Code § 5050(c).

149. See, e.g., §§ 1353.5 (display of U.S. flag), 1363.09 (election and board meeting), 1365.2(f) (record inspection), 1368(d) (seller disclosure); Corp. Code §§ 7510(c)-(d) (member meeting), 7515, 8323 (annual report), 8336 (record inspection).

150. Civ. Code § 1364(a).

151. See proposed Civ. Code § 5130.

1 assessment can pose a serious financial hardship for an owner, especially one who
2 is retired and cannot easily make up the loss.

3 An unfunded reserve can also lead to unexpected liability for a new purchaser. A
4 prospective purchaser who does not realize that the association has insufficient
5 reserves to cover looming repair costs cannot take those costs into account in
6 negotiating a purchase price.

7 Underfunding of reserves appears to be common. One survey of 687
8 associations found an average funding rate of 54%. That is, the surveyed
9 associations only had 54% of the funds in reserve that would be needed for future
10 repair and replacement costs.¹⁵²

11 **Reserve Study**

12 Existing law does not require that an association fully fund its reserves. Instead,
13 the law requires study and disclosure. An association must prepare an annual
14 reserve study, which identifies its future repair responsibilities and compares the
15 cost of those repairs to the amount set aside in the reserve fund. This serves two
16 important purposes:

- 17 (1) It educates the board and the membership about the adequacy of the
18 association's reserve fund.
- 19 (2) It provides information that a prospective buyer can use to assess the hidden
20 cost of purchasing a unit in a CID with underfunded reserves.

21 The current rules on reserve funding are spread across multiple provisions.¹⁵³ It
22 is difficult to read those sections together and get a clear picture of what is
23 required.

24 The proposed law would restate the substance of the existing requirements in a
25 significantly simplified form.¹⁵⁴

26 **Reserve Funding Plan**

27 An association must also adopt a "reserve funding plan." The plan would
28 "include a schedule of the date and amount of any change in regular or special
29 assessments that would be needed to sufficiently fund the reserve...."¹⁵⁵

30 The proposed law would restate the substance of the existing requirements in a
31 significantly simplified form.¹⁵⁶

152. See T. Berding, *The Uncertain Future of Community Associations, Thoughts on Financial Reform* 25 (January 2005).

153. See Civ. Code §§ 1365(a)(2), 1365.2.5, 1365.5.

154. See proposed Civ. Code § 5555.

155. See Civ. Code §§ 1365(a)(3)-(4), 1365.5(e)(5).

156. See proposed Civ. Code § 5560.

1 ASSESSMENTS

2 An association is required to impose assessments sufficient to perform its
3 obligations. However, an assessment may not exceed the amount required to
4 accomplish the purpose for which it is assessed.¹⁵⁷

5 **Assessment Increase**

6 Under existing law, an association may increase its assessments by any amount
7 that is required to meet its obligations, even if the governing documents purport to
8 limit assessment increases.¹⁵⁸ However, an increase above a certain amount must
9 be approved by the members.¹⁵⁹ The provision establishing those rules is poorly
10 phrased, but legislative history makes its meaning clear.¹⁶⁰

11 The proposed law restates those rules to improve their clarity, without changing
12 their substance.¹⁶¹

13 **Assessment Collection**

14 Assessment collection is governed by several complex and partially overlapping
15 sections.¹⁶²

16 The proposed law regroups the material by subject matter, and presents it as a
17 series of relatively short sections that roughly track the order of the procedural
18 steps involved in collecting an overdue assessment.¹⁶³

19 **Application Dates**

20 The existing assessment collection provisions have differing application dates:

- 21 • Civil Code Section 1367 applies to a lien created on or after January 1,
22 1986, and before January 1, 2003.
- 23 • With one exception, Civil Code Section 1367.1 applies to a lien created on
24 or after January 1, 2003. A requirement that the board make the decision to
25 record a lien applies on or after January 1, 2006.
- 26 • Civil Code Section 1367.4 applies to a lien created on or after January 1,
27 2006. However, Section 1367.1 is expressly “subordinate to” Section

157. See Civ. Code §§ 1366(a), 1366.1; proposed Civ. Code § 5575.

158. Civ. Code § 1366(b).

159. *Id.*

160. See Senate Housing and Urban Affairs Committee Analysis of AB 279 (July 1, 1987) (on file with Commission); Letter from Senate Housing and Urban Affairs Committee to Senator Leroy F. Greene (August 20, 1987) (on file with Commission). See also C. Sproul and K. Rosenberry, *Advising California Common Interest Communities* § 5.4, at 283-84 (Cal. Cont. Ed. Bar 2006).

161. See proposed Civ. Code § 5580.

162. See Civ. Code §§ 1365.1, 1366.2, 1366.2.7, 1367, 1367.1, 1367.4, 1367.5.

163. See proposed Civ. Code §§ 5600-5675.

1 application of common interest development law to a stock cooperative as a
2 separate study.

3 CONSTRUCTION DEFECT LITIGATION

4 Existing law includes fairly lengthy provisions setting out procedural
5 prerequisites to an association filing a construction defect lawsuit against a
6 developer or builder.¹⁷⁰ The proposed law would leave those provisions unchanged
7 to the maximum extent possible. The section numbers would change and cross-
8 references would be updated, but no other changes would be made.¹⁷¹

9 DEFERRED OPERATION

10 The proposed law would have a one-year deferred operative date. That would
11 give practitioners time to adjust to the new organization of the law. It would also
12 provide an opportunity for a follow-up bill to coordinate the proposed law with
13 any changes to the law that are made in the same year that the proposed law is
14 enacted.

15 FURTHER STUDY

16 In the course of developing the proposed law, the Commission received a
17 number of suggestions for substantive changes to existing law. Most were too
18 substantive for inclusion in a reform of this type. However, the Commission noted
19 all of the suggestions and will study them on an ongoing basis.

170. Civ. Code §§ 1375-1375.1.

171. See proposed Civ. Code §§ 6200-6215.

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PROPOSED LEGISLATION

1 **Civ. Code §§ 4000-6215 (added). Common Interest Developments**

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

4 **PART 5. COMMON INTEREST DEVELOPMENTS**

5 **CHAPTER 1. PRELIMINARY PROVISIONS**

6 **Article 1. General Provisions**

7 **§ 4000. Short title**

8 4000. This part shall be known and may be cited as the Davis-Stirling Common
9 Interest Development Act.

10 **Comment.** Section 4000 continues former Section 1350 without change.

11 **§ 4005. Effect of headings**

12 4005. Division, part, title, chapter, and article headings do not in any manner
13 affect the scope, meaning, or intent of this part.

14 **Comment.** Section 4005 continues former Section 1350.5 without substantive change. It is a
15 standard provision found in many codes. See, e.g., Evid. Code § 5; Fam. Code § 5; Prob. Code §
16 4.

17 **§ 4010. Continuation of prior law**

18 4010. (a) A provision of this part, insofar as it is substantially the same as a
19 previously existing provision relating to the same subject matter, shall be
20 considered as a restatement and continuation thereof and not as a new enactment,
21 and a reference in a statute to the provision of this part shall be deemed to include
22 a reference to the previously existing provision unless a contrary intent appears.

23 (b) A reference in an association's governing documents, to a former provision
24 that is restated and continued in this part, is deemed to include a reference to the
25 provision of this part that restates and continues the former provision.

26 **Comment.** Section 4010 is new. Subdivision (a) is a standard provision found in many codes.
27 See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a); Veh. Code §
28 2. See also Gov't Code §§ 9604 (construction of restatements and continuations), 9605
29 (construction of amended statutory provision). The last clause makes clear that a statutory
30 reference to a provision within this part includes a reference to the former law from which it is
31 drawn. *Cf.* Gov't Code § 9604 (reference to previously existing provision deemed reference to
32 restatement or continuation).

33 Subdivision (b) adapts the general principle of subdivision (a) to a statutory reference in an
34 association's governing documents.

1 A number of terms and phrases are used in the Comments to the sections of this part to indicate
 2 the sources of the sections and to describe how they compare with prior law. The following
 3 discussion is intended to provide guidance in interpreting the terminology most commonly used
 4 in the Comments.

5 (1) *Continues without change.* A new provision “continues” a former provision “without
 6 change” if the two provisions are identical or nearly so. In some cases, there may be insignificant
 7 technical differences, such as where punctuation is changed without a change in meaning. Some
 8 Comments may describe the relationship by simply stating that the new provision “continues” or
 9 is “the same as” a former provision, or is “the same as” a provision of a uniform act.

10 (2) *Continues without substantive change.* A new provision “continues” a former provision
 11 “without substantive change” if the substantive law remains the same, but the language differs to
 12 an insignificant degree.

13 (3) *Restates without substantive change.* A new provision “restates” a former provision
 14 “without substantive change” if the substantive law remains the same but the language differs to a
 15 significant degree. Some Comments may describe the new provision as being the “same in
 16 substance.”

17 (4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,”
 18 the Comment may say that the former provision is continued or restated, but also note the specific
 19 differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

20 (5) *Generalizes, broadens, restates in general terms.* A new provision may be described as
 21 “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This
 22 description means that a limited rule has been expanded to cover a broader class of cases.

23 (6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new
 24 provision deals with the same subject as the former provision, but treats it in a significantly
 25 different manner.

26 (7) *New.* A provision is described as “new” where it has no direct source in prior statutes.

27 (8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for
 28 a new provision, typically a source other than California statutes. For example, a provision may
 29 be “drawn from” a uniform act, model code, or the statutes of another state. In these cases, it may
 30 be useful to consult any available commentary or interpretation of the source from which the new
 31 provision is drawn for background information.

32 (9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has not
 33 previously been enacted into statutory law.

34 (10) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular
 35 rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under
 36 prior law was doubtful or contradictory.

37 (11) *Statement in Comment that section is “comparable” to another section.* A Comment may
 38 state that a provision is “comparable” to another provision. If the Comment to a section notes that
 39 another section is “comparable,” that does not mean that the other section is the same or
 40 substantially the same. The statement is included in the Comment so that the statute user is
 41 alerted to the other section and can review the cases under that section for possible use in
 42 interpreting the section containing the statement in the Comment.

43 § 4015. Application of part

44 4015. (a) This part applies to a common interest development.

45 (b) Nothing in this part may be construed to apply to a development that does
 46 not include common area.

47 **Comment.** Subdivision (a) of Section 4015 continues the first clause of former Section 1352
 48 without substantive change. The part of former Section 1352 that is not continued in this section
 49 is continued in Section 6000 (creation of common interest development).

50 Subdivision (b) continues former Section 1374 without substantive change.

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

1 **§ 4020. Nonresidential development**

2 4020. (a) The following provisions do not apply to a common interest
3 development that is limited to industrial or commercial uses by zoning or by a
4 declaration of covenants, conditions, and restrictions that is recorded in the official
5 records of each county in which the common interest development is located:

- 6 (1) Section 4025.
- 7 (2) Section 4620.
- 8 (3) Article 3 (commencing with Section 4625) of Chapter 3.
- 9 (4) Article 7 (commencing with Section 4800) of Chapter 3.
- 10 (5) Article 2 (commencing with Section 5510) of Chapter 5.
- 11 (6) Article 3 (commencing with Section 5550) of Chapter 5.
- 12 (7) Subdivision (b) of Section 5575.
- 13 (8) Section 5580.
- 14 (9) Section 5900.
- 15 (10) Article 2 (commencing with Section 5825) of Chapter 7.
- 16 (11) Section 5775.
- 17 (12) Article 5 (commencing with Section 6100) of Chapter 8.

18 (b) The Legislature finds that the provisions listed in subdivision (a) are
19 appropriate to protect purchasers in residential common interest developments but
20 may not be necessary to protect purchasers in commercial or industrial
21 developments. Those provisions could result in unnecessary burdens and costs for
22 nonresidential developments.

23 **Comment.** Section 4020 continues former Section 1373 without substantive change, except
24 that a nonresidential common interest development is now exempt from the provisions of this part
25 that govern member election procedures.

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

27 **§ 4025. Application of Corporations Code**

28 4025. (a) Except as otherwise provided, an association that is incorporated is
29 governed by this part and by the Corporations Code.

30 (b) The following provisions of the Corporations Code do not apply to an
31 association, unless a provision of this part expressly provides otherwise:

- 32 (1) Sections 5211 and 7211.
- 33 (2) Chapter 5 (commencing with Section 5510) of Part 2 of, and Chapter 5
34 (commencing with Section 7510) of Part 3 of, Division 2.
- 35 (3) Sections 5610, 5611, 5612, 5615, 5617, 7610, 7611, 7612, 7614, and 7616.
- 36 (4) Chapter 13 (commencing with Section 6310) of Part 2 of, and Chapter 13
37 (commencing with Section 8310) of Part 3 of, Division 2.

38 (c) An association that is not incorporated is governed by this part and by any
39 provision of the Corporations Code that is applicable pursuant to this part.

40 (d) If a provision of this part conflicts with a provision of the Corporations
41 Code, the provision of this part prevails to the extent of the inconsistency.

42 **Comment.** Section 4025 is new.

1 Subdivision (b) lists provisions of the Nonprofit Public Benefit Corporation Law and the
2 Nonprofit Mutual Benefit Corporation Law that are entirely superseded by the provisions of this
3 part.

4 Subdivision (c) makes clear that this part may apply specified provisions of the Corporations
5 Code to an association that is unincorporated. See, e.g., Section 4405(a)(2).

6 See also Section 4080 (“association”).

7 **§ 4030. Construction of zoning ordinance**

8 4030. Unless a contrary intent is clearly expressed, a local zoning ordinance is
9 construed to treat like structures, lots, parcels, areas, or spaces in like manner
10 regardless of whether the common interest development is a community apartment
11 project, condominium project, planned development, or stock cooperative.

12 **Comment.** Section 4030 continues former Section 1372 without substantive change.

13 See also Sections 4100 (“common interest development”), 4105 (“community apartment
14 project”), 4125 (“condominium project”), 4175 (“planned development”), 4190 (“stock
15 cooperative”).

16 **§ 4035. “Delivered to the board”**

17 4035. If a provision of this part requires that a document be “delivered to the
18 board” the document shall be delivered by one of the following methods:

19 (a) By first-class mail, postage prepaid, to the person designated in the member
20 handbook (Section 4810) to receive documents on behalf of the association. If no
21 person has been designated to receive documents, the document shall be delivered
22 to the president or secretary of the association.

23 (b) By personal delivery to a director at a meeting of the board.

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

26 See also Sections 4080 (“association”), 4085 (“board”), 4170 (“person”).

27 **§ 4040. “Individual notice”**

28 4040. (a) If a provision of this part requires “individual notice,” the notice shall
29 be delivered to the person to be notified by one of the following methods:

30 (1) Personal delivery.

31 (2) First-class mail, postage prepaid, addressed to the person at the address last
32 shown on the books of the association or otherwise provided by the person.

33 (3) E-mail, facsimile, or other electronic means, if the person has agreed to that
34 method of delivery.

35 (4) Any other method of delivery that is reasonably calculated to provide actual
36 notice to the person.

37 (b) A member may request in writing that a notice to that member be sent to up
38 to two different addresses.

39 (c) For the purposes of this section, a provision of the operating rules, articles, or
40 bylaws of the association that provides for a particular method of delivery does not
41 constitute agreement by a member of the association to that method of delivery.

42 **Comment.** Section 4040 is new.

1 Subdivision (b) generalizes former Sections 1365.1(c) and 1367.1(k) without substantive
2 change.

3 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
4 4165 (“operating rule”), 4170 (“person”).

5 **§ 4045. “General notice”**

6 4045. (a) If a provision of this part requires “general notice,” the notice shall be
7 provided to all members by one or more of the following methods:

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

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

11 (3) Posting in a location that is accessible to all members, including on an
12 Internet website, if the location has been designated in the member handbook
13 (Section 4810) for the posting of general notices by the association.

14 (4) Publication in a periodical that is circulated primarily to members of the
15 association.

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

19 (b) Notwithstanding subdivision (a), if a member requests that general notice to
20 the member be delivered as an individual notice, a general notice to the member
21 shall be delivered as an individual notice (Section 4040). The option provided in
22 this subdivision shall be described in the member handbook (Section 4810).

23 **Comment.** Section 4045 restates part of former Section 1350.7 without substantive change.

24 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
25 4810 (“member handbook”).

26 **§ 4050. Time and proof of delivery**

27 4050. (a) This section governs the delivery of a document pursuant to this part.

28 (b) If a document is delivered by mail, delivery is complete at the time of
29 deposit into the mail.

30 (c) If a document is delivered by electronic mail, facsimile, or other electronic
31 means, delivery is complete at the time of transmission.

32 (d) An affidavit of delivery of a notice, which is executed by the secretary,
33 assistant secretary, or managing agent of the association, is prima facie evidence
34 of delivery.

35 **Comment.** Subdivision (b) of Section 4050 continues part of former Section 1350.7(b)(2)
36 without substantive change.

37 Subdivision (c) continues part of former Section 1350.7(b)(3) without substantive change.

38 Subdivision (d) is comparable to part of Corporations Code Section 7511(b).

39 See also Sections 4080 (“association”), 4155 (“managing agent”).

40 **§ 4055. Delivery failure**

41 4055. (a) If a notice to a member is returned by the United States Postal Service
42 marked to indicate that the United States Postal Service is unable to deliver the

1 notice to the member at the given address, the association shall deliver that notice
2 and any future notices to that member to the address of a separate interest owned
3 by the member.

4 (b) If electronic delivery of a notice to a member fails, the association shall
5 deliver that notice by other means, and shall not deliver any future notice to that
6 member electronically, unless the member provides a new address or the
7 association determines that a technical problem with the given address has been
8 corrected.

9 **Comment.** Section 4055 is new.

10 See also Sections 4160 (“member”), 4185 (“separate interest”).

11 **§ 4060. Approved by board**

12 4060. If a provision of this part requires that an action be approved by the board,
13 the action shall be approved or ratified by the vote of the board or by the vote of a
14 committee authorized to exercise the powers of the board, pursuant to Article 2
15 (commencing with Section 4500) of Chapter 3.

16 **Comment.** Section 4060 is comparable to Corporations Code Section 5032. It is added for
17 drafting convenience.

18 See also Sections 4085 (“board”), 4160 (“member”).

19 **§ 4065. Approved by majority of all members**

20 4065. If a provision of this part requires that an action be approved by a majority
21 of all members, the action shall be approved or ratified by an affirmative vote of
22 members representing more than 50 percent of the total voting power of the
23 association, or if the governing documents of an association divide the members
24 into two or more classes for the purposes of voting, by an affirmative vote of
25 members representing more than 50 percent of the voting power in each class that
26 is required to approve the action.

27 **Comment.** Section 4065 is comparable to Corporations Code Section 5033. It is added for
28 drafting convenience.

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

30 **§ 4070. Approved by majority of quorum of members**

31 4070. If a provision of this part requires that an action be approved by a majority
32 of a quorum of the members, the action shall be approved or ratified by an
33 affirmative vote of members representing more than 50 percent of the votes cast in
34 an election at which a quorum is achieved, or if the governing documents of an
35 association divide the members into two or more classes for the purposes of
36 voting, by an affirmative vote of members representing more than 50 percent of
37 the votes cast in an election at which a quorum is achieved, in each class that is
38 required to approve the action.

39 **Comment.** Section 4070 is comparable to Corporations Code Section 5034. It is added for
40 drafting convenience.

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

1 Article 2. Definitions

2 § 4075. Application of definitions

3 4075. Unless the provision or context otherwise requires, the definitions in this
4 article govern the construction of this part.

5 **Comment.** Section 4075 continues the introductory clause of former Section 1351 without
6 substantive change.

7 § 4080. “Association”

8 4080. “Association” means a nonprofit corporation or unincorporated
9 association created for the purpose of managing a common interest development.

10 **Comment.** Section 4080 continues former Section 1351(a) without substantive change.
11 See also Sections 4100 (“common interest development”), 4500 (existence of association).

12 § 4085. “Board”

13 4085. “Board” means the board of directors of an association.

14 **Comment.** Section 4085 is new. It is added for drafting convenience.
15 See also Sections 4080 (“association”), 4140 (“director”).

16 § 4090. “Board meeting”

17 4090. “Board meeting” means a congregation of directors constituting a quorum
18 at the same time and place to hear, discuss, or deliberate upon any business
19 scheduled to be heard by the board.

20 **Comment.** Section 4090 restates part of the substance of former Section 1363.05(j) without
21 substantive change, except that the number of directors required to establish a meeting has been
22 changed from a majority to a number constituting a quorum. This reflects the fact that a board
23 may have a quorum that is different from a simple majority. See Section 4510. The exception for
24 matters considered in executive session is continued in Section 5030.

25 Nothing in this section precludes a director from participating in a board meeting by
26 teleconference. See Section 4535 (teleconference).

27 See also Section 4085 (“board”).

28 § 4095. “Common area”

29 4095. (a) “Common area” means the entire common interest development
30 except the separate interests therein.

31 (b) The estate in the common area may be a fee, a life estate, an estate for years,
32 or any combination of the foregoing.

33 (c) In a planned development, common area may consist of mutual or reciprocal
34 easement rights appurtenant to the separate interests.

35 **Comment.** Section 4095 continues former Section 1351(b) without substantive change.

36 See also Sections 4100 (“common interest development”), 4175 (“planned development”),
37 4185 (“separate interest”).

1 **§ 4100. “Common interest development”**

2 4100. (a) “Common interest development” means a real property development
3 in which a separate interest is coupled with either of the following:

- 4 (1) An undivided interest in all or part of the common area.
5 (2) Membership in an association that owns all or part of the common area.

6 (b) In a development where there is no common area other than that established
7 by mutual or reciprocal easement rights appurtenant to the separate interests,
8 “common interest development” means a development in which a separate interest
9 is coupled with membership in an association with the power to enforce an
10 obligation of an owner of a separate interest with respect to the beneficial use and
11 enjoyment of common area by means of an assessment that may become a lien
12 upon the separate interest.

13 (c) “Common interest development” includes all of the following types of
14 developments:

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

19 **Comment.** Section 4100 restates the definition of “common interest development” to improve
20 its clarity, without substantive change. See former Sections 1351(c), (d), (f), (k), (m); 1352.

21 See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment
22 project”), 4125 (“condominium project”), 4175 (“planned development”), 4185 (“separate
23 interest”), 4190 (“stock cooperative”), 6000 (creation of common interest development).

24 **§ 4105. “Community apartment project”**

25 4105. “Community apartment project” means a real property development in
26 which a right of exclusive occupancy of an apartment is coupled with an
27 undivided interest in the development as a whole.

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

29 **§ 4110. “Community service organization”**

30 4110. (a) “Community service organization” means a nonprofit entity, other than
31 the association, that is organized to provide services to residents of a common
32 interest development or to the public in addition to the residents, to the extent that
33 the common area is available to the public.

34 (b) “Community service organization” does not include an entity that has been
35 organized solely to raise moneys and contribute to other nonprofit organizations
36 that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue
37 Code and that provide housing or housing assistance.

38 **Comment.** Section 4110 continues former Section 1368(c)(3) without substantive change.

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

1 **§ 4115. “Condominium”**

2 4115. “Condominium” means a separate interest in a condominium project,
3 coupled with an undivided interest in all or part of the common area of the
4 condominium project.

5 **Comment.** Section 4115 restates the definition of “condominium” in former Section 1351(f),
6 without substantive change.

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

9 **§ 4120. “Condominium plan”**

10 4120. “Condominium plan” means a plan of the type described in Section 6075.

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

12 **§ 4125. “Condominium project”**

13 4125. (a) “Condominium project” means a real property development in which
14 ownership of a separate interest is coupled with an undivided interest in all or part
15 of the common area.

16 (b) The undivided interest in the common area and the separate interest may be a
17 specified three-dimensional space filled with air, earth, or water, or any
18 combination thereof, and need not be physically attached to land except by
19 easements for access and, if necessary, support.

20 (c) The boundaries of the common area shall be described on a recorded final
21 map, parcel map, or condominium plan.

22 (d) The boundaries of the separate interests shall be described on a recorded
23 final map, parcel map, or condominium plan. A description of a separate interest
24 may refer to (1) boundaries described in the recorded final map, parcel map, or
25 condominium plan, (2) physical boundaries, either in existence, or to be
26 constructed, such as walls, floors, and ceilings of a structure or any portion
27 thereof, (3) an entire structure containing one or more separate interests, or (4) any
28 combination thereof.

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

31 **Comment.** Section 4125 restates former Section 1351(f), without substantive change, except
32 that the definition of “condominium” has been relocated to Section 4115.

33 See also Sections 4095 (“common area”), 4120 (“condominium plan”), 4185 (“separate
34 interest”).

35 **§ 4130. “Declarant”**

36 4130. “Declarant” means the person or group of persons designated in the
37 declaration as the declarant, or if no declarant is designated, the person or group of
38 persons who sign the original declaration or who succeed to special rights,
39 preferences, or privileges designated in the declaration as belonging to the person
40 who signed the original declaration.

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

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

2 **§ 4135. “Declaration”**

3 4135. “Declaration” means the document, however denominated, that contains
4 information that is substantially equivalent to the information required by Section
5 6025.

6 **Comment.** Section 4135 continues former Section 1351(h) without substantive change except
7 that exact equivalence with the requirements of Section 6025 is not required. A declaration
8 recorded before January 1, 1986, may not contain all of the information required by Section 6025.

9 **§ 4140. “Director”**

10 4140. “Director” means a natural person elected, designated, or selected to serve
11 on the board.

12 **Comment.** Section 4140 is new. It is added for drafting convenience. See Corp. Code §§ 7220,
13 7224-7225, 7520-7527 (election or selection of director).

14 See also Sections 4085 (“board”), 4170 (“person”).

15 **§ 4145. “Exclusive use common area”**

16 4145. (a) “Exclusive use common area” means a part of the common area
17 designated by the declaration or pursuant to Section 5900, to be used exclusively
18 by one or more, but fewer than all, of the members. The right of exclusive use is
19 appurtenant to the separate interests of those members.

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

26 (c) Notwithstanding the provisions of the declaration, internal and external
27 communication wiring designed to serve a single separate interest, but located
28 outside the boundaries of the separate interest, are exclusive use common areas
29 allocated exclusively to that separate interest. For the purposes of this section,
30 “wiring” includes nonmetallic transmission lines.

31 **Comment.** Section 4145 restates former Section 1351(i) without substantive change, except
32 that the reference in subdivision (c) to “telephone wiring” is generalized to accommodate non-
33 telephonic communication technology and nonmetallic media (e.g., fiber optic).

34 See also Sections 4095 (“common area”), 4135 (“declaration”), 4160 (“member”), 4185
35 (“separate interest”), 5710 (exclusive use communication wiring).

36 **§ 4150. “Governing documents”**

37 4150. “Governing documents” means the declaration, bylaws, articles of
38 incorporation or association, operating rules, and any other documents that govern
39 the operation of the common interest development or association.

40 **Comment.** Section 4150 continues former Section 1351(j) without substantive change.

1 See also Sections 4080 (“association”), 4100 (“common interest development”), 4135
2 (“declaration”), 4165 (“operating rule”).

3 **§ 4155. “Managing agent”**

4 4155. (a) “Managing agent” means a person who, for compensation or in
5 expectation of compensation, exercises control over the assets of a common
6 interest development.

7 (b) “Managing agent” does not include either of the following:

8 (1) A full-time employee of the association.

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

11 **Comment.** Section 4155 generalizes former Section 1363.1(b).

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

14 **§ 4160. “Member”**

15 4160. “Member” means either of the following persons:

16 (a) An owner of a separate interest in a common interest development.

17 (b) A person that is designated as a member in the declaration, articles, or
18 bylaws. The incidents of a membership established under this paragraph may be
19 limited by the document that establishes the membership.

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

21 Subdivision (b) recognizes that the governing documents may designate a non-owner as a
22 member for a limited purpose. For example, an association may have a cooperative or reciprocal
23 relationship with another entity (e.g., an affiliated resort) and the governing documents may
24 provide that a member of that entity has limited membership rights within the association.

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

26 **§ 4163. “Member election”**

27 4163. “Member election” means a vote of the members on a matter that requires
28 the approval of the members. “Member election” does not include a vote of the
29 board or other appointed or elected body.

30 **Comment.** Section 4163 is new. It is added for drafting convenience.

31 See also Sections 4085 (“board”), 4100 (“common interest development”), 4185 (“separate
32 interest”).

33 **§ 4165. “Operating rule”**

34 4165. “Operating rule” means a regulation adopted by the board that applies
35 generally to the management and operation of the common interest development
36 or the conduct of the business and affairs of the association.

37 **Comment.** Section 4165 generalizes former Section 1357.100(a) without substantive change.

38 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest
39 development”).

1 **§ 4170. “Person”**

2 4170. “Person” means an individual, corporation, government or governmental
3 subdivision or agency, business trust, estate, trust, partnership, limited liability
4 company, association, or other entity.

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

6 See also Section 4080 (“association”).

7 **§ 4175. “Planned development”**

8 4175. “Planned development” means a real property development of any of the
9 following types:

10 (a) A development, other than a condominium project, in which ownership of a
11 separate interest is coupled with an undivided interest in the common area.

12 (b) A development in which ownership of a separate interest is coupled with: (1)
13 membership in an association that owns the common area, and (2) an appurtenant
14 right to the beneficial use and enjoyment of the common area.

15 (c) If the common area consists entirely of mutual or reciprocal easement rights
16 appurtenant to the separate interests, a development in which separate ownership
17 of a specified part of the development is coupled with membership in an
18 association that has the power to enforce an obligation of an owner of a separate
19 interest with respect to the beneficial use and enjoyment of the common area by
20 means of an assessment that may become a lien upon the separate interests in
21 accordance with Article 5 (commencing with Section 5600) of Chapter 5.

22 **Comment.** Section 4175 continues former Section 1351(k) without substantive change.
23 Subdivision (b) incorporates a related provision from former Section 1351(b).

24 See also Sections 4080 (“association”), 4095 (“common area”), 4125 (“condominium
25 project”), 4185 (“separate interest”).

26 **§ 4180. “Rule change”**

27 4180. “Rule change” means the adoption, amendment, or repeal of an operating
28 rule by the board.

29 **Comment.** Section 4180 generalizes former Section 1357.100(b).

30 See also Sections 4085 (“board”), 4165 (“operating rule”).

31 **§ 4185. “Separate interest”**

32 4185. (a) In a community apartment project, “separate interest” means the
33 exclusive right to occupy an apartment.

34 (b) In a condominium project, “separate interest” means a separately owned
35 unit.

36 (c) In a planned development, “separate interest” means a separately owned lot,
37 parcel, area, or space.

38 (d) In a stock cooperative, “separate interest” means the exclusive right to
39 occupy a portion of the real property.

40 (e) Unless the declaration or a condominium plan otherwise provides, if walls,
41 floors, or ceilings are designated as boundaries of a separate interest, the interior

1 surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets
2 located within the separate interest are part of the separate interest and any other
3 portions of the walls, floors, or ceilings are part of the common area.

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

6 **Comment.** Section 4185 restates former Section 1351(l) without substantive change.

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

10 **§ 4190. “Stock cooperative”**

11 4190. (a) “Stock cooperative” means a real property development in which a
12 right of exclusive occupancy of a specified part of the development is coupled
13 with an ownership interest in a corporation that is formed or availed of primarily
14 for the purpose of holding title to the development as a whole, either in fee simple
15 or for a term of years.

16 (b) An owner’s interest in the corporation, whether evidenced by a share of
17 stock, a certificate of membership, a lease, or otherwise, is deemed to be an
18 interest in a common interest development and a real estate development for
19 purposes of subdivision (f) of Section 25100 of the Corporations Code.

20 (c) It is not necessary that all shareholders of the corporation receive a right of
21 exclusive occupancy of a specified part of the development.

22 (d) A “stock cooperative” includes a limited equity housing cooperative that
23 meets the criteria of Section 33007.5 of the Health and Safety Code.

24 **Comment.** Section 4190 continues former Section 1351(m) without substantive change.

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

26 **CHAPTER 2. MEMBER BILL OF RIGHTS [RESERVED]**

27 **CHAPTER 3. COMMUNITY ASSOCIATION GOVERNANCE**

28 **Article 1. Association Existence and Powers**

29 **§ 4400. Association**

30 4400. A common interest development shall be governed by an association,
31 which may be incorporated or unincorporated.

32 **Comment.** Section 4400 continues the first sentence of former Section 1363(a).

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

34 **§ 4405. Association powers**

35 4405. (a) Whether incorporated or unincorporated, an association may exercise
36 the following powers:

37 (1) The powers granted in this part.

1 (2) Unless the governing documents provide otherwise, the powers granted to a
2 nonprofit mutual benefit corporation pursuant to Section 7140 of the Corporations
3 Code.

4 (b) Notwithstanding subdivision (a), an unincorporated association may not
5 adopt or use a corporate seal or issue membership certificates in accordance with
6 Section 7313 of the Corporations Code.

7 **Comment.** Section 4405 restates former Section 1363(c) without substantive change.

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

9 **§ 4410. Standing**

10 4410. An association has standing to institute, defend, settle, or intervene in
11 litigation, arbitration, mediation, or administrative proceedings in its own name as
12 the real party in interest and without joining with it the members of the
13 association, in matters pertaining to the following:

14 (a) Enforcement of the governing documents.

15 (b) Damage to the common area.

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

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

21 **Comment.** Section 4410 continues former Section 1368.3 without substantive change.

22 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
23 development”), 4150 (“governing documents”), 4185 (“separate interest”).

24 **§ 4415. Comparative fault**

25 4415. (a) In an action maintained by an association pursuant to subdivision (b),
26 (c), or (d) of Section 4410, the amount of damages recovered by the association
27 shall be reduced by the amount of damages allocated to the association or its
28 managing agents in direct proportion to their percentage of fault based upon
29 principles of comparative fault.

30 (b) The comparative fault of the association or its managing agents may be
31 raised by way of defense, but shall not be the basis for a cross-action or separate
32 action against the association or its managing agents for contribution or implied
33 indemnity, where the only damage was sustained by the association or its
34 members.

35 (c) It is the intent of the Legislature in enacting this section to require that
36 comparative fault be pleaded as an affirmative defense, rather than a separate
37 cause of action, where the only damage was sustained by the association or its
38 members.

39 (d) In an action involving damages described in subdivision (b), (c), or (d) of
40 Section 4410, the defendant or cross-defendant may allege and prove the
41 comparative fault of the association or its managing agents as a setoff to the

1 liability of the defendant or cross-defendant even if the association is not a party to
2 the litigation or is no longer a party whether by reason of settlement, dismissal, or
3 otherwise.

4 (e) This section applies to actions commenced on or after January 1, 1993.

5 (f) Nothing in this section affects a person's liability under Section 1431, or the
6 liability of the association or its managing agent for an act or omission that causes
7 damages to another.

8 **Comment.** Section 4415 continues former Section 1368.4 without substantive change.

9 See also Sections 4080 ("association"), 4155 ("managing agent"), 4160 ("member"), 4170
10 ("person").

11 **§ 4420. No limitation of rights**

12 4420. Except as expressly provided by statute, the rights of members provided in
13 this chapter may not be limited by contract or by the governing documents.
14 Nothing in this section precludes a member from expressly waiving an individual
15 right provided in this chapter.

16 **Comment.** Section 4420 generalizes the substance of Corporations Code Section 8313. The
17 second sentence is new. It makes clear that the section does not preclude an individual waiver of
18 rights, whether as part of a settlement agreement or otherwise.

19 See also Sections 4150 ("governing documents"), 4160 ("member").

20 Article 2. Board Meeting

21 **§ 4500. Short title**

22 4500. This article shall be known and may be cited as the Common Interest
23 Development Open Meeting Act.

24 **Comment.** Section 4500 continues former Section 1363.05(a) without substantive change.

25 **§ 4505. Convening or adjourning meeting**

26 4505. (a) Unless the governing documents provide otherwise, a board meeting
27 may be called by the board chair, the president, the vice president, the secretary, or
28 any two directors.

29 (b) Unless the governing documents provide otherwise, a majority of the
30 directors present at a meeting, whether or not a quorum is present, may adjourn the
31 meeting to another time and place.

32 **Comment.** Subdivision (a) of Section 4505 is comparable to Corporations Code Section
33 7211(a)(1).

34 Subdivision (b) is comparable to the first sentence of Corporations Code Section 7211(a)(4).
35 See also Section 4520(d) (notice of meeting adjourned for more than 24 hours).

36 See also Sections 4085 ("board"), 4090 ("board meeting"), 4140 ("director").

37 **§ 4510. Quorum**

38 4510. Unless the governing documents provide otherwise, a majority of the total
39 number of directors authorized by the governing documents constitutes a quorum.

1 The governing documents may not provide for a quorum that is less than one-fifth
2 of the number of directors authorized, or less than two directors, whichever is
3 larger.

4 **Comment.** Section 4510 is comparable to Corporations Code Section 7211(a)(7). See Section
5 4025. Note that in an association with only one director, one director is a majority of the total
6 number of directors and would therefore constitute a quorum.

7 See also Sections 4140 (“director”), 4150 (“governing documents”).

8 **§ 4515. Board action**

9 4515. (a) Except as otherwise provided by law, an action approved by a majority
10 of directors present at a meeting at which a quorum is present is the action of the
11 board. The governing documents may specify a higher percentage for approval of
12 a board action, but may not specify a lower percentage.

13 (b) Unless the governing documents provide otherwise, a meeting at which a
14 quorum is initially present may continue to transact business notwithstanding the
15 withdrawal of directors, if any action taken is approved by either a majority of the
16 required quorum or, if a higher percentage is required by law or the governing
17 documents, by that higher percentage.

18 **Comment.** Section 4515 is comparable to Corporations Code Section 7211(a)(8).

19 See also Sections 4085 (“board”), 4140 (“director”), 4150 (“governing documents”).

20 **§ 4520. Notice of board meeting**

21 4520 (a) Unless the time and place of a meeting is fixed by the governing
22 documents, the association shall provide general notice (Section 4045) of a board
23 meeting, and shall provide individual notice (Section 4040) of the board meeting
24 to directors and to any association member who has requested notice of meetings.
25 The notice shall state the time and place of the board meeting and shall include an
26 agenda for the board meeting.

27 (b) Unless the governing documents provide for a longer period of notice, the
28 association shall deliver notice of the time and place of a board meeting at least 10
29 days before the meeting.

30 (c) The president of the association, or two directors other than the president,
31 may call an emergency board meeting if there are circumstances that could not
32 have been reasonably foreseen, that require immediate attention and possible
33 action by the board, so that it would be impracticable to give notice pursuant to
34 this section. Advance notice of an emergency board meeting is not required.

35 (d) Unless the governing documents provide otherwise, if a meeting is adjourned
36 to another time and place for more than 24 hours, the association shall provide
37 notice of the time and place at which the meeting will reconvene, by general
38 notice (Section 4045), and by individual notice (Section 4040) to a director who
39 was not present at the meeting and to any member who has requested notice of
40 board meetings. The notice shall be delivered before the meeting reconvenes.

41 (e) Unless the governing documents provide otherwise, notice of a meeting need
42 not be given to a director who does any of the following:

1 (1) Provides a written waiver of notice. The waiver shall be filed with the
2 association records or made part of the minutes of the meeting.

3 (2) Provides a written consent to holding the meeting or approving the minutes
4 of the meeting. The consent shall be filed with the association records or made
5 part of the minutes of the meeting.

6 (3) Attends the meeting without protesting the lack of notice, either before the
7 meeting or at the meeting.

8 **Comment.** Subdivisions (a) and (b) of Section 4520 restate former Section 1363.05(f) without
9 substantive change, except for the following changes:

10 (1) The time for delivery of notice of a meeting has been extended from four to 10 days.

11 (2) The term “bylaws” has been broadened to “governing documents.”

12 (3) Language regarding the manner of providing notice has not been continued. Notice
13 delivery methods are governed by Sections 4040 and 4045.

14 (4) The notice is now required to include an agenda for the meeting. This is consistent with
15 the requirements of other open meeting laws. See, e.g., Gov’t Code § 11125(b).

16 Subdivision (c) restates former Section 1363.05(g) without substantive change.

17 Subdivision (d) is comparable to the second sentence of Corporations Code Section 7211(a)(4).

18 Subdivision (e) is comparable to Corporations Code Section 7211(a)(3).

19 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4140
20 (“director”), 4150 (“governing documents”), 4160 (“member”).

21 **§ 4525. Board meeting open**

22 4525. (a) Any member may attend and speak at a board meeting, except for any
23 part of the meeting held in executive session.

24 (b) The board may set a reasonable time limit for member testimony at a board
25 meeting.

26 **Comment.** Section 4525 continues part of former Section 1363.05(b) & (h), without
27 substantive change, except that the establishment of a time limit on member testimony is now
28 optional. The part of former Section 1363.05(b) that described the basis for meeting in executive
29 session is continued in Section 4540(a)-(b).

30 See also Sections 4085 (“board”), 4090 (“board meeting”), 4160 (“member”).

31 **§ 4528. Limitation on meeting content**

32 4528. (a) Except as otherwise provided in this section, the board may not discuss
33 or take action on any item at a meeting unless the item was placed on the agenda
34 included in the notice provided pursuant to Section 4520.

35 (b) This section does not preclude any of the following from being raised at a
36 meeting, even if the matter is not on the agenda:

37 (1) A statement or question of a resident of the development other than a
38 director.

39 (2) A brief response to statements made or questions posed by a resident other
40 than a director.

41 (3) A request for clarification.

42 (4) A brief announcement.

43 (5) A brief report on a director’s own activities.

1 (c) A board or director, acting in compliance with any rules or procedures
2 provided in the governing documents, may take any of the following actions at a
3 meeting, even if the action was not on the agenda:

4 (1) Provide a reference to, or provide other resources for factual information to,
5 a managing agent, other agent, or staff.

6 (2) Request a managing agent, other agent, or staff to report back to the board at
7 a subsequent meeting concerning any matter.

8 (3) Direct a managing agent, other agent, or staff to place a matter of business
9 on a future agenda.

10 (4) Direct a managing agent, other agent, or staff to perform administrative tasks
11 that are necessary to carry out this section.

12 (d) The board may take action on an item of business that is not on the agenda if
13 the board openly identifies the item to the members present at the meeting and one
14 or more of the following conditions is satisfied:

15 (1) A majority of the directors present at the meeting determines that an
16 emergency situation exists. For the purposes of this paragraph, an emergency
17 situation exists if there are circumstances that could not have been reasonably
18 foreseen by the board, that require immediate attention and possible action by the
19 board, and that, of necessity, make it impracticable to provide notice.

20 (2) The board determines that there is a need to take immediate action and that
21 the need for action came to the attention of the board after notice of the meeting
22 was delivered. This determination may only be made by the affirmative vote of
23 two-thirds of the directors present at the meeting, or, if less than two-thirds of the
24 directors are present at the meeting, by a unanimous vote of all directors present at
25 the meeting.

26 (3) The item appeared on the agenda of a prior board meeting, was taken up at
27 that meeting, and was continued for action at a later meeting. An item cannot be
28 continued under this paragraph to a meeting that takes place more than 30 days
29 after the meeting at which the item was originally considered.

30 **Comment.** Section 4528 restates former Section 1363.05(i) without substantive change.

31 **§ 4530. Board meeting location**

32 4530. A board meeting shall be held within the common interest development
33 unless the board determines that a larger meeting room is required than is
34 available within the common interest development. A board meeting held outside
35 of the common interest development shall be held as close to the common interest
36 development as the board, acting in good faith, determines to be practicable.

37 **Comment.** Section 4530 is comparable to a Department of Real Estate regulation requiring
38 reasonable arrangements for board meetings. See 10 Cal. Code Regs. § 2792.20(b).

39 See also Sections 4085 (“board”), 4090 (“board meeting”), 4100 (“common interest
40 development”).

1 **§ 4535. Teleconference**

2 4535. (a) If all of the following conditions are satisfied, a director who is not
3 physically present at the noticed location of a board meeting may participate in the
4 meeting by teleconference:

5 (1) Each director participating in the meeting can communicate with all other
6 directors concurrently.

7 (2) Each director participating in the meeting is provided the means of
8 participating in all matters before the board, including the ability to propose or
9 interpose an objection to a specific action taken by the board.

10 (3) At least one director is physically present at the meeting location stated in
11 the notice.

12 (4) A member attending the meeting at the location stated in the notice can hear
13 and be heard by all directors.

14 (5) Any vote taken at the meeting is by roll call vote.

15 (b) For the purpose of establishing a quorum, a director who participates in a
16 meeting by teleconference pursuant to this section is deemed to be present at the
17 meeting.

18 (c) For the purposes of this section, “teleconference” means a communication
19 method that provides for two-way transmission of audio or audio and visual
20 signals.

21 **Comment.** Section 4535 is comparable to Corporations Code Section 7211(a)(6) and
22 Government Code Sections 11123(b) and 54953(b).

23 See also Sections 4085 (“board”), 4090 (“board meeting”), 4140 (“director”), 4160
24 (“member”).

25 **§ 4540. Executive session**

26 4540. (a) The board may meet in executive session to consider litigation, matters
27 relating to the formation of contracts with third parties, an assessment dispute,
28 personnel matters, or to conduct a hearing pursuant to Section 5005.

29 (b) The board shall meet in executive session to consider an assessment dispute
30 or to conduct a hearing pursuant to Section 5005, if requested to do so by the
31 member who is the subject of the matter to be considered.

32 (c) The board shall meet in executive session to consider a request for a payment
33 plan made under Section 5620 or to make a decision on whether to foreclose on a
34 lien under Section 5655.

35 (d) Notwithstanding Section 4525, if the board meets in executive session to
36 consider an assessment dispute, a request for a payment plan for overdue
37 assessment debt, or to conduct a hearing pursuant to Section 5005, the member
38 who is the subject of that matter may attend and speak during consideration of the
39 matter.

40 **Comment.** Subdivisions (a)-(b) of Section 4540 continue part of former Section 1363.05(b)
41 without substantive change, except that a member may require that discussion of an assessment
42 dispute involving that member be conducted in executive session. The remainder of former
43 Section 1363.05(b) is continued in Section 4525(a).

1 Subdivision (c) continues the substance of former Sections 1367.1(c)(3) and 1367.4(c)(2).
2 Subdivision (d) generalizes part of the substance of former Section 1363.05(b) that allowed a
3 subject of disciplinary action to attend an executive session at which the disciplinary action is
4 considered.

5 See also Sections 4085 (“board”), 4160 (“member”), 5005 (due process hearing).

6 **§ 4545. Action without meeting**

7 4545. (a) An action required or permitted to be taken by the board may be taken
8 without a meeting, if all directors individually or collectively consent in writing to
9 that action. The written consent shall be filed with the minutes of the proceedings
10 of the board.

11 (b) For the purposes of this section “all directors” does not include an
12 “interested director” as defined in Section 5233 of the Corporations Code, to the
13 extent that section is made applicable pursuant to Section 7238 of the Corporations
14 Code.

15 **Comment.** Section 4545 generalizes Corporations Code Section 7211(b).

16 See also Sections 4085 (“board”), 4140 (“director”).

17 **§ 4550. Minutes**

18 4550. (a) Board meeting minutes, minutes proposed for adoption that are
19 marked to indicate draft status, or a summary of the minutes, shall be available to
20 members within 30 days of a board meeting.

21 (b) The minutes for any part of a board meeting held in executive session shall
22 include a general description of the matter considered in executive session.

23 (c) A member may request a copy of meeting minutes under Article 5
24 (commencing with Section 4700). Notwithstanding Section 4705, a request for a
25 copy of meeting minutes is not required to include a statement of the purpose for
26 the request.

27 (d) The member handbook (Section 4810) shall inform the members of their
28 right to obtain copies of board meeting minutes and shall describe the procedure
29 for obtaining a copy of the minutes.

30 **Comment.** Subdivision (a) of Section 4550 continues part of the first sentence of former
31 Section 1363.05(d).

32 Subdivision (b) restates former Section 1363.05(c) without substantive change. Language
33 addressing the timing of the preparation of the minutes for a meeting held in executive session is
34 not continued.

35 Subdivision (c) restates the substance of the second sentence of former Section 1363.05(d).
36 The second sentence of subdivision (c) makes express what is implicit in former Section
37 1363.05(d), that a member has an absolute right to inspect minutes and is not required to state a
38 permissible purpose in order to obtain a copy.

39 Subdivision (d) restates former Section 1363.05(e) without substantive change.

40 See also Sections 4085 (“board”), 4090 (“board meeting”), 4160 (“member”).

41 **§ 4555. Civil action to enforce article**

42 4555. (a) A member may bring a civil action for declaratory or equitable relief
43 for a violation of this article by the member’s association, including injunctive

1 relief, restitution, or a combination thereof, within one year of the date the cause
2 of action accrues.

3 (b) The court may impose a civil penalty of up to five hundred dollars (\$500) for
4 each violation, except that each identical violation shall be subject to only one
5 penalty if the violation affects each member of the association equally.

6 (c) A member who prevails in a civil action to enforce a requirement of this
7 article is entitled to reasonable attorney's fees and court costs. A prevailing
8 association shall not recover any costs, unless the court finds the action to be
9 frivolous, unreasonable, or without foundation.

10 **Comment.** Section 4555 restates former Section 1363.09(a)-(b) without substantive change, to
11 the extent that it applied to board meetings.

12 See also Sections 4080 ("association"), 4160 ("member").

13 **§ 4560. Application of article**

14 4560. (a) This article applies to a board meeting or a meeting of a committee
15 that exercises a power of the board.

16 (b) If two or more associations have consolidated any of their functions under a
17 joint neighborhood association or similar organization, the meetings of the joint
18 organization are governed by this article.

19 **Comment.** Subdivision (a) of Section 4560 is drawn from Corporations Code Section 7211(c).

20 Subdivision (b) continues part of former Section 1363(i) without substantive change.

21 See also Sections 4080 ("association"), 4085 ("board"), 4090 ("board meeting").

22 **Article 3. Member Meeting**

23 **§ 4575. General rules for conduct of meeting**

24 4575. (a) An association shall hold a regular member meeting to transact
25 business that requires action by the members, with the frequency stated in the
26 governing documents.

27 (b) An association may hold a special member meeting, pursuant to Section
28 4600.

29 (c) A member meeting shall be held within the common interest development
30 unless the board determines that a larger meeting room is required than is
31 available within the common interest development. A member meeting held
32 outside of the common interest development shall be held as close to the common
33 interest development as the board, acting in good faith, determines to be
34 practicable.

35 (d) A member meeting shall be conducted in accordance with a recognized
36 system of parliamentary procedure or any parliamentary procedure the association
37 may adopt in its governing documents.

38 **Comment.** Subdivision (a) of Section 4575 is comparable to Corporations Code Section
39 7510(b).

40 Subdivision (b) is comparable to part of Corporations Code Section 7510(e). See Section 4600.

41 Subdivision (c) is new.

1 Subdivision (d) restates former Section 1363(d) without substantive change.
2 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest
3 development”), 4140 (“director”), 4150 (“governing documents”), 4160 (“member”).

4 **§ 4580. Quorum**

5 4580. (a) Unless the declaration, articles, or bylaws provide otherwise, the
6 quorum for a member meeting is one-third of the voting power of the association,
7 represented in person or by proxy.

8 (b) An amendment of the bylaws to increase the quorum for a member meeting
9 shall be adopted with the approval of a majority of a quorum of the members
10 (Section 4070).

11 **Comment.** Section 4580 is comparable to the first two sentences of Corporations Code Section
12 7512(a).

13 See also Sections 4080 (“association”), 4160 (“member”), 4170 (“person”).

14 **§ 4585. Member action**

15 4585. (a) Unless this part or the governing documents require a greater number
16 of votes, an action approved by a majority of a quorum of the members (Section
17 4070) is the action of the members.

18 (b) Unless the governing documents provide otherwise, a meeting at which a
19 quorum is initially present may continue to transact business notwithstanding the
20 withdrawal of members, if any action taken is approved by affirmative votes
21 equaling at least a majority of the number of votes required for a quorum or, if a
22 higher percentage of the vote is required by law or the governing documents, by
23 that higher percentage.

24 (c) If a quorum has not been established at a member meeting, the meeting may
25 be adjourned by affirmative votes equaling at least a majority of the votes cast, but
26 no other business may be transacted.

27 **Comment.** Section 4585 is comparable to the third sentence of Corporations Code Section
28 7512(a) and subdivisions (c)-(d) of that section.

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

30 **§ 4590. Teleconference**

31 4590. (a) If all of the following conditions are satisfied, the board may elect to
32 permit a member who is not physically present at the noticed location of a member
33 meeting to participate in the meeting by teleconference:

34 (1) Each member participating in the meeting can communicate with all other
35 members concurrently.

36 (2) Each member participating in the meeting is provided the means of
37 participating in all matters being considered, including the ability to propose or
38 interpose an objection to a specific action.

39 (3) At least one member is physically present at the meeting location stated in
40 the notice.

1 (4) The vote of any member who is not present shall be cast orally. A vote cast
2 pursuant to this paragraph is not governed by Section 4640.

3 (b) For the purposes of establishing a quorum, a member participating in a
4 meeting by teleconference pursuant to this section is deemed to be present at the
5 meeting.

6 (c) For the purposes of this section, “teleconference” means a communication
7 method that provides for two-way transmission of audio or audio and visual
8 signals.

9 **Comment.** Section 4590 is comparable to Corporations Code Sections 7211(a)(6) and 7510(f),
10 and Government Code Sections 11123(b) and 54953(b).

11 See also Section 4160 (“member”).

12 **§ 4595. Notice of regular meeting**

13 4595. (a) The board shall deliver individual notice (Section 4040) of a regular
14 meeting to each member who, on the date of the notice, is entitled to vote at the
15 meeting. The notice shall be delivered at least 10 days, but not more than 90 days,
16 before the date of the meeting.

17 (b) The notice of a regular meeting shall include the date, time, and place of the
18 meeting. If the board makes arrangements for participation in the meeting by
19 teleconference, the notice shall include instructions on how to participate by
20 teleconference.

21 (c) The notice of a regular meeting shall state the matters that the board, at the
22 time of the notice, intends to present for action by the members. The members
23 may act on a matter that is not described in the notice, except in the following
24 circumstances:

25 (1) If the bylaws of the association provide for a quorum of one-third or less of
26 the voting power and less than one-third of the voting power is present, the
27 members shall not act on any matter that was not described in the notice.

28 (2) The members shall not act on any matter that is not described in the notice
29 and that requires the approval of the members under Section 7222, 7224, 7233,
30 7812, 8610, or 8719 of the Corporations Code, unless the matter is required to be
31 approved by the unanimous vote of those entitled to vote on the matter, or the
32 general nature of the matter is described in each of the documents waiving notice
33 under Section 4610.

34 (d) The notice of any meeting at which a director will be elected shall include
35 the names of those who are nominees on the date of the notice.

36 **Comment.** Section 4595 is comparable to Corporations Code Sections 7511(a) & (f), 7512(b),
37 and 7611(a). The introductory clause of subdivision (c) of Section 4595 continues former Section
38 1363(e) without substantive change.

39 See also Sections 4080 (“association”), 4085 (“board”), 4140 (“director”), 4160 (“member”).

40 **§ 4600. Special meeting of members**

41 4600. (a) The following persons may call a special meeting of the members at
42 any time, for any lawful purpose, by adoption of a board resolution or by delivery

1 of a written request to the board (Section 4035) that states the business to be
2 transacted at the special meeting:

3 (1) The board.

4 (2) The president of the association or chair of the board.

5 (3) Any person authorized to do so by the governing documents.

6 (4) Members representing five percent or more of the voting power of the
7 association.

8 (b) Within 20 days after a special meeting is called, the board shall deliver
9 individual notice (Section 4040) of the special meeting to each member who, on
10 the date of the notice, is entitled to vote at the special meeting. The notice shall
11 include all of the following information:

12 (1) The date and time of the special meeting, which shall be between 35 to 90
13 days after the special meeting is called.

14 (2) The location of the special meeting.

15 (3) If arrangements are made for participation in the meeting by teleconference,
16 instructions on how to participate by teleconference.

17 (4) The general nature of the business to be transacted at the special meeting. No
18 other business may be transacted at the special meeting.

19 (c) If the board does not send the required notice within 20 days after the
20 meeting is called, the person who called the special meeting may set the time,
21 date, and place of the special meeting and send the notice. The association shall
22 reimburse the person for the cost of the notice.

23 **Comment.** Section 4600 is comparable to Corporations Code Sections 7510(e) and 7511(a) &
24 (c).

25 See also Sections 4080 (“association”), 4085 (“board”), 4150 (“governing documents”), 4160
26 (“member”), 4170 (“person”).

27 **§ 4605. Meeting adjournment**

28 4605. (a) Unless the governing documents provide otherwise, a member meeting
29 may be adjourned to another time or place without giving written notice of the
30 reconvened meeting, if both of the following conditions are satisfied:

31 (1) The time, date, and place of the reconvened meeting are announced at the
32 meeting that is being adjourned. If arrangements are made for participation in the
33 reconvened meeting by teleconference, the announcement shall include
34 instructions on how to participate by teleconference.

35 (2) The record date for notice and voting are not changed.

36 (b) The members may transact any business at a reconvened meeting that could
37 have been transacted at the adjourned meeting.

38 (c) No meeting may be adjourned for more than 45 days.

39 **Comment.** Section 4605 is comparable to Corporations Code Section 7511(d).

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

1 **§ 4610. Waiver of requirements**

2 4610. (a) Notwithstanding the requirements of this article, a court may find that
3 a notice is valid if it was given in a fair and reasonable manner.

4 (b) A failure to comply with the requirements of this article does not make a
5 transaction at a member meeting invalid if there is a quorum at the meeting and if
6 every member who is entitled to vote satisfies one or more of the following
7 conditions:

8 (1) The member is present at the meeting and does not raise, at the beginning of
9 the meeting, an objection to the meeting being held.

10 (2) The member gave a proxy to a person who is present at the meeting and the
11 proxyholder does not raise, at the beginning of the meeting, an objection to the
12 meeting being held.

13 (3) The member provides a waiver of notice, consent to hold the meeting, or
14 approval of the minutes of the meeting. The waiver, consent, or approval shall be
15 written and shall be filed with the association's records and made part of the
16 minutes of the meeting. Unless expressly required by law or the governing
17 documents, the waiver, consent, or approval need not include a description of the
18 business to be transacted at the meeting.

19 (c) Notwithstanding subdivision (b), if a matter is required to be described in the
20 meeting notice and is not described in the meeting notice, action on that matter is
21 not valid if any member expressly objects, at the meeting, that the matter may not
22 be considered at the meeting.

23 **Comment.** Subdivision (a) of Section 4610 is comparable to Corporations Code Section
24 7511(g).

25 Subdivisions (b)-(c) are comparable to Corporations Code Section 7511(e).

26 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
27 4170 (“person”).

28 **§ 4615. Court-ordered meeting**

29 4615. (a) If an association is required to hold a member meeting or conduct a
30 written ballot and does not do so, a member or the Attorney General may apply to
31 the superior court for a summary order compelling the association to hold the
32 member meeting or conduct the written ballot.

33 (b) The time for submitting an application under this section shall be as follows:

34 (1) If a date is designated for holding a member meeting or conducting a written
35 ballot, the application shall be made 60 days or more after the designated date.

36 (2) If a date is not designated for a member meeting, the application shall be
37 made 15 months or more after the formation of the association or after the last
38 regular member meeting.

39 (3) If a special meeting has been called pursuant to Section 4600, and the board
40 has not given the required notice, the application shall be made 20 days or more
41 after the special meeting is called.

42 (c) A copy of the application shall be served on the association, which shall have
43 an opportunity to be heard before the court issues an order.

1 (d) The court may issue any appropriate order, including an order that sets the
2 time and place of a meeting and the record date for determination of members
3 entitled to vote, requires that notice of the meeting be delivered, modifies or
4 eliminates the quorum requirement, or specifies the form or content of the notice.

5 **Comment.** Section 4615 is comparable to Corporations Code Sections 7510(c)-(d) and
6 7511(c).

7 See also Sections 4080 (“association”), 4085 (“board”), 4150 (“governing documents”), 4160
8 (“member”).

9 **§ 4620. Court-ordered modification of meeting requirements**

10 4620. (a) A director, officer, or member may petition the superior court for an
11 order modifying any requirement of this part or the governing documents that
12 governs the conduct of a member meeting or a written ballot. On filing the
13 petition, the court shall set the matter for hearing. The petitioner shall provide
14 general notice of the hearing, including a copy of the petition.

15 (b) If the court determines that it would be impractical or unduly difficult for the
16 association to conduct a member meeting or otherwise obtain the consent of the
17 members, the court may order that a member meeting or written ballot be held and
18 may, to the extent it is fair and equitable to do so, modify or dispense with any
19 provision of this part or of the governing documents that relates to the conduct of a
20 member meeting or written ballot, including any quorum requirement or provision
21 requiring a specified number or percentage of votes for member approval of a
22 matter.

23 (c) An order issued pursuant to this section shall provide for a method of notice
24 that is reasonably designed to give actual notice to all parties who are entitled to
25 notice of the member meeting or written ballot. Compliance with the method of
26 notice ordered by the court need not result in actual notice to all persons who are
27 entitled to notice.

28 (d) To the extent practical, an order issued pursuant to this section shall limit the
29 subject matter presented for member approval to the following matters:

30 (1) An amendment of the governing documents that would or might enable the
31 association to manage its affairs without further resort to this section.

32 (2) Dissolution, merger, sale of assets, or reorganization of the association.

33 (3) A reasonable amendment of the declaration, if more than 50 percent of the
34 voting power is required to amend the declaration.

35 (e) In a proceeding under this section, the court may determine who is a member
36 or director of the association.

37 (f) Member approval of a matter that is obtained in compliance with the
38 requirements of an order issued under this section is valid and shall have the same
39 force and effect as a member approval that complies with all of the requirements
40 of this part and the governing documents.

41 **Comment.** Section 4620 is comparable to Corporations Code Section 7515.

42 Subdivision (b) authorizes court modification of meeting requirements if it is impractical or
43 unduly difficult to obtain the consent of the members. This section cannot be used to modify a

1 provision of the governing documents or a contract that expressly requires the consent of a non-
2 member in order to make a decision.

3 Subdivision (d)(3) continues the general substance of former Section 1356.

4 See also Sections 4080 (“association”), 4135 (“declaration”), 4140 (“director”), 4150
5 (“governing documents”), 4160 (“member”), 4170 (“person”).

6 Article 4. Member Election

7 § 4625. Application of article

8 4625. This article governs a member election. This article does not govern a
9 vote of directors or other appointed or elected officials.

10 **Comment.** Section 4625 restates former Section 1363.03(m).

11 Former Section 1363.03(l) is redundant and is not continued. See Section 4080 (“association”
12 defined).

13 Former Section 1363.03(n) is redundant and is not continued. See Section 4025(d) (application
14 of Corporations Code).

15 Former Section 1363.03(o), stating the operative date of the former section, is obsolete and is
16 not continued.

17 See also Sections 4140 (“director”), 4163 (“member election”).

18 § 4630. Election provisions in governing documents

19 4630. The association shall adopt operating rules to address all of the following
20 matters:

21 (a) Any rule required to implement this article.

22 (b) Any qualification to serve in an elected position.

23 (c) The loss and restoration of a member’s voting privilege.

24 (d) The calculation of voting power.

25 (e) If the governing documents permit the use of proxies, procedures for the use
26 of proxies.

27 (f) The selection of an election inspector.

28 **Comment.** Section 4630 restates part of former Section 1363.03(a)(3)-(5) without substantive
29 change. The provision of former Section 1363.03(a)(3) that relates to procedures for nomination
30 of candidates is continued in Section 4665.

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

32 § 4635. Selection of election inspector

33 4635. (a) An election shall be overseen by one or three election inspectors,
34 selected by the association for that purpose.

35 (b) An election inspector shall be an independent third party, including, but not
36 limited to a volunteer poll worker with the county registrar of voters, a licensee of
37 the California Board of Accountancy, or a notary public. Except as provided in
38 subdivision (c), a member of the association may serve as election inspector.

39 (c) The following persons may not be selected as an election inspector:

40 (1) A director.

41 (2) A candidate for the office that is the subject of the election.

1 (3) Unless the governing documents expressly provide otherwise, an employee
2 or contractor of the association.

3 (4) The parent, grandparent, child, grandchild, brother, sister, spouse, domestic
4 partner, uncle, aunt, niece, nephew, or first cousin, whether by blood, marriage,
5 domestic partnership, or adoption, of any person who is disqualified under
6 paragraphs (1) to (3), inclusive.

7 (d) An election inspector shall, consistent with the governing documents, do all
8 of the following:

9 (1) Determine which members are entitled to vote and the voting power of each.

10 (2) Determine the authenticity, validity, and effect of any proxies.

11 (3) Receive ballots.

12 (4) Hear and decide all challenges and questions in any way arising out of or in
13 connection with the right to vote.

14 (5) Count and tabulate all votes.

15 (6) Determine when the polls open and close.

16 (7) Determine the results of the election.

17 (8) Perform any other task that may be required to conduct the election with
18 fairness to all members.

19 (e) An election inspector shall act impartially and in good faith, to the best of the
20 election inspector's ability, and as expeditiously as is practical. If there are three
21 election inspectors, the action of a majority shall be deemed to be the action of all.
22 Any report made by the election inspector is prima facie evidence of the facts
23 stated in the report.

24 (f) An election inspector may appoint and oversee additional persons to assist in
25 verifying signatures and counting votes, provided that the persons selected are
26 independent third parties.

27 **Comment.** Subdivision (a) of Section 4635 restates former Section 1363.03(c)(1).

28 Subdivisions (b)-(c) restate former Section 1363.03(c)(2). The limitation on the selection of an
29 employee or contractor to serve as an election inspector has no effect on the ability of an
30 association to contract with and compensate a person who serves as election inspector.
31 Subdivision (c)(4) generalizes and clarifies the rule disqualifying a person who is "related" to a
32 disqualified person.

33 Subdivision (d) restates former Section 1363.03(c)(3).

34 Subdivision (e) restates former Section 1363.03(c)(4).

35 Subdivision (f) continues part of former Section 1363.03(b) without substantive change.

36 See also Sections 4080 ("association"), 4140 ("director"), 4150 ("governing documents"),
37 4160 ("member"), 4170 ("person").

38 **§ 4640. Secret ballots**

39 4640. (a) This section governs a member election on any of the following
40 matters:

41 (1) Assessment approval.

42 (2) Director election or removal.

43 (3) Amendment of the governing documents.

44 (4) The grant of exclusive use of common area.

1 (5) Any other matter that is expressly identified in the operating rules as being
2 governed by this section.

3 (b) The association shall deliver the following voting materials to every member
4 who is entitled to vote, by first-class mail or personal delivery, at least 30 days
5 prior to the deadline for voting:

6 (1) A ballot that does not identify the member in any way. In the election of a
7 director, the ballot shall identify all nominated candidates. In an election on a
8 proposed action, the ballot shall describe the proposed action and provide an
9 opportunity to vote for or against the proposed action.

10 (2) An inside envelope that does not identify the member in any way.

11 (3) An outside envelope that is marked with the name of the member, the
12 address of each separate interest owned by the member, and the address at which
13 the ballot is to be cast.

14 (4) Instructions on how to cast the ballot. If cumulative voting will be used to
15 elect directors, the instructions shall explain how to cast cumulative votes.

16 (c) A member shall cast a ballot in the following manner:

17 (1) Mark the ballot to indicate the member's vote and insert it, unsigned, into the
18 inside envelope.

19 (2) Seal the inside envelope and insert it into the outside envelope.

20 (3) Seal and sign the outside envelope.

21 (4) Mail or hand deliver the outside envelope and its contents to the election
22 inspector at the address printed on the outside envelope. If the outside envelope is
23 delivered by hand, the member may request a receipt for delivery.

24 (d) Once delivered, a secret ballot is irrevocable.

25 (e) Unless the governing documents provide otherwise, a member election
26 conducted pursuant to this section can be conducted entirely by mail, with the
27 exception of the meeting required by Section 4650. For the purposes of
28 determining the existence of a quorum, a ballot received by the election inspector
29 shall be treated in the same way as a vote cast by a member present at a meeting.

30 (f) A member election that is not governed by this section may be conducted as
31 provided in Section 7513 of the Corporations Code.

32 **Comment.** Subdivision (a) of Section 4640 generalizes part of former Section 1363.03(b)
33 without substantive change.

34 Subdivision (b) restates the first two sentences of former Section 1363.03(e). The second
35 sentence is generalized in order to make clear that a ballot may not identify the voting member in
36 any way. The third sentence of former Section 1363.03(e), requiring that ballot procedures be
37 based on "procedures used by California counties," is unclear and is not continued. The
38 provisions of this article adequately preserve voter anonymity.

39 The second and third sentences of subdivision (b)(1) are drawn from Corporations Code
40 Section 7513(a).

41 Subdivision (c) restates former Section 1363.03(e)(1)-(2).

42 Subdivision (d) restates the last sentence of former Section 1363.03(f).

43 The first sentence of subdivision (e) restates former Section 1363.03(k). The second sentence
44 restates part of former Section 1363.03(b). See also Corp. Code § 7513(b).

45 Subdivision (f) makes clear that Corporations Code Section 7513 applies to an election that is
46 not governed by this section, notwithstanding Section 4025.

1 See also Sections 4080 (“association”), 4095 (“common area”), 4140 (“director”), 4150
2 (“governing documents”), 4160 (“member”), 4163 (“member election”), 4185 (“separate
3 interest”).

4 **§ 4650. Counting ballots**

5 4650. (a) A ballot cast pursuant to this article shall be counted pursuant to this
6 section.

7 (b) Prior to opening and counting a ballot, the election inspector shall verify the
8 information and signature on the outside envelope and shall verify the eligibility to
9 vote, voting power, and voting class of the member who cast the ballot. A decision
10 by the election inspector to accept or reject a ballot is governed by Section 7517 of
11 the Corporations Code.

12 (c) The election inspector shall open and count all of the ballots cast, at a board
13 meeting or member meeting that is open to the public. Any member may observe
14 the counting of ballots, but shall not be permitted to observe any information that
15 would reveal the identity of a member casting a ballot.

16 (d) The election inspector shall certify the results of the election to the board, in
17 writing. The results shall be noted in the minutes of the meeting at which the
18 ballots were counted and delivered to all members by general notice (Section
19 4045) within 15 days after the votes are counted.

20 **Comment.** Section 4650 restates former Section 1363.03(f)-(g), except that the second
21 sentence of subdivision (b) is new.

22 See also Sections 4085 (“board”), 4090 (“board meeting”), 4160 (“member”).

23 **§ 4655. Ballot custody and inspection**

24 4655. (a) A ballot cast pursuant to this article shall remain in the custody of the
25 election inspector until it is opened and counted.

26 (b) Once the ballots are opened and counted, the election inspector shall
27 maintain custody of the ballots until the time for challenge of the election result
28 under Section 4685 has passed.

29 (c) The ballots shall be transferred to the association after the time for challenge
30 of the election result under Section 4685 has passed.

31 (d) On the written request of a member, the election inspector shall make the
32 ballots available for inspection by the member or the member’s agent. Any
33 inspection of ballots shall be conducted in a manner that preserves the
34 confidentiality of the vote.

35 (e) After the transfer of election materials to the association, the ballots shall be
36 stored by the association in a secure place for no less than one year after the date
37 of the election.

38 **Comment.** Section 4655 restates former Section 1363.03(h)-(i). Subdivision (d) generalizes
39 the requirements of the last sentence of former Section 1363.03(h).

40 See also Sections 4080 (“association”), 4160 (“member”).

1 **§ 4660. Proxies**

2 4660. (a) For the purposes of this article, “proxy” means a written authorization
3 signed by a member or the member’s agent that gives another member the power
4 to vote on behalf of the member who gave the proxy. For the purposes of this
5 section, “signed” means the placing of the member’s name on the proxy (whether
6 by manual signature, typewriting, telegraphic transmission, or otherwise) by the
7 member or authorized representative of the member.

8 (b) A proxy is not itself a ballot and cannot be cast or counted as a ballot.

9 (c) The governing documents may permit and regulate the use of proxies.

10 (d) Nothing in this section requires that an association prepare or distribute
11 proxies.

12 (e) If a proxy includes instructions on how the proxyholder is to cast the vote of
13 the member who gave the proxy, the instruction shall be stated on a separate page
14 of the proxy that can be detached and given to the proxyholder to retain.

15 (f) A proxy may be used in casting a secret ballot.

16 (g) A proxy is revocable until a ballot cast pursuant to the proxy is received by
17 the election inspector.

18 (h) A proxy is governed by Section 7514 and subdivisions (a) through (f),
19 inclusive, of Section 7613, of the Corporations Code.

20 (i) If a proxy is given for a vote on a matter other than the election or removal of
21 a director, the proxy shall state the nature of the matter to be voted on. A proxy
22 that does not comply with this subdivision is invalid.

23 **Comment.** Subdivisions (a)-(h) of Section 4660 restate former Section 1363.03(d).

24 Subdivision (i) is drawn from Corporations Code section 7613(g).

25 See also Sections 4080 (“association”), 4140 (“director”), 4150 (“governing documents”),
26 4160 (“member”).

27 **§ 4665. Nomination of candidate for board**

28 4665. (a) The governing documents of an association shall include a reasonable
29 procedure for the nomination of candidates in the election of a director.

30 (b) The governing documents shall permit self-nomination.

31 (c) If the election is conducted at a member meeting, the governing documents
32 may permit nomination from the floor.

33 (d) The governing documents may permit write-in candidates.

34 (e) The governing documents shall provide a reasonable period for the
35 submission of nominations.

36 (f) The governing documents may authorize the board to declare that all
37 qualified nominees are elected without further action, if after the close of
38 nominations, the number of qualified nominees is equal to or fewer than the
39 number of directors to be elected.

40 **Comment.** Subdivisions (a)-(b) of Section 4665 restate part of former Section 1363.03(a)(3)
41 without substantive change. The part of the former paragraph that relates to director qualifications
42 is continued in Section 4630.

43 Subdivisions (b)-(d) restate former Section 1363.03(j).

1 Subdivisions (e)-(f) are drawn from Corporations Code Section 7522(d).
2 See also Sections 4080 (“association”), 4085 (“board”), 4140 (“director”), 4150 (“governing
3 documents”), 4160 (“member”).

4 **§ 4670. Campaign-related information**

5 4670. (a) An association may not use its funds to provide campaign-related
6 information, except as otherwise provided in this section.

7 (b) An association may provide campaign-related information in a newsletter,
8 Internet website, or other media if it provides equal access to all candidates or
9 advocates for or against a proposal in the pending election. The association shall
10 not edit or redact campaign-related information provided by a candidate or
11 advocate pursuant to this subdivision, but may include a statement specifying that
12 the candidate or advocate, and not the association, is responsible for the
13 information provided. An association is not liable for campaign-related
14 information provided by a candidate or advocate pursuant to this subdivision.

15 (c) If an association has common area meeting space, it shall provide access to
16 the space, at no cost, for events that provide campaign-related information. The
17 association shall provide equal access to each candidate and advocate for or
18 against a proposal in the pending election.

19 (d) For the purposes of this section, “campaign-related information” means
20 information that is reasonably related to a pending election, including, but not
21 limited to the following information:

22 (1) A statement advocating the election or defeat of a candidate in a pending
23 member election.

24 (2) A statement advocating the passage or defeat of a proposal at issue in a
25 pending member election.

26 (3) Information that includes the photograph or name of a candidate within 30
27 days before ballots may be cast in an election.

28 (e) Nothing in this section limits the use of association funds to include the name
29 of a candidate in a ballot, ballot materials, or in any other communication that is
30 required by law.

31 **Comment.** Section 4670 restates former Sections 1363.03(a)(1)-(2) and 1363.04.

32 Subdivision (e) makes clear that the communication of a candidate’s name is not prohibited
33 where the communication is required by law. For example, distribution of meeting minutes would
34 not be barred merely because the minutes include the name of a candidate in a pending election.
35 See Section 4550 (minutes of board meeting).

36 See also Sections 4080 (“association”), 4095 (“common area”), 4163 (“member election”).

37 **§ 4675. Voting rights**

38 4675. (a) Unless the governing documents provide otherwise, a member who is
39 entitled to vote may cast one vote for each separate interest that the member owns.

40 (b) If a separate interest is owned by more than one person, each owner shall be
41 a member of the association, but there shall be no more than one vote cast for that
42 separate interest.

1 (c) The governing documents may provide, or the board may fix in advance, the
2 record date for determining the members entitled to vote in a member election.
3 The record date shall not be more than 60 days before the first day on which a
4 ballot may be cast in the member election.

5 **Comment.** Subdivision (a) of Section 4675 is drawn from 10 Cal. Code Regs. § 2792.18(a). It
6 states a default rule that can be overridden by the governing documents. See also Corp. Code §
7 7312(d).

8 Subdivision (b) is drawn from 10 Cal. Code Regs. § 2792.18(a). It makes clear that joint
9 owners of a separate interest share the voting rights that are appurtenant to ownership of a
10 separate interest. The law does not address how the joint owners will decide how to cast their
11 joint vote. The governing documents should provide a clear rule in order to avoid confusion or
12 disenfranchisement.

13 Subdivision (c) is drawn from Corporations Code Section 7611(b)-(d). See also Section 4595
14 (notice of regular meeting), which is drawn from Corporations Code Section 7611(a).

15 See also Sections 4080 (“association”), 4085 (“board”), 4150 (“governing documents”), 4160
16 (“member”), 4163 (“member election”), 4170 (“person”), 4185 (“separate interest”).

17 **§ 4680. Action by unanimous written consent**

18 4680. Any action required or permitted to be taken by the members may be
19 taken without a meeting, if all members individually or collectively consent in
20 writing to the action. The written consent shall be filed with the minutes of the
21 proceedings of the members. The action by written consent shall have the same
22 force and effect as the unanimous vote of the members. Action under this section
23 is not governed by Sections 4625 through 4675, inclusive.

24 **Comment.** Section 4680 is drawn from Corporations Code Section 7516.
25 See also Section 4160 (“member”).

26 **§ 4685. Judicial enforcement**

27 4685. (a) A member of an association may bring a civil action for a violation of
28 this part or the governing documents in conducting a member election.

29 (b) Upon the filing of the complaint, and before any further proceedings are had,
30 the court shall enter an order fixing a date for the hearing, which shall be within
31 five days unless good cause is shown for a later date. The court shall require that
32 the plaintiff serve notice of the date of the hearing and a copy of the complaint on
33 the association and on any person, other than the plaintiff, whose purported
34 election or failure to be elected is challenged. Service shall be in the manner in
35 which a summons is required to be served, or, if the court so directs, by registered
36 mail. The court may make any further requirements as to notice that appear to be
37 proper under the circumstances.

38 (c) If the court finds a violation, it may grant any equitable relief that is
39 appropriate, including nullification of the election results, declaratory relief,
40 injunction, and restitution. The court may impose a civil penalty of up to five
41 hundred dollars (\$500) for each violation, except that each identical violation shall
42 be subject to only one penalty if the violation affects each member of the
43 association equally.

1 (d) An action under this section shall be brought within one year of the
2 violation. In the absence of fraud, an election is conclusively presumed to be valid
3 if no action is brought under this section within one year.

4 (e) A member who prevails in an action under this section is entitled to
5 reasonable attorney's fees and court costs.

6 (f) If the court finds that an action brought under this section is frivolous,
7 unreasonable, or without foundation, it may award reasonable attorney's fees and
8 court costs to the association.

9 (g) An action under this section that alleges a violation of this part may be
10 brought in the small claims division of the superior court, so long as the amount of
11 any demand for restitution does not exceed the jurisdiction of that division.

12 **Comment.** Section 4685 restates former Section 1363.09, except that subdivision (b) is drawn
13 from Corporations Code Section 7616(c) and the second sentence of subdivision (d) is drawn
14 from Corporations Code Section 7527.

15 See also Sections 4080 ("association"), 4150 ("governing documents"), 4160 ("member"),
16 4163 ("member election").

17 Article 5. Inspection of Records

18 § 4700. Scope of inspection right

19 4700. (a) Except as otherwise provided in this article, a member may inspect the
20 following association records:

21 (1) The governing documents.

22 (2) The membership list, including member names, property addresses, mailing
23 addresses, and electronic mail addresses.

24 (3) The agenda and minutes of a member meeting, a board meeting, or a meeting
25 of a committee that exercises a power of the board.

26 (4) A report prepared pursuant to Article 7 (commencing with Section 4800).

27 (5) A balance sheet, income and expense statement, budget comparison, or
28 general ledger. This paragraph applies to any record of the types described,
29 regardless of whether the record is interim or final, audited or unaudited, prepared
30 pursuant to a fixed schedule or on an ad hoc basis. For the purposes of this
31 paragraph, a "general ledger" is a report that shows all transactions that occurred
32 in an association account over a specified period of time. The records described in
33 this paragraph shall be prepared in accordance with an accrual or modified accrual
34 basis of accounting.

35 (6) An invoice, receipt, cancelled check, credit card statement, statement for
36 services rendered, or reimbursement request.

37 (7) A statement of deposits to and withdrawals from the reserve account, or
38 showing the current balance of the reserve account.

39 (8) An executed contract.

40 (9) Written board approval of a vendor or contractor proposal or invoice.

41 (10) A state or federal tax return.

1 (11) A record of the compensation provided to an employee or contractor. The
2 compensation information shall be indicated by job classification or title and may
3 not refer to an individual employee or contractor by name or by other identifying
4 information. Except as provided in this subdivision, personnel records are not
5 subject to inspection.

6 (12) Information required by the member to comply with Section 5825.

7 (b) Notwithstanding subdivision (a), a member may not inspect the following
8 association records:

9 (1) A record that was prepared three or more fiscal years before the fiscal year in
10 which the inspection request is delivered. This paragraph does not apply to the
11 governing documents or the minutes of a member meeting, a board meeting, or a
12 meeting of a committee that exercises a power of the board. The governing
13 documents and meeting minutes must be made available for inspection
14 permanently.

15 (2) A record that is protected from disclosure by an evidentiary privilege.
16 Examples include documents subject to the attorney-client privilege or relating to
17 litigation in which the association is or may become involved. For the purposes of
18 this section, a contract to provide maintenance, management, or legal services to
19 an association is not privileged.

20 (3) The agenda or minutes of a board or committee meeting held in executive
21 session.

22 (4) A record of a disciplinary action, collection activity, or a payment plan for
23 overdue assessments, that involves a person other than the person making the
24 request.

25 (5) An interior architectural plan of a separate interest.

26 (6) A plan showing any security features of a separate interest.

27 (7) A record of a good or service provided to a member for a fee.

28 (c) Inspection under this article may be made in person or by an agent or
29 attorney and the right of inspection includes the right to copy and make extracts.

30 **Comment.** Subdivision (a) of Section 4700 continues former Section 1365.2(a) without
31 substantive change, except for the following changes:

32 Subdivision (a)(1) is new.

33 Subdivision (a)(2) includes an electronic mail address in the information that must be provided
34 as part of the membership list. The substantive limitations on use of a membership list are not
35 included in this section. They are continued in Sections 4715 and 4725.

36 Subdivision (a)(3) generalizes the requirements for inspection of documents prepared pursuant
37 to former Section 1365. Any document that is delivered to the membership generally is subject to
38 inspection.

39 Subdivision (a)(5) does not limit the inspection of financial statements to those that are
40 “interim,” “unaudited,” and “periodic or as compiled.” All financial statements of the types
41 described are subject to inspection.

42 Subdivision (a)(8) does not preclude inspection of contracts that are privileged. That
43 requirement is subsumed in the general exemption of privileged documents from inspection that
44 is provided in subdivision (b)(2).

45 Subdivision (a)(11) continues former Section 1365.2(d)(1)(E)(v) & (d)(2) without substantive
46 change.

1 Subdivision (b)(1) continues Section 1365.2(i) without substantive change, except that
2 governing documents are required to be made available for inspection permanently.

3 Subdivision (b)(2) continues former Section 1365.2(d)(1)(C) without substantive change.

4 Subdivision (b)(3) continues former Section 1365.2(d)(1)(E)(iv) without substantive change.

5 Subdivision (b)(4) continues former Section 1365.2(d)(1)(E)(ii) without substantive change.

6 Subdivision (b)(5)-(6) continues former Section 1365.2(d)(1)(E)(vi) without substantive
7 change.

8 Subdivision (b)(7) continues former Section 1365.2(d)(1)(E)(i) without substantive change.

9 Subdivision (c) restates former Section 1365.2(b)(2) without substantive change and is
10 comparable to Corporations Code Section 8311.

11 Nothing in this section affects the scope of discovery in a civil or criminal case.

12 This section governs the right of a member to inspect a record, if that record exists. Nothing in
13 this section mandates that any record be created or maintained. For record retention requirements,
14 see Sections 4775-4780.

15 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100
16 (“common interest development”), 4150 (“governing documents”), 4160 (“member”), 4170
17 (“person”), 4185 (“separate interest”).

18 **§ 4705. Inspection procedure**

19 4705. (a) A member may deliver to the board (Section 4035) a written request to
20 inspect an association record. The request shall identify the record to be inspected
21 and shall state a purpose for the inspection that is reasonably related to the
22 member’s interest as a member. The request may designate an agent to inspect the
23 record on the member’s behalf.

24 (b) Except as provided in Sections 4710, 4715 and 4725, the association shall
25 make the requested record available for inspection according to the following
26 deadlines:

27 (1) For a record prepared in the current fiscal year, within 15 days after the
28 request is delivered.

29 (2) For a record prepared in a prior fiscal year, within 30 days after the request is
30 delivered.

31 (3) For a record that has not yet been prepared, within 15 days after the request
32 is delivered or the record is prepared, whichever is later.

33 (4) For the membership list, within 10 days.

34 (c) If the association has a business office in the common interest development,
35 the requested record shall be made available for inspection in that office. If the
36 association does not have a business office in the common interest development,
37 the record shall be made available for inspection at a location agreed to by the
38 association and the member who submitted the request.

39 (d) At the member’s request, a copy of a specifically identified record shall be
40 delivered to the member by individual delivery (Section 4040). If the record exists
41 in electronic form, the association shall comply with a member request that the
42 record be provided in electronic form. Notwithstanding the other provisions of this
43 subdivision, the association shall not provide a record in electronic form if the
44 form of the record prevents a necessary redaction or allows the record to be altered
45 by the requesting member.

1 **Comment.** Subdivision (a) of Section 4705 is new.

2 Subdivision (b) continues part of former Section 1365.2(j) without substantive change, except
3 that the deadlines have been recast as calendar days rather than “business days.” Special
4 deadlines for inspection of specific types of records have been subsumed within the general
5 deadlines.

6 Subdivisions (c) and (d) continue former Section 1365.2(c) & (h) without substantive change.

7 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest
8 development”), 4160 (“member”).

9 **§ 4710. Redaction**

10 4710. (a) Before making a record available for inspection, the association shall
11 redact all of the following information from the record:

12 (1) Any financial account number.

13 (2) Any password or personal identification number.

14 (3) Any social security number or taxpayer identification number.

15 (4) Any driver’s license number.

16 (5) Any other information, if it is reasonably probable that disclosure of the
17 information will compromise the privacy of a member, lead to unauthorized use of
18 a person’s identity or financial resources, or is reasonably likely to lead to fraud in
19 connection with the association.

20 (b) Before providing a membership list, the association shall remove the name
21 and other information of any person who has opted to have that information
22 removed from the membership list pursuant to Section 4715.

23 (c) If the member requests, the association shall provide a written statement
24 explaining the legal justification for any redaction made.

25 **Comment.** Section 4710(a) restates former Section 1365.2(d)(1), except that the duty to redact
26 certain information has been made mandatory.

27 Subdivision (c) restates former Section 1365.2(d)(4) without substantive change.

28 See also Sections 4080 (“association”), 4160 (“member”), 4170 (“person”).

29 **§ 4715. Optional removal from membership list**

30 4715. (a) A member may elect, in writing, to have the member’s name and other
31 information removed from the membership list that is available for inspection by
32 the members.

33 (b) A member who requests the membership list may also request that the
34 association deliver material to any member whose information has been removed
35 from the membership list. The association shall deliver the material to those
36 members by individual delivery (Section 4040), within 15 days after delivery of
37 the request.

38 **Comment.** Section 4715 restates former Section 1365.2(a)(1)(I)(iii).

39 See also Sections 4080 (“association”), 4160 (“member”).

40 **§ 4720. Fees**

41 4720. (a) The association may charge a fee to recover the direct and actual cost
42 to copy or deliver a record. The association shall inform the member of the fee

1 amount, and the member shall agree to pay the fee, before a copy is made or a
2 record delivered.

3 (b) The association may charge a fee of up to ten dollars (\$10) per hour, not to
4 exceed two hundred dollars (\$200) per written request, for the time actually and
5 reasonably spent to retrieve and redact a record. The association shall inform the
6 member of the estimated fee amount, and the member shall agree to pay the fee,
7 before the record is retrieved and redacted.

8 **Comment.** Section 4720 continues former Section 1365.2(b)(1) & (c)(4)-(5) without
9 substantive change, except that the authority to charge a fee for redaction has been generalized.

10 See also Sections 4080 (“association”), 4160 (“member”).

11 § 4725. Permissible purpose

12 4725. (a) A member may only inspect and use an association record for a
13 purpose that is reasonably related to the requesting member’s interest as a
14 member. A member may not inspect or use an association record for a commercial
15 purpose.

16 (b) The association may deny a record inspection request if it believes, in good
17 faith and with a substantial basis, that the record will be used for an impermissible
18 purpose or that disclosure of the record would violate a member’s constitutional
19 rights.

20 (c) Impermissible use of an association record includes, without limitation, the
21 use of a record without association permission for any of the following purposes:

22 (1) To solicit money or property unless such money or property will be used
23 solely to solicit the vote of the members in an election to be held by the
24 association.

25 (2) Any purpose that the member does not reasonably and in good faith believe
26 will benefit the association.

27 (3) Any commercial purpose.

28 (4) The sale of the record to any person.

29 **Comment.** Subdivision (a) of Section 4725 continues former Section 1365.2(e) without
30 substantive change. See also Corp. Code § 8338 (use of membership list).

31 Subdivision (b) is comparable to Corporations Code Sections 8331(a) and 8332, but it applies
32 to any record and not just the association’s membership list.

33 Subdivision (c) is comparable to Corporations Code Section 8338.

34 See also Sections 4080 (“association”), 4160 (“member”).

35 § 4730. Denial of request

36 4730. (a) An association that denies a request for records under this article shall
37 provide the requesting member a notice of denial, by individual delivery (Section
38 4040), within 15 days after delivery of the inspection request.

39 (b) The notice of denial shall include all of the following information:

40 (1) An explanation of the basis for the denial decision.

41 (2) An offer to attempt to resolve the matter through the association’s internal
42 dispute resolution procedure provided pursuant to Article 2 (commencing with

1 Section 5050) of Chapter 4. The offer may include an alternative proposal for
2 achieving the member’s purpose, such as an offer to mail notices to the members
3 on behalf of the requesting member.

4 **Comment.** Section 4730 is new.

5 See also Sections 4080 (“association”), 4160 (“member”).

6 **§ 4735. Action to enforce**

7 4735. (a) If an association has not complied with a document inspection request
8 within the time provided, the requesting member may bring an action in the
9 superior court to enforce the record inspection request. The action may be filed in
10 the small claims division of the superior court if the amount of the demand does
11 not exceed the jurisdiction of that division.

12 (b) If the court determines that there is no legal basis for the failure to comply
13 with the record inspection request, it shall order compliance.

14 (c) If the court determines that disclosure is not required under this article, that
15 disclosure would violate a member’s constitutional rights, or that there is a
16 reasonable probability that disclosure would lead to misuse of a record, it shall
17 modify or set aside the record inspection request.

18 (d) The court may grant any other relief appropriate to the circumstances,
19 including the following relief:

20 (1) If the association acted unreasonably in denying the request, the imposition
21 of a civil penalty of up to \$500 against the association.

22 (2) The tolling of any deadline affected by association delay in providing access
23 to a record.

24 (3) The postponement of a scheduled board meeting or member meeting, if
25 association delay in providing access to a record would prejudice the requesting
26 member’s interest in a decision to be made at the meeting.

27 (4) The appointment of an investigator or accountant to inspect or audit
28 association records on behalf of the requesting member. The cost of investigation
29 shall ordinarily be borne by the requesting member, but the court may order that
30 the association bear or share the cost.

31 (5) An order requiring that the association distribute material to the membership
32 on behalf of the requesting member, in lieu of disclosing the membership list.

33 (e) The association bears the burden of proving the legal grounds for
34 noncompliance with the records request.

35 (f) If the court finds that the association acted unreasonably in denying the
36 record inspection request, it shall award reasonable costs and expenses, including
37 reasonable attorney’s fees, to the requesting member.

38 (g) If the court finds that an action brought under this section is frivolous,
39 unreasonable, or without foundation, it may award reasonable costs and expenses,
40 including reasonable attorney’s fees, to the association.

41 (h) Nothing in this section limits the right of the association to bring an action
42 under Section 4740.

1 **Comment.** Subdivisions (a)-(c) of Section 4735 are comparable to former Section 1365.2(f)
2 and Corporations Code Sections 8336 (action to enforce inspection right) and 8337 (costs and
3 expenses).

4 Subdivision (d)(1) continues part of former Section 1365.2(f) without substantive change.

5 Subdivision (d)(2) is new. It authorizes the court to toll a procedural deadline if the
6 association's delay in providing access to a record affected the member's ability to comply with
7 the deadline. For example, Section 6120 provides for a member meeting to reverse a rule change,
8 within 30 days after notice of the rule change. The signatures of five percent or more of the
9 members are required to call the meeting. A member who requests access to the membership list
10 in order to solicit signatures might be unable to meet the deadline due to association delay in
11 providing the list. Subdivision (b)(2) would authorize the court to toll that time period to prevent
12 injustice. See also subdivision (b)(3); Corp. Code § 8335 (postponement of meeting).

13 Subdivision (d)(3) is comparable to Corporations Code Section 8335, except that it applies to
14 all records and not just to a membership list.

15 Subdivision (d)(4) is comparable to Corporations Code Section 8336.

16 Subdivision (d)(5) is comparable to Corporations Code Sections 8331(g) and 8332.

17 Subdivision (e) is comparable to former Section 1365.2(a)(1)(I)(ii) and Corporations Code
18 Sections 8331(f)(1) and 8332, except that it applies to all records and not just to a membership
19 list.

20 Subdivisions (f)-(g) continue part of former Section 1365.2(f) without substantive change.

21 Subdivision (h) is comparable to Corporations Code Section 8331(j).

22 See also Sections 4080 ("association"), 4090 ("board meeting"), 4160 ("member").

23 **§ 4740. Action to enjoin improper use of records**

24 4740. An association may bring an action for injunctive relief and actual
25 damages against any person who misuses association records. In addition, a court
26 in its discretion may award exemplary damages for a fraudulent or malicious
27 misuse of association records. If the association prevails in an action brought
28 under this section, the court shall award the association reasonable costs and
29 expenses, including reasonable attorney's fees.

30 **Comment.** Section 4740 is comparable to Corporations Code Section 8338(b)-(d).

31 See also Sections 4080 ("association"), 4170 ("person").

32 **§ 4745. Liability**

33 4745. An association, or an officer, director, employee, agent, or volunteer of an
34 association, is not liable for damages that result from a failure to withhold or
35 redact information pursuant to this article, unless the failure to withhold or redact
36 the information was intentional, willful, or negligent.

37 **Comment.** Section 4745 restates former Section 1365.2(d)(3) without substantive change.

38 See also Sections 4080 ("association"), 4140 ("director").

39 **§ 4750. Application of article**

40 4750. (a) This article applies to a community service organization or similar
41 entity that is related to the association. The members of the community service
42 organization or similar entity shall have the same right to inspect records of that
43 organization or entity that are granted to the members of an association under this
44 article.

1 (b) This article does not apply to a common interest development in which
2 separate interests are being offered for sale by a subdivider under the authority of a
3 public report issued by the Department of Real Estate, so long as the subdivider or
4 all subdividers offering those separate interests for sale, or any employees of those
5 subdividers or any other person who receives direct or indirect compensation from
6 any of those subdividers, comprise a majority of the members of the board of
7 directors of the association. Notwithstanding the foregoing, this article applies to a
8 common interest development no later than 10 years after the close of escrow for
9 the first sale of a separate interest to a member of the general public pursuant to
10 the public report issued for the first phase of the development.

11 (c) If two or more associations have consolidated any of their functions under a
12 joint neighborhood association or similar organization, the members of each
13 participating association shall have access to the records of the joint organization
14 as if they were the records of the participating association.

15 (d) Notwithstanding Section 4025, a common interest development that is
16 exempt from the requirements of this article pursuant to this section is governed
17 by Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division
18 2 of the Corporations Code.

19 **Comment.** Subdivision (a) of Section 4750 continues former Section 1365.2(g) without
20 substantive change.

21 Subdivision (b) continues former Section 1365.2(m) without substantive change.

22 Subdivision (c) continues part of former Section 1363(i) without substantive change.

23 Subdivision (d) is new.

24 See also Sections 4080 (“association”), 4100 (“common interest development”), 4110
25 (“community service organization”), 4140 (“director”), 4160 (“member”), 4170 (“person”), 4185
26 (“separate interest”).

27 Article 6. Record Keeping

28 § 4775. Duty to maintain records

29 4775. (a) An association shall maintain at least one copy of the following
30 association records, for the periods specified in Section 4780:

31 (1) The original governing documents and any amendment of or addition to the
32 governing documents.

33 (2) The membership list, including the name, address, and membership class of
34 each member.

35 (3) The notice, agenda, and minutes of a member meeting, board meeting, or
36 meeting of a committee that exercises a power of the board.

37 (4) A written waiver, consent, or approval received under Section 4610.

38 (5) A report prepared pursuant to Article 7 (commencing with Section 4800).

39 (6) Books and records of account.

40 (7) A tax return or other tax-related record.

41 (8) A deed or other record that relates to title of real property within the
42 common interest development.

1 (9) A record that relates to the design, construction, or physical condition of the
2 common interest development.

3 (10) A record that relates to a proposed modification of a member’s separate
4 interest.

5 (11) A record that relates to litigation involving the association or legal services
6 provided to the association.

7 (12) An employment or payroll record.

8 (13) An insurance policy or record relating to insurance coverage or claims.

9 (14) A contract to which the association is a party.

10 (15) A loan document.

11 (16) A ballot, proxy, or other record that relates to an election.

12 (17) A reserve funding study.

13 (18) A record that relates to enforcement of a restriction.

14 (b) The association may keep a record in paper form or in any other form that
15 can be converted to a paper copy, provided that the paper copy accurately portrays
16 the content of the record. A paper copy produced from a non-paper record is
17 admissible in evidence and is accepted for all other purposes, to the same extent as
18 an original paper record of the same information.

19 **Comment.** Subdivisions (a)(2)-(3), (a)(6), and (b) of Section 4775 are comparable to
20 Corporations Code Section 8320. The other provisions of subdivision (a) are new.

21 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100
22 (“common interest development”), 4150 (“governing documents”), 4160 (“member”), 4185
23 (“separate interest”).

24 **§ 4780. Record retention periods**

25 4780. (a) Unless a longer period is required by law or by the governing
26 documents, an association shall retain a record listed in Section 4775 for at least
27 four years after its date of creation, except that a record with continuing legal or
28 operational effect shall be retained during the period of its effect and for at least
29 four years after the termination of its effect.

30 (b) The association shall retain the following records permanently:

31 (1) The original governing documents and each amendment of or addition to the
32 governing documents.

33 (2) The minutes of a member meeting, board meeting, or meeting of a
34 committee that exercises a power of the board.

35 (3) A deed or other record that relates to title of real property within the
36 common interest development.

37 (4) A record that relates to the design, construction, or physical condition of the
38 common interest development.

39 (c) A ballot cast in a member election shall be retained for the period provided
40 in Section 4655.

41 (d) This section does not apply to a record that is discarded or destroyed before
42 January 1, 2010.

1 **Comment.** Section 4780 is new. Subdivision (a) states a default retention period, but makes
2 clear that other law or an association’s governing documents may impose a longer retention
3 period. A special rule is provided for records that have “continuing legal or operational effect.”
4 Such records might include a lease or other contract with a fixed term. Associations should
5 determine whether administrative agencies, such as the Franchise Tax Board or Internal Revenue
6 Service, impose longer retention requirements for some records.

7 Subdivision (c) reflects the rule provided in Section 4655 (ballot custody).

8 Subdivision (d) provides that the requirements of this section only apply to a record held by an
9 association at the time that the section became operative. Note that other record retention
10 requirements may govern documents that were held by the association before that date. See, e.g.,
11 Section 4770(b) (period during which records must be made available for member inspection); 22
12 Cal. Code Regs. § 1085-2 (four-year period for retention of employment records); 26 C.F.R. §
13 1.6001-1 (retention of federal tax records while material to assessment or collection of tax); 29
14 C.F.R. § 516.5 (three-year period for retention of payroll records).

15 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100
16 (“common interest development”), 4150 (“governing documents”), 4160 (“member”).

17 **§ 4785. Director inspection**

18 4785. A director shall have the absolute right at any reasonable time to inspect
19 and copy all association books, records, and documents of every kind and, subject
20 to reasonable limitations in the governing documents, to inspect the common area.
21 These rights shall be exercised pursuant to the standard provided in Section 7231
22 of the Corporations Code.

23 **Comment.** Section 4785 is comparable to Corporations Code Section 8334, except that the
24 right to inspect the common area may be subject to reasonable limitations in the governing
25 documents (e.g., a requirement of advance notice before entering a separate interest to inspect
26 appurtenant exclusive use common area). The provision requiring compliance with Corporations
27 Code Section 7231 is a specific expression of a general rule.

28 See also Sections 4080 (“association”), 4095 (“common area”), 4140 (“director”).

29 **Article 7. Annual Reports**

30 **§ 4800. Annual budget report**

31 4800. (a) From 30 to 90 days before the end of the fiscal year, the board shall
32 prepare an annual budget report.

33 (b) The annual budget report shall include all of the following information:

34 (1) The estimated revenue and expenses for the operating and reserve accounts,
35 on an accrual basis.

36 (2) The reserve funding study prepared pursuant to Section 5555.

37 (3) A summary of the association’s property, general liability, earthquake, flood,
38 and fidelity insurance policies. For each policy, the summary shall include the
39 name of the insurer, the type of insurance, the policy limit, and the amount of any
40 deductible. To the extent that any of the required information is specified in the
41 insurance policy declaration page, the association may meet its obligation to
42 disclose that information by making copies of that page and distributing it with the
43 annual budget report.

1 (c) The board shall promptly deliver a copy of the current annual budget report
2 to any member who requests a copy, at no cost to the member.

3 (d) The type used in the annual budget report shall be at least 12 points in size.

4 **Comment.** Section 4800 continues part of former Sections 1365(a) & (e) and 1365.2 without
5 substantive change.

6 See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4160
7 (“member”).

8 **§ 4805. Annual financial statement**

9 4805. (a) Within 120 days after the end of the fiscal year, the board of an
10 association that receives ten thousand dollars (\$10,000) or more in gross revenues
11 or receipts during the fiscal year shall prepare an annual financial statement.

12 (b) If the association receives more than seventy-five thousand dollars (\$75,000)
13 in a fiscal year, a licensee of the California Board of Accountancy shall conduct a
14 review of the annual financial statement, using generally accepted accounting
15 principles.

16 (c) The annual financial statement shall include all of the following information:

17 (1) A balance sheet as of the end of that fiscal year and an income statement and
18 a statement of cashflows for that fiscal year.

19 (2) If the financial statement is reviewed by an independent accountant, a copy
20 of the accountant’s report.

21 (3) If the financial statement is not reviewed by an independent accountant, the
22 certificate of an authorized officer of the association that the financial statement
23 was prepared without audit from the books and records of the association.

24 (4) If the association is incorporated, a statement of any transaction or
25 indemnification of a type described in Section 8322 of the Corporations Code.

26 (d) The board shall promptly deliver a copy of the current annual financial
27 statement to any member who requests a copy, at no cost to the member.

28 (e) The type used in the annual financial statement shall be at least 12 points in
29 size.

30 **Comment.** Section 4805 is comparable to Corporations Code Section 8321, except that
31 subdivision (b) continues former Section 1365(c) without substantive change.

32 See also Sections 4080 (“association”), 4085 (“board”), 4160 (“member”).

33 **§ 4810. Member handbook**

34 4810. (a) Within 120 days after the end of the fiscal year, the board shall prepare
35 a member handbook that contains all of the following information:

36 (1) A statement explaining that a member may submit a request to have notices
37 sent to up to two different specified addresses.

38 (2) The name and address of the person designated to receive official
39 communications to the board, pursuant to Section 4035.

40 (3) Notice of a member’s right to receive copies of meeting minutes, pursuant to
41 subdivision (d) of Section 4550.

42 (4) The statement required by Section 5670.

1 (5) A statement describing the association’s policies and practices in enforcing
2 lien rights or other legal remedies for default in the payment of assessments.

3 (6) A statement describing the association’s discipline policy, including any
4 schedule of penalties for violations of the governing documents.

5 (7) A summary of alternative dispute resolution procedures, pursuant to Sections
6 5070 and 5115.

7 (8) A summary of any requirements for association approval of a physical
8 change to property, pursuant to subdivision (c) of Section 5775.

9 (9) The location, if any, designated for posting of a general notice (Section
10 4045).

11 (10) Any other information that is required by law or the governing documents
12 or that the board determines to be appropriate for inclusion.

13 (b) The board shall promptly deliver a copy of the current member handbook to
14 any new member and to any member who requests a copy, at no cost to the
15 member.

16 (c) The type used in the member handbook shall be at least 12 points in size.

17 **Comment.** Section 4810 is new.

18 Subdivision (a)(5) continues former Section 1365(e) without substantive change.

19 See also Sections 4080 (“association”), 4085 (“board”), 4150 (“governing documents”), 4160
20 (“member”), 4170 (“person”).

21 **§ 4815. Community service organization report**

22 4815. (a) Unless the governing documents impose more stringent standards, a
23 community service organization that receives 10 percent or more of its funding
24 from an association or its members shall prepare and distribute to the board an
25 annual report that includes all of the following information:

26 (1) A financial statement.

27 (2) A detailed statement of administrative costs that identifies the person paid
28 for each cost.

29 (3) If the report is not consistent with the requirements of Article 5
30 (commencing with Section 4700), a statement describing the noncompliance in
31 detail.

32 (4) If a community service organization is responsible for the maintenance of
33 major components for which an association would otherwise be responsible,
34 information regarding those components that the association requires to complete
35 the disclosures and reserve reports required under Article 3 (commencing with
36 Section 5550) of Chapter 5.

37 (b) An association may rely upon information received from a community
38 service organization.

39 **Comment.** Section 4815 restates former Section 1365.3 without substantive change, except
40 that the report must be made annually.

41 See also Sections 4080 (“association”), 4110 (“community service organization”), 4150
42 (“governing documents”), 4160 (“member”), 4170 (“person”).

1 (b) A director or member of a committee shall not vote or otherwise act on
2 behalf of the association with respect to any of the following matters:

3 (1) Discipline of the director or member.

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

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

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

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

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

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

15 **Comment.** Subdivision (a) of Section 4855 continues former Section 1365.6 without
16 substantive change.

17 Subdivisions (b) and (c) are new.

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

19 **Article 9. Managing Agent**

20 **§ 4900. Prospective managing agent disclosure**

21 4900. (a) A prospective managing agent of a common interest development shall
22 provide a written disclosure to the board before entering into a management
23 agreement. The disclosure shall be provided as soon as is practicable after entering
24 into negotiations, but in no event more than 90 days before entering into an
25 agreement.

26 (b) The disclosure required under this section shall contain all of the following
27 information:

28 (1) The name and business address of each owner or general partner of the
29 managing agent. If the managing agent is a corporation, the disclosure shall
30 include the name and business address of each shareholder owning more than 10
31 percent of the shares of the corporation and each director or officer of the
32 corporation.

33 (2) For each person named in paragraph (1), a list of any relevant license or
34 professional certification or designation held by that person. A license,
35 certification, or designation is relevant if it relates to a service to be provided by
36 the managing agent, including architectural design, construction, engineering, real
37 estate, accounting, real property management, or community association
38 management. The list shall indicate the type of license, certification, or
39 designation, the issuing authority, the issuance date, and any expiration date.

40 **Comment.** Section 4900 restates former Section 1363.1 without substantive change.

41 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest development”),
42 4140 (“director”), 4155 (“managing agent”), 4170 (“person”).

1 **§ 4905. Trust fund account**

2 4905. (a) A managing agent who receives funds belonging to an association,
3 other than for deposit into an escrow account or account under the control of the
4 association, shall deposit the funds into a trust fund account.

5 (b) The trust fund account shall be maintained in California, in a federally
6 insured financial institution. The account shall be maintained in the name of the
7 managing agent as trustee for the association or in the name of the association.

8 (c) On the written request of the board, the trust fund account shall be created as
9 an interest bearing account. No interest earned on funds in the account shall inure
10 directly or indirectly to the benefit of the managing agent or to an employee of the
11 managing agent.

12 (d) The managing agent shall inform the board of the nature of the trust fund
13 account, including a statement of how any interest will be calculated and paid,
14 whether service charges will be paid to the depository and by whom, and whether
15 there are any notice requirements or penalties for withdrawal of funds from the
16 account.

17 (e) Funds in a trust fund account may only be disbursed in accordance with
18 written instructions from the association that is entitled to the funds.

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

22 (g) The managing agent shall not commingle the funds of an association with
23 the funds of any other person, except as provided in subdivision (h).

24 (h) A managing agent who commingled the funds of two or more associations
25 on or before February 26, 1990, may continue to do so if all of the following
26 requirements are met:

27 (1) The board of each affected association has given its written assent to the
28 commingling.

29 (2) The managing agent maintains a fidelity and surety bond in an amount that is
30 adequate to protect each association and that provides each association at least 10
31 days notice before cancellation. The managing agent shall provide each affected
32 board with the name and address of the bonding company, the amount of the bond,
33 and the expiration date of the bond. If there are any changes in the bond coverage
34 or the company that provides the coverage, the managing agent shall disclose that
35 fact to the board of each affected association as soon as practical, but in no event
36 more than 10 days after the change.

37 (3) The managing agent provides a written statement to each affected board
38 describing any benefit received by the managing agent from the commingled
39 account or the financial institution where the funds will be on deposit.

40 (4) A completed payment on behalf of an association is deposited within 24
41 hours or the next business day and does not remain commingled for more than 10
42 calendar days. As used in this subdivision, “completed payment” means funds
43 received that clearly identify the account to which the funds are to be credited.

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

3 (j) As used in this section, “financial institution” has the meaning provided in
4 Section 31041 of the Financial Code.

5 **Comment.** Section 4905 restates former Section 1363.2 without substantive change.

6 See also Sections 4080 (“association”), 4085 (“board”), 4155 (“managing agent”), 4170
7 (“person”).

8 Article 10. Government Assistance

9 § 4950. Director training course

10 4950. To the extent existing funds are available, the Department of Consumer
11 Affairs and the Department of Real Estate shall develop an on-line education
12 course for the board of directors of an association regarding the role, duties, laws,
13 and responsibilities of directors and prospective directors, and the nonjudicial
14 foreclosure process.

15 **Comment.** Section 4950 continues former Section 1363.001 without substantive change.

16 See also Sections 4080 (“association”), 4140 (“director”).

17 § 4955. Attorney general

18 4955. (a) Upon receiving a complaint from a member, director, or officer that an
19 association has violated the provisions of Article 3 (commencing with Section
20 4575), Article 4 (commencing with Section 4625), Article 5 (commencing with
21 Section 4700), Article 6 (commencing with Section 4775), or Article 7
22 (commencing with Section 4800), the Attorney General may, in the name of the
23 people of the State of California, send a notice of the complaint to the principal
24 office of the association (or, if there is no office, to the office or residence of the
25 chief executive officer or secretary, of the corporation, as set forth in the most
26 recent statement filed pursuant to Section 8210 of the Corporations Code).

27 (b) If the answer to the notice of the complaint is not satisfactory, or if there is
28 no answer within 30 days, the Attorney General may institute, maintain, or
29 intervene in a suit, action, or proceeding of any type in any court or tribunal of
30 competent jurisdiction or before any administrative agency for relief by way of
31 injunction, the dissolution of entities, the appointment of receivers, or any other
32 temporary, preliminary, provisional or final remedy as may be appropriate to
33 protect the rights of members or to undo the consequences of the violation. In any
34 action, suit, or proceeding under this section, all persons and entities responsible
35 for or affected by the violation may be joined as parties.

36 (c) If the violation involves assets held in charitable trust, the Attorney General
37 may bring an action under this section without having received a complaint, and
38 without first giving notice of a complaint.

39 **Comment.** Section 4955 is drawn from Corporations Code Section 8216, which authorizes the
40 Attorney General to act on a complaint that a nonprofit mutual benefit corporation is not
41 complying with the law governing member meetings, voting, and record inspection. Section 4955

1 would continue that authority with respect to the provisions of this part that govern the same
2 matters.

3 See also Sections 4080 (“association”), 4160 (“member”).

4 **§ 4960. State registry**

5 4960. (a) To assist with the identification of common interest developments,
6 each association shall submit to the Secretary of State, on a form and for a fee not
7 to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the
8 following information concerning the association and the development that it
9 manages:

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

12 (2) The name of the association.

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

15 (4) The name, address, and either the daytime telephone number or e-mail
16 address of the president of the association, other than the address, telephone
17 number, or e-mail address of the association’s onsite office or managing agent of
18 the association.

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

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

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

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

28 (9) The type of common interest development, as defined in subdivision (c) of
29 Section 4100.

30 (10) The number of separate interests in the development.

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

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

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

40 (c) The association shall notify the Secretary of State of any change in the street
41 address of the association’s onsite office or of the responsible officer or managing

1 agent of the association in the form and for a fee prescribed by the Secretary of
2 State, within 60 days of the change.

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

8 (e) The Secretary of State shall make the information submitted pursuant to
9 paragraph (4) of subdivision (a) available only for governmental purposes and
10 only to Members of the Legislature and the Business, Transportation and Housing
11 Agency, on written request. All other information submitted pursuant to this
12 section shall be subject to public inspection pursuant to the California Public
13 Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title
14 1 of the Government Code.

15 **Comment.** Section 4960 continues former Section 1363.6 without substantive change.

16 See also Sections 4080 ("association"), 4100 ("common interest development"), 4155
17 ("managing agent").

18 CHAPTER 4. DISPUTE RESOLUTION AND ENFORCEMENT

19 Article 1. Disciplinary Action

20 § 5000. Authority to impose disciplinary fine

21 5000. An association shall not fine a member for a violation of the governing
22 documents unless, at the time of the violation, the governing documents expressly
23 authorize the use of a fine and include a schedule of the amounts that can be
24 assessed for each type of violation.

25 **Comment.** Section 5000 restates former Section 1363(g) without substantive change, with two
26 exceptions:

27 (1) It does not continue language relating to the distribution of copies of the enforcement
28 policy. Distribution of the governing documents is governed by other law. See Sections
29 4700(a)(1) (record inspection), 5825 (seller's disclosure), 6115 (notice of proposed rule change).

30 (2) It provides that the authority to fine and the schedule of fine amounts must exist at the time
31 of the violation. This prevents ex post facto punishment.

32 See also Sections 4080 ("association"), 4150 ("governing documents"), 4160 ("member").

33 § 5005. Due process hearing

34 5005. (a) The board shall only impose discipline on a member or assess a
35 member for damage to the common area and facilities at a meeting of the board at
36 which the member shall have an opportunity to be heard.

37 (b) At least 10 days before the meeting, the board shall deliver an individual
38 notice to the member (Section 4040) that includes all of the following information:

39 (1) If the member is alleged to have violated the governing documents, the
40 provision of the governing documents that the member is alleged to have violated,

1 a brief summary of the facts constituting the alleged violation, and the penalty that
2 may be imposed for the violation.

3 (2) If the member is alleged to be liable for damage to the common area and
4 facilities, a brief description of the facts giving rise to the allegation and the
5 amount to be assessed against the member for the damage.

6 (3) The time, date, and location of the meeting at which the matter will be heard.

7 (4) A statement that the member has a right to attend the meeting, address the
8 board, and request that the matter be considered in closed executive session.

9 (c) Within 15 days after the meeting, the board shall deliver a written decision to
10 the member, by individual notice (Section 4040). If the board imposes a penalty,
11 the written decision shall state the provision of the governing documents violated
12 and the penalty for the violation. If the board assesses the member for damage to
13 the common area and facilities, the written decision shall state the basis for the
14 member's liability and the amount assessed.

15 **Comment.** Section 5005 restates former Section 1363(h) without substantive change, with the
16 following changes:

17 (1) Subdivision (a) is new. It states expressly what is clearly implied.

18 (2) The application of the section is extended to include an assessment against a member for
19 damage to association property. See Section 5640(a) (assessment for damage to common area and
20 facilities).

21 See also Sections 4085 ("board"), 4150 ("governing documents"), 4160 ("member").

22 § 5015. Responsibility for guest, invitee, or tenant

23 5015. For the purposes of this article, a member is responsible for a violation of
24 the governing documents by the member's guest, invitee, or tenant, or a resident of
25 the member's separate interest.

26 **Comment.** Section 5015 is consistent with former Section 1363(g), except that the rule has
27 been broadened to provide that a member is responsible for a violation by a tenant or a resident of
28 the member's separate interest.

29 See also Sections 4150 ("governing documents"), 4160 ("member").

30 § 5020. Removing vehicle from common interest development

31 5020. The removal of a vehicle from a common interest development by the
32 association is governed by Section 22658 of the Vehicle Code.

33 **Comment.** Section 5020 is new.

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

35 Article 2. Internal Dispute Resolution

36 § 5050. Application of article

37 5050. (a) This article applies to a dispute between an association and a member
38 involving their rights, duties, or liabilities under this part, under the Nonprofit
39 Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of
40 Division 2 of Title 1 of the Corporations Code), or under the governing
41 documents.

1 (b) This article supplements, and does not replace, Article 3 (commencing with
2 Section 5075), relating to alternative dispute resolution as a prerequisite to an
3 enforcement action.

4 (c) This article does not apply to a decision made pursuant to Section 5005 or
5 5620.

6 **Comment.** Subdivisions (a) and (b) of Section 5050 continue former Section 1363.810 without
7 substantive change.

8 Subdivision (c) is new. It makes clear that the procedure provided in this article is not available
9 to review a decision made pursuant to the specified sections, which involve a formal opportunity
10 to be heard by the board. The subdivision would not preclude the application of this article to a
11 dispute that involves a failure of the association to comply with Section 5005 or 5620. Nor would
12 it preclude the use of this article before a final decision is made under Section 5005. Prior to
13 making a final decision, an association could defer or suspend action under Section 5005 and
14 instead proceed under this article.

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

16 **§ 5055. Fair, reasonable, and expeditious dispute resolution procedure required**

17 5055. (a) An association shall provide a fair, reasonable, and expeditious
18 procedure for resolving a dispute within the scope of this article.

19 (b) In developing a procedure pursuant to this article, an association shall make
20 maximum, reasonable use of available local dispute resolution programs involving
21 a neutral third party, including low-cost mediation programs such as those listed
22 on the Internet Web sites of the Department of Consumer Affairs and the United
23 States Department of Housing and Urban Development.

24 (c) If an association does not provide a fair, reasonable, and expeditious
25 procedure for resolving a dispute within the scope of this article, the procedure
26 provided in Section 5065 applies and satisfies the requirement of subdivision (a).

27 **Comment.** Section 5055 continues former Section 1363.820 without substantive change.

28 See also Section 4080 (“association”).

29 **§ 5060. Minimum requirements of association procedure**

30 5060. A fair, reasonable, and expeditious dispute resolution procedure shall at a
31 minimum satisfy all of the following requirements:

32 (a) The procedure may be invoked by either party to the dispute. A request
33 invoking the procedure shall be in writing.

34 (b) The procedure shall provide for prompt deadlines. The procedure shall state
35 the maximum time for the association to act on a request invoking the procedure.

36 (c) If the procedure is invoked by a member, the association shall participate in
37 the procedure.

38 (d) If the procedure is invoked by the association, the member may elect not to
39 participate in the procedure. If the member participates but the dispute is resolved
40 other than by agreement of the member, the member shall have a right of appeal to
41 the association’s board of directors.

42 (e) A resolution of a dispute pursuant to the procedure that is not in conflict with
43 the law or the governing documents, binds the association and is judicially

1 enforceable. An agreement reached pursuant to the procedure that is not in conflict
2 with the law or the governing documents, binds the parties and is judicially
3 enforceable.

4 (f) The procedure shall provide a means by which the member and the
5 association may explain their positions.

6 (g) A member of the association shall not be charged a fee to participate in the
7 process.

8 **Comment.** Section 5060 continues former Section 1363.830 without substantive change.

9 See also Sections 4080 (“association”), 4140 (“director”), 4150 (“governing documents”),
10 4160 (“member”).

11 **§ 5065. Default meet and confer procedure**

12 5065. (a) This section applies in an association that does not otherwise provide a
13 fair, reasonable, and expeditious dispute resolution procedure. The procedure
14 provided in this section is fair, reasonable, and expeditious, within the meaning of
15 this article.

16 (b) Either party to a dispute within the scope of this article may invoke the
17 following procedure:

18 (1) The party may request the other party to meet and confer in an effort to
19 resolve the dispute. The request shall be in writing.

20 (2) A member of an association may refuse a request to meet and confer. The
21 association may not refuse a request to meet and confer.

22 (3) The association’s board of directors shall designate a member of the board to
23 meet and confer.

24 (4) The parties shall meet promptly at a mutually convenient time and place,
25 explain their positions to each other, and confer in good faith in an effort to
26 resolve the dispute.

27 (5) A resolution of the dispute agreed to by the parties shall be memorialized in
28 writing and signed by the parties, including the board designee on behalf of the
29 association.

30 (c) An agreement reached under this section binds the parties and is judicially
31 enforceable if both of the following conditions are satisfied:

32 (1) The agreement is not in conflict with law or the governing documents of the
33 common interest development or association.

34 (2) The agreement is either consistent with the authority granted by the board of
35 directors to its designee or the agreement is ratified by the board of directors.

36 (d) A member of the association may not be charged a fee to participate in the
37 process.

38 **Comment.** Section 5065 continues former Section 1363.840 without substantive change.

39 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest
40 development”), 4140 (“director”), 4150 (“governing documents”), 4160 (“member”).

1 **§ 5070. Notice in member handbook**

2 5070. The member handbook (Section 4810) shall include a description of the
3 internal dispute resolution process provided pursuant to this article.

4 **Comment.** Section 5070 continues former Section 1363.850 without substantive change.

5 **Article 3. Alternative Dispute Resolution**
6 **Prerequisite to Civil Action**

7 **§ 5075. Definitions**

8 5075. As used in this article:

9 (a) “Alternative dispute resolution” means mediation, arbitration, conciliation,
10 or other nonjudicial procedure that involves a neutral party in the dispute
11 resolution process. The form of alternative dispute resolution chosen pursuant to
12 this article may be binding or nonbinding, with the voluntary consent of the
13 parties.

14 (b) “Enforcement action” means a civil action or proceeding, other than a cross-
15 complaint, for any of the following purposes:

16 (1) Enforcement of this part.

17 (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3
18 commencing with Section 7110) of Division 2 of Title 1 of the Corporations
19 Code).

20 (3) Enforcement of the governing documents of a common interest
21 development.

22 **Comment.** Section 5075 continues former Section 1369.510 without substantive change. The
23 term “decisionmaking process” has been replaced with the more technically accurate term
24 “dispute resolution process.” This is a nonsubstantive change.

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

26 **§ 5080. ADR prerequisite to enforcement action**

27 5080. (a) An association or an owner or a member of a common interest
28 development may not file an enforcement action in the superior court unless the
29 parties have endeavored to submit their dispute to alternative dispute resolution
30 pursuant to this article.

31 (b) This section applies only to an enforcement action that is solely for
32 declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim
33 for monetary damages not in excess of the jurisdictional limits stated in Sections
34 116.220 and 116.221 of the Code of Civil Procedure.

35 (c) This section does not apply to a small claims action.

36 **Comment.** Section 5080 continues former Section 1369.520 without substantive change,
37 except that former Section 1369.520(d) is obsolete and is not continued. That subdivision
38 provided that the alternative dispute resolution requirements do not apply to an assessment
39 dispute, except as otherwise provided by law. The application of this article to an assessment
40 dispute is now governed by Article 5 (commencing with Section 5600) of Chapter 5.

1 See also Sections 4080 (“association”), 4100 (“common interest development”), 4160
2 (“member”).

3 **§ 5085. Request for resolution**

4 5085. (a) Any party to a dispute may initiate the process required by Section
5 5080 by serving on all other parties to the dispute a request for resolution. The
6 request for resolution shall include all of the following:

7 (1) A brief description of the dispute between the parties.

8 (2) A request for alternative dispute resolution.

9 (3) A notice that the party receiving the request for resolution is required to
10 respond within 30 days of service or the request will be deemed rejected.

11 (4) If the party on whom the request is served is the owner of a separate interest,
12 a copy of this article.

13 (b) Service of the request for resolution shall be by personal delivery, first-class
14 mail, express mail, facsimile transmission, or other means reasonably calculated to
15 provide the party on whom the request is served actual notice of the request.

16 (c) A party on whom a request for resolution is served has 30 days following
17 service to accept or reject the request. If a party does not accept the request within
18 that period, the request is deemed rejected by the party.

19 **Comment.** Section 5085 continues former Section 1369.530 without substantive change.
20 See also Section 4185 (“separate interest”).

21 **§ 5090. ADR process**

22 5090. (a) A party on whom a request for resolution is served may agree to
23 participate in alternative dispute resolution by delivering a written acceptance to
24 the party that served the request for resolution. The written acceptance shall be
25 delivered as an individual notice (Section 4040).

26 (b) The parties shall complete the alternative dispute resolution within 90 days
27 after delivery of the written acceptance, unless this period is extended by written
28 stipulation signed by both parties.

29 (c) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence
30 Code applies to any form of alternative dispute resolution initiated by a Request
31 for Resolution under this article, other than arbitration.

32 (d) The costs of the alternative dispute resolution shall be borne by the parties.

33 **Comment.** Section 5090 continues former Section 1369.540 without substantive change,
34 except that a procedure is added in subdivision (a) for written acceptance of a request for
35 resolution.

36 **§ 5095. Tolling of statute of limitations**

37 5095. If a request for resolution is served before the end of the applicable time
38 limitation for commencing an enforcement action, the time limitation is tolled
39 during the following periods:

40 (a) The period provided in Section 5085 for response to a request for resolution.

1 (b) If the request for resolution is accepted, the period provided by Section 5090
2 for completion of alternative dispute resolution, including any extension of time
3 stipulated to by the parties pursuant to Section 5090.

4 **Comment.** Section 5095 continues former Section 1369.550 without substantive change.

5 **§ 5100. Certification of efforts to resolve dispute**

6 5100. (a) At the time of commencement of an enforcement action, the party
7 commencing the action shall file with the initial pleading a certificate stating that
8 one or more of the following conditions is satisfied:

9 (1) Alternative dispute resolution has been completed in compliance with this
10 article.

11 (2) One of the other parties to the dispute did not accept the terms offered for
12 alternative dispute resolution.

13 (3) Preliminary or temporary injunctive relief is necessary.

14 (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a
15 demurrer or a motion to strike unless the court finds that dismissal of the action for
16 failure to comply with this article would result in substantial prejudice to one of
17 the parties.

18 **Comment.** Section 5100 continues former Section 1369.560 without substantive change.

19 **§ 5105. Stay of litigation for dispute resolution**

20 5105 (a) After an enforcement action is commenced, on written stipulation of
21 the parties, the matter may be referred to alternative dispute resolution. The
22 referred action is stayed. During the stay, the action is not subject to the rules
23 implementing subdivision (c) of Section 68603 of the Government Code.

24 (b) The costs of the alternative dispute resolution shall be borne by the parties.

25 **Comment.** Section 5105 continues former Section 1369.570 without substantive change.

26 **§ 5110. Attorney's fees**

27 5110. In an enforcement action in which fees and costs may be awarded, the
28 court, in determining the amount of the award, may consider whether a party's
29 refusal to participate in alternative dispute resolution before commencement of the
30 action was reasonable.

31 **Comment.** Section 5110 generalizes former Section 1369.580 so that it applies to any
32 enforcement action and not just to an action to enforce the governing documents.

33 **§ 5115. Notice in member handbook**

34 5115. The member handbook (Section 4810) shall include a summary of the
35 provisions of this article that specifically references this article. The summary
36 shall include the following language: "Failure of a member of the association to
37 comply with the alternative dispute resolution requirements of Civil Code Section
38 5080 may result in the loss of your right to sue the association or another member

1 of the association regarding enforcement of the governing documents or the
2 applicable law.”

3 **Comment.** Section 5115 restates former Section 1369.590 without substantive change.
4 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

5 Article 4. Civil Actions

6 § 5125. Enforcement of governing documents

7 5125. (a) The covenants and restrictions in the declaration shall be enforceable
8 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind
9 all owners of separate interests in the development. Unless the declaration states
10 otherwise, these servitudes may be enforced by any owner of a separate interest or
11 by the association, or by both.

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

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

17 **Comment.** Section 5125 continues former Section 1354 without substantive change.
18 See also Sections 4080 (“association”), 4135 (“declaration”), 4150 (“governing documents”),
19 4185 (“separate interest”).

20 § 5130. Enforcement of this part

21 5130. In addition to any other remedy provided by law, a member may bring an
22 action in superior court to enforce a provision of this part.

23 **Comment.** Section 5130 is new. Relief under this section may include a writ of mandate, an
24 injunction, or other appropriate relief.

25 See also Section 4160 (“member”).

26 CHAPTER 5. FINANCES

27 Article 1. Accounting

28 § 5500. Accounting

29 5500. (a) The board shall maintain separate operating and reserve accounts.

30 (b) The board shall maintain current income and expense records for each
31 account, on an accrual basis.

32 (c) If the reserve account includes funds received by the association as a
33 compensatory damage award or settlement in litigation involving a construction or
34 design defect, the deposit or withdrawal of those funds shall be itemized
35 separately.

1 (d) On at least a quarterly basis, the board shall reconcile the income and
2 expense record for each account against the most recent statement provided by the
3 financial institution for that account.

4 **Comment.** Subdivisions (a)-(b) of Section 5500 are new.
5 Subdivision (c) restates former Section 1365(a)(2)(B)(iii) without substantive change.
6 Subdivision (d) restates and simplifies former Section 1365.5(a) without substantive change.
7 See also Sections 4080 (“association”), 4085 (“board”).

8 Article 2. Use of Reserve Funds

9 § 5510. Use of reserve funds

10 5510. (a) Funds on deposit in the reserve account may only be used for the
11 following purposes:

12 (1) The maintenance, repair, or replacement of a major component that the
13 association is required to maintain.

14 (2) Litigation that relates to the maintenance, repair, or replacement of a major
15 component that the association is required to maintain.

16 (3) A temporary transfer of funds to the operating account pursuant to Section
17 5515.

18 (b) The withdrawal of funds from the reserve account requires either the
19 signature of two directors or the signature of one director and an officer who is not
20 a director.

21 **Comment.** Subdivision (a) of Section 5510 restates former Section 1365.5(c)(1) without
22 substantive change.

23 Subdivision (b) restates former Section 1365.5(b) without substantive change.

24 See also Sections 4080 (“association”), 4140 (“director”).

25 § 5515. Temporary transfer of reserve funds

26 5515. (a) The board may authorize, at a board meeting, a temporary transfer of
27 funds from the reserve account to the operating account in order to address a short
28 term cash flow requirement or other expense.

29 (b) Notice of the meeting at which the transfer is to be authorized must include
30 the following information:

31 (1) A statement that the board will consider a transfer of funds from the reserve
32 account to the operating account.

33 (2) The reason for the proposed transfer.

34 (3) Options for repayment of the transferred amount.

35 (4) Whether a special assessment may be necessary for repayment of the
36 transferred amount.

37 (c) If the board authorizes the transfer, the minutes of the meeting shall include a
38 written description of the amount to be transferred, the reasons for the transfer,
39 and when and how the transferred amount will be repaid to the reserve account.

40 (d) Funds transferred under this section shall be repaid to the reserve account
41 within one year of the date of the initial transfer, except that the board may delay

1 repayment in the same manner that it would authorize a new transfer. A board may
2 only delay repayment if it makes a written finding, supported by documentation,
3 that the delay would be in the best interest of the common interest development.

4 (e) The board shall exercise prudent fiscal management in maintaining the
5 integrity of the reserve account, and shall, if necessary, levy a special assessment
6 to recover the full amount of the transferred funds within the time limits required
7 by this section. This special assessment is subject to the limitation imposed by
8 Section 5580. The board may, in its discretion, extend the date the payment on the
9 special assessment is due. An extension of the due date does not prevent the board
10 from pursuing any legal remedy to enforce the collection of an unpaid special
11 assessment.

12 **Comment.** Section 5515 restates former Section 1365.5(c)(2) without substantive change.

13 See also Sections 4085 (“board”), 4090 (“board meeting”), 4100 (“common interest
14 development”).

15 **§ 5520. Use of reserve funds for litigation**

16 5520. (a) If funds in the reserve account are expended or transferred for the
17 purpose of litigation, the board shall provide general notice to the members
18 (Section 4045) of the expenditure or transfer. The notice shall inform the members
19 of their rights under subdivision (b).

20 (b) The board shall make an accounting, at least quarterly, of any funds in the
21 reserve account that are expended or transferred for the purpose of litigation. A
22 member may inspect the accounting pursuant to Article 5 (commencing with
23 Section 4700) of Chapter 3.

24 **Comment.** Section 5520 restates former Section 1365.5(d) without substantive change.

25 See also Sections 4080 (“association”), 4085 (“board”), 4160 (“member”).

26 **Article 3. Reserve Funding**

27 **§ 5550. Inspection of major components**

28 5550. At least once every three years, the board shall conduct a reasonably
29 competent and diligent visual inspection of the accessible areas of the major
30 components that the association is obligated to maintain.

31 **Comment.** Section 5550 restates part of former Section 1365.5(e) without substantive change,
32 except that an exception from the inspection requirement, for major components with a
33 replacement value of less than half of the association’s operating budget, is not continued.

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

35 **§ 5555. Reserve funding study**

36 5555. (a) At least once every three years, the board shall prepare a reserve
37 funding study. The board shall review the study annually and make any necessary
38 adjustments to the study.

39 (b) The study shall describe each major component that the association is
40 obligated to maintain and that has a remaining useful life of less than 30 years.

1 The study shall provide at least the following information for each included
2 component, as of the end of the fiscal year for which the study is prepared or
3 updated:

4 (1) An identifying description of the component.

5 (2) The total useful life of the component, in years.

6 (3) The estimated repair and replacement cost of the component over its useful
7 life.

8 (4) The average annual repair and replacement cost for the component. This is
9 calculated by dividing the lifetime repair and replacement cost by the total useful
10 life of the component.

11 (5) The number of years the component has been in service.

12 (6) The required balance for the component. This is calculated by one of the two
13 following methods: (A) by multiplying the average annual repair and replacement
14 cost and the number of years that the component has been in service, or (B) by a
15 generally accepted alternative method that is described in the study.

16 (c) The study shall include a summary page in the following form, with the
17 indicated attachments:

18 **Summary of Reserve Funding Study**

19 (1) The information provided in this summary is current as of the end of fiscal
20 year _____. It is based on a reserve study prepared by _____ on
21 _____. A copy of the complete study is available from the association on
22 request, at no charge.

23 (2) **Current Fiscal Year Projection:** At the end of this fiscal year, the balance
24 in the reserve account is projected to be \$_____. This figure includes only
25 assets held in cash or cash equivalents and projected income.

26 The total required balance for all components included in the reserve
27 funding study is \$_____. A description of the method used to calculate
28 the required balance is attached.

29 The balance of the reserve account is _____% of the total required balance
30 for all components included in the reserve funding study.

31 If the balance of the reserve account is less than the total required balance
32 for all components included in the reserve funding study, the difference is
33 \$_____. The difference per separate interest is \$_____.

34 Note: If the units in this development do not pay equal assessments, then the
35 proportional share of the difference, for each class of unit, is attached.

36 (3) **Five Year Projection:** The tables below provide projections for each of the
37 five fiscal years following the current fiscal year. Table 1 shows the
38 projected balance in the reserve account if the most recently approved
39 reserve funding plan is implemented. Table 2 shows the projected balance in

1 the reserve account if the most recently approved reserve funding plan is not
 2 implemented.

3 Table 1. Five Year Projection with Implementation of Funding Plan

Fiscal Year	Projected Balance	Total Required Balance for all Components Included in the Reserve Funding Study	Ratio of Projected Balance to Required Balance (as percentage)

4 Table 2. Five Year Projection without Implementation of Funding Plan

Fiscal Year	Projected Balance	Total Required Balance for all Components Included in the Reserve Funding Study	Ratio of Projected Balance to Required Balance (as percentage)

5 (4) The current regular assessment per unit is \$_____ per _____.

6 Note: If the units in this development do not pay equal assessments, then a
 7 schedule showing the current regular assessment for each class of unit is
 8 attached.

1 (5) Additional regular assessments that have already been approved for any
 2 purpose are listed in the schedule below:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

3 Note: If the units in this development do not pay equal assessments, then a
 4 schedule showing the approved regular assessments for each class of unit is
 5 attached.

6 (6) Special assessments that have been approved for any purpose are listed in
 7 the schedule below:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

8 Note: If the units in this development do not pay equal assessments, then a
 9 schedule showing the approved special assessments for each class of unit is
 10 attached.

11 (7) If the association has any outstanding loans with an original term of more
 12 than one year, information about those loans is included in the schedule
 13 below:

Lender	Amount owed	Interest rate	Annual payment	Date when loan to be retired

14 (8) Based on the most recent reserve study and other information available to
 15 the board of directors, will the current regular assessment, approved
 16 increases in the regular assessment, and approved special assessments
 17 provide sufficient reserve funds at the end of each year to meet the
 18 association’s obligation for repair and replacement of major components
 19 over the next 30 years?

1 Yes _____ No _____

2 (9) If the answer to question (8) is no, please refer to the most recently
3 approved reserve funding plan for a description of any additional assessment
4 increases or special assessments that may be proposed in order to provide
5 sufficient reserve funds at the end of each year to meet the association's
6 obligation for repair and replacement of major components over the next 30
7 years.

8 (10) The financial representations set forth in this summary are based on the best
9 estimates of the preparer at that time. The estimates are subject to change. A
10 statement describing the procedures used to make the calculations used in
11 this summary is attached.

12 (d) The summary prepared pursuant to subdivision (c) shall be included with the
13 notice of availability of the annual budget report that is delivered to members
14 pursuant to Section 4820. The form may be supplemented or modified in order to
15 make the information provided clearer or more complete, so long as the minimum
16 information required by subdivision (c) is provided.

17 (e) The summary prepared pursuant to subdivision (c) shall not be admissible in
18 evidence to show improper financial management of an association. Other relevant
19 and competent evidence of the financial condition of the association is not made
20 inadmissible by this subdivision.

21 (f) A component with an estimated remaining useful life of more than 30 years
22 may be included in a study as a capital asset or disregarded from the reserve
23 calculation, so long as the decision is revealed in the reserve study report and
24 reported in the summary prepared pursuant to subdivision (c).

25 **Comment.** Subdivision (a) of Section 5555 is drawn from former Section 1365.5(e).

26 Subdivision (b)(1) restates former Sections 1365.2.5(a)(5) and 1365.5(e)(1) without substantive
27 change.

28 Subdivision (b)(2) is consistent with former Section 1365(a)(2)(A) and is required in order to
29 perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

30 Subdivision (b)(3) is consistent with former Sections 1365(a)(2)(A) and 1365.5(e)(3) and is
31 required in order to perform the calculation required by former Sections 1365(a)(2)(B)(i) and
32 1365.2.5(a)(6).

33 Subdivision (b)(4) is required in order to perform the calculation required by former Sections
34 1365.2.5(a)(6) and 1365.5(e)(4).

35 Subdivision (b)(5) is consistent with former Section 1365(a)(2)(A) and is required in order to
36 perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

37 Subdivision (b)(6) is required in order to perform the calculation required by former Sections
38 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

39 Subdivision (c) restates the disclosure requirements of former Sections 1365(a)(2) and
40 1365.2.5, as follows:

41 Item (1) is drawn from Sections 1365(a)(2)(B) and 1365.2.5(a)(6).

42 Item (2) is drawn from former Sections 1365(a)(2)(B)(i)-(ii) & (C)-(D) and 1365.2.5(a)(6).

43 Item (3) is drawn from former Sections 1365(a)(2)(B)(i)-(ii) & (C) and 1365.2.5(a)(7).

44 Item (4) is drawn from Section 1365.2.5(a)(1).

45 Items (5) and (6) are drawn from former Section 1365.2.5(a)(2).

46 Item (7) is drawn from former Section 1365(a)(3)(D).

- 1 Item (8) is drawn from former Section 1365.2.5(a)(3).
- 2 Item (9) is drawn from former Section 1365.2.5(a)(4), except that the schedule of proposed
- 3 assessment increases will be set out in the reserve funding plan. See Section 5560.
- 4 Item (10) is drawn from former Section 1365.2.5(a)(7).
- 5 Subdivision (d) restates former Section 1365.2.5(b)(3) without substantive change.
- 6 Subdivision (e) restates the second paragraph of former Section 1365(a)(4) without substantive
- 7 change.
- 8 Subdivision (f) restates former Section 1365.2.5(b)(2) without substantive change.
- 9 See also Sections 4080 (“association”), 4085 (“board”), 4140 (“director”), 4160 (“member”),
- 10 4185 (“separate interest”).

11 **§ 5560. Reserve funding plan**

12 5560. (a) At least once every three years, the board shall prepare a reserve

13 funding plan that describes how the association will contribute sufficient funds to

14 the reserve account to meet the association’s obligation to repair and replace the

15 major components included in the most recent reserve funding study.

16 (b) The plan may provide for an increase in the general assessment, a special

17 assessment, borrowing, use of other assets, deferral of selected replacement or

18 repairs, or other mechanisms.

19 (c) If the plan proposes an increase in the general assessment, it shall describe

20 the proposed increase in the following form:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

21 (d) If the plan proposes an increase in one or more special assessments, it shall

22 describe the proposed increase in the following form:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

23 (e) If the separate interests in the development do not pay equal assessments, the

24 plan shall indicate the amount of any increase or special assessment for each class

25 of separate interest.

26 (f) The plan shall be considered by the board at a board meeting.

27 (g) Board approval of the plan does not constitute approval of an assessment

28 increase described in the plan. Any assessment increase must be considered

29 separately by the board and is subject to the procedure provided in Section 5580.

1 (h) The plan may not assume a rate of return on cash reserves in excess of 2
2 percent above the discount rate published by the Federal Reserve Bank of San
3 Francisco at the time the plan is prepared.

4 (i) The reserve funding plan may be supplemented or modified in order to make
5 the information provided clearer or more complete, so long as the minimum
6 information required by this section is provided.

7 **Comment.** Section 5560 restates former Sections 1365(a)(3)-(4) and 1365.5(e)(5) with one
8 substantive change: subdivision (i) is new. It is comparable to the second sentence of former
9 Section 1365.2.5(b)(3).

10 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4185
11 (“separate interest”).

12 Article 4. Assessments

13 § 5575. Levy of assessment

14 5575. (a) An association shall levy regular and special assessments sufficient to
15 perform its obligations under the governing documents and this title.

16 (b) An association shall not levy an assessment or fee that exceeds the amount
17 necessary to defray the costs for which it is levied.

18 **Comment.** Subdivision (a) of Section 5575 continues the first sentence of former Section
19 1366(a) without substantive change.

20 Subdivision (b) continues former Section 1366.1 without substantive change.

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

22 § 5580. Assessment increase

23 5580. (a) Subject to the limitations of Section 5575 and subdivision (b), the
24 board may increase the regular assessment by any amount that is required to fulfill
25 its obligations and may impose a special assessment of any amount that is required
26 to fulfill its obligations. This subdivision supersedes any contrary provision of the
27 governing documents.

28 (b) In the following circumstances, an assessment increase or special assessment
29 may only be adopted with the approval of an affirmative majority of the votes cast
30 in a member election at which at least fifty percent of the voting power is
31 represented:

32 (1) The association has not complied with Section 4800 for the fiscal year in
33 which the assessment increase or special assessment would take effect.

34 (2) The total increase in the regular assessment for the fiscal year would be more
35 than 20 percent of the regular assessment for the preceding fiscal year.

36 (3) The total for all special assessments imposed in the fiscal year would be
37 more than 5 percent of the budgeted gross expenses of the association for the fiscal
38 year in which the special assessment would be imposed.

39 (c) Subdivision (b) does not apply to an assessment increase that is required to
40 address the following emergency expenses:

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

1 (2) An extraordinary expense necessary to repair or replace any part of the
2 development that the association is obligated to maintain, where a threat to
3 personal safety is discovered on the property.

4 (3) An extraordinary expense necessary to repair or replace any part of the
5 development that the association is obligated to maintain that could not have been
6 reasonably foreseen by the board in preparing and distributing the budget report
7 under Section 4800. Before imposing an assessment under this subdivision, the
8 board shall adopt a resolution containing written findings as to the necessity of the
9 extraordinary expense involved and why the expense was not or could not have
10 been reasonably foreseen in the budgeting process, and the resolution shall be
11 distributed to the members with the notice of assessment.

12 (d) The association shall provide the members with individual notice (Section
13 4040) of any increase in the regular or special assessments of the association at
14 least 30 days before the increased assessment takes effect.

15 **Comment.** Subdivisions (a)-(c) and (e) of Section 5580 restate the last two sentences of former
16 Section 1366(a), and former Section 1366(b), without substantive change. Subdivision (a) makes
17 clear that a board’s authority to impose an assessment increase that is required to fulfill its legal
18 obligations may not be limited by the governing documents.

19 Subdivision (d) restates former Section 1366(d) without substantive change, except that the
20 prohibition on giving notice more than 60 days before the increase takes effect is not continued.

21 See also Sections 4080 (“association”), 4085 (“board”), 4150 (“governing documents”), 4160
22 (“member”).

23 **§ 5585. Exemption from execution**

24 5585. (a) A regular assessment imposed or collected to perform an obligation of
25 an association under the governing documents or this title is exempt from
26 execution by a judgment creditor of the association only to the extent necessary
27 for the association to perform essential services, such as paying for utilities and
28 insurance. In determining the appropriateness of an exemption, a court shall
29 ensure that only essential services are protected under this subdivision.

30 (b) This section does not apply to a consensual pledge, lien, or encumbrance that
31 is approved by a majority of a quorum of the members (Section 4070), or to any
32 state tax lien, or to any lien for labor or materials supplied to the common area.

33 **Comment.** Section 5585 continues former Section 1366(c) without substantive change.

34 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
35 documents”), 4160 (“member”).

36 **Article 5. Payment and Collection of Assessment**

37 **§ 5600. Payment**

38 5600. (a) The association shall provide a mailing address for receipt of an
39 assessment payment that is sent by overnight delivery. The address shall be
40 included in the member handbook (Section 4810).

1 (b) On the request of a member, the association shall provide that member with
2 a receipt for a payment made to the association. The receipt shall indicate the date
3 and amount of the payment and the person who received the payment for the
4 association.

5 (c) A payment made for a delinquent assessment shall first be applied to the
6 assessment owed. Only after the assessment owed is paid in full shall the payment
7 be applied to collection costs, a late fee, or interest.

8 **Comment.** Section 5600 continues former Section 1367.1(b) without substantive change.
9 See also Sections 4080 (“association”), 4160 (“member”), 4170 (“person”).

10 **§ 5605. Delinquency**

11 5605. (a) An assessment becomes delinquent 15 days after it is due, unless the
12 declaration provides a longer time period, in which case the longer time period
13 applies.

14 (b) If an assessment is delinquent, the association may recover all of the
15 following amounts:

16 (1) The unpaid amount of the assessment.

17 (2) The reasonable cost incurred in collecting the delinquent assessment,
18 including a reasonable attorney’s fee.

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

23 (4) Interest on the delinquent assessment, the reasonable cost of collection, and
24 the late charge. The annual interest rate shall not exceed 12 percent, commencing
25 30 days after the assessment becomes due, unless the declaration specifies a lower
26 rate of interest, in which case the lower rate of interest applies.

27 (c) An association is exempt from interest-rate limitations imposed by Article
28 XV of the California Constitution, subject to the limitations of this section.

29 (d) The amount described in subdivision (b) becomes a debt of the member at
30 the time the assessment or other sum is levied.

31 **Comment.** Subdivisions (a)-(c) of Section 5605 restate former Section 1366(e)-(f) without
32 substantive change.

33 Subdivision (d) continues the first sentence of former Sections 1367(a) and 1367.1(a) without
34 substantive change.

35 See also Sections 4080 (“association”), 4135 (“declaration”), 4160 (“member”).

36 **§ 5610. Assignment or pledge**

37 5610. (a) Except as otherwise provided in this section, an association may not
38 voluntarily assign or pledge to a third party the association’s right to collect a
39 payment or assessment, or to enforce or foreclose a lien.

40 (b) An association may assign or pledge the association’s right to collect a
41 payment or assessment, or to enforce or foreclose a lien, to a financial institution

1 or lender chartered or licensed under federal or state law, when acting within the
2 scope of that charter or license, as security for a loan obtained by the association.

3 (c) An association may assign an unpaid obligation of a former member to a
4 third party for purposes of collection.

5 **Comment.** Section 5610 restates the first sentence of former Section 1367.1(g) without
6 substantive change.

7 See also Sections 4080 (“association”), 4160 (“member”).

8 **§ 5615. Pre-lien notice**

9 5615. (a) At least 30 days before recording a lien on the separate interest of the
10 owner of record to collect a debt that is past due under this article, the association
11 shall deliver to the owner of record, by certified mail, a written notice of
12 delinquency.

13 (b) The notice of delinquency shall include the following information.

14 (1) An itemized statement of the charges owed, including any collection costs,
15 late fee, and interest.

16 (2) A general description of the collection and lien enforcement procedures of
17 the association and the method by which the amount due was calculated.

18 (c) The notice of delinquency shall include the following statement, in bold 14
19 point type:

20 **IMPORTANT NOTICE**

21 **IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE**
22 **BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE**
23 **SOLD WITHOUT COURT ACTION.** However, before the association can
24 initiate foreclosure, you have the right to request alternative dispute resolution
25 with a neutral third party under Civil Code Section 5655(a)(2).

26 You have the right to inspect association records under Civil Code Section
27 4700.

28 You have the right to request a meeting with a representative of the board under
29 Civil Code Section 5625.

30 If you wish to request a payment plan, you have the right to request a meeting
31 with the board under Civil Code Section 5620.

32 If the association determines that the assessment is not delinquent, you will not
33 be liable for any collection costs, late fee, or interest.

34 **Comment.** Section 5615 continues part of former Section 1367.1(a) without substantive
35 change.

36 Subdivision (c) provides a standardized form for the disclosure of required statements.

37 See also Sections 4080 (“association”), 4085 (“board”), 4185 (“separate interest”).

38 **§ 5620. Payment plan**

39 5620. (a) A member that owes a delinquent assessment may deliver a written
40 request (Section 4035) to meet with the board to discuss a payment plan for the
41 debt. If the association has adopted standards for payment plans, the association
42 shall provide a copy of the standards to the member.

1 (b) The association shall meet with the member and consider the request within
2 45 days after receipt of the request, either at a regularly scheduled board meeting
3 or at a specially scheduled meeting between the member and a committee
4 appointed by the board for that purpose. The board shall deliver individual notice
5 (Section 4040) to the member stating the date, time, and location of the meeting at
6 which the request will be considered.

7 (c) A payment plan may incorporate an assessment that will accrue during the
8 payment plan period. Additional late fees shall not accrue during the payment plan
9 period if the owner is in compliance with the terms of the payment plan.

10 (d) A payment plan does not affect an association's ability to record a lien on the
11 owner's separate interest to secure payment of a delinquent assessment. In the
12 event of a default on any payment plan, the association may resume its efforts to
13 collect all delinquent assessments.

14 **Comment.** Section 5620 continues former Section 1367.1(c)(3) without substantive change,
15 except that a special rule that applies to an interest in a time share is not continued. Such an
16 interest is expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212.

17 Subdivision (b) simplifies the former provision on the timing of a meeting to request a payment
18 plan.

19 See also Sections 4080 ("association"), 4085 ("board"), 4090 ("board meeting"), 4160
20 ("member"), 4185 ("separate interest").

21 § 5625. Pre-lien meeting

22 5625. Before recording a lien for delinquent assessments, an association shall
23 offer the owner and, if so requested by the owner, participate in internal dispute
24 resolution pursuant to Article 2 (commencing with Section 5050) of Chapter 4.

25 **Comment.** Section 5625 restates former Section 1367.1(c)(1)(A) and the second sentence of
26 former Section 1367.4(b)(2) without substantive change.

27 See also Section 4080 ("association").

28 § 5630. Lien creation and priority

29 5630. (a) An association that has complied with Sections 5615 and 5625 may
30 record a notice of delinquent assessment in the county in which the common
31 interest development is located. Recording of the notice of delinquent assessment
32 creates a lien against the property for which the delinquent assessment is owed.

33 (b) The recorded notice of delinquent assessment shall state the following
34 information:

35 (1) The amount owed, including an itemized statement of any delinquent
36 assessment amount, reasonable cost of collection, late fees, or interest.

37 (2) A legal description of the separate interest against which the lien is imposed.

38 (3) The name of the record owner of the separate interest against which the lien
39 is imposed.

40 (c) A lien may not be enforced by nonjudicial foreclosure unless the recorded
41 notice of delinquent assessment states the name and address of the trustee that is
42 authorized by the association to enforce the lien by sale.

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

4 (e) A copy of the recorded notice of delinquent assessment shall be mailed by
5 certified mail to every person whose name is shown as an owner of the separate
6 interest in the association's records, no later than 10 days after recordation.

7 (f) Unless the governing documents provide otherwise, a lien created pursuant to
8 this section has priority over a subsequently recorded lien.

9 (g) The decision to record a lien for a delinquent assessment shall be made only
10 by the board, at a meeting of the board, and may not be delegated to an agent of
11 the association.

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

16 (i) An association that fails to comply with Section 5615 or 5625 before
17 recording a lien shall provide a new notice under Section 5615. Any additional
18 costs that accrue from the failure to comply with Section 5615 or 5625 shall be
19 borne by the association and not by the owner of the separate interest.

20 **Comment.** Subdivisions (a)-(e) of Section 5630 restate the first six sentences of former Section
21 1367.1(d) without substantive change. Subdivision (a) is consistent with the substance of former
22 Section 1367.1(l)(1).

23 Subdivision (f) restates former Section 1367.1(f) without substantive change.

24 Subdivision (g) restates former Section 1367.1(c)(2) without substantive change, except that
25 the provision limiting the provision to liens recorded on or after January 1, 2006, is not continued.
26 See Section 5675 (application of article).

27 Subdivision (h) restates former Section 1367.1(h) without substantive change.

28 Subdivision (i) restates former Section 1367.1(l) without substantive change.

29 See also Sections 4080 ("association"), 4085 ("board"), 4100 ("common interest
30 development"), 4135 ("declaration"), 4150 ("governing documents"), 4170 ("person"), 4185
31 ("separate interest").

32 **§ 5635. Lien release**

33 5635. (a) Within 21 days after the payment of the sums stated in a recorded
34 notice of delinquent assessment, the association shall record a lien release or
35 notice of rescission in the county in which the notice of delinquent assessment is
36 recorded. The association shall deliver to the record owner of the separate interest,
37 by individual notice (Section 4040), a copy of the lien release or notice of
38 rescission.

39 (b) Within 21 days after a determination that a notice of delinquent assessment
40 was recorded in error, the association shall record a lien release or notice of
41 rescission in the county in which the notice of delinquent assessment is recorded.
42 The association shall deliver to the record owner of the separate interest, by
43 individual notice (Section 4040), a copy of the lien release or notice of rescission
44 and a declaration that the notice of delinquent assessment was recorded in error.

1 (c) If a notice of delinquent assessment is recorded in error, the association shall
2 reverse any collection cost, late fee, or interest that results from the error. The
3 association shall bear any cost of alternative dispute resolution that relates to the
4 error.

5 **Comment.** Subdivision (a) of Section 5635 restates the seventh sentence of former Section
6 1367.1(d) without substantive change.

7 Subdivision (b) restates former Section 1367.1(i) without substantive change.

8 Subdivision (c) restates former Section 1367.5 without substantive change. The requirement
9 that the error be discovered as a result of alternative dispute resolution is not continued.

10 See also Sections 4080 (“association”), 4135 (“declaration”), 4185 (“separate interest”).

11 **§ 5640. Lien for damage or fine**

12 5640. (a) Unless the governing documents provide otherwise, a monetary charge
13 imposed by the association as a means of reimbursing the association for costs
14 incurred by the association in the repair of damage to common areas and facilities
15 for which the member, a resident of the member’s separate interest, or the
16 member’s guest, invitee, or tenant is responsible may become a lien against the
17 member’s separate interest that is enforceable by the sale of the interest under
18 Sections 2924, 2924b, and 2924c.

19 (b) A fine imposed by the association for a violation of the governing
20 documents, however described, shall not become a lien against the member’s
21 separate interest that is enforceable by the sale of the interest under Sections 2924,
22 2924b, and 2924c. This subdivision does not apply to a penalty for late payment of
23 a regular or special assessment.

24 **Comment.** Subdivision (a) of Section 5640 restates the eight and ninth sentences of former
25 Section 1367.1(d) without substantive change, except that the section makes clear that a member
26 may be liable for damage caused by a resident of the member’s separate interest or an invitee.

27 Subdivision (b) restates former Section 1367.1(e) without substantive change.

28 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
29 documents”), 4160 (“member”), 4185 (“separate interest”).

30 **§ 5645. Collection generally**

31 5645. (a) Except as otherwise provided in this article, 30 days after recording a
32 notice of delinquent assessment, an association may enforce the resulting lien in
33 any manner permitted by law, including sale by the court, sale by the trustee
34 designated in the recorded notice of delinquent assessment, or sale by a trustee
35 substituted pursuant to Section 2934a.

36 (b) If the amount of the lien is within the jurisdictional limit of the small claims
37 division of the superior court, the association may bring an action to collect the
38 debt in the small claims division pursuant to Chapter 5.5 (commencing with
39 Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure. An
40 association may enforce a judgment of the small claims division as provided in
41 Article 8 (commencing with Section 116.810) of Chapter 5.5 of Title 1 of Part 1 of
42 the Code of Civil Procedure. The amount recovered in an action in the small

1 claims division, which may not exceed the jurisdictional limit of the small claims
2 division, is the sum of the following:

3 (1) The amount owed as of the date of filing the complaint.

4 (2) In the discretion of the court, an additional amount equal to the amount owed
5 for the period from the date the complaint is filed until satisfaction of the
6 judgment, which may include accruing unpaid assessments and any reasonable
7 late charges, fees and costs of collection, attorney's fees, and interest.

8 **Comment.** Subdivision (a) of Section 5645 restates the second sentence of former Section
9 1367.1(g) without substantive change.

10 Subdivision (b) restates former Section 1367.4(b)(1) without substantive change.

11 See also Section 4080 ("association").

12 **§ 5650. Prohibition on foreclosure for small amount**

13 5650. (a) An association may only foreclose on a lien, judicially or
14 nonjudicially, if the debt is twelve months or more overdue or the amount owed,
15 excluding any accelerated assessment, collection cost, late charge, or interest, is
16 one thousand eight hundred dollars (\$1,800) or more.

17 (b) Subdivision (a) does not apply to a separate interest owned by the declarant.

18 (c) This section applies to a lien recorded on or after January 1, 2006.

19 **Comment.** Subdivision (a) of Section 5650 restates the introduction of former Section
20 1367.4(b) without substantive change.

21 Subdivision (b) restates former Section 1367.4(d) without substantive change, except that the
22 exemption of time share units is superfluous and has not been continued. A time share unit is not
23 subject to this section. See Bus. & Prof. Code § 11211.7. The reference to "developers" has been
24 replaced with a reference to the declarant. See Section 4130 ("declarant" defined).

25 See also Sections 4080 ("association"), 4185 ("separate interest").

26 **§ 5655. Foreclosure**

27 5655. (a) Before commencing foreclosure to enforce a lien created under this
28 article, the association shall satisfy all of the following requirements:

29 (1) The decision to foreclose shall be made by the board at least 30 days before
30 any public sale. The decision may not be delegated to a committee or agent. The
31 vote approving foreclosure shall be recorded in the minutes. The board shall
32 maintain the confidentiality of the owner of the separate interest by identifying the
33 matter in the minutes by the parcel number of the property only.

34 (2) The association shall offer to participate in either internal dispute resolution
35 pursuant to Article 2 (commencing with Section 5050), or alternative dispute
36 resolution pursuant to Article 3 (commencing with Section 5075), of Chapter 4.
37 The decision of whether to participate and the type of alternative dispute
38 resolution to use shall be made by the owner of the separate interest, except that
39 binding arbitration may not be used if the association intends to commence a
40 judicial foreclosure.

41 (3) The association shall serve notice of its decision to foreclose on the owner or
42 the owner's legal representative, in accordance with the manner of service of

1 summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5
2 of Part 2 of the Code of Civil Procedure.

3 (b) Any sale by a trustee shall be conducted in accordance with Sections 2924,
4 2924b, and 2924c. The fees of a trustee may not exceed the amounts prescribed in
5 Sections 2924c and 2924d, plus the cost of service for either of the following
6 documents:

7 (1) The notice of default recorded pursuant to subdivision (c).

8 (2) The decision of the board to foreclose on the separate interest provided
9 pursuant to paragraph (3) of subdivision (a).

10 (c) If the association records a notice of default pursuant to Section 2924, the
11 association shall serve a copy of the notice of default on the owner or the owner's
12 legal representative in the same manner as service of a summons under Article 3
13 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of
14 Civil Procedure.

15 (d) If the owner of the separate interest does not occupy the separate interest, a
16 notice required under this section may be delivered by first class mail to the
17 mailing address shown in the association's records. If the owner has not provided
18 the association with a mailing address, the address of the separate interest is
19 deemed to be the owner's mailing address.

20 (e) For the purposes of this section, the "owner's legal representative" means a
21 person designated by the owner as the owner's legal representative in a notice
22 delivered to the board (Section 4035).

23 **Comment.** Subdivision (a)(1) of Section 5655 restates former Sections 1367.1(c)(2) and
24 1367.4(c)(2) without substantive change.

25 Subdivision (a)(2) restates former Sections 1367.1(c)(1)(B) and 1367.4(c)(1) without
26 substantive change.

27 Subdivision (a)(3) restates former Section 1367.4(c)(3) without substantive change.

28 Subdivision (b) restates the third and fourth sentences of former Section 1367.1(g) without
29 substantive change.

30 Subdivisions (c)-(e) restate former Section 1367.1(j) without substantive change, except that
31 subdivisions (d) and (e) have been generalized to apply to any notice given under the section.

32 See also Sections 4080 ("association"), 4085 ("board"), 4170 ("person"), 4185 ("separate
33 interest").

34 **§ 5660. Right of redemption after trustee sale**

35 5660. A separate interest sold by a trustee under this article is subject to a right
36 of redemption for 90 days after the sale. In addition to the requirements of Section
37 2924f, notice of sale in connection with an association's foreclosure of a separate
38 interest shall include a statement that the property is being sold subject to the right
39 of redemption created in this section.

40 **Comment.** Section 5660 restates former Section 1367.4(c)(4) without substantive change.

41 See also Sections 4080 ("association"), 4185 ("separate interest").

1 **§ 5665. Recorded association information**

2 5665. (a) In order to facilitate the collection of a regular assessment, special
3 assessment, transfer fee, or similar charge, the board is authorized to record a
4 statement or amended statement identifying relevant information for the
5 association. This statement may include any or all of the following information:

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

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

11 (3) A daytime telephone number of the person identified in paragraph (2).

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

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

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

18 (b) The county recorder is authorized to charge a fee for recording the document
19 described in subdivision (a), based on the number of pages in the document and
20 the recorder's per-page recording fee.

21 **Comment.** Section 5665 restates former Section 1366.2 without substantive change.

22 See also Sections 4080 ("association"), 4085 ("board"), 4135 ("declaration"), 4155 ("managing
23 agent"), 4170 ("person"), 4185 ("separate interest").

24 **§ 5670. Statement of collection procedure**

25 5670. The member handbook (Section 4810) shall include the following
26 statement:

27 **NOTICE REGARDING ASSESSMENTS AND FORECLOSURE**

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

34 **ASSESSMENTS AND FORECLOSURE**

35 An assessment becomes delinquent 15 days after it is due, unless the governing
36 documents provide for a longer time. The failure to pay an association assessment
37 may result in the loss of an owner's property through foreclosure. Foreclosure
38 may occur either as a result of a court action, known as judicial foreclosure, or
39 without court action, often referred to as nonjudicial foreclosure.

40 An association may not use judicial or nonjudicial foreclosure to enforce a lien
41 that is recorded on or after January 1, 2006, if the debt is less than twelve months

1 overdue and the amount of the delinquent assessments or dues, exclusive of any
2 accelerated assessment, late charge, fee, attorney's fee, interest, or cost of
3 collection, is less than one thousand eight hundred dollars (\$1,800).

4 An association may use judicial or nonjudicial foreclosure to collect a debt if it
5 is more than twelve months overdue or if the amount owed for assessments or
6 dues is more than one thousand eight hundred dollars (\$1,800). Foreclosure is
7 subject to the conditions set forth in Civil Code Sections 5650 and 5655.

8 When using judicial or nonjudicial foreclosure, the association records a lien on
9 the owner's property. The owner's property may be sold to satisfy the lien if the
10 amounts secured by the lien are not paid. (Civil Code Sections 5645, 5650, and
11 5655.)

12 In a judicial or nonjudicial foreclosure, the association may recover the
13 delinquent assessment, the reasonable cost of collection including a reasonable
14 attorney's fee, a late charge, and interest. The association may not use nonjudicial
15 foreclosure to collect a fine or penalty. Unless the governing documents provide
16 otherwise, an association may use nonjudicial foreclosure to collect the cost to
17 repair damage to the common area that is caused by a member or the member's
18 guests. (Civil Code Section 5640.)

19 The association must comply with the requirements of Civil Code Sections
20 5615, 5620, and 5625 when collecting a delinquent assessment. If the association
21 fails to follow these requirements, it may not record a lien on the owner's
22 property until it has satisfied the requirements. Any additional cost that results
23 from satisfying the requirements is the responsibility of the association. (Civil
24 Code Section 5630.)

25 At least 30 days before recording a lien on an owner's separate interest, the
26 association must provide the owner of record with certain documents by certified
27 mail, including a description of its collection and lien enforcement procedure and
28 the method used to calculate the amount owed. It must also provide an itemized
29 statement of the charges owed by the owner. An owner has a right to review the
30 association's records to verify the debt. (Civil Code Section 5615.)

31 If a lien is recorded against an owner's property in error, the person who
32 recorded the lien is required to record a lien release within 21 days, and to provide
33 an owner certain documents in this regard. (Civil Code Section 5635.)

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

37 PAYMENTS

38 On the request of a member, the association shall provide that member with a
39 receipt for a payment made to the association. The receipt shall indicate the date
40 and amount of the payment and the person who received the payment for the
41 association. The association must inform owners of a mailing address for the
42 overnight delivery of payments. (Civil Code Section 5600.)

43 An owner may dispute an assessment debt by submitting a written request for
44 dispute resolution to the association under Civil Code Section 5625. In addition,
45 an association may not initiate a foreclosure without participating in alternative
46 dispute resolution with a neutral third party under Civil Code Section 5655, if so
47 requested by the owner. Binding arbitration shall not be available if the
48 association intends to initiate a judicial foreclosure.

1 An owner is not liable for a late charge, interest, or the cost of collection, if it is
2 established that the assessment was paid properly on time. (Civil Code Section
3 5635.)

4 MEETINGS AND PAYMENT PLANS

5 An owner of a separate interest may request the association to consider a
6 payment plan to satisfy a delinquent assessment. The association must inform the
7 owner of the standards for payment plans, if any exist. (Civil Code Section 5620)

8 The board of directors must meet with an owner who makes a proper written
9 request for a meeting to discuss a payment plan when the owner has received a
10 notice of a delinquent assessment. A payment plan must conform with the
11 payment plan standards of the association, if they exist. (Civil Code Section 5620)

12 **Comment.** Section 5670 restates former Section 1365.1 without substantive change, except for
13 the following changes:

14 (1) A special rule that applies to an interest in a time share is not continued. Such an interest is
15 expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212. Related
16 references to time share interests are not continued.

17 (2) The substance of former Section 1365.1(c) is generalized in Section 4040.

18 See also Sections 4080 (“association”), 4085 (“board”), 4140 (“director”), 4150 (“governing
19 documents”), 4160 (“member”), 4170 (“person”), 4185 (“separate interest”).

20 § 5675. Application of article

21 5675. (a) Except as otherwise provided, this article applies to a lien created on or
22 after January 1, 2003.

23 (b) A lien created before January 1, 2003, is governed by the law in existence at
24 the time the lien was created.

25 **Comment.** Section 5675 is new. A lien created between January 1, 1986, and January 1, 2003,
26 is governed by former Section 1367. Note that Section 5650 only applies to a lien created on or
27 after January 1, 2006.

28 Article 6. Insurance and Liability

29 § 5680. Limitation of director and officer liability

30 5680. (a) An association officer or director is not personally liable for a tortious
31 act or omission of the officer or director, in excess of the amount of insurance
32 coverage specified in paragraph (6), if all of the following requirements are met:

33 (1) The officer or director is a volunteer.

34 (2) The officer or director is a tenant of a separate interest or an owner of no
35 more than two separate interests.

36 (3) The association is exclusively residential.

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

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

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

1 (7) The association maintained and had in effect, at the time of the act or
2 omission and at the time that a claim is made, insurance coverage for the general
3 liability of the association and for the individual liability of an officer or director
4 of the association for negligent acts or omissions in that capacity. In an association
5 with 100 or fewer separate interests, the coverage for each type of liability shall be
6 at least five hundred thousand dollars (\$500,000). In an association of more than
7 100 separate interests, the coverage for each type of liability shall be at least one
8 million dollars (\$1,000,000).

9 (b) For the purposes of this section, “volunteer” does not include the declarant or
10 a person who receives direct or indirect compensation as an employee of the
11 declarant, or as an employee of a financial institution that purchased a separate
12 interest at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on
13 real property. Payment of actual expenses incurred by a director or officer in the
14 execution of the duties of that position does not affect the director’s or officer’s
15 status as a volunteer.

16 (c) Nothing in this section limits the liability of the association for its negligent
17 act or omission or for any negligent act or omission of an officer or director of the
18 association.

19 (d) For the purposes of this section, an officer’s or director’s association duties
20 include making a decision on whether to conduct an investigation of the common
21 interest development for latent deficiencies before the expiration of the applicable
22 statute of limitations and whether to commence a civil action against the builder
23 for defects in design or construction. This subdivision is intended to clarify the
24 application of this section. It is not intended to expand or limit the fiduciary duties
25 owed by a director or officer.

26 **Comment.** Section 5680 restates former Section 1365.7 without substantive change. See also
27 Corp. Code § 7231 (standard of care and liability of director of nonprofit mutual benefit
28 corporation).

29 See also Sections 4080 (“association”), 4100 (“common interest development”), 4130
30 (“declarant”), 4140 (“director”), 4170 (“person”), 4185 (“separate interest”).

31 **§ 5685. Limitation of member liability**

32 5685. (a) It is the intent of the Legislature to offer civil liability protection to
33 owners of separate interests in a common interest development that has common
34 area that is owned as tenancy-in-common if the association carries a certain level
35 of prescribed insurance that covers a cause of action in tort.

36 (b) A cause of action in tort against a member arising solely by reason of an
37 ownership interest as a tenant in common in the common area shall be brought
38 only against the association and not against the individual members, if both of the
39 insurance requirements are met:

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

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

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

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

7 **Comment.** Section 5685 continues former Section 1365.9 without substantive change.

8 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
9 development”), 4160 (“member”), 4185 (“separate interest”).

10 **§ 5690. Notice of change in coverage**

11 5690. (a) If an insurance policy described in the annual budget report pursuant to
12 Section 4800 lapses or is canceled, and is not immediately renewed, restored, or
13 replaced, or if there is a significant change to the policy, such as a reduction in
14 coverage or limits or an increase in the deductible, the association shall give
15 individual notice (Section 4040) of the change to the members as soon as
16 reasonably practicable.

17 (b) If the association receives notice of nonrenewal of a policy described in the
18 annual budget report pursuant to Section 4800 and a replacement policy will not
19 be in effect by the date that the existing policy will lapse, the association shall
20 immediately give individual notice (Section 4040) of that fact to the members.

21 **Comment.** Section 5690 restates part of former Section 1365(f) without substantive change.

22 See also Sections 4080 (“association”), 4160 (“member”).

23 **CHAPTER 6. PROPERTY MAINTENANCE AND USE**

24 **Article 1. Maintenance**

25 **§ 5700. Maintenance responsibility generally**

26 5700. Unless the declaration provides otherwise, the responsibility for repair,
27 replacement, and maintenance is as follows:

28 (a) The association is responsible for the repair, replacement, and maintenance
29 of the common area, other than exclusive use common area.

30 (b) The owner of a separate interest is responsible for the maintenance of the
31 separate interest and any exclusive use common area appurtenant to the separate
32 interest.

33 (c) Upon approval of the majority of all members (Section 4065), responsibility
34 for the repair and maintenance of the separate interests occasioned by the presence
35 of wood-destroying pests or organisms may be delegated to the association, which
36 may recover its costs through a special assessment.

37 **Comment.** Subdivisions (a) and (b) of Section 5700 continue former Section 1364(a) without
38 substantive change.

39 Subdivision (c) generalizes part of former Section 1364(b)(2).

1 See also Sections 4080 (“association”), 4095 (“common area”), 4135 (“declaration”), 4145
2 (“exclusive use common area”), 4185 (“separate interest”).

3 **§ 5705. Temporary removal of occupant to perform treatment of wood-destroying pests**

4 5705. (a) The association may cause the temporary, summary removal of any
5 occupant of a common interest development as may be necessary for prompt,
6 effective treatment of wood-destroying pests or organisms.

7 (b) The association shall give individual notice (Section 4040) of the need to
8 temporarily vacate a separate interest to the occupant and, if the owner is different
9 from the occupant, to the owner. Notice shall be given not less than 15 days nor
10 more than 30 days prior to the date of the temporary relocation. The notice shall
11 state the reason for the temporary relocation, the date and time of the beginning of
12 treatment, the anticipated date and time of termination of treatment, and that the
13 occupants will be responsible for their own accommodations during the temporary
14 relocation.

15 (c) For purposes of this section, “occupant” means an owner, resident, guest,
16 invitee, tenant, lessee, sublessee, or other person in possession of the separate
17 interest.

18 (d) The costs of temporary relocation of an occupant pursuant to this section
19 shall be borne by the owner of the separate interest affected.

20 **Comment.** Section 5705 continues former Section 1364(b)-(e) without substantive change,
21 except for the following changes:

22 (1) The specific notice delivery provisions of former Section 1364(d)(3) have not been
23 continued. Rules for delivery of notice are generalized in Sections 4035-4055.

24 (2) Former Section 1364(c), governing the cost of relocation, has been restated in subdivision
25 (d) so as to make clear that it only applies to a relocation involving wood destroying organisms.

26 (3) Redundant language on the responsibility for maintenance and repair has not been
27 continued.

28 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
29 development”), 4105 (“community apartment project”), 4115 (“condominium”), 4135
30 (“declaration”), 4160 (“member”), 4170 (“person”), 4175 (“planned development”), 4185
31 (“separate interest”), 4190 (“stock cooperative”).

32 **§ 5710. Exclusive use communication wiring**

33 5710. Notwithstanding the governing documents, the owner of a separate
34 interest is entitled to reasonable access to the common areas for the purpose of
35 maintaining the internal and external communication wiring that is exclusive use
36 common area pursuant to Section 4145. The access shall be subject to the consent
37 of the association, whose approval shall not be unreasonably withheld, and which
38 may include the association’s approval of communication wiring upon the exterior
39 of the common area, and other conditions as the association determines
40 reasonable. For the purposes of this section, “wiring” includes nonmetallic
41 transmission lines.

42 **Comment.** Section 5710 continues former Section 1364(f) without substantive change, except
43 that the reference to “telephone wiring” has been generalized to accommodate non-telephonic
44 communication technology and nonmetallic transmission media (e.g., fiber optic).

1 See also Sections 4080 (“association”), 4095 (“common area”), 4145 (“exclusive use common
2 area”), 4150 (“governing documents”), 4185 (“separate interest”), 4190 (“stock cooperative”).

3 Article 2. Limitation of Association Authority
4 to Regulate Property Use

5 **§ 5725. Application of article**

6 5725. This article includes provisions that limit the authority of an association to
7 regulate the use of a member’s separate interest. Nothing in this article is intended
8 to affect the application of any other provision that limits the authority of an
9 association to regulate the use of a member’s separate interest, including, but not
10 limited to, the following provisions:

11 (a) Sections 712 and 713, relating to the display of signs.

12 (b) Sections 714 and 714.1, relating to solar energy systems.

13 (c) Section 714.5, relating to structures that are constructed offsite and moved to
14 the property in sections or modules.

15 (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the
16 Government Code, relating to racial restrictions.

17 (e) Section 12927 of the Government Code, relating to the modification of
18 property to accommodate a disability.

19 (f) Section 1597.40 of the Health and Safety Code, relating to the operation of a
20 family day care home.

21 **Comment.** Section 5725 is new. It provides a non-exclusive list of provisions outside of this
22 part that limit the authority of an association to regulate separate interest property use.

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

24 **§ 5730. Display of flag or other noncommercial display**

25 5730. (a) Except as otherwise provided in this section, the governing documents
26 of an association may not prohibit the display of the flag of the United States or
27 any other noncommercial sign, poster, flag, or banner within a member’s separate
28 interest or exclusive use common area.

29 (b) Notwithstanding Section 434.4 of the Government Code, an association may
30 prohibit the display of the flag of the United States or any other noncommercial
31 sign, poster, flag, or banner within a member’s separate interest or exclusive use
32 common area if any of the following conditions is satisfied:

33 (1) The display endangers public health or safety.

34 (2) The display violates a local, state, or federal statute or regulation.

35 (3) The display includes the painting of architectural surfaces, or includes lights,
36 roofing, siding, paving materials, plants, or balloons, or any other building,
37 landscaping, or architectural materials.

38 (4) The display is not a flag and is more than 9 square feet in size.

39 (c) An association may prohibit the display of a flag other than the flag of the
40 United States, if the flag is more than 15 square feet in size.

1 (d) In an action under this section to challenge a prohibition on the display of the
2 flag of the United States, the prevailing party shall be awarded reasonable
3 attorney's fees and costs.

4 **Comment.** Section 5730 continues former Sections 1353.5 and 1353.6 without substantive
5 change, except that Section 5730(b)(2) now applies to a flag of the United States.

6 See also Sections 4080 ("association"), 4095 ("common area"), 4145 ("exclusive use common
7 area"), 4150 ("governing documents"), 4160 ("member"), 4185 ("separate interest").

8 **§ 5735. Pets**

9 5735. (a) No governing documents shall prohibit the owner of a separate interest
10 within a common interest development from keeping at least one pet within the
11 common interest development, subject to reasonable rules and regulations of the
12 association. This section may not be construed to affect any other rights provided
13 by law to an owner of a separate interest to keep a pet within the development.

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

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

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

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

28 **Comment.** Section 5735 continues former Section 1360.5 without change.

29 See also Sections 4080 ("association"), 4100 ("common interest development"), 4150
30 ("governing documents"), 4185 ("separate interest").

31 **§ 5740. Roofing materials**

32 5740. (a) An association may not require that a homeowner install or repair a
33 roof in a manner that is in violation of Section 13132.7 of the Health and Safety
34 Code.

35 (b) The governing documents of a common interest development located within
36 a very high fire severity zone, as designated by the Director of Forestry and Fire
37 Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of
38 Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to
39 Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of
40 the Government Code, shall allow for at least one type of fire retardant roof
41 covering material that meets the requirements of Section 13132.7 of the Health
42 and Safety Code.

1 **Comment.** Section 5740 continues former Section 1353.7 without substantive change. See also
2 Section 5775(a)(3) (“Notwithstanding a contrary provision of the governing documents, a
3 decision on a proposed change may not violate any governing provision of law, including, but not
4 limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of
5 Division 3 of Title 2 of the Government Code), or a building code or other applicable law
6 governing land use or public safety.”).

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

9 **§ 5745. Television antenna or satellite dish**

10 5745. (a) Except as otherwise provided in this section, a provision of the
11 governing documents is void to the extent that it would prohibit or restrict the use
12 or installation of an antenna.

13 (b) The following restrictions on the use or installation of an antenna are not
14 void pursuant to this section:

15 (1) A restriction or prohibition that is consistent with a provision of law that
16 imposes the same restriction or prohibition.

17 (2) A requirement that the antenna not be visible from a street or from the
18 common area.

19 (3) A restriction that does not significantly increase the cost of the antenna,
20 including all related equipment, or significantly decrease its efficiency or
21 performance.

22 (4) A requirement that the association approve the installation before installation
23 takes place.

24 (5) A requirement that an association approve the installation of an antenna on
25 the separate interest of a member other than the member seeking to install the
26 antenna.

27 (6) A provision for the maintenance, repair, or replacement of roofs or other
28 building components.

29 (7) A requirement that the installer indemnify or reimburse the association or a
30 member for loss or damage caused by the installation, maintenance, or use of the
31 antenna.

32 (c) Whenever approval is required for the installation or use of an antenna, the
33 application for approval shall be processed by the appropriate approving entity for
34 the common interest development in the same manner as an application for
35 approval of an architectural modification to the property, and the issuance of a
36 decision on the application shall not be willfully delayed.

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

39 (e) For the purposes of this section “antenna” means a video or television
40 antenna, including a satellite dish, of less than 36 inches in diameter or diagonal
41 measurement.

42 **Comment.** Section 5745 restates former Section 1376 without substantive change. Restrictions
43 on antennas may also be governed by federal regulation. See 47 C.F.R. § 1.4000.

1 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
2 development”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

3 **§ 5750. Marketing restriction**

4 5750. (a) A provision of the governing documents that arbitrarily or
5 unreasonably restricts a member’s ability to market the member’s interest in a
6 common interest development is void.

7 (b) An association shall not charge a fee in connection with the marketing of a
8 member’s interest that exceeds the actual cost to the association that results from
9 the marketing of the member’s interest.

10 (c) An association shall not require that a member use a particular real estate
11 broker to market the member’s interest.

12 (d) For the purposes of this section, “market” and “marketing” mean listing,
13 advertising, or obtaining or providing access to show the member’s interest.

14 **Comment.** Subdivision (a) of Section 5750 restates former Section 1368.1(a) without
15 substantive change. The phrase “rule or regulation” has been generalized to include any provision
16 of the association’s governing documents.

17 Subdivision (b) restates former Section 1368.1(b)(1) without substantive change. Subdivision
18 (b) is a specific application of the general rule provided in 5755(b).

19 Subdivision (c) restates former Section 1368.1(b)(2) without substantive change. Language
20 making clear that the provision does not affect marketing by an association is not continued
21 because the restated language makes clear that the limitation only affects marketing by an
22 individual member.

23 Subdivision (d) continues former Section 1368.1(c) without substantive change.

24 Subdivision (e) continues former Section 1368.1(d) without substantive change.

25 See also Sections 4080 (“association”), 4100 (“common interest development”), 4150
26 (“governing documents”), 4160 (“member”).

27 **§ 5755. Low water-using plants**

28 5755. The architectural guidelines of a common interest development shall not
29 prohibit or include conditions that have the effect of prohibiting the use of low
30 water-using plants as a group.

31 **Comment.** Section 5755 continues former Section 1353.8 without change.

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

33 **§ 5760. Improvements to separate interest**

34 5760. (a) Any change in the exterior appearance of a separate interest shall be in
35 accordance with the governing documents and applicable law.

36 (b) Subject to the governing documents and applicable law, the owner of a
37 separate interest may make any improvement or alteration within the boundaries
38 of the separate interest that does not impair the structural integrity or mechanical
39 systems or lessen the support of any part of the common interest development.

40 (c) Subject to the governing documents and applicable law, the owner of a
41 separate interest may modify the separate interest, at the owner’s expense, to
42 facilitate access for a person who is blind, visually handicapped, deaf, or
43 physically disabled, or to alter conditions that could be hazardous to the disabled

1 person. This may include a modification of the route from the public way to the
2 door of the separate interest if the separate interest is on the ground floor or is
3 already accessible by an existing ramp or elevator.

4 (d) A modification made pursuant to subdivision (c) is subject to the following
5 conditions:

6 (1) The modification shall be consistent with applicable building code
7 requirements.

8 (2) The modification shall be consistent with the intent of otherwise applicable
9 provisions of the governing documents pertaining to safety or aesthetics.

10 (3) A modification of the common area shall not prevent reasonable passage by
11 other residents, and shall be removed by the owner when the unit is no longer
12 occupied by a disabled person who requires the modification.

13 (4) The owner shall submit plans and specifications for a proposed modification
14 to the association for review to determine whether the proposed modification
15 complies with this section. The association shall not deny approval of the
16 proposed modification without good cause.

17 **Comment.** Section 5760 generalizes the substance of former Section 1360 so that it applies to
18 any separate interest and not just a separate interest that is contained within the boundaries of a
19 building. See also Section 5775 (association decision on modification of separate interest must
20 comply with Fair Employment and Housing Act); Gov't Code § 12927 (accommodation of
21 disability under Fair Employment and Housing Act).

22 See also Sections 4080 ("association"), 4095 ("common area"), 4100 ("common interest
23 development"), 4150 ("governing documents"), 4170 ("person"), 4185 ("separate interest").

24 Article 3. Architectural Review

25 § 5775. Architectural review and decisionmaking

26 5775. (a) This section applies if an association's governing documents require
27 association approval before an owner of a separate interest may make a physical
28 change to the owner's separate interest or to the common area. In reviewing and
29 approving or disapproving a proposed change, the association shall satisfy the
30 following requirements:

31 (1) The association shall provide a fair, reasonable, and expeditious procedure
32 for making its decision. The procedure shall be included in the association's
33 governing documents. The procedure shall provide for prompt deadlines. The
34 procedure shall state the maximum time for response to an application or a request
35 for reconsideration by the board of directors.

36 (2) A decision on a proposed change shall be made in good faith and may not be
37 unreasonable, arbitrary, or capricious.

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

1 (4) A decision on a proposed change shall be in writing. If a proposed change is
2 disapproved, the written decision shall include both an explanation of why the
3 proposed change is disapproved and a description of the procedure for
4 reconsideration of the decision by the board of directors.

5 (5) If a proposed change is disapproved, the applicant is entitled to
6 reconsideration by the board of directors of the association that made the decision,
7 at an open meeting of the board. This paragraph does not require reconsideration
8 of a decision that is made by the board of directors or a body that has the same
9 membership as the board of directors, at a meeting that satisfies the requirements
10 of Article 2 (commencing with Section 4500) of Chapter 3. Reconsideration by the
11 board does not constitute dispute resolution within the meaning of Section 5055.

12 (b) Nothing in this section authorizes a physical change to the common area in a
13 manner that is inconsistent with an association's governing documents, unless the
14 change is required by law.

15 (c) An association shall annually provide its members with notice of any
16 requirements for association approval of physical changes to property. The notice
17 shall describe the types of changes that require association approval and shall
18 include a copy of the procedure used to review and approve or disapprove a
19 proposed change.

20 **Comment.** Section 5775 continues former Section 1378 without substantive change.

21 See also Sections 4080 ("association"), 4085 ("board"), 4095 ("common area"), 4140
22 ("director"), 4150 ("governing documents"), 4160 ("member"), 4185 ("separate interest").

23 CHAPTER 7. PROPERTY OWNERSHIP AND TRANSFER

24 Article 1. Ownership Rights and Interests

25 § 5800. Ownership of common area

26 5800. Unless the declaration provides otherwise, in a condominium project, or in
27 a planned development in which the common area is owned by the owners of the
28 separate interests, the common area is owned by the owners of the separate
29 interests as tenants in common, with one share for each separate interest.

30 **Comment.** Section 5800 restates former Section 1362 without substantive change.

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

33 § 5805. Appurtenant rights and easements

34 5805. Unless the declaration provides otherwise:

35 (a) In a community apartment project, condominium, or a planned development
36 in which the common area is owned in common by the owners of the separate
37 interests, there are appurtenant to each separate interest nonexclusive rights of
38 ingress, egress, and support, if necessary, through the common areas. The common
39 area is subject to these rights.

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

5 **Comment.** Section 5805 restates former Section 1361 without substantive change.

6 See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment
7 project”), 4115 (“condominium”), 4175 (“planned development”), 4185 (“separate interest”),
8 4190 (“stock cooperative”).

9 **§ 5810. Access to separate interest property**

10 5810. Except as otherwise provided by law, an order of the court, or an order
11 pursuant to a final and binding arbitration decision, an association may not deny a
12 member or other occupant of a separate interest physical access to the separate
13 interest, either by restricting access through the common area, or by restricting
14 access solely to the separate interest.

15 **Comment.** Section 5810 continues former Section 1361.5 without substantive change.

16 See also Sections 4080 (“association”), 4095 (“common area”), 4160 (“member”), 4185
17 (“separate interest”).

18 **Article 2. Transfer Disclosure**

19 **§ 5825. Disclosure to prospective purchaser**

20 5825. As soon as practicable before the transfer of title to a separate interest or
21 the execution of a real property sales contract for a separate interest, as defined in
22 Section 2985, the owner of the separate interest, other than an owner subject to the
23 requirements of Section 11018.6 of the Business and Professions Code, shall
24 provide the following documents to the prospective purchaser:

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

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

34 (c) A copy of the most recent documents distributed pursuant to Article 7
35 (commencing with Section 4800) of Chapter 3.

36 (d) A true statement in writing obtained from an authorized representative of the
37 association as to the amount of the association’s current regular and special
38 assessments and fees, any assessments levied upon the owner’s interest in the
39 common interest development that are unpaid on the date of the statement, and any
40 monetary fines or penalties levied upon the owner’s interest and unpaid on the
41 date of the statement. The statement obtained from an authorized representative

1 shall also include true information on late charges, interest, and costs of collection
2 which, as of the date of the statement, are or may be made a lien upon the owner's
3 interest in a common interest development pursuant to Article 5 (commencing
4 with Section 5600) of Chapter 5.

5 (e) A copy or a summary of any notice previously sent to the owner pursuant to
6 Section 5005 that sets forth any alleged violation of the governing documents that
7 remains unresolved at the time of the request. The notice shall not be deemed a
8 waiver of the association's right to enforce the governing documents against the
9 owner or the prospective purchaser of the separate interest with respect to any
10 violation. This paragraph shall not be construed to require an association to inspect
11 an owner's separate interest.

12 (f) A copy of the preliminary list of defects provided to each member of the
13 association pursuant to Section 6200, unless the association and the builder
14 subsequently enter into a settlement agreement or otherwise resolve the matter and
15 the association complies with Section 6210. Disclosure of the preliminary list of
16 defects pursuant to this paragraph does not waive any privilege attached to the
17 document. The preliminary list of defects shall also include a statement that a final
18 determination as to whether the list of defects is accurate and complete has not
19 been made.

20 (g) A copy of the latest information provided for in Section 6210.

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

25 **Comment.** Section 5825 continues former Section 1368(a) without substantive change.

26 Former section 5825(g) has not been continued. It provided that a community association
27 manager is an agent for the purposes of general agency law. That provision was superfluous and
28 included an erroneous cross-reference. There is no need to state the application of general agency
29 law to a common interest development.

30 See also Sections 4080 ("association"), 4100 ("common interest development"), 4140
31 ("director"), 4150 ("governing documents"), 4160 ("member"), 4165 ("operating rule"), 4185
32 ("separate interest").

33 **§ 5830. Information to be provided by association**

34 5830. (a) A member may request, in writing, that the association provide the
35 member with the documents described in Section 5825.

36 (b) Within 15 days after the request is delivered to the board (Section 4035), the
37 association shall provide the requesting member with a copy of the requested
38 documents.

39 (c) If the requested documents are maintained in electronic form, the requesting
40 member shall have the option of receiving them by electronic transmission or on
41 machine readable storage media.

42 (d) The association may charge a reasonable fee to recover the actual cost to
43 procure, prepare, and reproduce the requested documents.

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

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

5 (1) It is not an entity described by subdivision (a).

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

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

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

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

17 **Comment.** Section 5880 restates former Section 1368(c)(2) without substantive change.

18 See also Sections 4110 (“community service organization”), 4185 (“separate interest”).

19 Article 4. Restrictions on Transfers

20 § 5900. Grant of exclusive use

21 5900. (a) Unless the governing documents specify a different percentage, the
22 affirmative vote of members owning at least 67 percent of the separate interests in
23 the common interest development shall be required before the board of directors
24 may grant exclusive use of any portion of the common area to a member.

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

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

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

34 (3) A grant of exclusive use to eliminate or correct engineering errors in
35 documents recorded with the county recorder or on file with a public agency or
36 utility company.

37 (4) A grant of exclusive use to eliminate or correct encroachments due to errors
38 in construction of any improvements.

39 (5) A grant of exclusive use to permit changes in the plan of development
40 submitted to the Real Estate Commissioner in circumstances where the changes

1 are the result of topography, obstruction, hardship, aesthetic considerations, or
2 environmental conditions.

3 (6) A grant of exclusive use to fulfill the requirement of a public agency.

4 (7) A grant of exclusive use to transfer the burden of management and
5 maintenance of any common area that is generally inaccessible and not of general
6 use to the membership at large of the association.

7 (8) A grant in connection with an expressly zoned industrial or commercial
8 development, or any grant within a subdivision of the type defined in Section
9 4020.

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

15 **Comment.** Section 5900 restates former Section 1363.07 without substantive change, with the
16 following exceptions:

17 (1) The section is no longer limited in its application to a common area that the association
18 owns or in which the association has an easement right. It now applies to any common area.

19 (2) The substance of former subdivision (a)(1)(F) is continued in Section 4020.

20 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
21 development”), 4140 (“director”), 4150 (“governing documents”), 4160 (“member”), 4185
22 (“separate interest”).

23 **§ 5905. Partition of condominium project**

24 5905. (a) Except as provided in this section, the common area in a condominium
25 project shall remain undivided, and there shall be no judicial partition of the
26 common area. Nothing in this section shall be deemed to prohibit partition of a
27 cotenancy of a separate interest in a condominium.

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

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

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

41 (3) The project has been in existence more than 50 years, is obsolete and
42 uneconomic, and owners of separate interests holding in the aggregate more than a
43 50-percent interest in the common area oppose repair or restoration of the project.

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

2 **Comment.** Section 5905 restates former Section 1359 without substantive change.

3 See also Sections 4095 (“common area”), 4115 (“condominium”), 4125 (“condominium
4 project”), 4135 (“declaration”), 4185 (“separate interest”).

5 **§ 5910. Lien for work performed in condominium project**

6 5910. (a) In a condominium project, no labor performed or services or materials
7 furnished with the consent of, or at the request of, an owner in the condominium
8 project or the owner’s agent or contractor shall be the basis for the filing of a lien
9 against the property of any other owner in the condominium project unless that
10 other owner has expressly consented to or requested the performance of the labor
11 or furnishing of the materials or services.

12 (b) Express consent shall be deemed to have been given by the owner of any
13 condominium in the case of emergency repairs to the condominium.

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

17 (d) An owner may remove the owner’s condominium from a lien against two or
18 more condominiums or any part thereof by payment to the lien holder of the
19 fraction of the total sum secured by the lien that is attributable to the owner’s
20 condominium.

21 **Comment.** Section 5910 continues former Section 1369 without substantive change.

22 See also Sections 4080 (“association”), 4095 (“common area”), 4115 (“condominium”), 4125
23 (“condominium project”).

24 **Article 5. Transfer of Separate Interest**

25 **§ 5925. Community apartment project**

26 5925. In a community apartment project, any conveyance, judicial sale, or other
27 voluntary or involuntary transfer of the separate interest includes the undivided
28 interest in the community apartment project. Any conveyance, judicial sale, or
29 other voluntary or involuntary transfer of the owner’s entire estate also includes
30 the owner’s membership interest in the association.

31 **Comment.** Section 5925 continues former Section 1358(a) without substantive change.

32 See also Sections 4080 (“association”), 4105 (“community apartment project”), 4185
33 (“separate interest”).

34 **§ 5930. Condominium project**

35 5930. In a condominium project the common area is not subject to partition,
36 except as provided in Section 5905. Any conveyance, judicial sale, or other
37 voluntary or involuntary transfer of the separate interest includes the undivided
38 interest in the common area. Any conveyance, judicial sale, or other voluntary or
39 involuntary transfer of the owner’s entire estate also includes the owner’s
40 membership interest in the association.

1 **Comment.** Section 5930 continues former Section 1358(b) without substantive change.
2 See also Sections 4080 (“association”), 4095 (“common area”), 4125 (“condominium
3 project”), 4185 (“separate interest”).

4 **§ 5935. Planned development**

5 5935. In a planned development, any conveyance, judicial sale, or other
6 voluntary or involuntary transfer of the separate interest includes the undivided
7 interest in the common area. Any conveyance, judicial sale, or other voluntary or
8 involuntary transfer of the owner’s entire estate also includes the owner’s
9 membership interest in the association.

10 **Comment.** Section 5935 continues former Section 1358(c) without substantive change, except
11 that language suggesting that a planned development may not include common area is not
12 continued. All common interest developments included common area. See Section 4100
13 (“common interest development” defined).

14 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
15 development”), 4175 (“planned development”), 4185 (“separate interest”).

16 **§ 5940. Stock cooperative**

17 5940. In a stock cooperative, any conveyance, judicial sale, or other voluntary or
18 involuntary transfer of the separate interest includes the ownership interest in the
19 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary
20 or involuntary transfer of the owner’s entire estate also includes the owner’s
21 membership interest in the association.

22 **Comment.** Section 5940 continues former Section 1358(d) without substantive change.

23 See also Sections 4080 (“association”), 4185 (“separate interest”), 4190 (“stock cooperative”).

24 **§ 5945. Transfer of exclusive use common area**

25 5945. Nothing in this article prohibits the transfer of exclusive use common
26 area, independent of any other interest in a common interest development, if
27 authorization to separately transfer exclusive use common area is expressly stated
28 in the declaration and the transfer occurs in accordance with the terms of the
29 declaration.

30 **Comment.** Section 5945 continues the next to last paragraph of former Section 1358 without
31 substantive change.

32 See also Sections 4100 (“common interest development”), 4135 (“declaration”), 4145
33 (“exclusive use common area”).

34 **§ 5950. Severability of interests**

35 5950. Any restriction on the severability of the component interests in real
36 property which are contained in the declaration shall not be deemed conditions
37 repugnant to the interest created within the meaning of Section 711 of the Civil
38 Code. However, these restrictions shall not extend beyond the period in which the
39 right to partition a project is suspended under Section 5905.

40 **Comment.** Section 5950 continues the last paragraph of former Section 1358 without
41 substantive change.

42 See also Section 4135 (“declaration”).

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CHAPTER 8. GOVERNING DOCUMENTS

Article 1. General Provisions

§ 6000. Creation of common interest development

6000. (a) For the purposes of this part, a common interest development is created when a separate interest coupled with an interest in the common area or membership in the association is, or has been, conveyed, provided that all of the following are recorded:

(1) A declaration.

(2) A condominium plan, if any exists.

(3) 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.

(b) Notwithstanding subdivision (a), this part governs a stock cooperative that has not recorded a declaration.

Comment. Subdivision (a) of Section 6000 continues part of former Section 1352 without substantive change. It governs the application of this part and is not intended to govern the date of creation of a common interest development for other purposes. See *City of West Hollywood v. Beverly Towers, Inc.*, 52 Cal. 3d 1184, 805 P.2d 329, 278 Cal. Rptr. 375 (1991) (failure to convey unit not determinative of whether condominium project exists for purposes of local planning law).

Subdivision (b) is new. It reflects the fact that some stock cooperatives are created without a recorded declaration.

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

§ 6005. Document authority

6005. (a) 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.

(b) 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.

(c) 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.

(d) This section does not apply to a stock cooperative.

Comment. Section 6005 is new.

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

Subdivision (c) is consistent with Section 6100(c) providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

1 Subdivision (d) reflects the fact that some stock cooperatives are created without a recorded
2 declaration.

3 See also Sections 4080 (“association”), 4135 (“declaration”), 4165 (“operating rule”).

4 Article 2. Declaration

5 § 6025. Content of declaration

6 6025. A declaration, recorded on or after January 1, 1986, shall contain all of the
7 following:

8 (a) A legal description of the common interest development.

9 (b) A statement that the common interest development is a community
10 apartment project, condominium project, planned development, stock cooperative,
11 or combination thereof.

12 (c) The name of the association.

13 (d) Any restriction on the use or enjoyment of any portion of the common
14 interest development that is intended to be an enforceable equitable servitude.

15 (e) Any other matter that the declarant or the members consider appropriate.

16 **Comment.** Section 6025 continues part of former Sections 1353(a)(1) and (b) without
17 substantive change. The remainder of former Section 1353(a)(1) is continued without substantive
18 change in Section 6030.

19 See also Sections 4080 (“association”), 4105 (“community apartment project”), 4100
20 (“common interest development”), 4125 (“condominium project”), 4130 (“declarant”), 4135
21 (“declaration”), 4160 (“member”), 4175 (“planned development”), 4190 (“stock cooperative”).

22 § 6030. Disclosure of airport in vicinity

23 6030. (a) If a common interest development is located within an airport
24 influence area and its declaration is recorded after January 1, 2004, the declaration
25 shall contain the following statement:

26 “NOTICE OF AIRPORT IN VICINITY

27 This property is presently located in the vicinity of an airport, within what
28 is known as an airport influence area. For that reason, the property may be
29 subject to some of the annoyances or inconveniences associated with
30 proximity to airport operations (for example: noise, vibration, or odors).
31 Individual sensitivities to those annoyances can vary from person to person.
32 You may wish to consider what airport annoyances, if any, are associated
33 with the property before you complete your purchase and determine whether
34 they are acceptable to you.”

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

1 (c) A statement in a declaration acknowledging that a property is located in an
2 airport influence area is not a title defect, lien, or encumbrance.

3 **Comment.** Section 6030 continues part of former Sections 1353(a)(1)-(2) & (4) without
4 substantive change. The remainder of former Section 1351(a)(1) is continued without substantive
5 change in Section 6025. See Bus. & Prof. Code § 11010 (disclosure of property within airport
6 influence area); Pub. Util. Code § 21675 (designation of “airport influence area” by county
7 airport land use commission).

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

9 **§ 6035. Disclosure of BCDC jurisdiction**

10 6035. (a) If a common interest development is within the jurisdiction of the San
11 Francisco Bay Conservation and Development Commission, as described in
12 Section 66610 of the Government Code, and its declaration is recorded on or after
13 January 1, 2006, the declaration shall contain the following notice:

14 “NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
15 DEVELOPMENT COMMISSION JURISDICTION

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

22 (b) A statement in a declaration acknowledging that a property is located within
23 the jurisdiction of the San Francisco Bay Conservation and Development
24 Commission is not a title defect, lien, or encumbrance.

25 **Comment.** Section 6035 continues former Section 1353(a)(3)-(4) without substantive change.
26 See also Sections 4100 (“common interest development”), 4135 (“declaration”).

27 **§ 6040. Amendment authorized**

28 6040. (a) Unless a declaration expressly provides otherwise, any provision of the
29 declaration can be amended.

30 (b) If a provision of a declaration can be amended, it can be amended at any
31 time.

32 (c) The Legislature finds that there are common interest developments that have
33 been created with deed restrictions that do not provide a means for the property
34 owners to extend the term of the declaration. The Legislature further finds that
35 covenants and restrictions, contained in the declaration, are an appropriate method
36 for protecting the common plan of developments and to provide for a mechanism
37 for financial support for the upkeep of common areas including, but not limited to,
38 roofs, roads, heating systems, and recreational facilities. If declarations terminate
39 prematurely, common interest developments may deteriorate and the supply of
40 affordable housing units could be impacted adversely. The Legislature further
41 finds and declares that it is in the public interest to provide a vehicle for extending

1 the term of the declaration if owners having more than 50 percent of the votes in
2 the association choose to do so.

3 (d) A declaration may be amended to extend the termination date of the
4 declaration, notwithstanding any contrary provision of the declaration. No single
5 extension of the term of the declaration made pursuant to this subdivision shall
6 exceed the initial term of the declaration or 20 years, whichever is less. However,
7 more than one extension may be made pursuant to this subdivision.

8 **Comment.** Subdivisions (a)-(b) of Section 6040 restate the first sentence of former Section
9 1355(b) without substantive change.

10 Subdivisions (c)-(d) restate Section 1357 without substantive change, except that the procedure
11 for approving an amendment of a declaration to extend its termination date is not continued. An
12 amendment under this subdivision would be approved pursuant to Section 6045.

13 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
14 development”), 4135 (“declaration”).

15 **§ 6045. Approval of amendment**

16 6045. (a) If the governing documents provide a procedure for approval of an
17 amendment of the declaration, an amendment may be approved by that procedure.

18 (b) If the governing documents do not provide a procedure for approval of an
19 amendment of the declaration, an amendment may be approved by a majority of
20 all members (Section 4065) and by any person whose approval of a declaration
21 amendment is specifically required under the governing documents.

22 (c) The board shall provide individual notice (Section 4040) to all members of
23 an amendment approved under this section.

24 **Comment.** Section 6045 is comparable to the provisions of former Section 1355 that relate to
25 approval of an amendment of the declaration. Note that a court may order modification of
26 amendment approval requirements in some circumstances. See Section 4620.

27 See also Sections 4085 (“board”), 4135 (“declaration”), 4150 (“governing documents”), 4160
28 (“member”).

29 **§ 6050. Approval of amendment to delete obsolete construction or marketing provision**

30 6050. Notwithstanding Section 6045, the deletion of a provision of the
31 declaration may be approved by the board (Section 4060) and by a majority of a
32 quorum of the members (Section 4070) if all of the following conditions are
33 satisfied:

34 (a) The provision to be deleted is unequivocally designed and intended, or by its
35 nature can only have been designed or intended, to facilitate the developer in
36 completing the construction or marketing of the development or of a particular
37 phase of the development.

38 (b) The provision to be deleted authorizes access by the developer over or across
39 the common area for the purposes of (1) completion of construction of the
40 development, and (2) the erection, construction, or maintenance of structures or
41 other facilities designed to facilitate the completion of construction or marketing
42 of separate interests.

1 (c) The construction or marketing activities governed by the provision to be
2 deleted have been completed or terminated.

3 **Comment.** Section 6050 is comparable to former Section 1355.5 but applies only to the
4 amendment of a declaration. The requirement of former Section 1355.5(c), mandating that
5 members be given notice before the board approves the amendment, is not continued. Member
6 notice is required before board meetings and before a member vote is held.

7 See also Sections 4085 (“board”), 4095 (“common area”), 4135 (“declaration”), 4160
8 (“member”), 4185 (“separate interest”), 4520 (notice of board meeting), 4595 (notice of regular
9 member meeting).

10 § 6055. Effective date of amendment

11 6055. Notwithstanding any contrary provision of the governing documents, an
12 amendment approved pursuant to this article becomes effective once the following
13 actions have been completed:

14 (a) An officer of the association certifies, in a writing that is signed and
15 acknowledged by the officer, that the amendment was approved pursuant to this
16 article. The certifying officer is the officer designated for that purpose by the
17 governing documents, or if no one is designated, the president of the association.

18 (b) The written certification and the amended text of the declaration are recorded
19 in each county in which the common interest development is located.

20 **Comment.** Subdivisions (a) and (b) of Section 6055 are comparable to the provisions of
21 former Section 1355 that relate to certification and recordation of an amendment of the
22 declaration. See Sections 1180-1207 (acknowledgement of instrument).

23 See also Sections 4080 (“association”), 4100 (“common interest development”), 4135
24 (“declaration”), 4150 (“governing documents”).

25 Article 3. Articles of Incorporation

26 § 6060. Content of articles

27 6060. (a) The articles of incorporation of an association that are filed with the
28 Secretary of State on or after January 1, 1995, shall include all of the following:

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

32 (2) The address of the business or corporate office of the association, if any.

33 (3) If the association has no business or corporate office, or if the business or
34 corporate office is not on the site of the common interest development, the nine-
35 digit ZIP Code, front street, and nearest cross street for the physical location of the
36 common interest development.

37 (4) The name and address of the association’s managing agent, if any.

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

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

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

5 **Comment.** Section 6110 continues former Section 1357.120 without substantive change,
6 except that subdivision (a)(7) is new. That provision is added to conform to Section 4625.

7 See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4145
8 (“exclusive use common area”), 4150 (“governing documents”), 4160 (“member”), 4165
9 (“operating rule”), 4180 (“rule change”), 4185 (“separate interest”).

10 **§ 6115. Approval of rule change by board**

11 6115. (a) The board shall provide general notice (Section 4045) of a proposed
12 rule change at least 30 days before making the rule change. The notice shall
13 include the text of the proposed rule change and a description of the purpose and
14 effect of the proposed rule change. Notice is not required under this subdivision if
15 the board determines that an immediate rule change is necessary to address an
16 imminent threat to public health or safety or imminent risk of substantial economic
17 loss to the association.

18 (b) A proposed rule change may be approved by the board (Section 4060).

19 (c) As soon as possible after approving a rule change, but not more than 15 days
20 after approving the rule change, the board shall provide general notice (Section
21 4045) of the rule change. If the rule change was an emergency rule change made
22 under subdivision (d), the notice shall include the text of the rule change, a
23 description of the purpose and effect of the rule change, and the date that the rule
24 change expires.

25 (d) If the board determines that an immediate rule change is required to address
26 an imminent threat to public health or safety, or an imminent risk of substantial
27 economic loss to the association, the board may approve an emergency rule
28 change (Section 4060) without providing general notice (Section 4045) of the
29 proposed rule change. An emergency rule change is effective for 120 days, unless
30 the board provides for a shorter effective period. A rule change made under this
31 subdivision may not be readopted under this subdivision.

32 **Comment.** Section 6115 restates former Section 1357.130 without substantive change.

33 See also Sections 4080 (“association”), 4085 (“board”), 4180 (“rule change”).

34 **§ 6120. Reversal of rule change by members**

35 6120. (a) Members of an association owning five percent or more of the separate
36 interests may call a special member meeting to reverse a rule change that was
37 approved by the board.

38 (b) A special member meeting may be called by delivering a request to the board
39 (Section 4035) that includes the requisite number of member signatures, after
40 which the board shall provide general notice (Section 4045) of the meeting and
41 hold the meeting in conformity with Article 2 (commencing with Section 4500) of
42 Chapter 3. A written request may only be delivered within 30 days after general

1 notice (Section 4045) of the rule change or enforcement of the resulting rule,
2 whichever occurs first.

3 (c) For the purposes of Article 5 (commencing with Section 4700) of Chapter 3,
4 collection of signatures to call a special meeting under this section is a purpose
5 reasonably related to the interests of the members of the association. A member
6 request to copy or inspect the membership list solely for that purpose may not be
7 denied on the grounds that the purpose is not reasonably related to the member's
8 interests as a member.

9 (d) A decision to reverse a rule change may be approved by a majority of a
10 quorum of the members (Section 4070), or if the declaration or bylaws require a
11 greater proportion, by the affirmative vote of the proportion required. In lieu of
12 calling the meeting described in this section, the board may distribute a written
13 ballot to every member of the association pursuant to Section 4640.

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

17 (f) A meeting called under this section is governed by Article 3 (commencing
18 with Section 4575) and Article 4 (commencing with Section 4625) of Chapter 3.

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

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

26 (i) This section does not apply to an emergency rule change made under
27 subdivision (d) of Section 6115.

28 **Comment.** Section 6120 continues former Section 1357.140 without substantive change. See
29 Sections 4035 ("delivered to the board"), 4045 ("general notice"), 4070 (approved by majority of
30 quorum of members).

31 See also Sections 4080 ("association"), 4085 ("board"), 4135 ("declaration"), 4160
32 ("member"), 4180 ("rule change"), 4185 ("separate interest").

33 **§ 6125. Applicability of article to changes commenced before and after January 1, 2004**

34 6125. (a) This article applies to a rule change commenced on or after January 1,
35 2004.

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

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

40 **Comment.** Section 6125 continues former Section 1357.150 without substantive change. This
41 section limits the effect of this article on a "rule change." See Section 4180 ("rule change"). A
42 rule that existed before January 1, 2004 without any change would still be governed by Section

1 6100 (with the exception of subdivision (d) of that section, which concerns the procedure for
2 making a rule change).

3 See also Section 4085 (“board”).

4 Article 6. Unlawful Restrictions

5 § 6150. Discriminatory restriction

6 6150. (a) No governing document shall include a restrictive covenant or other
7 provision in violation of Section 12955 of the Government Code.

8 (b) Notwithstanding any other provision of law or provision of the governing
9 documents, the board shall amend the governing documents to delete the unlawful
10 restrictive provision and to restate the governing document without the deleted
11 restrictive provision. No other person is required to approve the amendment.

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

17 (d) The Department of Fair Employment and Housing, a city or county in which
18 a common interest development is located, or any other person may provide
19 written notice to a board (Section 4035) requesting that it comply with this section.
20 If the board fails to comply with this section within 30 days after delivery of the
21 notice under this subdivision, the person who sent the notice may bring an action
22 against the association for injunctive relief to enforce this section. The court may
23 award attorney’s fees to the prevailing party.

24 **Comment.** Section 6150 restates former Section 1352.5 without substantive change, except
25 that subdivision (c) is added. See Section 4035 (“delivered to the board”).

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

28 Article 7. Construction of Documents

29 § 6175. Liberal construction of instruments

30 6175. (a) Any deed, declaration, or condominium plan for a common interest
31 development shall be liberally construed to facilitate the operation of the common
32 interest development, and its provisions shall be presumed to be independent and
33 severable.

34 (b) Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2
35 of Part 1 of Division 2 shall operate to invalidate any provisions of the governing
36 documents of a common interest development.

37 **Comment.** Section 6175 continues former Section 1370 without substantive change.

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

1 **§ 6180. Boundaries of units**

2 6180. In interpreting a deed or condominium plan, the existing physical
3 boundaries of a unit in a condominium project, when the boundaries of the unit are
4 contained within a building, or of a unit reconstructed in substantial accordance
5 with the original plans thereof, shall be conclusively presumed to be its boundaries
6 rather than the metes and bounds expressed in the deed or condominium plan, if
7 any exists, regardless of settling or lateral movement of the building and
8 regardless of minor variance between boundaries shown on the plan or in the deed
9 and those of the building.

10 **Comment.** Section 6180 continues former Section 1371 without substantive change.
11 See also Sections 4120 (“condominium plan”), 4125 (“condominium project”).

12 CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

13 **§ 6200. Actions for damages**

14 6200. (a) Before an association files a complaint for damages against a builder,
15 developer, or general contractor (“respondent”) of a common interest development
16 based upon a claim for defects in the design or construction of the common
17 interest development, all of the requirements of this section shall be satisfied with
18 respect to the builder, developer, or general contractor.

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

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

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

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

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

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

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

1 (c) Service of the notice shall commence a period, not to exceed 180 days,
2 during which the association, the respondent, and all other participating parties
3 shall try to resolve the dispute through the processes set forth in this section. This
4 180-day period may be extended for one additional period, not to exceed 180 days,
5 only upon the mutual agreement of the association, the respondent, and any parties
6 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any
7 extensions beyond the first extension shall require the agreement of all
8 participating parties. Unless extended, the dispute resolution process prescribed by
9 this section shall be deemed completed. All extensions shall continue the tolling
10 period described in subdivision (b).

11 (d) Within 25 days of the date the association serves the Notice of
12 Commencement of Legal Proceedings, the respondent may request in writing to
13 meet and confer with the board of directors of the association. Unless the
14 respondent and the association otherwise agree, there shall be not more than one
15 meeting, which shall take place no later than 10 days from the date of the
16 respondent's written request, at a mutually agreeable time and place. The meeting
17 shall be subject to Sections 4525 and 4540. The discussions at the meeting are
18 privileged communications and are not admissible in evidence in any civil action,
19 unless the association and the respondent consent in writing to their admission.

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

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

36 (2) The respondent shall provide written notice by certified mail to all
37 subcontractors, design professionals, their insurers, and the insurers of any
38 additional insured whose identities are known to the respondent or readily
39 ascertainable by review of the project files or other similar sources and whose
40 potential responsibility appears on the face of the notice. This notice to
41 subcontractors, design professionals, and insurers shall include a copy of the
42 Notice of Commencement of Legal Proceedings, and shall specify the date and
43 manner by which the parties shall meet and confer to select a dispute resolution

1 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its
2 obligation to participate in the meet and confer or serve a written acknowledgment
3 of receipt regarding this notice, advise the recipient that it will waive any
4 challenge to selection of the dispute resolution facilitator if it elects not to
5 participate in the meet and confer, advise the recipient that it may be bound by any
6 settlement reached pursuant to subdivision (d) of Section 6205, advise the
7 recipient that it may be deemed to have waived rights to conduct inspection and
8 testing pursuant to subdivision (c) of Section 6205, advise the recipient that it may
9 seek the assistance of an attorney, and advise the recipient that it should contact its
10 insurer, if any. Any subcontractor or design professional, or insurer for that
11 subcontractor, design professional, or additional insured, who receives written
12 notice from the respondent regarding the meet and confer shall, prior to the meet
13 and confer, serve on the respondent a written acknowledgment of receipt. That
14 subcontractor or design professional shall, within 10 days of service of the written
15 acknowledgment of receipt, provide to the association and the respondent a
16 Statement of Insurance that includes both of the following:

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

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

23 (3) Any subcontractor or design professional, or insurer for that subcontractor,
24 design professional, or additional insured, who so chooses, may, at any time, make
25 a written request to the dispute resolution facilitator for designation as a peripheral
26 party. That request shall be served contemporaneously on the association and the
27 respondent. If no objection to that designation is received within 15 days, or upon
28 rejection of that objection, the dispute resolution facilitator shall designate that
29 subcontractor or design professional as a peripheral party, and shall thereafter seek
30 to limit the attendance of that subcontractor or design professional only to those
31 dispute resolution sessions deemed peripheral party sessions or to those sessions
32 during which the dispute resolution facilitator believes settlement as to peripheral
33 parties may be finalized. Nothing in this subdivision shall preclude a party who
34 has been designated a peripheral party from being reclassified as a nonperipheral
35 party, nor shall this subdivision preclude a party designated as a nonperipheral
36 party from being reclassified as a peripheral party after notice to all parties and an
37 opportunity to object. For purposes of this subdivision, a peripheral party is a party
38 having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

39 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of
40 subdivision (e), the association, respondent, subcontractors, design professionals,
41 and their insurers who have been sent a notice as described in paragraph (2) of
42 subdivision (e) shall meet and confer in an effort to select a dispute resolution
43 facilitator to preside over the mandatory dispute resolution process prescribed by

1 this section. Any subcontractor or design professional who has been given timely
2 notice of this meeting but who does not participate, waives any challenge he or she
3 may have as to the selection of the dispute resolution facilitator. The role of the
4 dispute resolution facilitator is to attempt to resolve the conflict in a fair manner.
5 The dispute resolution facilitator shall be sufficiently knowledgeable in the subject
6 matter and be able to devote sufficient time to the case. The dispute resolution
7 facilitator shall not be required to reside in or have an office in the county in which
8 the project is located. The dispute resolution facilitator and the participating
9 parties shall agree to a date, time, and location to hold a case management meeting
10 of all parties and the dispute resolution facilitator, to discuss the claims being
11 asserted and the scheduling of events under this section. The case management
12 meeting with the dispute resolution facilitator shall be held within 100 days of
13 service of the Notice of Commencement of Legal Proceedings at a location in the
14 county where the project is located. Written notice of the case management
15 meeting with the dispute resolution facilitator shall be sent by the respondent to
16 the association, subcontractors and design professionals, and their insurers who are
17 known to the respondent to be on notice of the claim, no later than 10 days prior to
18 the case management meeting, and shall specify its date, time, and location. The
19 dispute resolution facilitator in consultation with the respondent shall maintain a
20 contact list of the participating parties.

21 (2) No later than 10 days prior to the case management meeting, the dispute
22 resolution facilitator shall disclose to the parties all matters that could cause a
23 person aware of the facts to reasonably entertain a doubt that the proposed dispute
24 resolution facilitator would be able to resolve the conflict in a fair manner. The
25 facilitator's disclosure shall include the existence of any ground specified in
26 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any
27 attorney-client relationship the facilitator has or had with any party or lawyer for a
28 party to the dispute resolution process, and any professional or significant personal
29 relationship the facilitator or his or her spouse or minor child living in the
30 household has or had with any party to the dispute resolution process. The
31 disclosure shall also be provided to any subsequently noticed subcontractor or
32 design professional within 10 days of the notice.

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

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

1 of the dispute resolution facilitator. The court may issue an order for final
2 selection of the dispute resolution facilitator pursuant to this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (I) Except for the purpose of in camera review as provided in subdivision (c) of
23 Section 6205, all defect lists and demands, communications, negotiations, and
24 settlement offers made in the course of the prelitigation dispute resolution process
25 provided by this section shall be inadmissible pursuant to Sections 1119 to 1124,
26 inclusive, of the Evidence Code and all applicable decisional law. This
27 inadmissibility shall not be extended to any other documents or communications
28 which would not otherwise be deemed inadmissible.

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

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

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

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

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

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

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

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

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

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

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

37 (p) As used in this section:

38 (1) “Association” shall have the same meaning as defined in Section 4080.

39 (2) “Builder” means the declarant, as defined in subdivision Section 4130.

40 (3) “Common interest development” shall have the same meaning as in Section
41 4100, except that it shall not include developments or projects with less than 20
42 units.

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

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

6 (s) This section shall become inoperative on July 1, 2010, and as of January 1,
7 2011, is repealed, unless a later enacted statute, that is enacted before January 1,
8 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

9 **Comment.** Section 6200 continues former Section 1375 without change other than to correct
10 obsolete cross-references.

11 See also Sections 4080 (“association”), 4100 (“common interest development”), 4140
12 (“director”), 4160 (“member”), 4170 (“person”).

13 **§ 6205. Action following pre-filing dispute resolution**

14 6205. (a) Upon the completion of the mandatory pre-filing dispute resolution
15 process described in Section 6200, if the parties have not settled the matter, the
16 association or its assignee may file a complaint in the superior court in the county
17 in which the project is located. Those matters shall be given trial priority.

18 (b) In assigning trial priority, the court shall assign the earliest possible trial
19 date, taking into consideration the pretrial preparation completed pursuant to
20 Section 6200, and shall deem the complaint to have been filed on the date of
21 service of the Notice of Commencement of Legal Proceedings described under
22 Section 6200.

23 (c) Any respondent, subcontractor, or design professional who received timely
24 prior notice of the inspections and testing conducted under Section 6200 shall be
25 prohibited from engaging in additional inspection or testing, except if all of the
26 following specific conditions are met, upon motion to the court:

27 (1) There is an insurer for a subcontractor or design professional, that did not
28 have timely notice that legal proceedings were commenced under Section 6200 at
29 least 30 days prior to the commencement of inspections or testing pursuant to
30 paragraph (6) of subdivision (h) of Section 6200.

31 (2) The insurer’s insured did not participate in any inspections or testing
32 conducted under the provisions of paragraph (6) of subdivision (h) of Section
33 6200.

34 (3) The insurer has, after receiving notice of a complaint filed in superior court
35 under subdivision (a), retained separate counsel, who did not participate in the
36 Section 6200 dispute resolution process, to defend its insured as to the allegations
37 in the complaint.

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

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

1 If the court permits additional inspections or testing upon finding that these
2 requirements are met, any additional inspections or testing shall be limited to the
3 extent reasonably necessary to avoid the likelihood of prejudice and shall be
4 coordinated among all similarly situated parties to ensure that they occur without
5 unnecessary duplication. For purposes of providing notice to an insurer prior to
6 inspections or testing under paragraph (6) of subdivision (h) of Section 6200, if
7 notice of the proceedings was not provided by the insurer's insured, notice may be
8 made via certified mail either by the subcontractor, design professional,
9 association, or respondent to the address specified in the Statement of Insurance
10 provided under paragraph (2) of subdivision (e) of Section 6200. Nothing herein
11 shall affect the rights of an intervenor who files a complaint in intervention. If the
12 association alleges defects that were not specified in the prefiling dispute
13 resolution process under Section 6200, the respondent, subcontractor, and design
14 professionals shall be permitted to engage in testing or inspection necessary to
15 respond to the additional claims. A party who seeks additional inspections or
16 testing based upon the amendment of claims shall apply to the court for leave to
17 conduct those inspections or that testing. If the court determines that it must
18 review the defect claims alleged by the association in the prefiling dispute
19 resolution process in order to determine whether the association alleges new or
20 additional defects, this review shall be conducted in camera. Upon objection of
21 any party, the court shall refer the matter to a judge other than the assigned trial
22 judge to determine if the claim has been amended in a way that requires additional
23 testing or inspection.

24 (d) Any subcontractor or design professional who had notice of the facilitated
25 dispute resolution conducted under Section 6200 but failed to attend, or attended
26 without settlement authority, shall be bound by the amount of any settlement
27 reached in the facilitated dispute resolution in any subsequent trial, although the
28 affected party may introduce evidence as to the allocation of the settlement. Any
29 party who failed to participate in the facilitated dispute resolution because the
30 party did not receive timely notice of the mediation shall be relieved of any
31 obligation to participate in the settlement. Notwithstanding any privilege
32 applicable to the prefiling dispute resolution process provided by Section 6200,
33 evidence may be introduced by any party to show whether a subcontractor or
34 design professional failed to attend or attended without settlement authority. The
35 binding effect of this subdivision shall in no way diminish or reduce a nonsettling
36 subcontractor or design professional's right to defend itself or assert all available
37 defenses relevant to its liability in any subsequent trial. For purposes of this
38 subdivision, a subcontractor or design professional shall not be deemed to have
39 attended without settlement authority because it asserted defenses to its potential
40 liability.

41 (e) Notice of the facilitated dispute resolution conducted under Section 6200
42 must be mailed by the respondent no later than 20 days prior to the date of the first
43 facilitated dispute resolution session to all parties. Notice shall also be mailed to

1 each of these parties' known insurance carriers. Mailing of this notice shall be by
2 certified mail. Any subsequent facilitated dispute resolution notices shall be served
3 by any means reasonably calculated to provide those parties actual notice.

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

14 (g)(1) The only method of seeking judicial relief for the failure of the
15 association or the respondent to complete the dispute resolution process under
16 Section 6200 shall be the assertion, as provided for in this subdivision, of a
17 procedural deficiency to an action for damages by the association against the
18 respondent after that action has been filed. A verified application asserting a
19 procedural deficiency shall be filed with the court no later than 90 days after the
20 answer to the plaintiff's complaint has been served, unless the court finds that
21 extraordinary conditions exist.

22 (2) Upon the verified application of the association or the respondent alleging
23 substantial noncompliance with Section 6200, the court shall schedule a hearing
24 within 21 days of the application to determine whether the association or
25 respondent has substantially complied with this section. The issue may be
26 determined upon affidavits or upon oral testimony, in the discretion of the court.

27 (3)(A) If the court finds that the association or the respondent did not
28 substantially comply with this paragraph, the court shall stay the action for up to
29 90 days to allow the noncomplying party to establish substantial compliance. The
30 court shall set a hearing within 90 days to determine substantial compliance. At
31 any time, the court may, for good cause shown, extend the period of the stay upon
32 application of the noncomplying party.

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

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

1 (i) This section shall become inoperative on July 1, 2010, and, as of January 1,
2 2011, is repealed, unless a later enacted statute that is enacted before January 1,
3 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

4 **Comment.** Section 6205 continues former Section 1375.05 without change other than to
5 correct obsolete cross-references.

6 See also Section 4080 (“association”).

7 **§ 6210. Notice of resolution**

8 6210. (a) As soon as is reasonably practicable after the association and the
9 builder have entered into a settlement agreement or the matter has otherwise been
10 resolved regarding alleged defects in the common areas, alleged defects in the
11 separate interests that the association is obligated to maintain or repair, or alleged
12 defects in the separate interests that arise out of, or are integrally related to, defects
13 in the common areas or separate interests that the association is obligated to
14 maintain or repair, where the defects giving rise to the dispute have not been
15 corrected, the association shall, in writing, inform only the members of the
16 association whose names appear on the records of the association that the matter
17 has been resolved, by settlement agreement or other means, and disclose all of the
18 following:

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

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

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

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

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

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

37 **Comment.** Section 6210 continues former Section 1375.1 without change other than to correct
38 obsolete cross-references.

39 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
40 development”), 4160 (“member”), 4185 (“separate interest”).

1 **§ 6215. Notice of civil action**

2 6215. (a) Not later than 30 days prior to the filing of any civil action by the
3 association against the declarant or other developer of a common interest
4 development for alleged damage to the common areas, alleged damage to the
5 separate interests that the association is obligated to maintain or repair, or alleged
6 damage to the separate interests that arises out of, or is integrally related to,
7 damage to the common areas or separate interests that the association is obligated
8 to maintain or repair, the board shall deliver individual notice (Section 4040) to
9 each member of the association who appears on the records of the association
10 when the notice is provided. The notice shall specify all of the following:

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

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

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

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

20 **Comment.** Section 6215 continues former Section 1368.5 without substantive change.

21 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
22 development”), 4130 (“declarant”), 4160 (“member”), 4185 (“separate interest”).

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

24 This act becomes operative on January 1, 2010.

CONFORMING REVISIONS

1 **Bus. & Prof. Code § 10131.01 (amended). Real estate broker exception**

2 SEC. _____. Section 10131.01 of the Business and Professions Code is amended
3 to read:

4 10131.01. (a) Subdivision (b) of Section 10131 does not apply to (1) the
5 manager of a hotel, motel, auto and trailer park, to the resident manager of an
6 apartment building, apartment complex, or court, or to the employees of that
7 manager, or (2) any person or entity, including a person employed by a real estate
8 broker, who, on behalf of another or others, solicits or arranges, or accepts
9 reservations or money, or both, for transient occupancies described in paragraphs
10 (1) and (2) of subdivision (b) of Section 1940 of the Civil Code, in a dwelling unit
11 in a common interest development, as defined in Section ~~1354~~ 4100 of the Civil
12 Code, in a dwelling unit in an apartment building or complex, or in a single-family
13 home, or (3) any person other than the resident manager or employees of that
14 manager, performing the following functions who is the employee of the property
15 management firm retained to manage a residential apartment building or complex
16 or court and who is performing under the supervision and control of a broker of
17 record who is an employee of that property management firm or a salesperson
18 licensed to the broker who meets certain minimum requirements as specified in a
19 regulation issued by the commissioner:

20 (A) Showing rental units and common areas to prospective tenants.

21 (B) Providing or accepting preprinted rental applications, or responding to
22 inquiries from a prospective tenant concerning the completion of the application.

23 (C) Accepting deposits or fees for credit checks or administrative costs and
24 accepting security deposits and rents.

25 (D) Providing information about rental rates and other terms and provisions of a
26 lease or rental agreement, as set out in a schedule provided by an employer.

27 (E) Accepting signed leases and rental agreements from prospective tenants.

28 (b) A broker or salesperson shall exercise reasonable supervision and control
29 over the activities of nonlicensed persons acting under paragraph (3) of
30 subdivision (a).

31 (c) A broker employing nonlicensed persons to act under paragraph (3) of
32 subdivision (a) shall comply with Section 10163 for each apartment building or
33 complex or court where the nonlicensed persons are employed.

34 **Comment.** Subdivision (b) of Section 10131.01 is amended to correct an obsolete reference to
35 former Civil Code Section 1351.

36 **Bus. & Prof. Code § 10153.2 (amended). Educational requirements for real estate broker**
37 **license**

38 SEC. _____. Section 10153.2 of the Business and Professions Code is amended to
39 read:

1 10153.2. (a) An applicant to take the examination for an original real estate
2 broker license shall also submit evidence, satisfactory to the commissioner, of
3 successful completion, at an accredited institution, of:

4 (1) A three-semester unit course, or the quarter equivalent thereof, in each of the
5 following:

6 (A) Real estate practice.

7 (B) Legal aspects of real estate.

8 (C) Real estate appraisal.

9 (D) Real estate financing.

10 (E) Real estate economics or accounting.

11 (2) A three-semester unit course, or the quarter equivalent thereof, in three of the
12 following:

13 (A) Advanced legal aspects of real estate.

14 (B) Advanced real estate finance.

15 (C) Advanced real estate appraisal.

16 (D) Business law.

17 (E) Escrows.

18 (F) Real estate principles.

19 (G) Property management.

20 (H) Real estate office administration.

21 (I) Mortgage loan brokering and lending.

22 (J) Computer applications in real estate.

23 (K) On and after July 1, 2004, California law that relates to common interest
24 developments, including, but not limited to, topics addressed in the Davis-Stirling
25 Common Interest Development Act (~~Title 6 Part 5~~ (commencing with Section
26 ~~1350 4000~~) of ~~Part 4 of Division 2~~ Division 4 of the Civil Code).

27 (b) The commissioner shall waive the requirements of this section for an
28 applicant who is a member of the State Bar of California and shall waive the
29 requirements for which an applicant has successfully completed an equivalent
30 course of study as determined under Section 10153.5.

31 (c) The commissioner shall extend credit under this section for any course
32 completed to satisfy requirements of Section 10153.3 or 10153.4.

33 **Comment.** Subdivision (a) of Section 10153.2 is amended to correct an obsolete reference to
34 former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code.

35 **Bus. & Prof. Code § 10177 (amended). Grounds for revoking real estate license**

36 SEC. _____. Section 10177 of the Business and Professions Code is amended to
37 read:

38 10177. The commissioner may suspend or revoke the license of a real estate
39 licensee, or may deny the issuance of a license to an applicant, who has done any
40 of the following, or may suspend or revoke the license of a corporation, or deny
41 the issuance of a license to a corporation, if an officer, director, or person owning

1 or controlling 10 percent or more of the corporation's stock has done any of the
2 following:

3 (a) Procured, or attempted to procure, a real estate license or license renewal, for
4 himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by
5 making a material misstatement of fact in an application for a real estate license,
6 license renewal, or reinstatement.

7 (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or
8 been convicted of, a felony, or a crime substantially related to the qualifications,
9 functions, or duties of a real estate licensee, and the time for appeal has elapsed or
10 the judgment of conviction has been affirmed on appeal, irrespective of an order
11 granting probation following that conviction, suspending the imposition of
12 sentence, or of a subsequent order under Section 1203.4 of the Penal Code
13 allowing that licensee to withdraw his or her plea of guilty and to enter a plea of
14 not guilty, or dismissing the accusation or information.

15 (c) Knowingly authorized, directed, connived at, or aided in the publication,
16 advertisement, distribution, or circulation of a material false statement or
17 representation concerning his or her designation or certification of special
18 education, credential, trade organization membership, or business, or concerning a
19 business opportunity or a land or subdivision, as defined in Chapter 1
20 (commencing with Section 11000) of Part 2, offered for sale.

21 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing
22 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or
23 the rules and regulations of the commissioner for the administration and
24 enforcement of the Real Estate Law and Chapter 1 (commencing with Section
25 11000) of Part 2.

26 (e) Willfully used the term "realtor" or a trade name or insignia of membership
27 in a real estate organization of which the licensee is not a member.

28 (f) Acted or conducted himself or herself in a manner that would have warranted
29 the denial of his or her application for a real estate license, or has either had a
30 license denied or had a license issued by another agency of this state, another state,
31 or the federal government revoked or suspended for acts that, if done by a real
32 estate licensee, would be grounds for the suspension or revocation of a California
33 real estate license, if the action of denial, revocation, or suspension by the other
34 agency or entity was taken only after giving the licensee or applicant fair notice of
35 the charges, an opportunity for a hearing, and other due process protections
36 comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with
37 Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5
38 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
39 Government Code), and only upon an express finding of a violation of law by the
40 agency or entity.

41 (g) Demonstrated negligence or incompetence in performing an act for which he
42 or she is required to hold a license.

1 (h) As a broker licensee, failed to exercise reasonable supervision over the
2 activities of his or her salespersons, or, as the officer designated by a corporate
3 broker licensee, failed to exercise reasonable supervision and control of the
4 activities of the corporation for which a real estate license is required.

5 (i) Has used his or her employment by a governmental agency in a capacity
6 giving access to records, other than public records, in a manner that violates the
7 confidential nature of the records.

8 (j) Engaged in any other conduct, whether of the same or a different character
9 than specified in this section, which constitutes fraud or dishonest dealing.

10 (k) Violated any of the terms, conditions, restrictions, and limitations contained
11 in an order granting a restricted license.

12 (l) (1) Solicited or induced the sale, lease, or listing for sale or lease of
13 residential property on the ground, wholly or in part, of loss of value, increase in
14 crime, or decline of the quality of the schools due to the present or prospective
15 entry into the neighborhood of a person or persons having a characteristic listed in
16 subdivision (a) or (d) of Section 12955 of the Government Code, as those
17 characteristics are defined in Sections 12926, 12926.1, subdivision (m), and
18 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
19 Government Code.

20 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
21 shall not be construed to apply to housing for older persons, as defined in Section
22 12955.9 of the Government Code. With respect to familial status, nothing in
23 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
24 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
25 of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o),
26 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

27 (m) Violated the Franchise Investment Law (Division 5 (commencing with
28 Section 31000) of Title 4 of the Corporations Code) or regulations of the
29 Commissioner of Corporations pertaining thereto.

30 (n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing
31 with Section 25000) of Title 4 of the Corporations Code) or the regulations of the
32 Commissioner of Corporations pertaining thereto.

33 (o) Failed to disclose to the buyer of real property, in a transaction in which the
34 licensee is an agent for the buyer, the nature and extent of a licensee's direct or
35 indirect ownership interest in that real property. The direct or indirect ownership
36 interest in the property by a person related to the licensee by blood or marriage, by
37 an entity in which the licensee has an ownership interest, or by any other person
38 with whom the licensee has a special relationship shall be disclosed to the buyer.

39 (p) Violated Article 6 (commencing with Section 10237). If a real estate broker
40 that is a corporation has not done any of the foregoing acts, either directly or
41 through its employees, agents, officers, directors, or persons owning or controlling
42 10 percent or more of the corporation's stock, the commissioner may not deny the
43 issuance of a real estate license to, or suspend or revoke the real estate license of,

1 the corporation, provided that any offending officer, director, or stockholder, who
2 has done any of the foregoing acts individually and not on behalf of the
3 corporation, has been completely disassociated from any affiliation or ownership
4 in the corporation.

5 **Comment.** Subdivision (l) of Section 10177 is amended to correct an obsolete reference to
6 former Civil Code Section 1360.

7 **Bus. & Prof. Code § 11003 (amended). “Planned development”**

8 SEC. _____. Section 11003 of the Business and Professions Code is amended to
9 read:

10 11003. “Planned development” has the same meaning as specified in
11 ~~subdivision (k) of Section 1351~~ Section 4175 of the Civil Code.

12 **Comment.** Section 11003 is amended to correct an obsolete reference to former Civil Code
13 Section 1351(k).

14 **Bus. & Prof. Code § 11003.2 (amended). “Stock cooperative”**

15 SEC. _____. Section 11003.2 of the Business and Professions Code is amended to
16 read:

17 11003.2. “Stock cooperative” has the same meaning as specified in ~~subdivision~~
18 ~~(m) of Section 1351~~ Section 4190 of the Civil Code, except that, as used in this
19 chapter, a “stock cooperative” does not include a limited-equity housing
20 cooperative.

21 **Comment.** Section 11003.2 is amended to correct an obsolete reference to former Civil Code
22 Section 1351(m).

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

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

26 11004. “Community apartment project” has the same meaning as specified in
27 ~~subdivision (d) of Section 1351~~ Section 4105 of the Civil Code.

28 **Comment.** Section 11004 is amended to correct an obsolete reference to former Civil Code
29 Section 1351(d).

30 **Bus. & Prof. Code § 11004.5 (amended). “Subdivided lands” and “subdivisions”**

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

33 11004.5. In addition to any provisions of Section 11000, the reference in this
34 code to “subdivided lands” and “subdivision” shall include all of the following:

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

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

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

1 (d) Any stock cooperative as defined in Section 11003.2, including any legal or
2 beneficial interests therein, having or intended to have five or more shareholders.

3 (e) Any limited-equity housing cooperative, as defined in Section 11003.4.

4 (f) In addition, the following interests shall be subject to this chapter and the
5 regulations of the commissioner adopted pursuant thereto:

6 (1) Any accompanying memberships or other rights or privileges created in, or
7 in connection with, any of the forms of development referred to in subdivision (a),
8 (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments,
9 declarations of restrictions, articles of incorporation, bylaws, or contracts
10 applicable thereto.

11 (2) Any interests or memberships in any owners' association as defined in
12 Section ~~1351~~ 4080 of the Civil Code, created in connection with any of the forms
13 of the development referred to in subdivision (a), (b), (c), (d), or (e).

14 (g) Notwithstanding this section, time-share plans, exchange programs,
15 incidental benefits, and short-term product subject to Chapter 2 (commencing with
16 Section 11210) are not "subdivisions" or "subdivided lands" subject to this
17 chapter.

18 **Comment.** Subdivision (f) of Section 11004.5 is amended to correct an obsolete reference to
19 former Civil Code Section 1351.

20 **Bus. & Prof. Code § 11010.10 (amended). Application for review of declaration**

21 SEC. _____. Section 11010.10 of the Business and Professions Code is amended
22 to read:

23 11010.10. A person who plans to offer for sale or lease lots or other interests in a
24 subdivision which sale or lease (a) is not subject to the provisions of this chapter,
25 (b) does not require the submission of a notice of intention as provided in Section
26 11010, or (c) is subject to this chapter and for which the local jurisdiction requires
27 review and approval of the declaration, as defined in ~~subdivision (h) of Section~~
28 ~~1351~~ Section 4135 of the Civil Code, prior to or concurrently with the recordation
29 of the subdivision map and prior to the approval of the declaration pursuant to a
30 notice of intention for a public report, may submit an application requesting
31 review of the declaration, along with any required supporting documentation, to
32 the commissioner, without the filing of a notice of intention for the subdivision for
33 which the declaration is being prepared. Upon approval, the commissioner shall
34 give notice to the applicant that the declaration shall be approved for a subsequent
35 notice of intent filing for any public report for the subdivision identified in the
36 application, provided that the subdivision setup is substantially the same as that
37 originally described in the application for review of the declaration.

38 **Comment.** Section 11010.10 is amended to correct an obsolete reference to former Civil Code
39 Section 1351(h).

1 **Bus. & Prof. Code § 11018.1 (amended). Disclosure to prospective purchaser**

2 SEC. _____. Section 11018.1 of the Business and Professions Code is amended to
3 read:

4 11018.1. (a) A copy of the public report of the commissioner, when issued, shall
5 be given to the prospective purchaser by the owner, subdivider or agent prior to
6 the execution of a binding contract or agreement for the sale or lease of any lot or
7 parcel in a subdivision. The requirement of this section extends to lots or parcels
8 offered by the subdivider after repossession. A receipt shall be taken from the
9 prospective purchaser in a form and manner as set forth in regulations of the Real
10 Estate Commissioner.

11 (b) A copy of the public report shall be given by the owner, subdivider or agent
12 at any time, upon oral or written request, to any member of the public. A copy of
13 the public report and a statement advising that a copy of the public report may be
14 obtained from the owner, subdivider or agent at any time, upon oral or written
15 request, shall be posted in a conspicuous place at any office where sales or leases
16 or offers to sell or lease lots within the subdivision are regularly made.

17 (c) At the same time that a public report is required to be given by the owner,
18 subdivider, or agent pursuant to subdivision (a) with respect to a common interest
19 development, as defined, in ~~subdivision (c) of Section 1351~~ Section 4100 of the
20 Civil Code, the owner, subdivider, or agent shall give the prospective purchaser a
21 copy of the following statement:

22 “Common Interest Development General Information

23 The project described in the attached Subdivision Public Report is known as a
24 common-interest development. Read the public report carefully for more
25 information about the type of development. The development includes common
26 areas and facilities ~~which~~ that will be owned or operated by an owners’
27 association. Purchase of a lot or unit automatically entitles and obligates you as a
28 member of the association and, in most cases, includes a beneficial interest in the
29 areas and facilities. Since membership in the association is mandatory, you should
30 be aware of the following information before you purchase:

31 Your ownership in this development and your rights and remedies as a member
32 of its association will be controlled by governing instruments ~~which~~ that generally
33 include a Declaration of Restrictions (also known as CC&R’s), Articles of
34 Incorporation (or association) and bylaws. The provisions of these documents are
35 intended to be, and in most cases are, enforceable in a court of law. Study these
36 documents carefully before entering into a contract to purchase a subdivision
37 interest.

38 In order to provide funds for operation and maintenance of the common
39 facilities, the association will levy assessments against your lot or unit. If you are
40 delinquent in the payment of assessments, the association may enforce payment
41 through court proceedings or your lot or unit may be liened and sold through the
42 exercise of a power of sale. The anticipated income and expenses of the
43 association, including the amount that you may expect to pay through assessments,

1 are outlined in the proposed budget. Ask to see a copy of the budget if the
2 subdivider has not already made it available for your examination.

3 A homeowner association provides a vehicle for the ownership and use of
4 recreational and other common facilities which were designed to attract you to buy
5 in this development. The association also provides a means to accomplish
6 architectural control and to provide a base for homeowner interaction on a variety
7 of issues. The purchaser of an interest in a common-interest development should
8 contemplate active participation in the affairs of the association. He or she should
9 be willing to serve on the board of directors or on committees created by the
10 board. In short, “they” in a common interest development is “you.” Unless you
11 serve as a member of the governing board or on a committee appointed by the
12 board, your control of the operation of the common areas and facilities is limited
13 to your vote as a member of the association. There are actions that can be taken by
14 the governing body without a vote of the members of the association which can
15 have a significant impact upon the quality of life for association members.

16 Until there is a sufficient number of purchasers of lots or units in a common
17 interest development to elect a majority of the governing body, it is likely that the
18 subdivider will effectively control the affairs of the association. It is frequently
19 necessary and equitable that the subdivider do so during the early stages of
20 development. It is vitally important to the owners of individual subdivision
21 interests that the transition from subdivider to resident-owner control be
22 accomplished in an orderly manner and in a spirit of cooperation.

23 When contemplating the purchase of a dwelling in a common interest
24 development, you should consider factors beyond the attractiveness of the
25 dwelling units themselves. Study the governing instruments and give careful
26 thought to whether you will be able to exist happily in an atmosphere of
27 cooperative living where the interests of the group must be taken into account as
28 well as the interests of the individual. Remember that managing a common interest
29 development is very much like governing a small community ... the management
30 can serve you well, but you will have to work for its success.”

31 Failure to provide the statement in accordance with this subdivision shall not be
32 deemed a violation subject to Section 10185.

33 **Comment.** Subdivision (c) of Section 11018.1 is amended to correct an obsolete reference to
34 former Civil Code Section 1351(c) and to make stylistic revisions.

35 **Bus. & Prof. Code § 11018.12 (amended). Conditional public report**

36 SEC. _____. Section 11018.12 of the Business and Professions Code is amended
37 to read:

38 11018.12. (a) The commissioner may issue a conditional public report for a
39 subdivision specified in Section 11004.5 if the requirements of subdivision (e) are
40 met, all deficiencies and substantive inadequacies in the documents that are
41 required to make an application for a final public report for the subdivision
42 substantially complete have been corrected, the material elements of the setup of

1 the offering to be made under the authority of the conditional public report have
2 been established, and all requirements for the issuance of a public report set forth
3 in the regulations of the commissioner have been satisfied, except for one or more
4 of the following requirements, as applicable:

5 (1) A final map has not been recorded.

6 (2) A condominium plan pursuant to ~~subdivision (e) of Section 1351~~ Section
7 4120 of the Civil Code has not been recorded.

8 (3) A declaration of covenants, conditions, and restrictions pursuant to ~~Section~~
9 1353 Sections 6025, 6030, and 6035 of the Civil Code has not been recorded.

10 (4) A declaration of annexation has not been recorded.

11 (5) A recorded subordination of existing liens to the declaration of covenants,
12 conditions, and restrictions or declaration of annexation, or escrow instructions to
13 effect recordation prior to the first sale, are lacking.

14 (6) Filed articles of incorporation are lacking.

15 (7) A current preliminary report of a licensed title insurance company issued
16 after filing of the final map and recording of the declaration covering all
17 subdivision interests to be included in the public report has not been provided.

18 (8) Other requirements the commissioner determines are likely to be timely
19 satisfied by the applicant, notwithstanding the fact that the failure to meet these
20 requirements makes the application qualitatively incomplete.

21 (b) The commissioner may issue a conditional public report for a subdivision not
22 referred to or specified in Section 11000.1 or 11004.5 if the requirements of
23 subdivision (e) are met, all deficiencies and substantive inadequacies in the
24 documents that are required to make an application for a final public report for the
25 subdivision substantially complete have been corrected, the material elements of
26 the setup of the offering to be made under the authority of the conditional public
27 report have been established, and all requirements for issuance of a public report
28 set forth in the regulations of the commissioner have been satisfied, except for one
29 or more of the following requirements, as applicable:

30 (1) A final map has not been recorded.

31 (2) A declaration of covenants, conditions, and restrictions has not been
32 recorded.

33 (3) A current preliminary report of a licensed title insurance company issued
34 after filing of the final map and recording of the declaration covering all
35 subdivision interests to be included in the public report has not been provided.

36 (4) Other requirements the commissioner determines are likely to be timely
37 satisfied by the applicant, notwithstanding the fact that the failure to meet these
38 requirements makes the application qualitatively incomplete.

39 (c) A decision by the commissioner to not issue a conditional public report shall
40 be noticed in writing to the applicant within five business days and that notice
41 shall specifically state the reasons why the report is not being issued.

42 (d) Notwithstanding the provisions of Section 11018.2, a person may sell or
43 lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a

1 conditional public report if, as a condition of the sale or lease or offer for sale or
2 lease, delivery of legal title or other interest contracted for will not take place until
3 issuance of a public report and provided that the requirements of subdivision (e)
4 are met.

5 (e)(1) Evidence shall be supplied that all purchase money will be deposited in
6 compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section
7 11013.4, and in the case of a subdivision referred to in subdivision (a) of this
8 section, evidence shall be given of compliance with paragraphs (1) and (2) of
9 subdivision (a) of Section 11018.5.

10 (2) A description of the nature of the transaction shall be supplied.

11 (3) Provision shall be made for the return of the entire sum of money paid or
12 advanced by the purchaser if a subdivision public report has not been issued
13 during the term of the conditional public report, or as extended, or the purchaser is
14 dissatisfied with the public report because of a change pursuant to Section 11012.

15 (f) A subdivider, principal, or his or her agent shall provide a prospective
16 purchaser a copy of the conditional public report and a written statement including
17 all of the following:

18 (1) Specification of the information required for issuance of a public report.

19 (2) Specification of the information required in the public report that is not
20 available in the conditional public report, along with a statement of the reasons
21 why that information is not available at the time of issuance of the conditional
22 public report.

23 (3) A statement that no person acting as a principal or agent shall sell or lease, or
24 offer for sale or lease, lots or parcels in a subdivision for which a conditional
25 public report has been issued except as provided in this article.

26 (4) Specification of the requirements of subdivision (e).

27 (g) The prospective purchaser shall sign a receipt that he or she has received and
28 has read the conditional public report and the written statement provided pursuant
29 to subdivision (f).

30 (h) The term of a conditional public report shall not exceed six months, and may
31 be renewed for one additional term of six months if the commissioner determines
32 that the requirements for issuance of a public report are likely to be satisfied
33 during the renewal term.

34 (i) The term of a conditional public report for attached residential condominium
35 units, as defined pursuant to Section 783 of the Civil Code, consisting of 25 units
36 or more as specified on the approved tentative tract map, shall not exceed 30
37 months and may be renewed for one additional term of six months if the
38 commissioner determines that the requirements for issuance of a public report are
39 likely to be satisfied during the renewal term.

40 **Comment.** Subdivision (a) of Section 11018.12 is amended to correct obsolete references to
41 former Civil Code Sections 1351(c) and 1353.

1 **Bus. & Prof. Code § 11018.6 (amended). Disclosure to prospective purchaser**

2 SEC. _____. Section 11018.6 of the Business and Professions Code is amended to
3 read:

4 11018.6. Any person offering to sell or lease any interest subject to the
5 requirements of subdivision (a) of Section 11018.1 in a subdivision described in
6 Section 11004.5 shall make a copy of each of the following documents available
7 for examination by a prospective purchaser or lessee before the execution of an
8 offer to purchase or lease and shall give a copy thereof to each purchaser or lessee
9 as soon as practicable before transfer of the interest being acquired by the
10 purchaser or lessee:

11 (a) The declaration of covenants, conditions, and restrictions for the subdivision.

12 (b) Articles of incorporation or association for the subdivision owners
13 association.

14 (c) Bylaws for the subdivision owners association.

15 (d) Any other instrument ~~which~~ that establishes or defines the common, mutual,
16 and reciprocal rights, and responsibilities of the owners or lessees of interests in
17 the subdivision as shareholders or members of the subdivision owners association
18 or otherwise.

19 (e) To the extent available, the current financial information and related
20 statements as specified in ~~subdivision (a) of Section 1365~~ Sections 4800 and 5560
21 of the Civil Code, for subdivisions subject to those provisions.

22 (f) A statement prepared by the governing body of the association setting forth
23 the outstanding delinquent assessments and related charges levied by the
24 association against the subdivision interests in question under authority of the
25 governing instruments for the subdivision and association.

26 **Comment.** Subdivision (e) of Section 11018.6 is amended to correct an obsolete reference to
27 former Civil Code Section 1365(a) and to make a stylistic revision.

28 **Bus. & Prof. Code § 11211.7 (amended). Application of Davis Stirling Common Interest**
29 **Development Act to time-share plan**

30 SEC. _____. Section 11211.7 of the Business and Professions Code is amended to
31 read:

32 11211.7. (a) Any time-share plan registered pursuant to this chapter to which the
33 Davis-Stirling Common Interest Development Act (~~Chapter 1 (commencing with~~
34 ~~Section 1350) of Part 4 of Division 2 of the Civil Code~~) (Part 5 (commencing with
35 Section 4000) of Division 4 of the Civil Code) might otherwise apply is exempt
36 from that act, except for ~~Sections 1354, 1355, 1355.5, 1356, 1357, 1358, 1361,~~
37 ~~1361.5, 1362, 1363.05, 1364, 1365.5, 1370, and 1371 of the Civil Code.~~ the
38 following provisions of the Civil Code:

39 (1) Sections 4520, 4525, 4540, and 4550.

40 (2) Section 4620.

41 (3) Section 5125.

42 (4) Subdivision (d) of Section 5500.

1 (5) Subdivision (b) of Section 5510.

2 (6) Sections 5515-5520, inclusive.

3 (7) Section 5550.

4 (8) Subdivision (a) of, and paragraphs (1), (3), and (4) of subdivision (b) of,
5 Section 5555.

6 (9) Article 1 (commencing with Section 5700) of Chapter 6 of Part 5 of Division
7 4.

8 (10) Article 1 (commencing with Section 5800) of Chapter 7 of Part 5 of
9 Division 4.

10 (11) Article 5 (commencing with Section 5925) of Chapter 7 of Part 5 of
11 Division 4.

12 (12) Article 7 (commencing with Section 6175) of Chapter 8 of Part 5 of
13 Division 4.

14 (13) Sections 6040-6050, inclusive.

15 (b)(1) To the extent that a single site time-share plan or component site of a
16 multisite time-share plan located in the state is structured as a condominium or
17 other common interest development, and there is any inconsistency between the
18 applicable provisions of this chapter and the Davis-Stirling Common Interest
19 Development Act, the applicable provisions of this chapter shall control.

20 (2) To the extent that a time-share plan is part of a mixed use project where the
21 time-share plan comprises a portion of a condominium or other common interest
22 development, the applicable provisions of this chapter shall apply to that portion
23 of the project uniquely comprising the time-share plan, and the Davis-Stirling
24 Common Interest Development Act shall apply to the project as a whole.

25 (c)(1) The offering of any time-share plan, exchange program, incidental
26 benefit, or short term product in this state that is subject to the provisions of this
27 chapter shall be exempt from Sections 1689.5 to 1689.14, inclusive, of the Civil
28 Code (Home Solicitation Sales), Sections 1689.20 to 1689.24, inclusive, of the
29 Civil Code (Seminar Sales), and Sections 1812.100 to 1812.129, inclusive, of the
30 Civil Code (Contracts for Discount Buying Services).

31 (2) A developer or exchange company that, in connection with a time-share
32 sales presentation or offer to arrange an exchange, offers a purchaser the
33 opportunity to utilize the services of an affiliate, subsidiary, or third-party entity in
34 connection with wholesale or retail air or sea transportation, shall not, in and of
35 itself, cause the developer or exchange company to be considered a seller of travel
36 subject to Sections 17550 to 17550.34, inclusive, of the Business and Professions
37 Code, so long as the entity that actually provides or arranges the air or sea
38 transportation is registered as a seller of travel with the California Attorney
39 General's office or is otherwise exempt under those sections.

40 (d) To the extent certain sections in this chapter require information and
41 disclosure that by their terms only apply to real property time-share plans, those
42 requirements shall not apply to personal property time-share plans.

1 **Comment.** Subdivision (a) of Section 11211.7 is amended to correct obsolete references to
2 provisions of former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil
3 Code.

4 **Bus. & Prof. Code §11500 (amended). Definitions**

5 SEC. _____. Section 11500 of the Business and Professions Code is amended to
6 read:

7 11500. For purposes of this chapter, the following definitions apply:

8 (a) “Common interest development” means a residential development identified
9 in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code.

10 (b) “Association” has the same meaning as defined in ~~subdivision (a) of Section~~
11 ~~1351~~ Section 4080 of the Civil Code.

12 (c) “Financial services” means acts performed or offered to be performed, for
13 compensation, for an association, including, but not limited to, the preparation of
14 internal unaudited financial statements, internal accounting and bookkeeping
15 functions, billing of assessments, and related services.

16 (d) “Management services” means acts performed or offered to be performed in
17 an advisory capacity for an association including, but not limited to, the following:

18 (1) Administering or supervising the collection, reporting, and archiving of the
19 financial or common area assets of an association or common interest
20 development, at the direction of the association’s board of directors.

21 (2) Implementing resolutions and directives of the board of directors of the
22 association elected to oversee the operation of a common interest development.

23 (3) Implementing provisions of governing documents, as defined in Section
24 ~~1351~~ 4150 of the Civil Code, that govern the operation of the common interest
25 development.

26 (4) Administering association contracts, including insurance contracts, within
27 the scope of the association’s duties or with other common interest development
28 managers, vendors, contractors, and other third-party providers of goods and
29 services to an association or common interest development.

30 (e) “Professional association for common interest development managers”
31 means an organization that meets all of the following:

32 (1) Has at least 200 members or certificants who are common interest
33 development managers in California.

34 (2) Has been in existence for at least five years.

35 (3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

36 (4) Certifies that a common interest development manager has met the criteria
37 set forth in Section 11502 without requiring membership in the association.

38 (5) Requires adherence to a code of professional ethics and standards of practice
39 for certified common interest development managers.

40 **Comment.** Subdivisions (a), (b), and (d) of Section 11500 are amended to correct obsolete
41 references to former Civil Code Section 1351.

1 **Bus. & Prof. Code § 11502 (amended). “Certified common interest development manager”**

2 SEC. _____. Section 11502 of the Business and Professions Code is amended to
3 read:

4 11502. In order to be called a “certified common interest development
5 manager,” a person shall meet one of the following requirements:

6 (a) Prior to July 1, 2003, has passed a knowledge, skills, and aptitude
7 examination as specified in Section 11502.5 or has been granted a certification or
8 a designation by a professional association for common interest development
9 managers, and who has, within five years prior to July 1, 2004, received
10 instruction in California law pursuant to paragraph (1) of subdivision (b).

11 (b) On or after July 1, 2003, has successfully completed an educational
12 curriculum that shall be no less than a combined 30 hours in coursework described
13 in this subdivision and passed an examination or examinations that test
14 competence in common interest development management in the following areas:

15 (1) The law that relates to the management of common interest developments,
16 including, but not limited to, the following courses of study:

17 (A) Topics covered by the Davis-Stirling Common Interest Development Act,
18 contained in ~~Title 6 (commencing with Section 1350) of Part 4 of Division 2~~ Part
19 5 (commencing with Section 4000) of Division 4 of the Civil Code, including, but
20 not limited to, the types of California common interest developments, disclosure
21 requirements pertaining to common interest developments, meeting requirements,
22 financial reporting requirements, and member access to association records.

23 (B) Personnel issues, including, but not limited to, general matters related to
24 independent contractor or employee status, the laws on harassment, the Unruh
25 Civil Rights Act, the California Fair Employment and Housing Act, and the
26 Americans with Disabilities Act.

27 (C) Risk management, including, but not limited to, insurance coverage,
28 maintenance, operations, and emergency preparedness.

29 (D) Property protection for associations, including, but not limited to, pertinent
30 matters relating to environmental hazards such as asbestos, radon gas, and lead-
31 based paint, the Vehicle Code, local and municipal regulations, family day care
32 facilities, energy conservation, Federal Communications Commission rules and
33 regulations, and solar energy systems.

34 (E) Business affairs of associations, including, but not limited to, necessary
35 compliance with federal, state, and local law.

36 (F) Basic understanding of governing documents, codes, and regulations relating
37 to the activities and affairs of associations and common interest developments.

38 (2) Instruction in general management that is related to the managerial and
39 business skills needed for management of a common interest development,
40 including, but not limited to, the following:

41 (A) Finance issues, including, but not limited to, budget preparation;
42 management; administration or supervision of the collection, reporting, and

1 archiving of the financial or common area assets of an association or common
2 interest development; bankruptcy laws; and assessment collection.

3 (B) Contract negotiation and administration.

4 (C) Supervision of employees and staff.

5 (D) Management of maintenance programs.

6 (E) Management and administration of rules, regulations, and parliamentary
7 procedures.

8 (F) Management and administration of architectural standards.

9 (G) Management and administration of the association's recreational programs
10 and facilities.

11 (H) Management and administration of owner and resident communications.

12 (I) Training and strategic planning for the association's board of directors and its
13 committees.

14 (J) Implementation of association policies and procedures.

15 (K) Ethics, professional conduct, and standards of practice for common interest
16 development managers.

17 (L) Current issues relating to common interest developments.

18 (M) Conflict avoidance and resolution mechanisms.

19 **Comment.** Subdivision (b) of Section 11502 is amended to correct an obsolete reference to
20 former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code.

21 **Bus. & Prof. Code § 11504 (amended). Annual report to board of directors**

22 SEC. _____. Section 11504 of the Business and Professions Code is amended to
23 read:

24 11504. On or before September 1, 2003, and annually thereafter, a person who
25 either provides or contemplates providing the services of a common interest
26 development manager to an association shall disclose to the board of directors of
27 the association the following information:

28 (a) Whether or not the common interest development manager has met the
29 requirements of Section 11502 so he or she may be called a certified common
30 interest development manager.

31 (b) The name, address, and telephone number of the professional association
32 that certified the common interest development manager, the date the manager was
33 certified, and the status of the certification.

34 (c) The location of his or her primary office.

35 (d) Prior to entering into or renewing a contract with an association, the common
36 interest development manager shall disclose to the board of directors of the
37 association or common interest development whether the fidelity insurance of the
38 common interest development manager or his or her employer covers the current
39 year's operating and reserve funds of the association. This requirement shall not
40 be construed to compel an association to require a common interest development
41 manager to obtain or maintain fidelity insurance.

1 (e) Whether the common interest development manager possesses an active real
2 estate license. This section may not preclude a common interest development
3 manager from disclosing information as required in Section ~~1363.1~~ 4900 of the
4 Civil Code.

5 **Comment.** Subdivision (e) of Section 11504 is amended to correct an obsolete reference to
6 former Civil Code Section 1363.1.

7 **Bus. & Prof. Code § 11505 (amended). Common interest development manager**

8 SEC. _____. Section 11505 of the Business and Professions Code is amended to
9 read:

10 11505. It is an unfair business practice for a common interest development
11 manager, a company that employs the common interest development manager, or
12 a company that is controlled by a company that also has a financial interest in a
13 company employing that manager, to do any of the following:

14 (a) On or after July 1, 2003, to hold oneself out or use the title of “certified
15 common interest development manager” or any other term that implies or suggests
16 that the person is certified as a common interest development manager without
17 meeting the requirements of Section 11502.

18 (b) To state or advertise that he or she is certified, registered, or licensed by a
19 governmental agency to perform the functions of a certified common interest
20 development manager.

21 (c) To state or advertise a registration or license number, unless the license or
22 registration is specified by a statute, regulation, or ordinance.

23 (d) To fail to comply with any item to be disclosed in Section 11504 of this
24 code, or Section ~~1363.1~~ 4900 of the Civil Code.

25 **Comment.** Subdivision (d) of Section 11505 is amended to correct an obsolete reference to
26 former Civil Code Section 1363.1.

27 **Bus. & Prof. Code § 23426.5 (amended). Tennis club**

28 SEC. _____. Section 23426.5 of the Business and Professions Code is amended to
29 read:

30 23426.5. (a) For purposes of this article, “club” also means any tennis club that
31 maintains not less than four regulation tennis courts, together with the necessary
32 facilities and clubhouse, has members paying regular monthly dues, has been in
33 existence for not less than 45 years, and is not associated with a common interest
34 development as defined in Section ~~1351~~ 4100 of the Civil Code, a community
35 apartment project as defined in Section 11004 of this code, a project consisting of
36 condominiums as defined in Section 783 of the Civil Code, or a mobilehome park
37 as defined in Section 18214 of the Health and Safety Code.

38 (b) It shall be unlawful for any club licensed pursuant to this section to make
39 any discrimination, distinction, or restriction against any person on account of age
40 or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the
41 Civil Code.

1 **Comment.** Subdivision (a) of Section 23426.5 is amended to correct an obsolete reference to
2 former Civil Code Section 1351.

3 **Bus. & Prof. Code § 23428.20 (amended). “Club”**

4 SEC. _____. Section 23428.20 of the Business and Professions Code is amended
5 to read:

6 23428.20. (a) For the purposes of this article, “club” also means any bona fide
7 nonprofit corporation that has been in existence for not less than nine years, has
8 more than 8,500 memberships issued and outstanding to owners of condominiums
9 and owners of memberships in stock cooperatives, and owns, leases, operates, or
10 maintains recreational facilities for its members.

11 (b) For the purposes of this article, “club” also means any bona fide nonprofit
12 corporation that was formed as a condominium homeowners’ association, has at
13 least 250 members, has served daily meals to its members and guests for a period
14 of not less than 12 years, owns or leases, operates, and maintains a clubroom or
15 rooms for its membership, has an annual fee of not less than nine hundred dollars
16 (\$900) per year per member, and has as a condition of membership that one
17 member of each household be at least 54 years old.

18 (c) Section 23399 and the numerical limitation of Section 23430 shall not apply
19 to a club defined in this section.

20 (d) No license shall be issued pursuant to this section to any club that withholds
21 membership or denies facilities or services to any person on account of any basis
22 listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those
23 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
24 of subdivision (p) of Section 12955, and Section 12955.2 of the Government
25 Code.

26 (e) Notwithstanding subdivision (d), with respect to familial status, subdivision
27 (d) shall not be construed to apply to housing for older persons, as defined in
28 Section 12955.9 of the Government Code. With respect to familial status, nothing
29 in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
30 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
31 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
32 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
33 apply to subdivision (d).

34 **Comment.** Subdivision (e) of Section 23428.20 is amended to correct an obsolete reference to
35 former Civil Code Section 1360.

36 **Civ. Code § 51.11 (amended). Senior housing in Riverside County**

37 SEC. _____. Section 51.11 of the Civil Code is amended to read:

38 51.11. (a) The Legislature finds and declares that this section is essential to
39 establish and preserve housing for senior citizens. There are senior citizens who
40 need special living environments, and find that there is an inadequate supply of
41 this type of housing in the state.

1 (b) For the purposes of this section, the following definitions apply:

2 (1) “Qualifying resident” or “senior citizen” means a person 62 years of age or
3 older, or 55 years of age or older in a senior citizen housing development.

4 (2) “Qualified permanent resident” means a person who meets both of the
5 following requirements:

6 (A) Was residing with the qualifying resident or senior citizen prior to the death,
7 hospitalization, or other prolonged absence of, or the dissolution of marriage with,
8 the qualifying resident or senior citizen.

9 (B) Was 45 years of age or older, or was a spouse, cohabitant, or person
10 providing primary physical or economic support to the qualifying resident or
11 senior citizen.

12 (3) “Qualified permanent resident” also means a disabled person or person with
13 a disabling illness or injury who is a child or grandchild of the senior citizen or a
14 qualified permanent resident as defined in paragraph (2) who needs to live with
15 the senior citizen or qualified permanent resident because of the disabling
16 condition, illness, or injury. For purposes of this section, “disabled” means a
17 person who has a disability as defined in subdivision (b) of Section 54. A
18 “disabling injury or illness” means an illness or injury ~~which~~ that results in a
19 condition meeting the definition of disability set forth in subdivision (b) of Section
20 54.

21 (A) For any person who is a qualified permanent resident under paragraph (3)
22 whose disabling condition ends, the owner, board of directors, or other governing
23 body may require the formerly disabled resident to cease residing in the
24 development upon receipt of six months’ written notice; provided, however, that
25 the owner, board of directors, or other governing body may allow the person to
26 remain a resident for up to one year, after the disabling condition ends.

27 (B) The owner, board of directors, or other governing body of the senior citizen
28 housing development may take action to prohibit or terminate occupancy by a
29 person who is a qualified permanent resident under paragraph (3) if the owner,
30 board of directors, or other governing body finds, based on credible and objective
31 evidence, that the person is likely to pose a significant threat to the health or safety
32 of others that cannot be ameliorated by means of a reasonable accommodation;
33 provided, however, that action to prohibit or terminate the occupancy may be
34 taken only after doing both of the following:

35 (i) Providing reasonable notice to and an opportunity to be heard for the disabled
36 person whose occupancy is being challenged, and reasonable notice to the
37 coresident parent or grandparent of that person.

38 (ii) Giving due consideration to the relevant, credible, and objective information
39 provided in that hearing. The evidence shall be taken and held in a confidential
40 manner, pursuant to a closed session, by the owner, board of directors, or other
41 governing body in order to preserve the privacy of the affected persons.

1 The affected persons shall be entitled to have present at the hearing an attorney
2 or any other person authorized by them to speak on their behalf or to assist them in
3 the matter.

4 (4) “Senior citizen housing development” means a residential development
5 developed with more than 20 units as a senior community by its developer and
6 zoned as a senior community by a local governmental entity, or characterized as a
7 senior community in its governing documents, as these are defined in Section
8 ~~1351~~ 4150, or qualified as a senior community under the federal Fair Housing
9 Amendments Act of 1988, as amended. Any senior citizen housing development
10 ~~which~~ that is required to obtain a public report under Section 11010 of the
11 Business and Professions Code and ~~which~~ that submits its application for a public
12 report after July 1, 2001, shall be required to have been issued a public report as a
13 senior citizen housing development under Section 11010.05 of the Business and
14 Professions Code.

15 (5) “Dwelling unit” or “housing” means any residential accommodation other
16 than a mobilehome.

17 (6) “Cohabitant” refers to persons who live together as husband and wife, or
18 persons who are domestic partners within the meaning of Section 297 of the
19 Family Code.

20 (7) “Permitted health care resident” means a person hired to provide live-in,
21 long-term, or terminal health care to a qualifying resident, or a family member of
22 the qualifying resident providing that care. For the purposes of this section, the
23 care provided by a permitted health care resident must be substantial in nature and
24 must provide either assistance with necessary daily activities or medical treatment,
25 or both.

26 A permitted health care resident shall be entitled to continue his or her
27 occupancy, residency, or use of the dwelling unit as a permitted resident in the
28 absence of the senior citizen from the dwelling unit only if both of the following
29 are applicable:

30 (A) The senior citizen became absent from the dwelling due to hospitalization or
31 other necessary medical treatment and expects to return to his or her residence
32 within 90 days from the date the absence began.

33 (B) The absent senior citizen or an authorized person acting for the senior
34 citizen submits a written request to the owner, board of directors, or governing
35 board stating that the senior citizen desires that the permitted health care resident
36 be allowed to remain in order to be present when the senior citizen returns to
37 reside in the development.

38 Upon written request by the senior citizen or an authorized person acting for the
39 senior citizen, the owner, board of directors, or governing board shall have the
40 discretion to allow a permitted health care resident to remain for a time period
41 longer than 90 days from the date that the senior citizen’s absence began, if it
42 appears that the senior citizen will return within a period of time not to exceed an
43 additional 90 days.

1 (c) The covenants, conditions, and restrictions and other documents or written
2 policy shall set forth the limitations on occupancy, residency, or use on the basis
3 of age. ~~Any such~~ A limitation shall not be more exclusive than to require that one
4 person in residence in each dwelling unit may be required to be a senior citizen
5 and that each other resident in the same dwelling unit may be required to be a
6 qualified permanent resident, a permitted health care resident, or a person under 55
7 years of age whose occupancy is permitted under subdivision (g) of this section or
8 subdivision (b) of Section 51.12. That limitation may be less exclusive, but shall at
9 least require that the persons commencing any occupancy of a dwelling unit
10 include a senior citizen who intends to reside in the unit as his or her primary
11 residence on a permanent basis. The application of the rules set forth in this
12 subdivision regarding limitations on occupancy may result in less than all of the
13 dwellings being actually occupied by a senior citizen.

14 (d) The covenants, conditions, and restrictions or other documents or written
15 policy shall permit temporary residency, as a guest of a senior citizen or qualified
16 permanent resident, by a person of less than 55 years of age for periods of time,
17 not more than 60 days in any year, that are specified in the covenants, conditions,
18 and restrictions or other documents or written policy.

19 (e) Upon the death or dissolution of marriage, or upon hospitalization, or other
20 prolonged absence of the qualifying resident, any qualified permanent resident
21 shall be entitled to continue his or her occupancy, residency, or use of the dwelling
22 unit as a permitted resident. This subdivision shall not apply to a permitted health
23 care resident.

24 (f) The covenants, conditions, and restrictions or other documents or written
25 policies applicable to any condominium, stock cooperative, limited-equity housing
26 cooperative, planned development, or multiple-family residential property that
27 contained age restrictions on January 1, 1984, shall be enforceable only to the
28 extent permitted by this section, notwithstanding lower age restrictions contained
29 in those documents or policies.

30 (g) Any person who has the right to reside in, occupy, or use the housing or an
31 unimproved lot subject to this section on or after January 1, 1985, shall not be
32 deprived of the right to continue that residency, occupancy, or use as the result of
33 the enactment of this section by Chapter 1147 of the Statutes of 1996.

34 (h) A housing development may qualify as a senior citizen housing development
35 under this section even though, as of January 1, 1997, it does not meet the
36 definition of a senior citizen housing development specified in subdivision (b), if
37 the development complies with that definition for every unit that becomes
38 occupied after January 1, 1997, and if the development was once within that
39 definition, and then became noncompliant with the definition as the result of any
40 one of the following:

41 (1) The development was ordered by a court or a local, state, or federal
42 enforcement agency to allow persons other than qualifying residents, qualified

1 permanent residents, or permitted health care residents to reside in the
2 development.

3 (2) The development received a notice of a pending or proposed action in, or by,
4 a court, or a local, state, or federal enforcement agency, which action could have
5 resulted in the development being ordered by a court or a state or federal
6 enforcement agency to allow persons other than qualifying residents, qualified
7 permanent residents, or permitted health care residents to reside in the
8 development.

9 (3) The development agreed to allow persons other than qualifying residents,
10 qualified permanent residents, or permitted health care residents to reside in the
11 development by entering into a stipulation, conciliation agreement, or settlement
12 agreement with a local, state, or federal enforcement agency or with a private
13 party who had filed, or indicated an intent to file, a complaint against the
14 development with a local, state, or federal enforcement agency, or file an action in
15 a court.

16 (4) The development allowed persons other than qualifying residents, qualified
17 permanent residents, or permitted health care residents to reside in the
18 development on the advice of counsel in order to prevent the possibility of an
19 action being filed by a private party or by a local, state, or federal enforcement
20 agency.

21 (i) The covenants, conditions, and restrictions or other documents or written
22 policy of the senior citizen housing development shall permit the occupancy of a
23 dwelling unit by a permitted health care resident during any period that the person
24 is actually providing live-in, long-term, or hospice health care to a qualifying
25 resident for compensation.

26 (j) This section shall only apply to the County of Riverside.

27 **Comment.** Subdivision (b) of Section 51.11 is amended to correct an obsolete reference to
28 former Section 1351.

29 The section is also amended to make stylistic revisions.

30 **Civ. Code § 714.1 (amended). Solar energy system in common interest development**

31 SEC. _____. Section 714.1 of the Civil Code is amended to read:

32 714.1. Notwithstanding Section 714, any association, as defined in Section ~~1351~~
33 ~~4080~~, may impose reasonable provisions ~~which~~ that:

34 (a) Restrict the installation of solar energy systems installed in common areas, as
35 defined in Section ~~1351~~ ~~4095~~, to those systems approved by the association.

36 (b) Require the owner of a separate interest, as defined in Section ~~1351~~ ~~4185~~, to
37 obtain the approval of the association for the installation of a solar energy system
38 in a separate interest owned by another.

39 (c) Provide for the maintenance, repair, or replacement of roofs or other building
40 components.

1 (d) Require installers of solar energy systems to indemnify or reimburse the
2 association or its members for loss or damage caused by the installation,
3 maintenance, or use of the solar energy system.

4 **Comment.** Section 714.1 is amended to correct obsolete references to former Section 1351 and
5 to make a stylistic revision.

6 **Civ. Code § 782 (amended). Discriminatory restriction**

7 SEC. _____. Section 782 of the Civil Code is amended to read:

8 782. (a) Any provision in any deed of real property in California, whether
9 executed before or after the effective date of this section, that purports to restrict
10 the right of any persons to sell, lease, rent, use or occupy the property to persons
11 having any characteristic listed in subdivision (a) or (d) of Section 12955 of the
12 Government Code, as those bases are defined in Sections 12926, 12926.1,
13 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section
14 12955.2 of the Government Code, by providing for payment of a penalty,
15 forfeiture, reverter, or otherwise, is void.

16 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
17 (a) shall not be construed to apply to housing for older persons, as defined in
18 Section 12955.9 of the Government Code. With respect to familial status, nothing
19 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
20 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
21 51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section
22 12955 of the Government Code shall apply to subdivision (a).

23 **Comment.** Subdivision (b) of Section 782 is amended to correct an obsolete reference to
24 former Section 1360.

25 **Civ. Code § 782.5 (amended). Discriminatory restriction**

26 SEC. _____. Section 782.5 of the Civil Code is amended to read:

27 782.5. (a) Any deed or other written instrument that relates to title to real
28 property, or any written covenant, condition, or restriction annexed or made a part
29 of, by reference or otherwise, ~~any such~~ the deed or instrument, that contains any
30 provision that purports to forbid, restrict, or condition the right of any person or
31 persons to sell, buy, lease, rent, use, or occupy the property on account of any
32 basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as
33 those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph
34 (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government
35 Code, with respect to any person or persons, shall be deemed to be revised to omit
36 that provision.

37 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
38 (a) shall not be construed to apply to housing for older persons, as defined in
39 Section 12955.9 of the Government Code. With respect to familial status, nothing
40 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
41 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section

1 51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section
2 12955 of the Government Code shall apply to subdivision (a).

3 (c) This section shall not be construed to limit or expand the powers of a court to
4 reform a deed or other written instrument.

5 **Comment.** Section 782.5 is amended to correct an obsolete reference to former Section 1360
6 and to make a stylistic revision.

7 **Civ. Code § 783 (amended). “Condominium”**

8 SEC. _____. Section 783 of the Civil Code is amended to read:

9 783. A condominium is an estate in real property described in ~~subdivision (f) of~~
10 ~~Section 1351~~ Section 4115. A condominium may, with respect to the duration of
11 its enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an
12 estate for life, (3) an estate for years, such as a leasehold or a subleasehold, or (4)
13 any combination of the foregoing.

14 **Comment.** Section 783 is amended to correct an obsolete reference to former Section 1351(f).

15 **Civ. Code § 783.1 (amended). Real property in stock cooperative**

16 SEC. _____. Section 783.1 of the Civil Code is amended to read:

17 783.1. In a stock cooperative, as defined in ~~subdivision (m) of Section 1351~~
18 Section 4190, both the separate interest, as defined in ~~paragraph (4) of subdivision~~
19 ~~(l) of Section 1351~~ Section 4185, and the correlative interest in the stock
20 cooperative corporation, however designated, are interests in real property.

21 **Comment.** Section 783.1 is amended to correct obsolete references to former Sections
22 1351(m) and 1351(l).

23 **Civ. Code § 798.20 (amended). Discrimination in private club membership**

24 SEC. _____. Section 798.20 of the Civil Code is amended to read:

25 798.20. (a) Membership in any private club or organization that is a condition
26 for tenancy in a park shall not be denied on any basis listed in subdivision (a) or
27 (d) of Section 12955 of the Government Code, as those bases are defined in
28 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
29 Section 12955, and Section 12955.2 of the Government Code.

30 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
31 (a) shall not be construed to apply to housing for older persons, as defined in
32 Section 12955.9 of the Government Code. With respect to familial status, nothing
33 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
34 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
35 51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section
36 12955 of the Government Code shall apply to subdivision (a).

37 **Comment.** Subdivision (b) of Section 798.20 is amended to correct an obsolete reference to
38 former Section 1360.

1 **Civ. Code § 799.10 (amended). Right to display political campaign sign**

2 SEC. _____. Section 799.10 of the Civil Code is amended to read:

3 799.10. A resident may not be prohibited from displaying a political campaign
4 sign relating to a candidate for election to public office or to the initiative,
5 referendum, or recall process in the window or on the side of a manufactured
6 home or mobilehome, or within the site on which the home is located or installed.
7 The size of the face of a political sign may not exceed six square feet, and the sign
8 may not be displayed in excess of a period of time from 90 days prior to an
9 election to 15 days following the election, unless a local ordinance within the
10 jurisdiction where the manufactured home or mobilehome subject to this article is
11 located imposes a more restrictive period of time for the display of ~~such a~~ the sign.
12 In the event of a conflict between the provisions of this section and the provisions
13 of ~~Title 6 Part 5~~ (commencing with Section ~~1350~~ 4000) of ~~Part 4 of Division 2~~
14 Division 4, relating to the size and display of political campaign signs, the
15 provisions of this section shall prevail.

16 **Comment.** Section 799.10 is amended to correct an obsolete reference to former Title 6
17 (commencing with Section 1350) of Part 4 of Division 4 and to make a stylistic revision.

18 **Civ. Code § 800.25 (amended). Membership discrimination in private marina club**

19 SEC. _____. Section 800.25 of the Civil Code is amended to read:

20 800.25. (a) Membership in any private club or organization that is a condition
21 for tenancy in a floating home marina shall not be denied on any basis listed in
22 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
23 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
24 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

25 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
26 (a) shall not be construed to apply to housing for older persons, as defined in
27 Section 12955.9 of the Government Code. With respect to familial status, nothing
28 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
29 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
30 51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section
31 12955 of the Government Code shall apply to subdivision (a).

32 **Comment.** Subdivision (b) of Section 800.25 is amended to correct an obsolete reference to
33 former Section 1360.

34 **Civ. Code § 895 (amended). Definitions**

35 SEC. _____. Section 895 of the Civil Code is amended to read:

36 895. (a) “Structure” means any residential dwelling, other building, or
37 improvement located upon a lot or within a common area.

38 (b) “Designed moisture barrier” means an installed moisture barrier specified in
39 the plans and specifications, contract documents, or manufacturer’s
40 recommendations.

1 (c) “Actual moisture barrier” means any component or material, actually
2 installed, that serves to any degree as a barrier against moisture, whether or not
3 intended as such.

4 (d) “Unintended water” means water that passes beyond, around, or through a
5 component or the material that is designed to prevent that passage.

6 (e) “Close of escrow” means the date of the close of escrow between the builder
7 and the original homeowner. With respect to claims by an association, as defined
8 in ~~subdivision (a) of Section 1351~~ Section 4080, “close of escrow” means the date
9 of substantial completion, as defined in Section 337.15 of the Code of Civil
10 Procedure, or the date the builder relinquishes control over the association’s ability
11 to decide whether to initiate a claim under this title, whichever is later.

12 (f) “Claimant” or “homeowner” includes the individual owners of single-family
13 homes, individual unit owners of attached dwellings and, in the case of a common
14 interest development, any association as defined in ~~subdivision (a) of Section 1351~~
15 Section 4080.

16 **Comment.** Subdivisions (e) and (f) of Section 895 are amended to correct obsolete references
17 to former Section 1351(a).

18 **Civ. Code § 935 (amended). Construction of chapter**

19 SEC. _____. Section 935 of the Civil Code is amended to read:

20 935. To the extent that provisions of this chapter are enforced and those
21 provisions are substantially similar to provisions in Section ~~1375~~ 6200 of the Civil
22 Code, but an action is subsequently commenced under Section ~~1375~~ 6200 of the
23 Civil Code, the parties are excused from performing the substantially similar
24 requirements under Section ~~1375~~ 6200 of the Civil Code.

25 **Comment.** Section 935 is amended to correct obsolete references to former Section 1375.

26 **Civ. Code § 945 (amended). Binding effect upon original purchaser and successor-in-**
27 **interest**

28 SEC. _____. Section 945 of the Civil Code is amended to read:

29 945. The provisions, standards, rights, and obligations set forth in this title are
30 binding upon all original purchasers and their successors-in-interest. For purposes
31 of this title, associations and others having the rights set forth in Sections ~~1368.3~~
32 ~~and 1368.4~~ 4410 and 4415 shall be considered to be original purchasers and shall
33 have standing to enforce the provisions, standards, rights, and obligations set forth
34 in this title.

35 **Comment.** Section 945 is amended to correct an obsolete reference to former Sections 1368.3
36 and 1368.4.

37 **Civ. Code § 1098 (amended). Transfer fee**

38 SEC. _____. Section 1098 of the Civil Code is amended to read:

39 1098. A “transfer fee” is any fee payment requirement imposed within a
40 covenant, restriction, or condition contained in any deed, contract, security

1 instrument, or other document affecting the transfer or sale of, or any interest in,
2 real property that requires a fee be paid upon transfer of the real property. A
3 transfer fee does not include any of the following:

4 (a) Fees or taxes imposed by a governmental entity.

5 (b) Fees pursuant to mechanics' liens.

6 (c) Fees pursuant to court-ordered transfers, payments, or judgments.

7 (d) Fees pursuant to property agreements in connection with a legal separation
8 or dissolution of marriage.

9 (e) Fees, charges, or payments in connection with the administration of estates
10 or trusts pursuant to Division 7 (commencing with Section 7000), Division 8
11 (commencing with Section 13000), or Division 9 (commencing with Section
12 15000) of the Probate Code.

13 (f) Fees, charges, or payments imposed by lenders or purchasers of loans, as
14 these entities are described in subdivision (c) of Section 10232 of the Business and
15 Professions Code.

16 (g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling
17 Common Interest Development Act (~~Title 6 (commencing with Section 1350) of~~
18 ~~Part 4~~) (Part 5 (commencing with Section 4000) of Division 4).

19 (h) Fees, charges, or payments for failing to comply with, or for transferring the
20 real property prior to satisfying, an obligation to construct residential
21 improvements on the real property.

22 (i) Any fee reflected in a document recorded against the property on or before
23 December 31, 2007, that is separate from any covenants, conditions, and
24 restrictions, and that substantially complies with subdivision (a) of Section 1098.5
25 by providing a prospective transferee notice of the following:

26 (1) Payment of a transfer fee is required.

27 (2) The amount or method of calculation of the fee.

28 (3) The date or circumstances under which the transfer fee payment requirement
29 expires, if any.

30 (4) The entity to which the fee will be paid.

31 (5) The general purposes for which the fee will be used.

32 **Comment.** Subdivision (g) of Section 1098 is amended to correct an obsolete reference to
33 former Title 6 (commencing with Section 1350).

34 **Civ. Code § 1102.6d (amended). Manufactured home and mobilehome transfer disclosure**
35 **statement**

36 SEC. ____. Section 1102.6d of the Civil Code is amended to read:

37 1102.6d. Except for manufactured homes and mobilehomes located in a
38 common interest development governed by ~~Title 6 Part 5~~ (commencing with
39 Section ~~1354 4000~~) of Division 4, the disclosures applicable to the resale of a
40 manufactured home or mobilehome pursuant to subdivision (b) of Section 1102
41 are set forth in, and shall be made on a copy of, the following disclosure form:

1 [Note. In the interest of conserving resources, the lengthy disclosure form is not reproduced
2 here.]

3 **Comment.** Section 1102.6d is amended to correct an obsolete reference to former Title 6
4 (commencing with Section 1351).

5 **Civ. Code § 1133 (amended). Notice to prospective purchaser**

6 SEC. _____. Section 1133 of the Civil Code is amended to read:

7 1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket
8 encumbrance, as defined in Section 11013 of the Business and Professions Code,
9 but is exempt from a requirement of compliance with Section 11013.2 of the
10 Business and Professions Code, the subdivider, his or her agent, or representative,
11 shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor
12 cause it to be sold, or leased for a term exceeding five years, until the prospective
13 purchaser or lessee of the lot, parcel, or unit has been furnished with and has
14 signed a true copy of the following notice:

15
16 BUYER/LESSEE IS AWARE OF THE FACT THAT THE LOT, PARCEL, OR
17 UNIT WHICH HE OR SHE IS PROPOSING TO PURCHASE OR LEASE IS
18 SUBJECT TO A DEED OF TRUST, MORTGAGE, OR OTHER LIEN KNOWN
19 AS A “BLANKET ENCUMBRANCE”.

20
21 IF BUYER/LESSEE PURCHASES OR LEASES THIS LOT, PARCEL, OR
22 UNIT, HE OR SHE COULD LOSE THAT INTEREST THROUGH
23 FORECLOSURE OF THE BLANKET ENCUMBRANCE OR OTHER LEGAL
24 PROCESS EVEN THOUGH BUYER/LESSEE IS NOT DELINQUENT IN HIS
25 OR HER PAYMENTS OR OTHER OBLIGATIONS UNDER THE
26 MORTGAGE, DEED OF TRUST, OR LEASE.

27
28 _____
29 Date

Signature of Buyer or Lessee

30 (b) “Subdivision,” as used in subdivision (a), means improved or unimproved
31 land that is divided or proposed to be divided for the purpose of sale, lease, or
32 financing, whether immediate or future, into two or more lots, parcels, or units and
33 includes a condominium project, as defined in ~~subdivision (f) of Section 1351~~
34 Section 4125, a community apartment project, as defined in ~~subdivision (d) of~~
35 ~~Section 1351~~ Section 4105, a stock cooperative, as defined in ~~subdivision (m) of~~
36 ~~Section 1351~~ Section 4190, and a limited equity housing cooperative, as defined in
37 ~~subdivision (m) of Section 1351~~ Section 4190.

38 (c) The failure of the buyer or lessee to sign the notice shall not invalidate any
39 grant, conveyance, lease, or encumbrance.

40 (d) Any person or entity who willfully violates the provisions of this section
41 shall be liable to the purchaser of a lot or unit ~~which~~ that is subject to the

1 provisions of this section, for actual damages, and in addition thereto, shall be
2 guilty of a public offense punishable by a fine in an amount not to exceed five
3 hundred dollars (\$500). In an action to enforce ~~such~~ this liability or fine, the
4 prevailing party shall be awarded reasonable attorney's fees.

5 **Comment.** Subdivision (b) of Section 1133 is amended to correct obsolete references to former
6 Sections 1351(f), 1351(d), and 1351(m) and to make stylistic revisions.

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

8 SEC. _____. Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the
9 Civil Code is repealed.

10 **Comment.** Sections 1350-1378 are repealed. Most of the substance of the repealed provisions
11 is continued in new Part 5(commencing with Section 4000) of Division 4.

12 **Civ. Code § 1633.3 (amended). Application of title**

13 SEC. _____. Section 1633.3 of the Civil Code is amended to read:

14 1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title
15 applies to electronic records and electronic signatures relating to a transaction.

16 (b) This title does not apply to transactions subject to the following laws:

17 (1) A law governing the creation and execution of wills, codicils, or
18 testamentary trusts.

19 (2) Division 1 (commencing with Section 1101) of the Uniform Commercial
20 Code, except Sections 1107 and 1206.

21 (3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section
22 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9
23 (commencing with Section 9101), and 11 (commencing with Section 11101) of the
24 Uniform Commercial Code.

25 (4) A law that requires that specifically identifiable text or disclosures in a
26 record or a portion of a record be separately signed, including initialed, from the
27 record. However, this paragraph does not apply to Section 1677 or 1678 of this
28 code or Section 1298 of the Code of Civil Procedure.

29 (c) This title does not apply to any specific transaction described in Section
30 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14,
31 1133, ~~or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1134,~~ 1689.6,
32 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of
33 Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or
34 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of
35 Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6,
36 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5
37 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3
38 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d
39 (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, ~~or~~
40 Section 3071.5 of, or Part 5 (commencing with Section 4000) of Division 4 of the
41 Civil Code, subdivision (b) of Section 18608 or Section 22328 of the Financial

1 Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and
2 Safety Code, Section 658, 662, 663, 664, 666, 667.5, 673, 677, 678, 678.1, 786,
3 10083, 10086, 10087, 10102, 10113.7, 10127.7, 10127.9, 10127.10, 10197,
4 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1
5 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities
6 Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may
7 not be substituted for any notice that is required to be sent pursuant to Section
8 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be
9 construed to prohibit the recordation of any document with a county recorder by
10 electronic means.

11 (d) This title applies to an electronic record or electronic signature otherwise
12 excluded from the application of this title under subdivision (b) when used for a
13 transaction subject to a law other than those specified in subdivision (b).

14 (e) A transaction subject to this title is also subject to other applicable
15 substantive law.

16 (f) The exclusion of a transaction from the application of this title under
17 subdivision (b) or (c) shall be construed only to exclude the transaction from the
18 application of this title, but shall not be construed to prohibit the transaction from
19 being conducted by electronic means if the transaction may be conducted by
20 electronic means under any other applicable law.

21 **Comment.** Subdivision (c) of Section 1633.3 is amended to correct an obsolete reference to
22 former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code.

23 **Civ. Code § 1864 (amended). Transient occupancy**

24 SEC. _____. Section 1864 of the Civil Code is amended to read:

25 1864. Any person or entity, including a person employed by a real estate broker,
26 who, on behalf of another or others, solicits or arranges, or accepts reservations or
27 money, or both, for transient occupancies described in paragraphs (1) and (2) of
28 subdivision (b) of Section 1940, in a dwelling unit in a common interest
29 development, as defined in Section ~~1354~~ 4100, in a dwelling unit in an apartment
30 building or complex, or in a single-family home, shall do each of the following:

31 (a) Prepare and maintain, in accordance with a written agreement with the
32 owner, complete and accurate records and books of account, kept in accordance
33 with generally accepted accounting principles, of all reservations made and money
34 received and spent with respect to each dwelling unit. All money received shall be
35 kept in a trust account maintained for the benefit of owners of the dwelling units.

36 (b) Render, monthly, to each owner of the dwelling unit, or to that owner's
37 designee, an accounting for each month in which there are any deposits or
38 disbursements on behalf of that owner, however, in no event shall this accounting
39 be rendered any less frequently than quarterly.

40 (c) Make all records and books of account with respect to a dwelling unit
41 available, upon reasonable advance notice, for inspection and copying by the

1 dwelling unit's owner. The records shall be maintained for a period of at least
2 three years.

3 (d) Comply fully with all collection, payment, and recordkeeping requirements
4 of a transient occupancy tax ordinance, if any, applicable to the occupancy.

5 (e) In no event shall any activities described in this section subject the person or
6 entity performing those activities in any manner to Part 1 (commencing with
7 Section 10000) of Division 4 of the Business and Professions Code. However, a
8 real estate licensee subject to this section may satisfy the requirements of this
9 section by compliance with the Real Estate Law.

10 **Comment.** Section 1864 is amended to correct an obsolete reference to former Section 1351.

11 **Civ. Code § 2079.3 (amended). Scope of inspection**

12 SEC. _____. Section 2079.3 of the Civil Code is amended to read:

13 2079.3. The inspection to be performed pursuant to this article does not include
14 or involve an inspection of areas that are reasonably and normally inaccessible to
15 ~~such~~ this type of an inspection, nor an affirmative inspection of areas off the site of
16 the subject property or public records or permits concerning the title or use of the
17 property, and, if the property comprises a unit in a planned development as
18 defined in Section 11003 of the Business and Professions Code, a condominium as
19 defined in Section 783, or a stock cooperative as defined in Section 11003.2 of the
20 Business and Professions Code, does not include an inspection of more than the
21 unit offered for sale, if the seller or the broker complies with the provisions of
22 Section ~~1368~~ 5825.

23 **Comment.** Section 2079.3 is amended to correct an obsolete reference to former Section
24 1368(a) and to make a stylistic revision.

25 **Civ. Code § 2929.5 (amended). Inspection for hazardous substance**

26 SEC. _____. Section 2929.5 of the Civil Code is amended to read:

27 2929.5. (a) A secured lender may enter and inspect the real property security for
28 the purpose of determining the existence, location, nature, and magnitude of any
29 past or present release or threatened release of any hazardous substance into, onto,
30 beneath, or from the real property security on either of the following:

31 (1) Upon reasonable belief of the existence of a past or present release or
32 threatened release of any hazardous substance into, onto, beneath, or from the real
33 property security not previously disclosed in writing to the secured lender in
34 conjunction with the making, renewal, or modification of a loan, extension of
35 credit, guaranty, or other obligation involving the borrower.

36 (2) After the commencement of nonjudicial or judicial foreclosure proceedings
37 against the real property security.

38 (b) The secured lender shall not abuse the right of entry and inspection or use it
39 to harass the borrower or tenant of the property. Except in case of an emergency,
40 when the borrower or tenant of the property has abandoned the premises, or if it is
41 impracticable to do so, the secured lender shall give the borrower or tenant of the

1 property reasonable notice of the secured lender's intent to enter, and enter only
2 during the borrower's or tenant's normal business hours. Twenty-four hours'
3 notice shall be presumed to be reasonable notice in the absence of evidence to the
4 contrary.

5 (c) The secured lender shall reimburse the borrower for the cost of repair of any
6 physical injury to the real property security caused by the entry and inspection.

7 (d) If a secured lender is refused the right of entry and inspection by the
8 borrower or tenant of the property, or is otherwise unable to enter and inspect the
9 property without a breach of the peace, the secured lender may, upon petition,
10 obtain an order from a court of competent jurisdiction to exercise the secured
11 lender's rights under subdivision (a), and that action shall not constitute an action
12 within the meaning of subdivision (a) of Section 726 of the Code of Civil
13 Procedure.

14 (e) For purposes of this section:

15 (1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
16 mortgage, where the deed of trust or mortgage encumbers real property security
17 and secures the performance of the trustor or mortgagor under a loan, extension of
18 credit, guaranty, or other obligation. The term includes any successor-in-interest of
19 the trustor or mortgagor to the real property security before the deed of trust or
20 mortgage has been discharged, reconveyed, or foreclosed upon.

21 (2) "Hazardous substance" includes all of the following:

22 (A) Any "hazardous substance" as defined in subdivision (h) of Section 25281
23 of the Health and Safety Code.

24 (B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water
25 Code.

26 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
27 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
28 thereof.

29 (3) "Real property security" means any real property and improvements, other
30 than a separate interest and any related interest in the common area of a residential
31 common interest development, as the terms "separate interest," "common area,"
32 and "common interest development" are defined in ~~Section 1351~~ Sections 4185,
33 4095, and 4100, respectively, or real property consisting of one acre or less ~~which~~
34 that contains 1 to 15 dwelling units.

35 (4) "Release" means any spilling, leaking, pumping, pouring, emitting,
36 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
37 the environment, including continuing migration, of hazardous substances into,
38 onto, or through soil, surface water, or groundwater.

39 (5) "Secured lender" means the beneficiary under a deed of trust against the real
40 property security, or the mortgagee under a mortgage against the real property
41 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
42 of trust or mortgage.

1 **Comment.** Section 2929.5 is amended to correct an obsolete reference to former Section 1351
2 and to make stylistic revisions.

3 **Civ. Code § 2955.1 (amended). Disclosure of earthquake insurance requirement**

4 SEC. _____. Section 2955.1 of the Civil Code is amended to read:

5 2955.1. (a) Any lender originating a loan secured by the borrower's separate
6 interest in a condominium project, as defined in ~~subdivision (f) of Section 1351~~
7 Section 4125, which requires earthquake insurance or imposes a fee or any other
8 condition in lieu thereof pursuant to an underwriting requirement imposed by an
9 institutional third-party purchaser shall, disclose all of the following to the
10 potential borrower:

11 (1) That the lender or the institutional third party in question requires earthquake
12 insurance or imposes a fee or any other condition in lieu thereof pursuant to an
13 underwriting requirement imposed by an institutional third party purchaser.

14 (2) That not all lenders or institutional third parties require earthquake insurance
15 or impose a fee or any other condition in lieu thereof pursuant to an underwriting
16 requirement imposed by an institutional third party purchaser.

17 (3) Earthquake insurance may be required on the entire condominium project.

18 (4) That lenders or institutional third parties may also require that a
19 condominium project maintain, or demonstrate an ability to maintain, financial
20 reserves in the amount of the earthquake insurance deductible.

21 (b) For the purposes of this section, "institutional third party" means the Federal
22 Home Loan Mortgage Corporation, the Federal National Mortgage Association,
23 the Government National Mortgage Association, and other substantially similar
24 institutions, whether public or private.

25 (c) The disclosure required by this section shall be made in writing by the lender
26 as soon as reasonably practicable.

27 **Comment.** Subdivision (a) of Section 2955.1 is amended to correct an obsolete reference to
28 former Section 1351(f) and to make a stylistic revision.

29 **Code Civ. Proc. § 86 (amended). Jurisdiction**

30 SEC. _____. Section 86 of the Code of Civil Procedure is amended to read:

31 86. (a) The following civil cases and proceedings are limited civil cases:

32 (1) Cases at law in which the demand, exclusive of interest, or the value of the
33 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less.
34 This paragraph does not apply to cases that involve the legality of any tax, impost,
35 assessment, toll, or municipal fine, except actions to enforce payment of
36 delinquent unsecured personal property taxes if the legality of the tax is not
37 contested by the defendant.

38 (2) Actions for dissolution of partnership where the total assets of the
39 partnership do not exceed twenty-five thousand dollars (\$25,000); actions of
40 interpleader where the amount of money or the value of the property involved
41 does not exceed twenty-five thousand dollars (\$25,000).

1 (3) Actions to cancel or rescind a contract when the relief is sought in
2 connection with an action to recover money not exceeding twenty-five thousand
3 dollars (\$25,000) or property of a value not exceeding twenty-five thousand
4 dollars (\$25,000), paid or delivered under, or in consideration of, the contract;
5 actions to revise a contract where the relief is sought in an action upon the contract
6 if the action otherwise is a limited civil case.

7 (4) Proceedings in forcible entry or forcible or unlawful detainer where the
8 whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or
9 less.

10 (5) Actions to enforce and foreclose liens on personal property where the
11 amount of the liens is twenty-five thousand dollars (\$25,000) or less.

12 (6) Actions to enforce and foreclose, or petitions to release, liens of mechanics,
13 ~~materialmen~~ material providers, artisans, laborers, and of all other persons to
14 whom liens are given under the provisions of Chapter 2 (commencing with
15 Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce
16 and foreclose an assessment lien on a common interest development as defined in
17 Section ~~1351~~ 4100 of the Civil Code, where the amount of the liens is twenty-five
18 thousand dollars (\$25,000) or less. However, where an action to enforce the lien
19 affects property that is also affected by a similar pending action that is not a
20 limited civil case, or where the total amount of the liens sought to be foreclosed
21 against the same property aggregates an amount in excess of twenty-five thousand
22 dollars (\$25,000), the action is not a limited civil case.

23 (7) Actions for declaratory relief when brought pursuant to either of the
24 following:

25 (A) By way of cross-complaint as to a right of indemnity with respect to the
26 relief demanded in the complaint or a cross-complaint in an action or proceeding
27 that is otherwise a limited civil case.

28 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
29 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
30 Division 3 of the Business and Professions Code, where the amount in controversy
31 is twenty-five thousand dollars (\$25,000) or less.

32 (8) Actions to issue temporary restraining orders and preliminary injunctions,
33 and to take accounts, where necessary to preserve the property or rights of any
34 party to a limited civil case; to make any order or perform any act, pursuant to
35 Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments)
36 in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited
37 civil case; to determine title to personal property seized in a limited civil case.

38 (9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of
39 Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property
40 or to enforce the liability of the debtor of a judgment debtor where the interest
41 claimed adversely is of a value not exceeding twenty-five thousand dollars
42 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars
43 (\$25,000).

1 (10) Arbitration-related petitions filed pursuant to either of the following:
2 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
3 except for uninsured motorist arbitration proceedings in accordance with Section
4 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
5 becomes final and the matter to be resolved by arbitration is a limited civil case
6 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
7 after the arbitration award becomes final and the amount of the award and all other
8 rulings, pronouncements, and decisions made in the award are within paragraphs
9 (1) to (9), inclusive, of subdivision (a).

10 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
11 and client that is binding or has become binding, pursuant to Article 13
12 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
13 Professions Code, where the arbitration award is twenty-five thousand dollars
14 (\$25,000) or less.

15 (b) The following cases in equity are limited civil cases:

16 (1) Cases to try title to personal property when the amount involved is not more
17 than twenty-five thousand dollars (\$25,000).

18 (2) Cases when equity is pleaded as a defensive matter in any case that is
19 otherwise a limited civil case.

20 (3) Cases to vacate a judgment or order of the court obtained in a limited civil
21 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

22 **Comment.** Subdivision (a) of Section 86 is amended to correct an obsolete reference to former
23 Civil Code Section 1351 and to make a stylistic revision.

24 **Code Civ. Proc. § 116.540 (amended). Appearance by person other than plaintiff or**
25 **defendant in small claims action**

26 SEC. ____. Section 116.540 of the Code of Civil Procedure is amended to read:

27 116.540. (a) Except as permitted by this section, no individual other than the
28 plaintiff and the defendant may take part in the conduct or defense of a small
29 claims action.

30 (b) Except as additionally provided in subdivision (i), a corporation may appear
31 and participate in a small claims action only through a regular employee, or a duly
32 appointed or elected officer or director, who is employed, appointed, or elected for
33 purposes other than solely representing the corporation in small claims court.

34 (c) A party who is not a corporation or a natural person may appear and
35 participate in a small claims action only through a regular employee, or a duly
36 appointed or elected officer or director, or in the case of a partnership, a partner,
37 engaged for purposes other than solely representing the party in small claims
38 court.

39 (d) If a party is an individual doing business as a sole proprietorship, the party
40 may appear and participate in a small claims action by a representative and
41 without personally appearing if both of the following conditions are met:

1 (1) The claim can be proved or disputed by evidence of an account that
2 constitutes a business record as defined in Section 1271 of the Evidence Code, and
3 there is no other issue of fact in the case.

4 (2) The representative is a regular employee of the party for purposes other than
5 solely representing the party in small claims actions and is qualified to testify to
6 the identity and mode of preparation of the business record.

7 (e) A plaintiff is not required to personally appear, and may submit declarations
8 to serve as evidence supporting his or her claim or allow another individual to
9 appear and participate on his or her behalf, if (1) the plaintiff is serving on active
10 duty in the United States Armed Forces outside this state, (2) the plaintiff was
11 assigned to his or her duty station after his or her claim arose, (3) the assignment is
12 for more than six months, (4) the representative is serving without compensation,
13 and (5) the representative has appeared in small claims actions on behalf of others
14 no more than four times during the calendar year. The defendant may file a claim
15 in the same action in an amount not to exceed the jurisdictional limits stated in
16 Sections 116.220, 116.221, and 116.231.

17 (f) A party incarcerated in a county jail, a Department of Corrections and
18 Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to
19 personally appear, and may submit declarations to serve as evidence supporting
20 his or her claim, or may authorize another individual to appear and participate on
21 his or her behalf if that individual is serving without compensation and has
22 appeared in small claims actions on behalf of others no more than four times
23 during the calendar year.

24 (g) A defendant who is a nonresident owner of real property may defend against
25 a claim relating to that property without personally appearing by (1) submitting
26 written declarations to serve as evidence supporting his or her defense, (2)
27 allowing another individual to appear and participate on his or her behalf if that
28 individual is serving without compensation and has appeared in small claims
29 actions on behalf of others no more than four times during the calendar year, or (3)
30 taking the action described in both (1) and (2).

31 (h) A party who is an owner of rental real property may appear and participate in
32 a small claims action through a property agent under contract with the owner to
33 manage the rental of that property, if (1) the owner has retained the property agent
34 principally to manage the rental of that property and not principally to represent
35 the owner in small claims court, and (2) the claim relates to the rental property.

36 (i) A party that is an association created to manage a common interest
37 development, as defined in Section ~~1354~~ 4100 of the Civil Code, may appear and
38 participate in a small claims action through an agent, a management company
39 representative, or bookkeeper who appears on behalf of that association.

40 (j) At the hearing of a small claims action, the court shall require any individual
41 who is appearing as a representative of a party under subdivisions (b) to (i),
42 inclusive, to file a declaration stating (1) that the individual is authorized to appear
43 for the party, and (2) the basis for that authorization. If the representative is

1 appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state
2 that the individual is not employed solely to represent the party in small claims
3 court. If the representative is appearing under subdivision (e), (f), or (g), the
4 declaration also shall state that the representative is serving without compensation,
5 and has appeared in small claims actions on behalf of others no more than four
6 times during the calendar year.

7 (k) A husband or wife who sues or who is sued with his or her spouse may
8 appear and participate on behalf of his or her spouse if (1) the claim is a joint
9 claim, (2) the represented spouse has given his or her consent, and (3) the court
10 determines that the interests of justice would be served.

11 (l) If the court determines that a party cannot properly present his or her claim or
12 defense and needs assistance, the court may in its discretion allow another
13 individual to assist that party.

14 (m) Nothing in this section shall operate or be construed to authorize an attorney
15 to participate in a small claims action except as expressly provided in Section
16 116.530.

17 **Comment.** Subdivision (i) of Section 116.540 is amended to correct an obsolete reference to
18 former Civil Code Section 1351.

19 **Code Civ. Proc. § 564 (amended). Appointment of receiver**

20 SEC. _____. Section 564 of the Code of Civil Procedure is amended to read:

21 564. (a) A receiver may be appointed, in the manner provided in this chapter, by
22 the court in which an action or proceeding is pending in any case in which the
23 court is empowered by law to appoint a receiver.

24 (b) A receiver may be appointed by the court in which an action or proceeding is
25 pending, or by a judge thereof, in the following cases:

26 (1) In an action by a vendor to vacate a fraudulent purchase of property, or by a
27 creditor to subject any property or fund to the creditor's claim, or between partners
28 or others jointly owning or interested in any property or fund, on the application of
29 the plaintiff, or of any party whose right to or interest in the property or fund, or
30 the proceeds thereof, is probable, and where it is shown that the property or fund is
31 in danger of being lost, removed, or materially injured.

32 (2) In an action by a secured lender for the foreclosure of a deed of trust or
33 mortgage and sale of property upon which there is a lien under a deed of trust or
34 mortgage, where it appears that the property is in danger of being lost, removed, or
35 materially injured, or that the condition of the deed of trust or mortgage has not
36 been performed, and that the property is probably insufficient to discharge the
37 deed of trust or mortgage debt.

38 (3) After judgment, to carry the judgment into effect.

39 (4) After judgment, to dispose of the property according to the judgment, or to
40 preserve it during the pendency of an appeal, or pursuant to the Enforcement of
41 Judgments Law (Title 9 (commencing with Section 680.010)), or after sale of real
42 property pursuant to a decree of foreclosure, during the redemption period, to

1 collect, expend, and disburse rents as directed by the court or otherwise provided
2 by law.

3 (5) Where a corporation has been dissolved, as provided in Section 565.

4 (6) Where a corporation is insolvent, or in imminent danger of insolvency, or
5 has forfeited its corporate rights.

6 (7) In an action of unlawful detainer.

7 (8) At the request of the Public Utilities Commission pursuant to Section 855 or
8 5259.5 of the Public Utilities Code.

9 (9) In all other cases where necessary to preserve the property or rights of any
10 party.

11 (10) At the request of the Office of Statewide Health Planning and
12 Development, or the Attorney General, pursuant to Section 129173 of the Health
13 and Safety Code.

14 (11) In an action by a secured lender for specific performance of an assignment
15 of rents provision in a deed of trust, mortgage, or separate assignment document.
16 The appointment may be continued after entry of a judgment for specific
17 performance if appropriate to protect, operate, or maintain real property
18 encumbered by a deed of trust or mortgage or to collect rents therefrom while a
19 pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage
20 is being completed.

21 (12) In a case brought by an assignee under an assignment of leases, rents,
22 issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

23 (c) A receiver may be appointed, in the manner provided in this chapter,
24 including, but not limited to, Section 566, by the superior court in an action
25 brought by a secured lender to enforce the rights provided in Section 2929.5 of the
26 Civil Code, to enable the secured lender to enter and inspect the real property
27 security for the purpose of determining the existence, location, nature, and
28 magnitude of any past or present release or threatened release of any hazardous
29 substance into, onto, beneath, or from the real property security. The secured
30 lender shall not abuse the right of entry and inspection or use it to harass the
31 borrower or tenant of the property. Except in case of an emergency, when the
32 borrower or tenant of the property has abandoned the premises, or if it is
33 impracticable to do so, the secured lender shall give the borrower or tenant of the
34 property reasonable notice of the secured lender's intent to enter and shall enter
35 only during the borrower's or tenant's normal business hours. Twenty-four hours'
36 notice shall be presumed to be reasonable notice in the absence of evidence to the
37 contrary.

38 (d) Any action by a secured lender to appoint a receiver pursuant to this section
39 shall not constitute an action within the meaning of subdivision (a) of Section 726.

40 (e) For purposes of this section:

41 (1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
42 mortgage, where the deed of trust or mortgage encumbers real property security
43 and secures the performance of the trustor or mortgagor under a loan, extension of

1 credit, guaranty, or other obligation. The term includes any successor in interest of
2 the trustor or mortgagor to the real property security before the deed of trust or
3 mortgage has been discharged, reconveyed, or foreclosed upon.

4 (2) “Hazardous substance” means any of the following:

5 (A) Any “hazardous substance” as defined in subdivision (h) of Section 25281
6 of the Health and Safety Code.

7 (B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water
8 Code.

9 (C) Petroleum including crude oil or any fraction thereof, natural gas, natural
10 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
11 thereof.

12 (3) “Real property security” means any real property and improvements, other
13 than a separate interest and any related interest in the common area of a residential
14 common interest development, as the terms “separate interest,” “common area,”
15 and “common interest development” are defined in ~~Section 1351~~ Sections 4185,
16 4095, and 4100 of the Civil Code, or real property consisting of one acre or less
17 that contains 1 to 15 dwelling units.

18 (4) “Release” means any spilling, leaking, pumping, pouring, emitting,
19 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
20 the environment, including continuing migration, of hazardous substances into,
21 onto, or through soil, surface water, or groundwater.

22 (5) “Secured lender” means the beneficiary under a deed of trust against the real
23 property security, or the mortgagee under a mortgage against the real property
24 security, and any successor in interest of the beneficiary or mortgagee to the deed
25 of trust or mortgage.

26 **Comment.** Subdivision (e) of Section 564 is amended to correct an obsolete reference to
27 former Civil Code Section 1351.

28 **Code Civ. Proc. § 726.5 (amended). Remedies for lender**

29 SEC. ____ . Section 726.5 of the Code of Civil Procedure is amended to read:

30 726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision
31 of law, except subdivision (d) of this section, a secured lender may elect between
32 the following where the real property security is environmentally impaired and the
33 borrower’s obligations to the secured lender are in default:

34 (1)(A) Waiver of its lien against (i) any parcel of real property security that is
35 environmentally impaired or is an affected parcel, and (ii) all or any portion of the
36 fixtures and personal property attached to the parcels; and

37 (B) Exercise of (i) the rights and remedies of an unsecured creditor, including
38 reduction of its claim against the borrower to judgment, and (ii) any other rights
39 and remedies permitted by law.

40 (2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust
41 or mortgage and, if applicable, a lien against fixtures or personal property attached

1 to the real property security, and (ii) any other rights and remedies permitted by
2 law.

3 (b) Before the secured lender may waive its lien against any parcel of real
4 property security pursuant to paragraph (1) of subdivision (a) on the basis of the
5 environmental impairment contemplated by paragraph (3) of subdivision (e), (i)
6 the secured lender shall provide written notice of the default to the borrower, and
7 (ii) the value of the subject real property security shall be established and its
8 environmentally impaired status shall be confirmed by an order of a court of
9 competent jurisdiction in an action brought by the secured lender against the
10 borrower. The complaint for a valuation and confirmation action may include
11 causes of action for a money judgment for all or part of the secured obligation, in
12 which case the waiver of the secured lender's liens under paragraph (1) of
13 subdivision (a) shall result only if and when a final money judgment is obtained
14 against the borrower.

15 (c) If a secured lender elects the rights and remedies permitted by paragraph (1)
16 of subdivision (a) and the borrower's obligations are also secured by other real
17 property security, fixtures, or personal property, the secured lender shall first
18 foreclose against the additional collateral to the extent required by applicable law
19 in which case the amount of the judgment of the secured lender pursuant to
20 paragraph (1) of subdivision (a) shall be limited to the extent Section 580a or
21 580d, or subdivision (b) of Section 726 apply to the foreclosures of additional real
22 property security. The borrower may waive or modify the foreclosure
23 requirements of this subdivision provided that the waiver or modification is in
24 writing and signed by the borrower after default.

25 (d) Subdivision (a) shall be inapplicable if all of the following are true:

26 (1) The release or threatened release was not knowingly or negligently caused or
27 contributed to, or knowingly or willfully permitted or acquiesced to, by any of the
28 following:

29 (A) The borrower or any related party.

30 (B) Any affiliate or agent of the borrower or any related party.

31 (2) In conjunction with the making, renewal, or modification of the loan,
32 extension of credit, guaranty, or other obligation secured by the real property
33 security, neither the borrower, any related party, nor any affiliate or agent of either
34 the borrower or any related party had actual knowledge or notice of the release or
35 threatened release, or if a person had knowledge or notice of the release or
36 threatened release, the borrower made written disclosure thereof to the secured
37 lender after the secured lender's written request for information concerning the
38 environmental condition of the real property security, or the secured lender
39 otherwise obtained actual knowledge thereof, prior to the making, renewal, or
40 modification of the obligation.

41 (e) For purposes of this section:

42 (1) "Affected parcel" means any portion of a parcel of real property security that
43 is (A) contiguous to the environmentally impaired parcel, even if separated by

1 roads, streets, utility easements, or railroad rights-of-way, (B) part of an approved
2 or proposed subdivision within the meaning of Section 66424 of the Government
3 Code, of which the environmentally impaired parcel is also a part, or (C) within
4 2,000 feet of the environmentally impaired parcel.

5 (2) “Borrower” means the trustor under a deed of trust, or a mortgagor under a
6 mortgage, where the deed of trust or mortgage encumbers real property security
7 and secures the performance of the trustor or mortgagor under a loan, extension of
8 credit, guaranty, or other obligation. The term includes any successor-in-interest of
9 the trustor or mortgagor to the real property security before the deed of trust or
10 mortgage has been discharged, reconveyed, or foreclosed upon.

11 (3) “Environmentally impaired” means that the estimated costs to clean up and
12 remediate a past or present release or threatened release of any hazardous
13 substance into, onto, beneath, or from the real property security, not disclosed in
14 writing to, or otherwise actually known by, the secured lender prior to the making
15 of the loan or extension of credit secured by the real property security, exceeds 25
16 percent of the higher of the aggregate fair market value of all security for the loan
17 or extension of credit (A) at the time of the making of the loan or extension of
18 credit, or (B) at the time of the discovery of the release or threatened release by the
19 secured lender. For the purposes of this definition, the estimated cost to clean up
20 and remediate the contamination caused by the release or threatened release shall
21 include only those costs that would be incurred reasonably and in good faith, and
22 fair market value shall be determined without giving consideration to the release
23 or threatened release, and shall be exclusive of the amount of all liens and
24 encumbrances against the security that are senior in priority to the lien of the
25 secured lender. Notwithstanding the foregoing, the real property security for any
26 loan or extension of credit secured by a single parcel of real property ~~which~~ that is
27 included in the National Priorities List pursuant to Section 9605 of Title 42 of the
28 United States Code, or in any list published by the Department of Toxic
29 Substances Control pursuant to subdivision (b) of Section 25356 of the Health and
30 Safety Code, shall be deemed to be environmentally impaired.

31 (4) “Hazardous substance” means any of the following:

32 (A) Any “hazardous substance” as defined in subdivision (h) of Section 25281
33 of the Health and Safety Code.

34 (B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water
35 Code.

36 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
37 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
38 thereof.

39 (5) “Real property security” means any real property and improvements, other
40 than a separate interest and any related interest in the common area of a residential
41 common interest development, as the terms “separate interest,” “common area,”
42 and “common interest development” are defined in ~~Section 1351~~ Sections 4185,
43 4095, and 4100 of the Civil Code, or real property ~~which~~ that contains only 1 to 15

1 dwelling units, which in either case (A) is solely used (i) for residential purposes,
2 or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage,
3 for residential purposes as well as limited agricultural or commercial purposes
4 incidental thereto, and (B) is the subject of an issued certificate of occupancy
5 unless the dwelling is to be owned and occupied by the borrower.

6 (6) “Related party” means any person who shares an ownership interest with the
7 borrower in the real property security, or is a partner or joint venturer with the
8 borrower in a partnership or joint venture, the business of which includes the
9 acquisition, development, use, lease, or sale of the real property security.

10 (7) “Release” means any spilling, leaking, pumping, pouring, emitting,
11 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
12 the environment, including continuing migration, of hazardous substances into,
13 onto, or through soil, surface water, or groundwater. The term does not include
14 actions directly relating to the incorporation in a lawful manner of building
15 materials into a permanent improvement to the real property security.

16 (8) “Secured lender” means the beneficiary under a deed of trust against the real
17 property security, or the mortgagee under a mortgage against the real property
18 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
19 of trust or mortgage.

20 (f) This section shall not be construed to invalidate or otherwise affect in any
21 manner any rights or obligations arising under contract in connection with a loan
22 or extension of credit, including, without limitation, provisions limiting recourse.

23 (g) This section shall only apply to loans, extensions of credit, guaranties, or
24 other obligations secured by real property security made, renewed, or modified on
25 or after January 1, 1992.

26 **Comment.** Subdivision (e) of Section 726.5 is amended to correct an obsolete reference to
27 former Civil Code Section 1351.

28 **Code Civ. Proc. § 729.035 (amended). Right of redemption**

29 SEC. _____. Section 729.035 of the Code of Civil Procedure is amended to read:

30 729.035. Notwithstanding any provision of law to the contrary, the sale of a
31 separate interest in a common interest development is subject to the right of
32 redemption within 90 days after the sale if the sale arises from a foreclosure by the
33 association of a common interest development pursuant to ~~subdivision (g) of~~
34 ~~Section 1367.1~~ Section 5645 of the Civil Code, subject to the conditions of
35 ~~Section 1367.4~~ Sections 5625, 5650, 5655, and 5660 of the Civil Code.

36 **Comment.** Section 729.035 is amended to correct obsolete references to former Civil Code
37 Sections 1367.1(g) and 1367.4.

38 **Code Civ. Proc. § 736 (amended). Remedy of secured lender for breach of environmental**
39 **provision**

40 SEC. _____. Section 736 of the Code of Civil Procedure is amended to read:

1 736. (a) Notwithstanding any other provision of law, a secured lender may bring
2 an action for breach of contract against a borrower for breach of any
3 environmental provision made by the borrower relating to the real property
4 security, for the recovery of damages, and for the enforcement of the
5 environmental provision, and that action or failure to foreclose first against
6 collateral shall not constitute an action within the meaning of subdivision (a) of
7 Section 726, or constitute a money judgment for a deficiency or a deficiency
8 judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of
9 Section 726. No injunction for the enforcement of an environmental provision may
10 be issued after (1) the obligation secured by the real property security has been
11 fully satisfied, or (2) all of the borrower's rights, title, and interest in and to the
12 real property security has been transferred in a bona fide transaction to an
13 unaffiliated third party for fair value.

14 (b) The damages a secured lender may recover pursuant to subdivision (a) shall
15 be limited to reimbursement or indemnification of the following:

16 (1) If not pursuant to an order of any federal, state, or local governmental agency
17 relating to the cleanup, remediation, or other response action required by
18 applicable law, those costs relating to a reasonable and good faith cleanup,
19 remediation, or other response action concerning a release or threatened release of
20 hazardous substances ~~which~~ that is anticipated by the environmental provision.

21 (2) If pursuant to an order of any federal, state, or local governmental agency
22 relating to the cleanup, remediation, or other response action required by
23 applicable law ~~which~~ that is anticipated by the environmental provision, all
24 amounts reasonably advanced in good faith by the secured lender in connection
25 therewith, provided that the secured lender negotiated, or attempted to negotiate,
26 in good faith to minimize the amounts it was required to advance under the order.

27 (3) Indemnification against all liabilities of the secured lender to any third party
28 relating to the breach and not arising from acts, omissions, or other conduct ~~which~~
29 that occur after the borrower is no longer an owner or operator of the real property
30 security, and provided the secured lender is not responsible for the
31 environmentally impaired condition of the real property security in accordance
32 with the standards set forth in subdivision (d) of Section 726.5. For purposes of
33 this paragraph, the term "owner or operator" means those persons described in
34 Section 101(20)(A) of the Comprehensive Environmental Response,
35 Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et
36 seq.).

37 (4) Attorneys' fees and costs incurred by the secured lender relating to the
38 breach.

39 The damages a secured lender may recover pursuant to subdivision (a) shall not
40 include (i) any part of the principal amount or accrued interest of the secured
41 obligation, except for any amounts advanced by the secured lender to cure or
42 mitigate the breach of the environmental provision that are added to the principal
43 amount, and contractual interest thereon, or (ii) amounts ~~which~~ that relate to a

1 release which was knowingly permitted, caused, or contributed to by the secured
2 lender or any affiliate or agent of the secured lender.

3 (c) A secured lender may not recover damages against a borrower pursuant to
4 subdivision (a) for amounts advanced or obligations incurred for the cleanup or
5 other remediation of real property security, and related attorneys' fees and costs, if
6 all of the following are true:

7 (1) The original principal amount of, or commitment for, the loan or other
8 obligation secured by the real property security did not exceed two hundred
9 thousand dollars (\$200,000).

10 (2) In conjunction with the secured lender's acceptance of the environmental
11 provision, the secured lender agreed in writing to accept the real property security
12 on the basis of a completed environmental site assessment and other relevant
13 information from the borrower.

14 (3) The borrower did not permit, cause, or contribute to the release or threatened
15 release.

16 (4) The deed of trust or mortgage covering the real property security has not
17 been discharged, reconveyed, or foreclosed upon.

18 (d) This section is not intended to establish, abrogate, modify, limit, or otherwise
19 affect any cause of action other than that provided by subdivision (a) that a
20 secured lender may have against a borrower under an environmental provision.

21 (e) This section shall apply only to environmental provisions contracted in
22 conjunction with loans, extensions of credit, guaranties, or other obligations made,
23 renewed, or modified on or after January 1, 1992. Notwithstanding the foregoing,
24 this section shall not be construed to validate, invalidate, or otherwise affect in any
25 manner the rights and obligations of the parties to, or the enforcement of,
26 environmental provisions contracted before January 1, 1992.

27 (f) For purposes of this section:

28 (1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
29 mortgage, where the deed of trust or mortgage encumbers real property security
30 and secures the performance of the trustor or mortgagor under a loan, extension of
31 credit, guaranty, or other obligation. The term includes any successor-in-interest of
32 the trustor or mortgagor to the real property security before the deed of trust or
33 mortgage has been discharged, reconveyed, or foreclosed upon.

34 (2) "Environmental provision" means any written representation, warranty,
35 indemnity, promise, or covenant relating to the existence, location, nature, use,
36 generation, manufacture, storage, disposal, handling, or past, present, or future
37 release or threatened release, of any hazardous substance into, onto, beneath, or
38 from the real property security, or to past, present, or future compliance with any
39 law relating thereto, made by a borrower in conjunction with the making, renewal,
40 or modification of a loan, extension of credit, guaranty, or other obligation
41 involving the borrower, whether or not the representation, warranty, indemnity,
42 promise, or covenant is or was contained in or secured by the deed of trust or

1 mortgage, and whether or not the deed of trust or mortgage has been discharged,
2 reconveyed, or foreclosed upon.

3 (3) “Hazardous substance” means any of the following:

4 (A) Any “hazardous substance” as defined in subdivision (h) of Section 25281
5 of the Health and Safety Code.

6 (B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water
7 Code.

8 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
9 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
10 thereof.

11 (4) “Real property security” means any real property and improvements, other
12 than a separate interest and any related interest in the common area of a residential
13 common interest development, as the terms “separate interest,” “common area,”
14 and “common interest development” are defined in ~~Section 1351~~ Sections 4185,
15 4095, and 4100 of the Civil Code, or real property ~~which that~~ contains only 1 to 15
16 dwelling units, which in either case (A) is solely used (i) for residential purposes,
17 or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage,
18 for residential purposes as well as limited agricultural or commercial purposes
19 incidental thereto, and (B) is the subject of an issued certificate of occupancy
20 unless the dwelling is to be owned and occupied by the borrower.

21 (5) “Release” means any spilling, leaking, pumping, pouring, emitting,
22 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
23 the environment, including continuing migration, of hazardous substances into,
24 onto, or through soil, surface water, or groundwater. The term does not include
25 actions directly relating to the incorporation in a lawful manner of building
26 materials into a permanent improvement to the real property security.

27 (6) “Secured lender” means the beneficiary under a deed of trust against the real
28 property security, or the mortgagee under a mortgage against the real property
29 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
30 of trust or mortgage.

31 **Comment.** Section 736 is amended to correct an obsolete reference to former Civil Code
32 Section 1351 and to make stylistic revisions.

33 **Gov’t Code § 12191 (amended). Miscellaneous business entity filing fee**

34 SEC. ____ . Section 12191 of the Government Code is amended to read:

35 12191. The miscellaneous business entity filing fees are the following:

36 (a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations
37 Code:

38 (1) Filing the statement and designation upon the qualification of a foreign
39 association pursuant to Section 2105 of the Corporations Code: One hundred
40 dollars (\$100).

41 (2) Filing an amended statement and designation by a foreign association
42 pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

1 (3) Filing a certificate showing the surrender of the right of a foreign association
2 to transact intrastate business pursuant to Section 2112 of the Corporations Code:
3 No fee.

4 (b) Unincorporated Associations:

5 (1) Filing a statement in accordance with Section 24003 of the Corporations
6 Code as to principal place of office or place for sending notices or designating
7 agent for service: Twenty-five dollars (\$25).

8 (2) Insignia Registrations: Ten dollars (\$10).

9 (c) Community Associations and Common Interest Developments:

10 (1) Filing a statement by a community association in accordance with Section
11 ~~1363.6~~ 4960 of the Civil Code to register the common interest development that it
12 manages: An amount not to exceed thirty dollars (\$30).

13 (2) Filing an amended statement by a community association in accordance with
14 Section ~~1363.6~~ 4960 of the Civil Code: No fee.

15 **Comment.** Subdivision (c) of Section 12191 is amended to correct obsolete references to
16 former Civil Code Section 1363.6.

17 **Gov't Code § 12956.1 (amended). Discriminatory restriction**

18 SEC. ____ . Section 12956.1 of the Government Code is amended to read:

19 12956.1. (a) As used in this section, “association,” “governing documents,” and
20 “declaration” have the same meanings as set forth in ~~Section 1351~~ Sections 4080,
21 4150, and 4135 of the Civil Code.

22 (b)(1) A county recorder, title insurance company, escrow company, real estate
23 broker, real estate agent, or association that provides a copy of a declaration,
24 governing document, or deed to any person shall place a cover page or stamp on
25 the first page of the previously recorded document or documents stating, in at least
26 14-point boldface type, the following:

27 “If this document contains any restriction based on race, color, religion, sex,
28 sexual orientation, familial status, marital status, disability, national origin, source
29 of income as defined in subdivision (p) of Section 12955, or ancestry, that
30 restriction violates state and federal fair housing laws and is void, and may be
31 removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions
32 under state and federal law on the age of occupants in senior housing or housing
33 for older persons shall not be construed as restrictions based on familial status.”

34 (2) The requirements set forth in paragraph (1) shall not apply to documents
35 being submitted for recordation to a county recorder.

36 (c) Any person who records a document for the express purpose of adding a
37 racially restrictive covenant is guilty of a misdemeanor. The county recorder shall
38 not incur any liability for recording the document. Notwithstanding any other
39 provision of law, a prosecution for a violation of this subdivision shall commence
40 within three years after the discovery of the recording of the document.

41 **Comment.** Subdivision (a) of Section 12956.1 is amended to correct obsolete references to
42 former Civil Code Section 1351.

1 **Gov't Code § 12956.2 (amended). Modification of discriminatory restriction**

2 SEC. ____ . Section 12956.2 of the Government Code is amended to read:

3 12956.2. (a) A person who holds an ownership interest of record in property that
4 he or she believes is the subject of an unlawfully restrictive covenant in violation
5 of subdivision (l) of Section 12955 may record a document titled Restrictive
6 Covenant Modification. The county recorder may choose to waive the fee
7 prescribed for recording and indexing instruments pursuant to Section 27361 in
8 the case of the modification document provided for in this section. The
9 modification document shall include a complete copy of the original document
10 containing the unlawfully restrictive language with the unlawfully restrictive
11 language stricken.

12 (b) Before recording the modification document, the county recorder shall
13 submit the modification document and the original document to the county
14 counsel who shall determine whether the original document contains an unlawful
15 restriction based on race, color, religion, sex, sexual orientation, familial status,
16 marital status, disability, national origin, source of income as defined in
17 subdivision (p) of Section 12955, or ancestry. The county counsel shall return the
18 documents and inform the county recorder of its determination. The county
19 recorder shall refuse to record the modification document if the county counsel
20 finds that the original document does not contain an unlawful restriction as
21 specified in this paragraph.

22 (c) The modification document shall be indexed in the same manner as the
23 original document being modified. It shall contain a recording reference to the
24 original document in the form of a book and page or instrument number, and date
25 of the recording.

26 (d) Subject to covenants, conditions, and restrictions that were recorded after the
27 recording of the original document that contains the unlawfully restrictive
28 language and subject to covenants, conditions, and restrictions that will be
29 recorded after the Restrictive Covenant Modification, the restrictions in the
30 Restrictive Covenant Modification, once recorded, are the only restrictions having
31 effect on the property. The effective date of the terms and conditions of the
32 modification document shall be the same as the effective date of the original
33 document.

34 (e) The county recorder shall make available to the public Restrictive Covenant
35 Modification forms.

36 (f) If the holder of an ownership interest of record in property causes to be
37 recorded a modified document pursuant to this section that contains modifications
38 not authorized by this section, the county recorder shall not incur liability for
39 recording the document. The liability that may result from the unauthorized
40 recordation is the sole responsibility of the holder of the ownership interest of
41 record who caused the modified recordation.

42 (g) This section does not apply to persons holding an ownership interest in
43 property that is part of a common interest development as defined in ~~subdivision~~

~~(c) of Section 1351~~ Section 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 1352.5~~ Section 6150 of the Civil Code.

Comment. Subdivision (g) of Section 12956.2 is amended to correct obsolete references to former Civil Code Sections 1351(c) and 1352.5(b).

Gov't Code § 53341.5 (amended). Notice of special tax in sale or lease of lot, parcel or unit of subdivision

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:

NOTICE OF SPECIAL TAX

COMMUNITY FACILITIES DISTRICT NO. _____
COUNTY OF _____, CALIFORNIA

TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY
KNOWN AS:

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR ENTERING INTO A CONTRACT TO PURCHASE THIS PROPERTY. THE SELLER IS REQUIRED TO GIVE YOU THIS NOTICE AND TO OBTAIN A COPY SIGNED BY YOU TO INDICATE THAT YOU HAVE RECEIVED AND READ A COPY OF THIS NOTICE.

(1) This property is subject to a special tax, that is in addition to the regular property taxes and any other charges, fees, special taxes, and benefit assessments on the parcel. It is imposed on this property because it is a new development, and

1 is not necessarily imposed generally upon property outside of this new
2 development. If you fail to pay this tax when due each year, the property may be
3 foreclosed upon and sold. The tax is used to provide public facilities or services
4 that are likely to particularly benefit the property. **YOU SHOULD TAKE THIS
5 TAX AND THE BENEFITS FROM THE FACILITIES AND SERVICES FOR
6 WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS
7 PROPERTY.**

8 (2) The maximum special tax that may be levied against this parcel to pay for
9 public facilities is \$_____ during the ____-__ tax year. This amount will
10 increase by __ percent per year after that (if applicable). The special tax will be
11 levied each year until all of the authorized facilities are built and all special tax
12 bonds are repaid, but in any case not after the ____-__ tax year. An additional
13 special tax will be used to pay for ongoing service costs, if applicable. The
14 maximum amount of this tax is _____ dollars (\$_____) during the ____-__ tax year.
15 This amount may increase by _____, if applicable, and that part may be levied until
16 the ____-__ tax year (or forever, as applicable).

17 (3) The authorized facilities that are being paid for by the special taxes, and by
18 the money received from the sale of bonds that are being repaid by the special
19 taxes, are:

20
21 These facilities may not yet have all been constructed or acquired and it is
22 possible that some may never be constructed or acquired.

23
24 In addition, the special taxes may be used to pay for costs of the following
25 services:

26
27 **YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION
28 THAT AUTHORIZED CREATION OF THE COMMUNITY FACILITIES
29 DISTRICT, AND THAT SPECIFIES MORE PRECISELY HOW THE SPECIAL
30 TAX IS APPORTIONED AND HOW THE PROCEEDS OF THE TAX WILL
31 BE USED, FROM THE _____ (name of jurisdiction) BY CALLING _____
32 (telephone number). THERE MAY BE A CHARGE FOR THIS DOCUMENT
33 NOT TO EXCEED THE REASONABLE COST OF PROVIDING THE
34 DOCUMENT.**

35
36 **I (WE) ACKNOWLEDGE THAT I (WE) HAVE READ THIS NOTICE AND
37 RECEIVED A COPY OF THIS NOTICE PRIOR TO ENTERING INTO A
38 CONTRACT TO PURCHASE OR SIGNING A DEPOSIT RECEIPT WITH
39 RESPECT TO THE ABOVE-REFERENCED PROPERTY. I (WE)
40 UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO
41 PURCHASE OR DEPOSIT RECEIPT WITHIN THREE DAYS AFTER
42 RECEIVING THIS NOTICE IN PERSON OR WITHIN FIVE DAYS AFTER IT
43 WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT**

1 TERMINATION TO THE OWNER, SUBDIVIDER, OR AGENT SELLING
2 THE

3 DATE: _____
4 _____
5 _____
6

7 (b) “Subdivision,” as used in subdivision (a), means improved or unimproved
8 land that is divided or proposed to be divided for the purpose of sale, lease, or
9 financing, whether immediate or future, into two or more lots, parcels, or units and
10 includes a condominium project, as defined by Section ~~1350~~ 4125 of the Civil
11 Code, a community apartment project, a stock cooperative, and a limited-equity
12 housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4,
13 respectively, of the Business and Professions Code.

14 (c) The buyer shall have three days after delivery in person or five days after
15 delivery by deposit in the mail of any notice required by this section, to terminate
16 his or her agreement by delivery of written notice of that termination to the owner,
17 subdivider, or agent.

18 (d) The failure to furnish the notice to the buyer or lessee, and failure of the
19 buyer or lessee to sign the notice of a special tax, shall not invalidate any grant,
20 conveyance, lease, or encumbrance.

21 (e) Any person or entity who willfully violates the provisions of this section
22 shall be liable to the purchaser of a lot or unit that is subject to the provisions of
23 this section, for actual damages, and in addition thereto, shall be guilty of a public
24 offense punishable by a fine in an amount not to exceed five hundred dollars
25 (\$500). In an action to enforce a liability or fine, the prevailing party shall be
26 awarded reasonable attorney’s fees.

27 **Comment.** Section 53341.5 is amended to correct an obsolete reference to former Civil Code
28 Section 1350.

29 **Gov’t Code § 65008 (amended). Prohibition of discrimination in land use**

30 SEC. _____. Section 65008 of the Government Code is amended to read:

31 65008. (a) Any action pursuant to this title by any city, county, city and county,
32 or other local governmental agency in this state is null and void if it denies to any
33 individual or group of individuals the enjoyment of residence, landownership,
34 tenancy, or any other land use in this state because of any of the following reasons:

35 (1)(A) The lawful occupation, age, or any characteristic of the individual or
36 group of individuals listed in subdivision (a) or (d) of Section 12955, as those
37 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
38 of subdivision (p) of Section 12955 and Section 12955.2.

39 (B) Notwithstanding subparagraph (A), with respect to familial status,
40 subparagraph (A) shall not be construed to apply to housing for older persons, as
41 defined in Section 12955.9. With respect to familial status, nothing in
42 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,

1 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
2 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
3 subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to
4 subparagraph (A).

5 (2) The method of financing of any residential development of the individual or
6 group of individuals.

7 (3) The intended occupancy of any residential development by persons or
8 families of very low, low, moderate, or middle income.

9 (b)(1) No city, county, city and county, or other local governmental agency
10 shall, in the enactment or administration of ordinances pursuant to any law,
11 including this title, prohibit or discriminate against any residential development or
12 emergency shelter for any of the following reasons:

13 (A) Because of the method of financing.

14 (B)(i) Because of the lawful occupation, age, or any characteristic listed in
15 subdivision (a) or (d) of Section 12955, as those characteristics are defined in
16 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
17 Section 12955, and Section 12955.2 of the owners or intended occupants of the
18 residential development or emergency shelter.

19 (ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not
20 be construed to apply to housing for older persons, as defined in Section 12955.9.
21 With respect to familial status, nothing in clause (i) shall be construed to affect
22 Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to
23 housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760
24 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of this code
25 shall apply to clause (i).

26 (C) Because the development or shelter is intended for occupancy by persons
27 and families of very low, low, or moderate income, as defined in Section 50093 of
28 the Health and Safety Code, or persons and families of middle income.

29 (D) Because the development consists of a multifamily residential project that is
30 consistent with both the jurisdiction's zoning ordinance and general plan as they
31 existed on the date the application was deemed complete, except that a project
32 shall not be deemed to be inconsistent with the zoning designation for the site if
33 that zoning designation is inconsistent with the general plan only because the
34 project site has not been rezoned to conform with a more recently adopted general
35 plan.

36 (2) The discrimination prohibited by this subdivision includes the denial or
37 conditioning of a residential development or shelter because of, in whole or in
38 part, either of the following:

39 (A) The method of financing.

40 (B) The occupancy of the development by persons protected by this subdivision,
41 including, but not limited to, persons and families of very low, low, or moderate
42 income.

1 (3) A city, county, city and county, or other local government agency may not,
2 pursuant to subdivision (d) of Section 65589.5, disapprove a housing development
3 project or condition approval of a housing development project in a manner that
4 renders the project infeasible if the basis for the disapproval or conditional
5 approval includes any of the reasons prohibited in paragraph (1) or (2).

6 (c) For the purposes of this section, “persons and families of middle income”
7 means persons and families whose income does not exceed 150 percent of the
8 median income for the county in which the persons or families reside.

9 (d)(1) No city, county, city and county, or other local governmental agency may
10 impose different requirements on a residential development or emergency shelter
11 that is subsidized, financed, insured, or otherwise assisted by the federal or state
12 government or by a local public entity, as defined in Section 50079 of the Health
13 and Safety Code, than those imposed on nonassisted developments, except as
14 provided in subdivision (e). The discrimination prohibited by this subdivision
15 includes the denial or conditioning of a residential development or emergency
16 shelter based in whole or in part on the fact that the development is subsidized,
17 financed, insured, or otherwise assisted as described in this paragraph.

18 (2)(A) No city, county, city and county, or other local governmental agency
19 may, because of the lawful occupation age, or any characteristic of the intended
20 occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics
21 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
22 subdivision (p) of Section 12955, and Section 12955.2 or because the development
23 is intended for occupancy by persons and families of very low, low, moderate, or
24 middle income, impose different requirements on these residential developments
25 than those imposed on developments generally, except as provided in subdivision
26 (e).

27 (B) Notwithstanding subparagraph (A), with respect to familial status,
28 subparagraph (A) shall not be construed to apply to housing for older persons, as
29 defined in Section 12955.9. With respect to familial status, nothing in
30 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
31 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
32 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
33 subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to
34 subparagraph (A).

35 (e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title
36 do not prohibit either of the following:

37 (1) The County of Riverside from enacting and enforcing zoning to provide
38 housing for older persons, in accordance with state or federal law, if that zoning
39 was enacted prior to January 1, 1995.

40 (2) Any city, county, or city and county from extending preferential treatment to
41 residential developments or emergency shelters assisted by the federal or state
42 government or by a local public entity, as defined in Section 50079 of the Health
43 and Safety Code, or other residential developments or emergency shelters intended

1 for occupancy by persons and families of low and moderate income, as defined in
2 Section 50093 of the Health and Safety Code, or persons and families of middle
3 income, or agricultural employees, as defined in subdivision (b) of Section 1140.4
4 of the Labor Code, and their families. This preferential treatment may include, but
5 need not be limited to, reduction or waiver of fees or changes in architectural
6 requirements, site development and property line requirements, building setback
7 requirements, or vehicle parking requirements that reduce development costs of
8 these developments.

9 (f) “Residential development,” as used in this section, means a single-family
10 residence or a multifamily residence, including manufactured homes, as defined in
11 Section 18007 of the Health and Safety Code.

12 (g) This section shall apply to chartered cities.

13 (h) The Legislature finds and declares that discriminatory practices that inhibit
14 the development of housing for persons and families of very low, low, moderate,
15 and middle income, or emergency shelters for the homeless, are a matter of
16 statewide concern.

17 **Comment.** Subdivisions (a), (b) and (d) of Section 65008 are amended to correct obsolete
18 references to former Civil Code Section 1360.

19 **Gov’t Code § 65915 (amended). Density bonus in housing development**

20 SEC. ____ . Section 65915 of the Government Code is amended to read:

21 65915. (a) When an applicant seeks a density bonus for a housing development
22 within, or for the donation of land for housing within, the jurisdiction of a city,
23 county, or city and county, that local government shall provide the applicant
24 incentives or concessions for the production of housing units and child care
25 facilities as prescribed in this section. All cities, counties, or cities and counties
26 shall adopt an ordinance that specifies how compliance with this section will be
27 implemented.

28 (b)(1) A city, county, or city and county shall grant one density bonus, the
29 amount of which shall be as specified in subdivision (g), and incentives or
30 concessions, as described in subdivision (d), when an applicant for a housing
31 development seeks and agrees to construct a housing development, excluding any
32 units permitted by the density bonus awarded pursuant to this section, that will
33 contain at least any one of the following:

34 (A) Ten percent of the total units of a housing development for lower income
35 households, as defined in Section 50079.5 of the Health and Safety Code.

36 (B) Five percent of the total units of a housing development for very low income
37 households, as defined in Section 50105 of the Health and Safety Code.

38 (C) A senior citizen housing development as defined in Sections 51.3 and 51.12
39 of the Civil Code, or mobilehome park that limits residency based on age
40 requirements for housing for older persons pursuant to Section 798.76 or 799.5 of
41 the Civil Code.

1 (D) Ten percent of the total dwelling units in a common interest development as
2 defined in Section ~~1351~~ 4100 of the Civil Code for persons and families of
3 moderate income, as defined in Section 50093 of the Health and Safety Code,
4 provided that all units in the development are offered to the public for purchase.

5 (2) For purposes of calculating the amount of the density bonus pursuant to
6 subdivision (f), the applicant who requests a density bonus pursuant to this
7 subdivision shall elect whether the bonus shall be awarded on the basis of
8 subparagraph (A), (B), (C), or (D) of paragraph (1).

9 (c)(1) An applicant shall agree to, and the city, county, or city and county shall
10 ensure, continued affordability of all low-and very low income units that qualified
11 the applicant for the award of the density bonus for 30 years or a longer period of
12 time if required by the construction or mortgage financing assistance program,
13 mortgage insurance program, or rental subsidy program. Rents for the lower
14 income density bonus units shall be set at an affordable rent as defined in Section
15 50053 of the Health and Safety Code. Owner-occupied units shall be available at
16 an affordable housing cost as defined in Section 50052.5 of the Health and Safety
17 Code.

18 (2) An applicant shall agree to, and the city, county, or city and county shall
19 ensure that, the initial occupant of the moderate-income units that are directly
20 related to the receipt of the density bonus in the common interest development, as
21 defined in Section ~~1351~~ 4100 of the Civil Code, are persons and families of
22 moderate income, as defined in Section 50093 of the Health and Safety Code, and
23 that the units are offered at an affordable housing cost, as that cost is defined in
24 Section 50052.5 of the Health and Safety Code. The local government shall
25 enforce an equity-sharing agreement, unless it is in conflict with the requirements
26 of another public funding source or law. The following apply to the equity-sharing
27 agreement:

28 (A) Upon resale, the seller of the unit shall retain the value of any
29 improvements, the downpayment, and the seller's proportionate share of
30 appreciation. The local government shall recapture any initial subsidy and its
31 proportionate share of appreciation, which shall then be used within three years for
32 any of the purposes described in subdivision (e) of Section 33334.2 of the Health
33 and Safety Code that promote homeownership.

34 (B) For purposes of this subdivision, the local government's initial subsidy shall
35 be equal to the fair market value of the home at the time of initial sale minus the
36 initial sale price to the moderate-income household, plus the amount of any
37 downpayment assistance or mortgage assistance. If upon resale the market value is
38 lower than the initial market value, then the value at the time of the resale shall be
39 used as the initial market value.

40 (C) For purposes of this subdivision, the local government's proportionate share
41 of appreciation shall be equal to the ratio of the initial subsidy to the fair market
42 value of the home at the time of initial sale.

1 (d)(1) An applicant for a density bonus pursuant to subdivision (b) may submit
2 to a city, county, or city and county a proposal for the specific incentives or
3 concessions that the applicant requests pursuant to this section, and may request a
4 meeting with the city, county, or city and county. The city, county, or city and
5 county shall grant the concession or incentive requested by the applicant unless the
6 city, county, or city and county makes a written finding, based upon substantial
7 evidence, of either of the following:

8 (A) The concession or incentive is not required in order to provide for affordable
9 housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for
10 rents for the targeted units to be set as specified in subdivision (c).

11 (B) The concession or incentive would have a specific adverse impact, as
12 defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health
13 and safety or the physical environment or on any real property that is listed in the
14 California Register of Historical Resources and for which there is no feasible
15 method to satisfactorily mitigate or avoid the specific adverse impact without
16 rendering the development unaffordable to low- and moderate-income households.

17 (2) The applicant shall receive the following number of incentives or
18 concessions:

19 (A) One incentive or concession for projects that include at least 10 percent of
20 the total units for lower income households, at least 5 percent for very low income
21 households, or at least 10 percent for persons and families of moderate income in a
22 common interest development.

23 (B) Two incentives or concessions for projects that include at least 20 percent of
24 the total units for lower income households, at least 10 percent for very low
25 income households, or at least 20 percent for persons and families of moderate
26 income in a common interest development.

27 (C) Three incentives or concessions for projects that include at least 30 percent
28 of the total units for lower income households, at least 15 percent for very low
29 income households, or at least 30 percent for persons and families of moderate
30 income in a common interest development.

31 (3) The applicant may initiate judicial proceedings if the city, county, or city and
32 county refuses to grant a requested density bonus, incentive, or concession. If a
33 court finds that the refusal to grant a requested density bonus, incentive, or
34 concession is in violation of this section, the court shall award the plaintiff
35 reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be
36 interpreted to require a local government to grant an incentive or concession that
37 has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of
38 Section 65589.5, upon health, safety, or the physical environment, and for which
39 there is no feasible method to satisfactorily mitigate or avoid the specific adverse
40 impact. Nothing in this subdivision shall be interpreted to require a local
41 government to grant an incentive or concession that would have an adverse impact
42 on any real property that is listed in the California Register of Historical
43 Resources. The city, county, or city and county shall establish procedures for

1 carrying out this section, that shall include legislative body approval of the means
 2 of compliance with this section. The city, county, or city and county shall also
 3 establish procedures for waiving or modifying development and zoning standards
 4 that would otherwise inhibit the utilization of the density bonus on specific sites.
 5 These procedures shall include, but not be limited to, such items as minimum lot
 6 size, side yard setbacks, and placement of public works improvements.

7 (e) In no case may a city, county, or city and county apply any development
 8 standard that will have the effect of precluding the construction of a development
 9 meeting the criteria of subdivision (b) at the densities or with the concessions or
 10 incentives permitted by this section. An applicant may submit to a city, county, or
 11 city and county a proposal for the waiver or reduction of development standards
 12 and may request a meeting with the city, county, or city and county. If a court
 13 finds that the refusal to grant a waiver or reduction of development standards is in
 14 violation of this section, the court shall award the plaintiff reasonable attorney’s
 15 fees and costs of suit. Nothing in this subdivision shall be interpreted to require a
 16 local government to waive or reduce development standards if the waiver or
 17 reduction would have a specific, adverse impact, as defined in paragraph (2) of
 18 subdivision (d) of Section 65589.5, upon health, safety, or the physical
 19 environment, and for which there is no feasible method to satisfactorily mitigate or
 20 avoid the specific adverse impact. Nothing in this subdivision shall be interpreted
 21 to require a local government to waive or reduce development standards that
 22 would have an adverse impact on any real property that is listed in the California
 23 Register of Historical Resources.

24 (f) The applicant shall show that the waiver or modification is necessary to make
 25 the housing units economically feasible.

26 (g) For the purposes of this chapter, “density bonus” means a density increase
 27 over the otherwise maximum allowable residential density under the applicable
 28 zoning ordinance and land use element of the general plan as of the date of
 29 application by the applicant to the city, county, or city and county. The applicant
 30 may elect to accept a lesser percentage of density bonus. The amount of density
 31 bonus to which the applicant is entitled shall vary according to the amount by
 32 which the percentage of affordable housing units exceeds the percentage
 33 established in subdivision (b).

34 (1) For housing developments meeting the criteria of subparagraph (A) of
 35 paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5

1	17	30.5
2	18	32
3	19	33.5
4	20	35

5
 6 (2) For housing developments meeting the criteria of subparagraph (B) of
 7 paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

8	Percentage Very Low Income Units	Percentage Density Bonus
9	5	20
10	6	22.5
11	7	25
12	8	27.5
13	9	30
14	10	32.5
15	11	35

16
 17
 18 (3) For housing developments meeting the criteria of subparagraph (C) of
 19 paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

20 (4) For housing developments meeting the criteria of subparagraph (D) of
 21 paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

22	Percentage Moderate-Income Units	Percentage Density Bonus
23	10	5
24	11	6
25	12	7
26	13	8
27	14	9
28	15	10
29	16	11
30	17	12
31	18	13
32	19	14
33	20	15
34	21	16
35	22	17
36	23	18
37	24	19
38	25	20
39	26	21
40	27	22
41	28	23
42	29	24

1	30	25
2	31	26
3	32	27
4	33	28
5	34	29
6	35	30
7	36	31
8	37	32
9	38	33
10	39	34
11	40	35

12

13 (5) All density calculations resulting in fractional units shall be rounded up to
 14 the next whole number. The granting of a density bonus shall not be interpreted, in
 15 and of itself, to require a general plan amendment, local coastal plan amendment,
 16 zoning change, or other discretionary approval. As used in subdivision (b), “total
 17 units” or “total dwelling units” does not include units permitted by a density bonus
 18 awarded pursuant to this section or any local law granting a greater density bonus.
 19 The density bonus provided by this section shall apply to housing developments
 20 consisting of five or more dwelling units.

21 (h)(1) When an applicant for a tentative subdivision map, parcel map, or other
 22 residential development approval donates land to a city, county, or city and county
 23 as provided for in this subdivision, the applicant shall be entitled to a 15-percent
 24 increase above the otherwise maximum allowable residential density under the
 25 applicable zoning ordinance and land use element of the general plan for the entire
 26 development, as follows:

27

28	Percentage Very Low Income	Percentage Density Bonus
29	10	15
30	11	16
31	12	17
32	13	18
33	14	19
34	15	20
35	16	21
36	17	22
37	18	23
38	19	24
39	20	25
40	21	26
41	22	27
42	23	28
43	24	29

1	25	30
2	26	31
3	27	32
4	28	33
5	29	34
6	30	35

7
8 (2) This increase shall be in addition to any increase in density mandated by
9 subdivision (b), up to a maximum combined mandated density increase of 35
10 percent if an applicant seeks both the increase required pursuant to this subdivision
11 and subdivision (b). All density calculations resulting in fractional units shall be
12 rounded up to the next whole number. Nothing in this subdivision shall be
13 construed to enlarge or diminish the authority of a city, county, or city and county
14 to require a developer to donate land as a condition of development. An applicant
15 shall be eligible for the increased density bonus described in this subdivision if all
16 of the following conditions are met:

17 (A) The applicant donates and transfers the land no later than the date of
18 approval of the final subdivision map, parcel map, or residential development
19 application.

20 (B) The developable acreage and zoning classification of the land being
21 transferred are sufficient to permit construction of units affordable to very low
22 income households in an amount not less than 10 percent of the number of
23 residential units of the proposed development.

24 (C) The transferred land is at least one acre in size or of sufficient size to permit
25 development of at least 40 units, has the appropriate general plan designation, is
26 appropriately zoned for development as affordable housing, and is or will be
27 served by adequate public facilities and infrastructure. The land shall have
28 appropriate zoning and development standards to make the development of the
29 affordable units feasible. No later than the date of approval of the final subdivision
30 map, parcel map, or of the residential development, the transferred land shall have
31 all of the permits and approvals, other than building permits, necessary for the
32 development of the very low income housing units on the transferred land, except
33 that the local government may subject the proposed development to subsequent
34 design review to the extent authorized by subdivision (i) of Section 65583.2 if the
35 design is not reviewed by the local government prior to the time of transfer.

36 (D) The transferred land and the affordable units shall be subject to a deed
37 restriction ensuring continued affordability of the units consistent with paragraphs
38 (1) and (2) of subdivision (c), which shall be recorded on the property at the time
39 of dedication.

40 (E) The land is transferred to the local agency or to a housing developer
41 approved by the local agency. The local agency may require the applicant to
42 identify and transfer the land to the developer.

1 (F) The transferred land shall be within the boundary of the proposed
2 development or, if the local agency agrees, within one-quarter mile of the
3 boundary of the proposed development.

4 (i)(1) When an applicant proposes to construct a housing development that
5 conforms to the requirements of subdivision (b) and includes a child care facility
6 that will be located on the premises of, as part of, or adjacent to, the project, the
7 city, county, or city and county shall grant either of the following:

8 (A) An additional density bonus that is an amount of square feet of residential
9 space that is equal to or greater than the amount of square feet in the child care
10 facility.

11 (B) An additional concession or incentive that contributes significantly to the
12 economic feasibility of the construction of the child care facility.

13 (2) The city, county, or city and county shall require, as a condition of approving
14 the housing development, that the following occur:

15 (A) The child care facility shall remain in operation for a period of time that is
16 as long as or longer than the period of time during which the density bonus units
17 are required to remain affordable pursuant to subdivision (c).

18 (B) Of the children who attend the child care facility, the children of very low
19 income households, lower income households, or families of moderate income
20 shall equal a percentage that is equal to or greater than the percentage of dwelling
21 units that are required for very low income households, lower income households,
22 or families of moderate income pursuant to subdivision (b).

23 (3) Notwithstanding any requirement of this subdivision, a city, county, or a city
24 and county shall not be required to provide a density bonus or concession for a
25 child care facility if it finds, based upon substantial evidence, that the community
26 has adequate child care facilities.

27 (4) “Child care facility,” as used in this section, means a child day care facility
28 other than a family day care home, including, but not limited to, infant centers,
29 preschools, extended day care facilities, and schoolage child care centers.

30 (j) “Housing development,” as used in this section, means one or more groups of
31 projects for residential units constructed in the planned development of a city,
32 county, or city and county. For the purposes of this section, “housing
33 development” also includes a subdivision or common interest development, as
34 defined in Section ~~1354~~ 4100 of the Civil Code, approved by a city, county, or city
35 and county and consists of residential units or unimproved residential lots and
36 either a project to substantially rehabilitate and convert an existing commercial
37 building to residential use or the substantial rehabilitation of an existing
38 multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the
39 result of the rehabilitation would be a net increase in available residential units.
40 For the purpose of calculating a density bonus, the residential units do not have to
41 be based upon individual subdivision maps or parcels. The density bonus shall be
42 permitted in geographic areas of the housing development other than the areas
43 where the units for the lower income households are located.

1 (k) The granting of a concession or incentive shall not be interpreted, in and of
2 itself, to require a general plan amendment, local coastal plan amendment, zoning
3 change, or other discretionary approval. This provision is declaratory of existing
4 law.

5 (l) For the purposes of this chapter, concession or incentive means any of the
6 following:

7 (1) A reduction in site development standards or a modification of zoning code
8 requirements or architectural design requirements that exceed the minimum
9 building standards approved by the California Building Standards Commission as
10 provided in Part 2.5 (commencing with Section 18901) of Division 13 of the
11 Health and Safety Code, including, but not limited to, a reduction in setback and
12 square footage requirements and in the ratio of vehicular parking spaces that
13 would otherwise be required that results in identifiable, financially sufficient, and
14 actual cost reductions.

15 (2) Approval of mixed use zoning in conjunction with the housing project if
16 commercial, office, industrial, or other land uses will reduce the cost of the
17 housing development and if the commercial, office, industrial, or other land uses
18 are compatible with the housing project and the existing or planned development
19 in the area where the proposed housing project will be located.

20 (3) Other regulatory incentives or concessions proposed by the developer or the
21 city, county, or city and county that result in identifiable, financially sufficient,
22 and actual cost reductions.

23 This subdivision does not limit or require the provision of direct financial
24 incentives for the housing development, including the provision of publicly owned
25 land, by the city, county, or city and county, or the waiver of fees or dedication
26 requirements.

27 (m) Nothing in this section shall be construed to supersede or in any way alter or
28 lessen the effect or application of the California Coastal Act (Division 20
29 (commencing with Section 30000) of the Public Resources Code.

30 (n) Nothing in this section shall be construed to prohibit a city, county, or city
31 and county from granting a density bonus greater than what is described in this
32 section for a development that meets the requirements of this section or from
33 granting a proportionately lower density bonus than what is required by this
34 section for developments that do not meet the requirements of this section.

35 (o) For purposes of this section, the following definitions shall apply:

36 (1) "Development standard" includes site or construction conditions that apply
37 to a residential development pursuant to any ordinance, general plan element,
38 specific plan, charter amendment, or other local condition, law, policy, resolution,
39 or regulation.

40 (2) "Maximum allowable residential density" means the density allowed under
41 the zoning ordinance, or if a range of density is permitted, means the maximum
42 allowable density for the specific zoning range applicable to the project.

1 (p)(1) Upon the request of the developer, no city, county, or city and county
2 shall require a vehicular parking ratio, inclusive of handicapped and guest parking,
3 of a development meeting the criteria of subdivision (b), that exceeds the
4 following ratios:

5 (A) Zero to one bedrooms: one onsite parking space.

6 (B) Two to three bedrooms: two onsite parking spaces.

7 (C) Four and more bedrooms: two and one-half parking spaces.

8 (2) If the total number of parking spaces required for a development is other
9 than a whole number, the number shall be rounded up to the next whole number.
10 For purposes of this subdivision, a development may provide “onsite parking”
11 through tandem parking or uncovered parking, but not through onstreet parking.

12 (3) This subdivision shall apply to a development that meets the requirements of
13 subdivision (b) but only at the request of the applicant. An applicant may request
14 additional parking incentives or concessions beyond those provided in this section,
15 subject to subdivision (d).

16 **Comment.** Subdivisions (b), (c) and (j) of Section 65915 are amended to correct obsolete
17 references to former Civil Code Section 1351.

18 **Gov’t Code § 65995.5 (amended). Alternative calculation of residential construction amount**

19 SEC. _____. Section 65995.5 of the Government Code is amended to read:

20 65995.5. (a) The governing board of a school district may impose the amount
21 calculated pursuant to this section as an alternative to the amount that may be
22 imposed on residential construction calculated pursuant to subdivision (b) of
23 Section 65995.

24 (b) To be eligible to impose the fee, charge, dedication, or other requirement up
25 to the amount calculated pursuant to this section, a governing board shall do all of
26 the following:

27 (1) Make a timely application to the State Allocation Board for new construction
28 funding for which it is eligible and be determined by the board to meet the
29 eligibility requirements for new construction funding set forth in Article 2
30 (commencing with Section 17071.10) and Article 3 (commencing with Section
31 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board
32 that submits an application to determine the district’s eligibility for new
33 construction funding shall be deemed eligible if the State Allocation Board fails to
34 notify the district of the district’s eligibility within 120 days of receipt of the
35 application.

36 (2) Conduct and adopt a school facility needs analysis pursuant to Section
37 65995.6.

38 (3) Until January 1, 2000, satisfy at least one of the requirements set forth in
39 subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at
40 least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

41 (A) The district is a unified or elementary school district that has a substantial
42 enrollment of its elementary school pupils on a multitrack year-round schedule.

1 “Substantial enrollment” for purposes of this paragraph means at least 30 percent
2 of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school
3 attendance area in which all or some of the new residential units identified in the
4 needs analysis are planned for construction. A high school district shall be deemed
5 to have met the requirements of this paragraph if either of the following apply:

6 (i) At least 30 percent of the high school district’s pupils are on a multitrack
7 year-round schedule.

8 (ii) At least 40 percent of the pupils enrolled in public schools in kindergarten
9 and grades 1 to 12, inclusive, within the boundaries of the high school attendance
10 area for which the school district is applying for new facilities are enrolled in
11 multitrack year-round schools.

12 (B) The district has placed on the ballot in the previous four years a local
13 general obligation bond to finance school facilities and the measure received at
14 least 50 percent plus one of the votes cast.

15 (C) The district meets one of the following:

16 (i) The district has issued debt or incurred obligations for capital outlay in an
17 amount equivalent to 15 percent of the district’s local bonding capacity, including
18 indebtedness that is repaid from property taxes, parcel taxes, the district’s general
19 fund, special taxes levied pursuant to Section 4 of Article XIII A of the California
20 Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with
21 Section 53311) of Division 2 of Title 5 that are approved by a vote of registered
22 voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section
23 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to
24 November 4, 1998, and revenues received pursuant to the Community
25 Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of
26 the Health and Safety Code). Indebtedness or other obligation to finance school
27 facilities to be owned, leased, or used by the district, that is incurred by another
28 public agency, shall be counted for the purpose of calculating whether the district
29 has met the debt percentage requirement contained herein.

30 (ii) The district has issued debt or incurred obligations for capital outlay in an
31 amount equivalent to 30 percent of the district’s local bonding capacity, including
32 indebtedness that is repaid from property taxes, parcel taxes, the district’s general
33 fund, special taxes levied pursuant to Section 4 of Article XIII A of the California
34 Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with
35 Section 53311) of Division 2 of Title 5 that are approved by a vote of registered
36 voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section
37 53311) of Division 2 of Title 5 that are approved by a vote of landowners after
38 November 4, 1998, and revenues received pursuant to the Community
39 Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of
40 the Health and Safety Code). Indebtedness or other obligation to finance school
41 facilities to be owned, leased, or used by the district, that is incurred by another
42 public agency, shall be counted for the purpose of calculating whether the district
43 has met the debt percentage requirement contained herein.

1 (D) At least 20 percent of the teaching stations within the district are relocatable
2 classrooms.

3 (c) The maximum square foot fee, charge, dedication, or other requirement
4 authorized by this section that may be collected in accordance with Chapter 6
5 (commencing with Section 17620) of Part 10.5 of the Education Code shall be
6 calculated by a governing board of a school district, as follows:

7 (1) The number of unhoused pupils identified in the school facilities needs
8 analysis shall be multiplied by the appropriate amounts provided in subdivision (a)
9 of Section 17072.10. This sum shall be added to the site acquisition and
10 development cost determined pursuant to subdivision (h).

11 (2) The full amount of local funds the governing board has dedicated to facilities
12 necessitated by new construction shall be subtracted from the amount determined
13 pursuant to paragraph (1). Local funds include fees, charges, dedications, or other
14 requirements imposed on commercial or industrial construction.

15 (3) The resulting amount determined pursuant to paragraph (2) shall be divided
16 by the projected total square footage of assessable space of residential units
17 anticipated to be constructed during the next five-year period in the school district
18 or the city and county in which the school district is located. The estimate of the
19 projected total square footage shall be based on information available from the city
20 or county within which the residential units are anticipated to be constructed or a
21 market report prepared by an independent third party.

22 (d) A school district that has a common territorial jurisdiction with a district that
23 imposes the fee, charge, dedication, or other requirement up to the amount
24 calculated pursuant to this section or Section 65995.7, may not impose a fee,
25 charge, dedication, or other requirement on residential construction that exceeds
26 the limit set forth in subdivision (b) of Section 65995 less the portion of that
27 amount it would be required to share pursuant to Section 17623 of the Education
28 Code, unless that district is eligible to impose the fee, charge, dedication, or other
29 requirement up to the amount calculated pursuant to this section or Section
30 65995.7.

31 (e) Nothing in this section is intended to limit or discourage the joint use of
32 school facilities or to limit the ability of a school district to construct school
33 facilities that exceed the amount of funds authorized by Section 17620 of the
34 Education Code and provided by the state grant program, if the additional costs are
35 funded solely by local revenue sources other than fees, charges, dedications, or
36 other requirements imposed on new construction.

37 (f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of
38 the Education Code, a fee, charge, dedication, or other requirement authorized
39 under this section and Section 65995.7 shall be expended solely on the school
40 facilities identified in the needs analysis as being attributable to projected
41 enrollment growth from the construction of new residential units. This subdivision
42 does not preclude the expenditure of a fee, charge, dedication, or other
43 requirement, authorized pursuant to subparagraph (C) of paragraph (1) of

1 subdivision (a) of Section 17620, on school facilities identified in the needs
2 analysis as necessary due to projected enrollment growth attributable to the new
3 residential units.

4 (g) “Residential units” and “residences” as used in this section and in Sections
5 65995.6 and 65995.7 means the development of single-family detached housing
6 units, single-family attached housing units, manufactured homes and
7 mobilehomes, as defined in subdivision (f) of Section 17625 of the Education
8 Code, condominiums, and multifamily housing units, including apartments,
9 residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519
10 of the Health and Safety Code, and stock cooperatives, as defined in Section ~~1351~~
11 4190 of the Civil Code.

12 (h) Site acquisition costs shall not exceed half of the amount determined by
13 multiplying the land acreage determined to be necessary under the guidelines of
14 the State Department of Education, as published in the “School Site Analysis and
15 Development Handbook,” as that handbook read as of January 1, 1998, by the
16 estimated cost determined pursuant to Section 17072.12 of the Education Code.
17 Site development costs shall not exceed the estimated amount that would be
18 funded by the State Allocation Board pursuant to its regulations governing grants
19 for site development costs.

20 **Comment.** Subdivision (g) of Section 65995.5 is amended to correct an obsolete reference to
21 former Civil Code Section 1351.

22 **Gov’t Code § 66411 (amended). Local control of common interest development and**
23 **subdivision**

24 SEC. ____. Section 66411 of the Government Code is amended to read:

25 66411. Regulation and control of the design and improvement of subdivisions
26 are vested in the legislative bodies of local agencies. Each local agency shall, by
27 ordinance, regulate and control the initial design and improvement of common
28 interest developments as defined in Section ~~1351~~ 4100 of the Civil Code and
29 subdivisions for which this division requires a tentative and final or parcel map. In
30 the development, adoption, revision, and application of ~~such~~ the ordinance, the
31 local agency shall comply with the provisions of Section 65913.2. The ordinance
32 shall specifically provide for proper grading and erosion control, including the
33 prevention of sedimentation or damage to offsite property. Each local agency may
34 by ordinance regulate and control other subdivisions, provided that the regulations
35 are not more restrictive than the regulations for those subdivisions for which a
36 tentative and final or parcel map are required by this division, and provided further
37 that the regulations shall not be applied to short-term leases (terminable by either
38 party on not more than 30 days’ notice in writing) of a portion of the operating
39 right-of-way of a railroad corporation as defined by Section 230 of the Public
40 Utilities Code unless a showing is made in individual cases, under substantial
41 evidence, that public policy necessitates the application of the regulations to those
42 short-term leases in individual cases.

1 **Comment.** Section 66411 is amended to correct an obsolete reference to former Civil Code
2 Section 1351 and to make a stylistic revision.

3 **Gov't Code § 66412 (amended). Exceptions to application of division**

4 SEC. ____ . Section 66412 of the Government Code is amended to read:

5 66412. This division shall be inapplicable to any of the following:

6 (a) The financing or leasing of apartments, offices, stores, or similar space
7 within apartment buildings, industrial buildings, commercial buildings,
8 mobilehome parks, or trailer parks.

9 (b) Mineral, oil, or gas leases.

10 (c) Land dedicated for cemetery purposes under the Health and Safety Code.

11 (d) A lot line adjustment between four or fewer existing adjoining parcels,
12 where the land taken from one parcel is added to an adjoining parcel, and where a
13 greater number of parcels than originally existed is not thereby created, if the lot
14 line adjustment is approved by the local agency, or advisory agency. A local
15 agency or advisory agency shall limit its review and approval to a determination of
16 whether or not the parcels resulting from the lot line adjustment will conform to
17 the local general plan, any applicable specific plan, any applicable coastal plan,
18 and zoning and building ordinances. An advisory agency or local agency shall not
19 impose conditions or exactions on its approval of a lot line adjustment except to
20 conform to the local general plan, any applicable specific plan, any applicable
21 coastal plan, and zoning and building ordinances, to require the prepayment of real
22 property taxes prior to the approval of the lot line adjustment, or to facilitate the
23 relocation of existing utilities, infrastructure, or easements. No tentative map,
24 parcel map, or final map shall be required as a condition to the approval of a lot
25 line adjustment. The lot line adjustment shall be reflected in a deed, which shall be
26 recorded. No record of survey shall be required for a lot line adjustment unless
27 required by Section 8762 of the Business and Professions Code.

28 (e) Boundary line or exchange agreements to which the State Lands
29 Commission or a local agency holding a trust grant of tide and submerged lands is
30 a party.

31 (f) Any separate assessment under Section 2188.7 of the Revenue and Taxation
32 Code.

33 (g) Unless a parcel or final map was approved by the legislative body of a local
34 agency, the conversion of a community apartment project, as defined in Section
35 ~~1351~~ 4105 of the Civil Code, to a condominium, as defined in Section 783 of the
36 Civil Code, but only if all of the following requirements are met:

37 (1) At least 75 percent of the units in the project were occupied by record
38 owners of the project on March 31, 1982.

39 (2) A final or parcel map of the project was properly recorded, if the property
40 was subdivided, as defined in Section 66424, after January 1, 1964, with all of the
41 conditions of that map remaining in effect after the conversion.

1 (3) The local agency certifies that the above requirements were satisfied if the
2 local agency, by ordinance, provides for that certification.

3 (4) Subject to compliance with ~~subdivision (e) of Section 1351~~ Section 6075
4 of the Civil Code, all conveyances and other documents necessary to effectuate the
5 conversion shall be executed by the required number of owners in the project as
6 specified in the bylaws or other organizational documents. If the bylaws or other
7 organizational documents do not expressly specify the number of owners
8 necessary to execute the conveyances and other documents, a majority of owners
9 in the project shall be required to execute the conveyances or other documents.
10 Conveyances and other documents executed under the foregoing provisions shall
11 be binding upon and affect the interests of all parties in the project.

12 (h) Unless a parcel or final map was approved by the legislative body of a local
13 agency, the conversion of a stock cooperative, as defined in Section ~~1351~~ 4190
14 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but
15 only if all of the following requirements are met:

16 (1) At least 51 percent of the units in the cooperative were occupied by
17 stockholders of the cooperative on January 1, 1981, or individually owned by
18 stockholders of the cooperative on January 1, 1981. As used in this paragraph, a
19 cooperative unit is “individually owned” if and only if the stockholder of that unit
20 owns or partially owns an interest in no more than one unit in the cooperative.

21 (2) No more than 25 percent of the shares of the cooperative were owned by any
22 one person, as defined in Section 17, including an incorporator or director of the
23 cooperative, on January 1, 1981.

24 (3) A person renting a unit in a cooperative shall be entitled at the time of
25 conversion to all tenant rights in state or local law, including, but not limited to,
26 rights respecting first refusal, notice, and displacement and relocation benefits.

27 (4) The local agency certifies that the above requirements were satisfied if the
28 local agency, by ordinance, provides for that certification.

29 (5) Subject to compliance with ~~subdivision (e) of Section 1351~~ Section 6075
30 of the Civil Code, all conveyances and other documents necessary to effectuate the
31 conversion shall be executed by the required number of owners in the cooperative
32 as specified in the bylaws or other organizational documents. If the bylaws or
33 other organizational documents do not expressly specify the number of owners
34 necessary to execute the conveyances and other documents, a majority of owners
35 in the cooperative shall be required to execute the conveyances or other
36 documents. Conveyances and other documents executed under the foregoing
37 provisions shall be binding upon and affect the interests of all parties in the
38 cooperative.

39 (i) The leasing of, or the granting of an easement to, a parcel of land, or any
40 portion or portions thereof, in conjunction with the financing, erection, and sale or
41 lease of a windpowered electrical generation device on the land, if the project is
42 subject to discretionary action by the advisory agency or legislative body.

1 (j) The leasing or licensing of a portion of a parcel, or the granting of an
2 easement, use permit, or similar right on a portion of a parcel, to a telephone
3 corporation as defined in Section 234 of the Public Utilities Code, exclusively for
4 the placement and operation of cellular radio transmission facilities, including, but
5 not limited to, antennae support structures, microwave dishes, structures to house
6 cellular communications transmission equipment, power sources, and other
7 equipment incidental to the transmission of cellular communications, if the project
8 is subject to discretionary action by the advisory agency or legislative body.

9 (k) Leases of agricultural land for agricultural purposes. As used in this
10 subdivision, “agricultural purposes” means the cultivation of food or fiber, or the
11 grazing or pasturing of livestock.

12 **Comment.** Subdivisions (g) and (h) of Section 66412 are amended to correct obsolete
13 references to former Civil Code Section 1351.

14 **Gov’t Code § 66424 (amended). Subdivision**

15 SEC. _____. Section 66424 of the Government Code is amended to read:

16 66424. “Subdivision” means the division, by any subdivider, of any unit or units
17 of improved or unimproved land, or any portion thereof, shown on the latest
18 equalized county assessment roll as a unit or as contiguous units, for the purpose
19 of sale, lease or financing, whether immediate or future. Property shall be
20 considered as contiguous units, even if it is separated by roads, streets, utility
21 easement or railroad rights-of-way. “Subdivision” includes a condominium
22 project, as defined in ~~subdivision (f) of Section 1351~~ Section 4125 of the Civil
23 Code, a community apartment project, as defined in ~~subdivision (d) of Section~~
24 ~~1351~~ Section 4105 of the Civil Code, or the conversion of five or more existing
25 dwelling units to a stock cooperative, as defined in ~~subdivision (m) of Section~~
26 ~~1351~~ Section 4190 of the Civil Code.

27 **Comment.** Section 66424 is amended to correct obsolete references to former Civil Code
28 Sections 1351(f), 1351(d), and 1351(m).

29 **Gov’t Code § 66427 (amended). Project map**

30 SEC. _____. Section 66427 of the Government Code is amended to read:

31 66427. (a) A map of a condominium project, a community apartment project, or
32 of the conversion of five or more existing dwelling units to a stock cooperative
33 project need not show the buildings or the manner in which the buildings or the
34 airspace above the property shown on the map are to be divided, nor shall the
35 governing body have the right to refuse approval of a parcel, tentative, or final
36 map of the project on account of the design or the location of buildings on the
37 property shown on the map that are not violative of local ordinances or on account
38 of the manner in which airspace is to be divided in conveying the condominium.

39 (b) A map need not include a condominium plan or plans, as defined in
40 ~~subdivision (e) of Section 1351~~ Section 4120 of the Civil Code, and the governing

1 body may not refuse approval of a parcel, tentative, or final map of the project on
2 account of the absence of a condominium plan.

3 (c) Fees and lot design requirements shall be computed and imposed with
4 respect to those maps on the basis of parcels or lots of the surface of the land
5 shown thereon as included in the project.

6 (d) Nothing herein shall be deemed to limit the power of the legislative body to
7 regulate the design or location of buildings in a project by or pursuant to local
8 ordinances.

9 (e) If the governing body has approved a parcel map or final map for the
10 establishment of condominiums on property pursuant to the requirements of this
11 division, the separation of a three-dimensional portion or portions of the property
12 from the remainder of the property or the division of that three-dimensional
13 portion or portions into condominiums shall not constitute a further subdivision as
14 defined in Section 66424, provided each of the following conditions has been
15 satisfied:

16 (1) The total number of condominiums established is not increased above the
17 number authorized by the local agency in approving the parcel map or final map.

18 (2) A perpetual estate or an estate for years in the remainder of the property is
19 held by the condominium owners in undivided interests in common, or by an
20 association as defined in ~~subdivision (a) of Section 1351~~ Section 4080 of the Civil
21 Code, and the duration of the estate in the remainder of the property is the same as
22 the duration of the estate in the condominiums.

23 (3) The three-dimensional portion or portions of property are described on a
24 condominium plan or plans, as defined in ~~subdivision (e) of Section 1351~~ Section
25 4120 of the Civil Code.

26 **Comment.** Subdivision (b) of Section 66427 is amended to correct an obsolete reference to
27 former Civil Code Section 1351(e).

28 Subdivision (e) of Section 66427 is amended to correct obsolete references to former Civil
29 Code Section 1351.

30 **Gov't Code § 66452.10 (amended). Conversion of stock cooperative or community**
31 **apartment project into condominium**

32 SEC. _____. Section 66452.10 of the Government Code is amended to read:

33 66452.10. A stock cooperative, as defined in Section 11003.2 of the Business
34 and Professions Code, or a community apartment project, as defined in Section
35 11004 of the Business and Professions Code, shall not be converted to a
36 condominium, as defined in Section 783 of the Civil Code, unless the required
37 number of (1) owners and (2) trustees or beneficiaries of each recorded deed of
38 trust and mortgagees of each recorded mortgage in the cooperative or project, as
39 specified in the bylaws, or other organizational documents, have voted in favor of
40 the conversion. If the bylaws or other organizational documents do not expressly
41 specify the number of votes required to approve the conversion, a majority vote of
42 the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and

1 mortgagees of each recorded mortgage in the cooperative or project shall be
2 required. Upon approval of the conversion as set forth above and in compliance
3 with ~~subdivision (e) of Section 1351~~ Section 6075 of the Civil Code, all
4 conveyances and other documents necessary to effectuate the conversion shall be
5 executed by the required number of owners in the cooperative or project as
6 specified in the bylaws or other organizational documents. If the bylaws or other
7 organizational documents do not expressly specify the number of owners
8 necessary to execute the conveyances or other documents, a majority of owners in
9 the cooperative or project shall be required to execute the conveyances and other
10 documents. Conveyances and other documents executed under the foregoing
11 provisions shall be binding upon and affect the interests of all parties in the
12 cooperative or project. The provisions of Section 66499.31 shall not apply to a
13 violation of this section.

14 **Comment.** Section 66452.10 is amended to correct an obsolete reference to former Civil Code
15 Section 1351(e).

16 **Gov't Code § 66475.2 (amended). Local transit facility**

17 SEC. _____. Section 66475.2 of the Government Code is amended to read:

18 66475.2. (a) There may be imposed by local ordinance a requirement of a
19 dedication or an irrevocable offer of dedication of land within the subdivision for
20 local transit facilities such as bus turnouts, benches, shelters, landing pads and
21 similar items that directly benefit the residents of a subdivision. The irrevocable
22 offers may be terminated as provided in subdivisions (c) and (d) of Section
23 66477.2.

24 (b) Only the payment of fees in lieu of the dedication of land may be required in
25 subdivisions that consist of the subdivision of airspace in existing buildings into
26 condominium projects, stock cooperatives, or community apartment projects, as
27 those terms are defined in ~~Section 1351~~ Sections 4125, 4190, and 4105 of the Civil
28 Code.

29 **Comment.** Subdivision (b) of Section 66475.2 is amended to correct an obsolete reference to
30 former Civil Code Section 1351.

31 **Gov't Code § 66477 (amended). Park and recreational fee under Quimby Act**

32 SEC. _____. Section 66477 of the Government Code is amended to read:

33 66477. (a) The legislative body of a city or county may, by ordinance, require
34 the dedication of land or impose a requirement of the payment of fees in lieu
35 thereof, or a combination of both, for park or recreational purposes as a condition
36 to the approval of a tentative map or parcel map, if all of the following
37 requirements are met:

38 (1) The ordinance has been in effect for a period of 30 days prior to the filing of
39 the tentative map of the subdivision or parcel map.

40 (2) The ordinance includes definite standards for determining the proportion of a
41 subdivision to be dedicated and the amount of any fee to be paid in lieu thereof.

1 The amount of land dedicated or fees paid shall be based upon the residential
2 density, which shall be determined on the basis of the approved or conditionally
3 approved tentative map or parcel map and the average number of persons per
4 household. There shall be a rebuttable presumption that the average number of
5 persons per household by units in a structure is the same as that disclosed by the
6 most recent available federal census or a census taken pursuant to Chapter 17
7 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the
8 dedication of land, or the payment of fees, or both, shall not exceed the
9 proportionate amount necessary to provide three acres of park area per 1,000
10 persons residing within a subdivision subject to this section, unless the amount of
11 existing neighborhood and community park area, as calculated pursuant to this
12 subdivision, exceeds that limit, in which case the legislative body may adopt the
13 calculated amount as a higher standard not to exceed five acres per 1,000 persons
14 residing within a subdivision subject to this section.

15 (A) The park area per 1,000 members of the population of the city, county, or
16 local public agency shall be derived from the ratio that the amount of
17 neighborhood and community park acreage bears to the total population of the
18 city, county, or local public agency as shown in the most recent available federal
19 census. The amount of neighborhood and community park acreage shall be the
20 actual acreage of existing neighborhood and community parks of the city, county,
21 or local public agency as shown on its records, plans, recreational element, maps,
22 or reports as of the date of the most recent available federal census.

23 (B) For cities incorporated after the date of the most recent available federal
24 census, the park area per 1,000 members of the population of the city shall be
25 derived from the ratio that the amount of neighborhood and community park
26 acreage shown on the records, maps, or reports of the county in which the newly
27 incorporated city is located bears to the total population of the new city as
28 determined pursuant to Section 11005 of the Revenue and Taxation Code. In
29 making any subsequent calculations pursuant to this section, the county in which
30 the newly incorporated city is located shall not include the figures pertaining to the
31 new city which were calculated pursuant to this paragraph. Fees shall be payable
32 at the time of the recording of the final map or parcel map or at a later time as may
33 be prescribed by local ordinance.

34 (3) The land, fees, or combination thereof are to be used only for the purpose of
35 developing new or rehabilitating existing neighborhood or community park or
36 recreational facilities to serve the subdivision.

37 (4) The legislative body has adopted a general plan or specific plan containing
38 policies and standards for parks and recreation facilities, and the park and
39 recreational facilities are in accordance with definite principles and standards.

40 (5) The amount and location of land to be dedicated or the fees to be paid shall
41 bear a reasonable relationship to the use of the park and recreational facilities by
42 the future inhabitants of the subdivision.

1 (6) The city, county, or other local public agency to which the land or fees are
2 conveyed or paid shall develop a schedule specifying how, when, and where it will
3 use the land or fees, or both, to develop park or recreational facilities to serve the
4 residents of the subdivision. Any fees collected under the ordinance shall be
5 committed within five years after the payment of the fees or the issuance of
6 building permits on one-half of the lots created by the subdivision, whichever
7 occurs later. If the fees are not committed, they, without any deductions, shall be
8 distributed and paid to the then record owners of the subdivision in the same
9 proportion that the size of their lot bears to the total area of all lots within the
10 subdivision.

11 (7) Only the payment of fees may be required in subdivisions containing 50
12 parcels or less, except that when a condominium project, stock cooperative, or
13 community apartment project, as those terms are defined in ~~Section 1351~~ Sections
14 4125, 4190, and 4105 of the Civil Code, exceeds 50 dwelling units, dedication of
15 land may be required notwithstanding that the number of parcels may be less than
16 50.

17 (8) Subdivisions containing less than five parcels and not used for residential
18 purposes shall be exempted from the requirements of this section. However, in that
19 event, a condition may be placed on the approval of a parcel map that if a building
20 permit is requested for construction of a residential structure or structures on one
21 or more of the parcels within four years, the fee may be required to be paid by the
22 owner of each parcel as a condition of the issuance of the permit.

23 (9) If the subdivider provides park and recreational improvements to the
24 dedicated land, the value of the improvements together with any equipment
25 located thereon shall be a credit against the payment of fees or dedication of land
26 required by the ordinance.

27 (b) Land or fees required under this section shall be conveyed or paid directly to
28 the local public agency ~~which~~ that provides park and recreational services on a
29 communitywide level and to the area within which the proposed development will
30 be located, if that agency elects to accept the land or fee. The local agency
31 accepting the land or funds shall develop the land or use the funds in the manner
32 provided in this section.

33 (c) If park and recreational services and facilities are provided by a public
34 agency other than a city or a county, the amount and location of land to be
35 dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be
36 jointly determined by the city or county having jurisdiction and that other public
37 agency.

38 (d) This section does not apply to commercial or industrial subdivisions or to
39 condominium projects or stock cooperatives that consist of the subdivision of
40 airspace in an existing apartment building that is more than five years old when no
41 new dwelling units are added.

42 (e) Common interest developments, as defined in ~~Section 1351~~ 4100 of the Civil
43 Code, shall be eligible to receive a credit, as determined by the legislative body,

1 against the amount of land required to be dedicated, or the amount of the fee
2 imposed, pursuant to this section, for the value of private open space within the
3 development ~~which~~ that is usable for active recreational uses.

4 (f) Park and recreation purposes shall include land and facilities for the activity
5 of “recreational community gardening,” which activity consists of the cultivation
6 by persons other than, or in addition to, the owner of the land, of plant material not
7 for sale.

8 (g) This section shall be known and may be cited as the Quimby Act.

9 **Comment.** Subdivisions (a) and (e) of Section 66477 are amended to correct obsolete
10 references to former Civil Code Section 1351. Section 66477 is also amended to make stylistic
11 revisions.

12 **Health & Safety Code § 1597.531 (amended). Liability insurance or bond for family day**
13 **care home**

14 SEC. _____. Section 1597.531 of the Health and Safety Code is amended to read:

15 1597.531. (a) All family day care homes for children shall maintain in force
16 either liability insurance covering injury to clients and guests in the amount of at
17 least one hundred thousand dollars (\$100,000) per occurrence and three hundred
18 thousand dollars (\$300,000) in the total annual aggregate, sustained on account of
19 the negligence of the licensee or its employees, or a bond in the aggregate amount
20 of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or
21 the bond, the family day care home may maintain a file of affidavits signed by
22 each parent with a child enrolled in the home ~~which~~ that meets the requirements of
23 this subdivision. The affidavit shall state that the parent has been informed that the
24 family day care home does not carry liability insurance or a bond according to
25 standards established by the state. If the provider does not own the premises used
26 as the family day care home, the affidavit shall also state that the parent has been
27 informed that the liability insurance, if any, of the owner of the property or the
28 homeowners’ association, as appropriate, may not provide coverage for losses
29 arising out of, or in connection with, the operation of the family day care home,
30 except to the extent that the losses are caused by, or result from, an action or
31 omission by the owner of the property or the homeowners’ association, for which
32 the owner of the property or the homeowners’ association would otherwise be
33 liable under the law. These affidavits shall be on a form provided by the
34 department and shall be reviewed at each licensing inspection.

35 (b) A family day care home that maintains liability insurance or a bond pursuant
36 to this section, and that provides care in premises that are rented or leased or uses
37 premises ~~which~~ that share common space governed by a homeowners’ association,
38 shall name the owner of the property or the homeowners’ association, as
39 appropriate, as an additional insured party on the liability insurance policy or bond
40 if all of the following conditions are met:

41 (1) The owner of the property or governing body of the homeowners’
42 association makes a written request to be added as an additional insured party.

1 (2) The addition of the owner of the property or the homeowners' association
2 does not result in cancellation or nonrenewal of the insurance policy or bond
3 carried by the family day care home.

4 (3) Any additional premium assessed for this coverage is paid by the owner of
5 the property or the homeowners' association.

6 (c) As used in this section, "homeowners' association" means an association of a
7 common interest development, as defined in Section ~~4351~~ 4100 of the Civil Code.

8 **Comment.** Section 1597.531 is amended to correct an obsolete reference to former Civil Code
9 Section 1351 and to make stylistic revisions.

10 **Health & Safety Code § 13132.7 (amended). Fire retardant roof covering**

11 SEC. _____. Section 13132.7 of the Health and Safety Code is amended to read:

12 13132.7. (a) Within a very high fire hazard severity zone designated by the
13 Director of Forestry and Fire Protection pursuant to Article 9 (commencing with
14 Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code
15 and within a very high hazard severity zone designated by a local agency pursuant
16 to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5
17 of the Government Code, the entire roof covering of every existing structure
18 where more than 50 percent of the total roof area is replaced within any one-year
19 period, every new structure, and any roof covering applied in the alteration, repair,
20 or replacement of the roof of every existing structure, shall be a fire retardant roof
21 covering that is at least class B as defined in the Uniform Building Code, as
22 adopted and amended by the State Building Standards Commission.

23 (b) In all other areas, the entire roof covering of every existing structure where
24 more than 50 percent of the total roof area is replaced within any one-year period,
25 every new structure, and any roof covering applied in the alteration, repair, or
26 replacement of the roof of every existing structure, shall be a fire retardant roof
27 covering that is at least class C as defined in the Uniform Building Code, as
28 adopted and amended by the State Building Standards Commission.

29 (c) Notwithstanding subdivision (b), within state responsibility areas classified
30 by the State Board of Forestry and Fire Protection pursuant to Article 3
31 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public
32 Resources Code, except for those state responsibility areas designated as moderate
33 fire hazard responsibility zones, the entire roof covering of every existing structure
34 where more than 50 percent of the total roof area is replaced within any one-year
35 period, every new structure, and any roof covering applied in the alteration, repair,
36 or replacement of the roof of every existing structure, shall be a fire retardant roof
37 covering that is at least class B as defined in the Uniform Building Code, as
38 adopted and amended by the State Building Standards Commission.

39 (d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard
40 severity zones designated by the Director of Forestry and Fire Protection pursuant
41 to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4
42 of the Public Resources Code or by a local agency pursuant to Chapter 6.8

1 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the
2 Government Code, the entire roof covering of every existing structure where more
3 than 50 percent of the total roof area is replaced within any one-year period, every
4 new structure, and any roof covering applied in the alteration, repair, or
5 replacement of the roof of every existing structure, shall be a fire retardant roof
6 covering that is at least class A as defined in the Uniform Building Code, as
7 adopted and amended by the State Building Standards Commission.

8 (2) Paragraph (1) does not apply to any jurisdiction containing a very high fire
9 hazard severity zone if the jurisdiction fulfills both of the following requirements:

10 (A) Adopts the model ordinance approved by the State Fire Marshal pursuant to
11 Section 51189 of the Government Code or an ordinance that substantially
12 conforms to the model ordinance of the State Fire Marshal.

13 (B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

14 (e) The State Building Standards Commission shall incorporate the requirements
15 set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to
16 the California Building Standards Code in accordance with Chapter 4
17 (commencing with Section 18935) of Part 2.5 of Division 13.

18 (f) Nothing in this section shall limit the authority of a city, county, city and
19 county, or fire protection district in establishing more restrictive requirements, in
20 accordance with current law, than those specified in this section.

21 (g) This section shall not affect the validity of an ordinance, adopted prior to the
22 effective date for the relevant roofing standard specified in subdivisions (a) and
23 (b), by a city, county, city and county, or fire protection district, unless the
24 ordinance mandates a standard that is less stringent than the standards set forth in
25 subdivision (a), in which case the ordinance shall not be valid on or after the
26 effective date for the relevant roofing standard specified in subdivisions (a) and
27 (b).

28 (h) Any qualified historical building or structure as defined in Section 18955
29 may, on a case-by-case basis, utilize alternative roof constructions as provided by
30 the State Historical Building Code.

31 (i) The installer of the roof covering shall provide certification of the roof
32 covering classification, as provided by the manufacturer or supplier, to the
33 building owner and, when requested, to the agency responsible for enforcement of
34 this part. The installer shall also install the roof covering in accordance with the
35 manufacturer's listing.

36 (j) No wood roof covering materials shall be sold or applied in this state unless
37 both of the following conditions are met:

38 (1) The materials have been approved and listed by the State Fire Marshal as
39 complying with the requirements of this section.

40 (2) The materials have passed at least five years of the 10-year natural
41 weathering test. The 10-year natural weathering test required by this subdivision
42 shall be conducted in accordance with standard 15-2 of the 1994 edition of the
43 Uniform Building Code at a testing facility recognized by the State Fire Marshal.

1 (k) The Insurance Commissioner shall accept the use of fire retardant wood roof
2 covering material that complies with the requirements of this section, used in the
3 partial repair or replacement of nonfire retardant wood roof covering material, as
4 complying with the requirement in Section 2695.9 of Title 10 of the California
5 Code of Regulations relative to matching replacement items in quality, color, and
6 size.

7 (l) No common interest development, as defined in Section ~~1351~~ 4100 of the
8 Civil Code, may require a homeowner to install or repair a roof in a manner that is
9 in violation of this section. The governing documents, as defined in Section ~~1351~~
10 4150 of the Civil Code, of a common interest development within a very high fire
11 severity zone shall allow for at least one type of fire retardant roof covering
12 material that meets the requirements of this section.

13 **Comment.** Subdivision (l) of Section 13132.7 is amended to correct obsolete references to
14 former Civil Code Section 1351.

15 **Health & Safety Code § 19850 (amended). Filing of building plan**

16 SEC. _____. Section 19850 of the Health and Safety Code is amended to read:

17 19850. The building department of every city or county shall maintain an
18 official copy, which may be on microfilm or other type of photographic copy, of
19 the plans of every building, during the life of the building, for which the
20 department issued a building permit.

21 “Building department” means the department, bureau, or officer charged with
22 the enforcement of laws or ordinances regulating the erection, construction, or
23 alteration of buildings.

24 Except for plans of a common interest development as defined in Section ~~1351~~
25 4100 of the Civil Code, plans need not be filed for:

26 (a) Single or multiple dwellings not more than two stories and basement in
27 height.

28 (b) Garages and other structures appurtenant to buildings described under
29 subdivision (a).

30 (c) Farm or ranch buildings.

31 (d) Any one-story building where the span between bearing walls does not
32 exceed 25 feet. The exemption in this subdivision does not, however, apply to a
33 steel frame or concrete building.

34 **Comment.** Section 19850 is amended to correct an obsolete reference to former Civil Code
35 Section 1351.

36 **Health & Safety Code § 25400.22 (amended). Lien on contaminated property**

37 SEC. _____. Section 25400.22 of the Health and Safety Code is amended to read:

38 25400.22. (a) No later than 10 working days after the date when a local health
39 officer determines that property is contaminated pursuant to subdivision (b) of
40 Section 25400.20, the local health officer shall do all of the following:

1 (1) Except as provided in paragraph (2), if the property is real property, record
2 with the county recorder a lien on the property. The lien shall specify all of the
3 following:

4 (A) The name of the agency on whose behalf the lien is imposed.

5 (B) The date on which the property is determined to be contaminated.

6 (C) The legal description of the real property and the assessor's parcel number.

7 (D) The record owner of the property.

8 (E) The amount of the lien, which shall be the greater of two hundred dollars
9 (\$200) or the costs incurred by the local health officer in compliance with this
10 chapter, including, but not limited to, the cost of inspection performed pursuant to
11 Section 25400.19 and the county recorder's fee.

12 (2)(A) If the property is a mobilehome or manufactured home specified in
13 paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record
14 with a restraint on the mobilehome, or manufactured home with the Department of
15 Housing and Community Development, in the form prescribed by that department,
16 providing notice of the determination that the property is contaminated.

17 (B) If the property is a recreational vehicle specified in paragraph (2) of
18 subdivision (t) of Section 25400.11, perfect by filing with the Department of
19 Motor Vehicles a vehicle license stop on the recreational vehicle in the form
20 prescribed by that department, providing notice of the determination that the
21 property is contaminated.

22 (C) If the property is a mobilehome or manufactured home, not subject to
23 paragraph (2) of subdivision (t) of Section 25400.11, is located on real property,
24 and is not attached to that real property, the local health officer shall record a lien
25 for the real property with the county recorder, and the Department of Housing and
26 Community Development shall amend the permanent record with a restraint for
27 the mobilehome or manufactured home, in the form and with the contents
28 prescribed by that department.

29 (3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall
30 specify all of the following:

31 (A) The name of the agency on whose behalf the lien, restraint, or vehicle
32 license stop is imposed.

33 (B) The date on which the property is determined to be contaminated.

34 (C) The legal description of the real property and the assessor's parcel number,
35 and the mailing and street address or space number of the manufactured home,
36 mobilehome, or recreational vehicle or the vehicle identification number of the
37 recreational vehicle, if applicable.

38 (D) The registered owner of the mobilehome, manufactured home, or
39 recreational vehicle, if applicable, or the name of the owner of the real property as
40 indicated in the official county records.

41 (E) The amount of the lien, if applicable, which shall be the greater of two
42 hundred dollars (\$200) or the costs incurred by the local health officer in
43 compliance with this chapter, including, but not limited to, the cost of inspection

1 performed pursuant to Section 25400.19 and the fee charged by the Department of
2 Housing and Community Development and the Department of Motor Vehicles
3 pursuant to paragraph (2) of subdivision (b).

4 (F) Other information required by the county recorder for the lien, the
5 Department of Housing and Community Development for the restraint, or the
6 Department of Motor Vehicles for the vehicle license stop.

7 (4) Issue to persons specified in subdivisions (d), (e), and (f) an order
8 prohibiting the use or occupancy of the contaminated portions of the property.

9 (b)(1) The county recorder's fees for recording and indexing documents
10 provided for in this section shall be in the amount specified in Article 5
11 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the
12 Government Code.

13 (2) The Department of Housing and Community Development and the
14 Department of Motor Vehicles may charge a fee to cover its administrative costs
15 for recording and indexing documents provided for in paragraph (2) of subdivision
16 (a).

17 (c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect,
18 and priority of a judgment lien. The restraint amending the permanent record
19 pursuant to subdivision (a) shall be displayed on any manufactured home or
20 mobilehome title search until the restraint is released. The vehicle license stop
21 shall remain in effect until it is released.

22 (2) The local health officer shall not authorize the release of a lien, restraint, or
23 vehicle license stop made pursuant to subdivision (a), until one of the following
24 occurs:

25 (A) The property owner satisfies the real property lien, or the contamination in
26 the mobilehome, manufactured home, or recreational vehicle is abated to the
27 satisfaction of the local health officer consistent with the notice in the restraint, or
28 vehicle license stop and the local health officer issues a release pursuant to Section
29 25400.27.

30 (B) For a manufactured home or mobilehome, the local health officer determines
31 that the unit will be destroyed or permanently salvaged. For the purposes of this
32 paragraph, the unit shall not be reregistered after this determination is made unless
33 the local health officer issues a release pursuant to Section 25400.27.

34 (C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in
35 a foreclosure sale.

36 (d) Except as otherwise specified in this section, an order issued pursuant to this
37 section shall be served, either personally or by certified mail, return receipt
38 requested in the following manner:

39 (1) For real property, to all known occupants of the property and to all persons
40 who have an interest in the property, as contained in the records of the recorder's
41 office of the county in which the property is located.

42 (2) In the case of a mobilehome or manufactured home, the order shall be served
43 to the legal owner, as defined in Section 18005.8, each junior lienholder, as

1 defined in Section 18005.3, and the registered owner, as defined in Section
2 18009.5.

3 (3) In the case of a recreational vehicle, the order shall be served on the legal
4 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
5 defined in Section 505 of the Vehicle Code.

6 (e) If the whereabouts of the person described in subdivision (d) are unknown
7 and cannot be ascertained by the local health officer, in the exercise of reasonable
8 diligence, and the local health officer makes an affidavit to that effect, the local
9 health officer shall serve the order by personal service or by mailing a copy of the
10 order by certified mail, postage prepaid, return receipt requested, as follows:

11 (1) The order related to real property shall be served to each person at the
12 address appearing on the last equalized tax assessment roll of the county where the
13 property is located, and to all occupants of the affected unit.

14 (2) In the case of a mobilehome or manufactured home, the order shall be served
15 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
16 defined in Section 18005.3, and the registered owner, as defined in Section
17 18009.5, at the address appearing on the permanent record and all occupants of the
18 affected unit at the mobilehome park space.

19 (3) In the case of a recreational vehicle, the order shall be served on the legal
20 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
21 defined in Section 505 of the Vehicle Code, at the address appearing on the
22 permanent record and all occupants of the affected vehicle at the mobilehome park
23 or special occupancy park space.

24 (f)(1) The local health officer shall also mail a copy of the order required by this
25 section to the address of each person or party having a recorded right, title, estate,
26 lien, or interest in the property and to the association of a common interest
27 development, as defined in Section ~~1351~~ 4100 of the Civil Code.

28 (2) In addition to the requirements of paragraph (1), if the affected property is a
29 mobilehome, manufactured home, or recreational vehicle, specified in paragraph
30 (2) of subdivision (t) of Section 25400.11, the order issued by the local health
31 officer shall also be served, either personally or by certified mail, return receipt
32 requested, to the owner of the mobilehome park or special occupancy park.

33 (g) The order issued pursuant to this section shall include all of the following
34 information:

35 (1) A description of the property.

36 (2) The parcel identification number, address, or space number, if applicable.

37 (3) The vehicle identification number, if applicable.

38 (4) A description of the local health officer's intended course of action.

39 (5) A specification of the penalties for noncompliance with the order.

40 (6) A prohibition on the use of all or portions of the property that are
41 contaminated.

42 (7) A description of the measures the property owner is required to take to
43 decontaminate the property.

1 (8) An indication of the potential health hazards involved.

2 (9) A statement that a property owner who fails to provide a notice or disclosure
3 that is required by this chapter is subject to a civil penalty of up to five thousand
4 dollars (\$5,000).

5 (h) The local health officer shall provide a copy of the order to the local building
6 or code enforcement agency or other appropriate agency responsible for the
7 enforcement of the State Housing Law (Part 1.5 (commencing with Section
8 17910) of Division 13).

9 (i) The local health officer shall post the order in a conspicuous place on the
10 property within one working day of the date that the order is issued.

11 **Comment.** Subdivision (f) of Section 25400.22 is amended to correct an obsolete reference to
12 former Civil Code Section 1351.

13 **Health & Safety Code § 25915.2 (amended). Written notice of asbestos in construction**
14 **material**

15 SEC. _____. Section 25915.2 of the Health and Safety Code is amended to read:

16 25915.2. (a) Notice provided pursuant to this chapter shall be provided in
17 writing to each individual employee, and shall be mailed to other owners
18 designated to receive the notice pursuant to subdivision (a) of Section 25915.5,
19 within 15 days of the first receipt by the owner of information identifying the
20 presence or location of asbestos-containing construction materials in the building.
21 This notice shall be provided annually thereafter. In addition, if new information
22 regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision
23 (a) of Section 25915 has been obtained within 90 days after the notice required by
24 this subdivision is provided or any subsequent 90-day period, then a supplemental
25 notice shall be provided within 15 days of the close of that 90-day period.

26 (b) Notice provided pursuant to this chapter shall be provided to new employees
27 within 15 days of commencement of work in the building.

28 (c) Notice provided pursuant to this chapter shall be mailed to any new owner
29 designated to receive the notice pursuant to subdivision (a) of Section 25915.5
30 within 15 days of the effective date of the agreement under which a person
31 becomes a new owner.

32 (d) Subdivisions (a) and (c) shall not be construed to require owners of a
33 building or part of a building within a residential common interest development to
34 mail written notification to other owners of a building or part of a building within
35 the residential common interest development, if all the following conditions are
36 met:

37 (1) The association conspicuously posts, in each building or part of a building
38 known to contain asbestos-containing materials, a large sign in a prominent
39 location that fully informs persons entering each building or part of a building
40 within the common interest development that the association knows the building
41 contains asbestos-containing materials.

1 The sign shall also inform persons of the location where further information, as
2 required by this chapter, is available about the asbestos-containing materials
3 known to be located in the building.

4 (2) The owners or association disclose, as soon as practicable before the transfer
5 of title of a separate interest in the common interest development, to a transferee
6 the existence of asbestos-containing material in a building or part of a building
7 within the common interest development.

8 Failure to comply with this section shall not invalidate the transfer of title of real
9 property. This paragraph shall only apply to transfers of title of separate interests
10 in the common interest development of which the owners have knowledge. As
11 used in this section, “association” and “common interest development” are defined
12 in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

13 (e) If a person contracting with an owner receives notice pursuant to this
14 chapter, that contractor shall provide a copy of the notice to his or her employees
15 or contractors working within the building.

16 (f) If the asbestos-containing construction material in the building is limited to
17 an area or areas within the building that meet all the following criteria:

18 (1) Are unique and physically defined.

19 (2) Contain asbestos-containing construction materials in structural, mechanical,
20 or building materials ~~which~~ that are not replicated throughout the building.

21 (3) Are not connected to other areas through a common ventilation system; then,
22 an owner required to give notice to his or her employees pursuant to subdivision
23 (a) of Section 25915 or 25915.1 may provide that notice only to the employees
24 working within or entering that area or those areas of the building meeting the
25 conditions above.

26 (g) If the asbestos-containing construction material in the building is limited to
27 an area or areas within the building that meet all the following criteria:

28 (1) Are accessed only by building maintenance employees or contractors and are
29 not accessed by tenants or employees in the building, other than on an incidental
30 basis.

31 (2) Contain asbestos-containing construction materials in structural, mechanical,
32 or building materials ~~which~~ that are not replicated in areas of the building ~~which~~
33 that are accessed by tenants and employees.

34 (3) The owner knows that no asbestos fibers are being released or have the
35 reasonable possibility to be released from the material; then, as to that asbestos-
36 containing construction material, an owner required to give notice to his or her
37 employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may
38 provide that notice only to its building maintenance employees and contractors
39 who have access to that area or those areas of the building meeting the conditions
40 above.

41 (h) In those areas of a building where the asbestos-containing construction
42 material is composed only of asbestos fibers ~~which~~ that are completely
43 encapsulated, if the owner knows that no asbestos fibers are being released or have

1 the reasonable possibility to be released from that material in its present condition
2 and has no knowledge that other asbestos-containing material is present, then an
3 owner required to give notice pursuant to subdivision (a) of Section 25915 shall
4 provide the information required in paragraph (2) of subdivision (a) of Section
5 25915 and may substitute the following notice for the requirements of paragraphs
6 (1), (3), (4), and (5) of subdivision (a) of Section 25915:

7 (1) The existence of, conclusions from, and a description or list of the contents
8 of, that portion of any survey conducted to determine the existence and location of
9 asbestos-containing construction materials within the building that refers to the
10 asbestos materials described in this subdivision, and information describing when
11 and where the results of the survey are available pursuant to Section 25917.

12 (2) Information to convey that moving, drilling, boring, or otherwise disturbing
13 the asbestos-containing construction material identified may present a health risk
14 and, consequently, should not be attempted by an unqualified employee. The
15 notice shall identify the appropriate person the employee is required to contact if
16 the condition of the asbestos-containing construction material deteriorates.

17 **Comment.** Subdivision (d) of Section 25915.2 is amended to correct an obsolete reference to
18 former Civil Code Section 1351.

19 Subdivisions (g) and (h) are amended to make stylistic revisions.

20 **Health & Safety Code § 25915.5 (amended). Notice to persons in privity with owner**

21 SEC. _____. Section 25915.5 of the Health and Safety Code is amended to read:

22 25915.5. (a) An owner required to give notice to employees pursuant to this
23 chapter, in addition to notifying his or her employees, shall mail, in accordance
24 with this subdivision, a copy of that notice to all other persons who are owners of
25 the building or part of the building, with whom the owner has privity of contract.
26 Receipt of a notice pursuant to this section by an owner, lessee or operator shall
27 constitute knowledge that the building contains asbestos-containing construction
28 materials for purposes of this chapter. Notice to an owner shall be delivered by
29 first-class mail addressed to the person and at the address designated for the
30 receipt of notices under the lease, rental agreement, or contract with the owner.

31 (b) The delivery of notice under this section or negligent failure to provide that
32 notice shall not constitute a breach of any covenant under the lease or rental
33 agreement, and nothing in this chapter enlarges or diminishes any rights or duties
34 respecting constructive eviction.

35 (c) No owner who, in good faith, complies with the provisions of this section
36 shall be liable to any other owner for any damages alleged to have resulted from
37 his or her compliance with the provisions of this section.

38 (d) This section shall not be construed to apply to owners of a building or part of
39 a building within a residential common interest development or association, if the
40 owners comply with the provisions of subdivision (d) of Section 25915.2. For
41 purposes of this section, “association” and “common interest development” are
42 defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

1 **Comment.** Subdivision (d) of Section 25915.5 is amended to correct an obsolete reference to
2 former Civil Code Section 1351.

3 **Health & Safety Code § 33050 (amended). Prohibition of discrimination in community**
4 **redevelopment project**

5 SEC. _____. Section 33050 of the Health and Safety Code is amended to read:

6 33050. (a) It is hereby declared to be the policy of the state that in undertaking
7 community redevelopment projects under this part there shall be no discrimination
8 because of any basis listed in subdivision (a) or (d) of Section 12955 of the
9 Government Code, as those bases are defined in Sections 12926, 12926.1,
10 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
11 Section 12955.2 of the Government Code.

12 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
13 (a) shall not be construed to apply to housing for older persons, as defined in
14 Section 12955.9 of the Government Code. With respect to familial status, nothing
15 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
16 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
17 Subdivision (d) of Section 51 and Section ~~4360~~ 5760 of the Civil Code and
18 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
19 apply to subdivision (a).

20 **Comment.** Subdivision (b) of Section 33050 is amended to correct an obsolete reference to
21 former Civil Code Section 1360.

22 **Health & Safety Code § 33435 (amended). Obligation of lessee and purchaser to refrain**
23 **from discrimination**

24 SEC. _____. Section 33435 of the Health and Safety Code is amended to read:

25 33435. (a) Agencies shall obligate lessees and purchasers of real property
26 acquired in redevelopment projects and owners of property improved as a part of a
27 redevelopment project to refrain from restricting the rental, sale, or lease of the
28 property on any basis listed in subdivision (a) or (d) of Section 12955 of the
29 Government Code, as those bases are defined in Sections 12926, 12926.1,
30 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
31 Section 12955.2 of the Government Code. All deeds, leases, or contracts for the
32 sale, lease, sublease, or other transfer of any land in a redevelopment project shall
33 contain or be subject to the nondiscrimination or nonsegregation clauses hereafter
34 prescribed.

35 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
36 (a) shall not be construed to apply to housing for older persons, as defined in
37 Section 12955.9 of the Government Code. With respect to familial status, nothing
38 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
39 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
40 Subdivision (d) of Section 51 and Section ~~4360~~ 5760 of the Civil Code and
41 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
42 apply to subdivision (a).

1 **Comment.** Subdivision (b) of Section 33435 is amended to correct an obsolete reference to
2 former Civil Code Section 1360.

3 **Health & Safety Code § 33436 (amended). Form of nondiscrimination and nonsegregation**
4 **clause**

5 SEC. _____. Section 33436 of the Health and Safety Code is amended to read:

6 33436. Express provisions shall be included in all deeds, leases, and contracts
7 that the agency proposes to enter into with respect to the sale, lease, sublease,
8 transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment
9 project in substantially the following form:

10 (a)(1) In deeds the following language shall appear -- “The grantee herein
11 covenants by and for himself or herself, his or her heirs, executors, administrators,
12 and assigns, and all persons claiming under or through them, that there shall be no
13 discrimination against or segregation of, any person or group of persons on
14 account of any basis listed in subdivision (a) or (d) of Section 12955 of the
15 Government Code, as those bases are defined in Sections 12926, 12926.1,
16 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
17 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer,
18 use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall
19 the grantee or any person claiming under or through him or her, establish or permit
20 any practice or practices of discrimination or segregation with reference to the
21 selection, location, number, use or occupancy of tenants, lessees, subtenants,
22 sublessees, or vendees in the premises herein conveyed. The foregoing covenants
23 shall run with the land.”

24 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
25 shall not be construed to apply to housing for older persons, as defined in Section
26 12955.9 of the Government Code. With respect to familial status, nothing in
27 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
28 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
29 of Section 51 and Section ~~4360~~ 5760 of the Civil Code and subdivisions (n), (o),
30 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

31 (b)(1) In leases the following language shall appear -- “The lessee herein
32 covenants by and for himself or herself, his or her heirs, executors, administrators,
33 and assigns, and all persons claiming under or through him or her, and this lease is
34 made and accepted upon and subject to the following conditions:

35 That there shall be no discrimination against or segregation of any person or
36 group of persons, on account of any basis listed in subdivision (a) or (d) of Section
37 12955 of the Government Code, as those bases are defined in Sections 12926,
38 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
39 and Section 12955.2 of the Government Code, in the leasing, subleasing,
40 transferring, use, occupancy, tenure, or enjoyment of the premises herein leased
41 nor shall the lessee himself or herself, or any person claiming under or through
42 him or her, establish or permit any such of this type of practice or practices of

1 discrimination or segregation with reference to the selection, location, number,
2 use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the
3 premises herein leased.”

4 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
5 shall not be construed to apply to housing for older persons, as defined in Section
6 12955.9 of the Government Code. With respect to familial status, nothing in
7 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
8 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
9 of Section 51 and Section ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o),
10 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

11 (c) In contracts entered into by the agency relating to the sale, transfer, or
12 leasing of land or any interest therein acquired by the agency within any survey
13 area or redevelopment project the foregoing provisions in substantially the forms
14 set forth shall be included and the contracts shall further provide that the foregoing
15 provisions shall be binding upon and shall obligate the contracting party or parties
16 and any subcontracting party or parties, or other transferees under the instrument.

17 **Comment.** Section 33436 is amended to correct obsolete references to former Civil Code
18 Section 1360 and to make a stylistic revision.

19 **Health & Safety Code § 33769 (amended). Nondiscrimination in construction and**
20 **disposition of residence**

21 SEC. _____. Section 33769 of the Health and Safety Code is amended to read:

22 33769. (a) An agency shall require that any residence that is constructed with
23 financing obtained under this chapter shall be open, upon sale or rental of any
24 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of
25 Section 12955 of the Government Code, as those bases are defined in Sections
26 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
27 12955, and Section 12955.2 of the Government Code. The agency shall also
28 require that contractors and subcontractors engaged in residential construction
29 financed under this chapter shall provide equal opportunity for employment,
30 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
31 the Government Code, as those bases are defined in Sections 12926 and 12926.1
32 of the Government Code, and except as otherwise provided in Section 12940 of
33 the Government Code. All contracts and subcontracts for residential construction
34 financed under this chapter shall be let without discrimination as to any basis
35 listed in subdivision (a) of Section 12940 of the Government Code, as those bases
36 are defined in Sections 12926 and 12926.1 of the Government Code and except as
37 otherwise provided in Section 12940 of the Government Code. It shall be the
38 policy of an agency financing residential construction under this chapter to
39 encourage participation by minority contractors, and the agency shall adopt rules
40 and regulations to implement this section.

41 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
42 (a) shall not be construed to apply to housing for older persons, as defined in

1 Section 12955.9 of the Government Code. With respect to familial status, nothing
2 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
3 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
4 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
5 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
6 apply to subdivision (a).

7 **Comment.** Subdivision (b) of Section 33769 is amended to correct an obsolete reference to
8 former Civil Code Section 1360.

9 **Health & Safety Code § 35811 (amended). Prohibition of discrimination by financial**
10 **institution**

11 SEC. _____. Section 35811 of the Health and Safety Code is amended to read:

12 35811. (a) No financial institution shall discriminate in the availability of, or in
13 the provision of, financial assistance for the purpose of purchasing, constructing,
14 rehabilitating, improving, or refinancing housing accommodations due, in whole
15 or in part, to the consideration of any basis listed in subdivision (a) or (d) of
16 Section 12955 of the Government Code, as those bases are defined in Sections
17 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
18 12955, and Section 12955.2 of the Government Code.

19 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
20 (a) shall not be construed to apply to housing for older persons, as defined in
21 Section 12955.9 of the Government Code. With respect to familial status, nothing
22 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
23 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
24 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
25 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
26 apply to subdivision (a).

27 **Comment.** Subdivision (b) of Section 35811 is amended to correct an obsolete reference to
28 former Civil Code Section 1360.

29 **Health & Safety Code § 37630 (amended). Prohibition of discrimination in financing,**
30 **contract, and subcontract of rehabilitated property**

31 SEC. _____. Section 37630 of the Health and Safety Code is amended to read:

32 37630. (a) The local agency shall require that any property that is rehabilitated
33 with financing obtained under this part shall be open, upon sale or rental of any
34 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of
35 Section 12955 of the Government Code, as those bases are defined in Sections
36 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
37 12955, and Section 12955.2 of the Government Code. The local agency shall also
38 require that contractors and subcontractors engaged in historical rehabilitation
39 financed under this part provide equal opportunity for employment, without
40 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
41 Government Code, as those bases are defined in Sections 12926 and 12926.1 of

1 the Government Code, and except as otherwise provided in Section 12940 of the
2 Government Code. All contracts and subcontracts for historical rehabilitation
3 financed under this part shall be let without discrimination as to any basis listed in
4 subdivision (a) of Section 12940 of the Government Code, as those bases are
5 defined in Sections 12926 and 12926.1 of the Government Code, and except as
6 otherwise provided in Section 12940 of the Government Code.

7 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
8 (a) shall not be construed to apply to housing for older persons, as defined in
9 Section 12955.9 of the Government Code. With respect to familial status, nothing
10 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
11 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
12 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
13 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
14 apply to subdivision (a).

15 **Comment.** Subdivision (b) of Section 37630 is amended to correct an obsolete reference to
16 former Civil Code Section 1360.

17 **Health & Safety Code § 37923 (amended). Open housing and equal opportunity in**
18 **employment and contract of rehabilitated property**

19 SEC. _____. Section 37923 of the Health and Safety Code is amended to read:

20 37923. (a) The local agency shall require that any residence that is rehabilitated,
21 constructed, or acquired with financing obtained under this part shall be open,
22 upon sale or rental of any portion thereof, to all regardless of any basis listed in
23 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
24 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
25 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.
26 The local agency shall also require that contractors and subcontractors engaged in
27 residential rehabilitation financed under this part provide equal opportunity for
28 employment, without discrimination as to any basis listed in subdivision (a) of
29 Section 12940 of the Government Code, as those bases are defined in Sections
30 12926 and 12926.1 of the Government Code, and except as otherwise provided in
31 Section 12940 of the Government Code. All contracts and subcontracts for
32 residential rehabilitation financed under this part shall be let without
33 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
34 Government Code, as those bases are defined in Sections 12926 and 12926.1 of
35 the Government Code, and except as otherwise provided in Section 12940 of the
36 Government Code. It shall be the policy of the local agency financing residential
37 rehabilitation under this part to encourage participation by minority contractors,
38 and the local agency shall adopt rules and regulations to implement this section.

39 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
40 (a) shall not be construed to apply to housing for older persons, as defined in
41 Section 12955.9 of the Government Code. With respect to familial status, nothing
42 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,

1 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
2 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
3 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
4 apply to subdivision (a).

5 **Comment.** Subdivision (b) of Section 37923 is amended to correct an obsolete reference to
6 former Civil Code Section 1360.

7 **Health & Safety Code § 50955 (amended). Equal opportunity without discrimination in**
8 **management, construction, and rehabilitation of housing development**

9 SEC. _____. Section 50955 of the Health and Safety Code is amended to read:

10 50955. (a) The agency and every housing sponsor shall require that occupancy
11 of housing developments assisted under this part shall be open to all regardless of
12 any basis listed in subdivision (a) or (d) of Section 12955 of the Government
13 Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and
14 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
15 Government Code, that contractors and subcontractors engaged in the construction
16 of housing developments shall provide an equal opportunity for employment,
17 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
18 the Government Code, as those bases are defined in Sections 12926 and 12926.1
19 of the Government Code, and except as otherwise provided in Section 12940 of
20 the Government Code, and that contractors and subcontractors shall submit and
21 receive approval of an affirmative action program prior to the commencement of
22 construction or rehabilitation. Affirmative action requirements respecting
23 apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070)
24 of Division 3 of the Labor Code.

25 All contracts for the management, construction, or rehabilitation of housing
26 developments, and contracts let by housing sponsors, contractors, and
27 subcontractors in the performance of management, construction or rehabilitation,
28 shall be let without discrimination as to any basis listed in subdivision (a) of
29 Section 12940 of the Government Code, as those bases are defined in Sections
30 12926 and 12926.1 of the Government Code, except as otherwise provided in
31 Section 12940 of the Government Code, and pursuant to an affirmative action
32 program, which shall be at not less than the Federal Housing Administration
33 affirmative action standards unless the board makes a specific finding that the
34 particular requirement would be unworkable. The agency shall periodically review
35 implementation of affirmative action programs required by this section.

36 It shall be the policy of the agency and housing sponsors to encourage
37 participation with respect to all projects by minority developers, builders, and
38 entrepreneurs in all levels of construction, planning, financing, and management
39 of housing developments. In areas of minority concentration the agency shall
40 require significant participation of minorities in the sponsorship, construction,
41 planning, financing, and management of housing developments. The agency shall
42 (1) require that, to the greatest extent feasible, opportunities for training and

1 employment arising in connection with the planning, construction, rehabilitation,
2 and operation of housing developments financed pursuant to this part be given to
3 persons of low income residing in the area of that housing, and (2) determine and
4 implement means to secure the participation of small businesses in the
5 performance of contracts for work on housing developments and to develop the
6 capabilities of these small businesses to more efficiently and competently
7 participate in the economic mainstream. In order to achieve this participation by
8 small businesses, the agency may, among other things, waive retention
9 requirements otherwise imposed on contractors or subcontractors by regulation of
10 the agency and may authorize or make advance payments for work to be
11 performed. The agency shall develop relevant selection criteria for the
12 participation of small businesses to ensure that, to the greatest extent feasible, the
13 participants possess the necessary nonfinancial capabilities. The agency may, with
14 respect to these small businesses, waive bond requirements otherwise imposed
15 upon contractors or subcontractors by regulation of the agency, but the agency
16 shall in that case substantially reduce the risk through (1) a pooled-risk bonding
17 program, (2) a bond program in cooperation with other federal or state agencies, or
18 (3) development of a self-insured bonding program with adequate reserves.

19 The agency shall adopt rules and regulations to implement this section.

20 Prior to commitment of a mortgage loan, the agency shall require each housing
21 sponsor, except with respect to mutual self-help housing, to submit an affirmative
22 marketing program that meets standards set forth in regulations of the agency. The
23 agency shall require ~~such a~~ the housing sponsor to conduct the affirmative
24 marketing program so approved. Additionally, the agency shall supplement the
25 efforts of individual housing sponsors by conducting affirmative marketing
26 programs with respect to housing at the state level.

27 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
28 (a) shall not be construed to apply to housing for older persons, as defined in
29 Section 12955.9 of the Government Code. With respect to familial status, nothing
30 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
31 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
32 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
33 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
34 apply to subdivision (a).

35 **Comment.** Section 50955 is amended to correct an obsolete reference to former Civil Code
36 Section 1360 and to make a stylistic revision.

37 **Health & Safety Code § 51602 (amended). Requirement of open housing and equal**
38 **opportunity for loan insurance**

39 SEC. _____. Section 51602 of the Health and Safety Code is amended to read:

40 51602. (a) The agency shall require that occupancy of housing for which a loan
41 is insured pursuant to this part shall be open to all regardless of any basis listed in
42 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases

1 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
2 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,
3 and that contractors and subcontractors engaged in the construction or
4 rehabilitation of housing funded by a loan insured pursuant to this part shall
5 provide an equal opportunity for employment without discrimination as to any
6 basis listed in subdivision (a) of Section 12940 of the Government Code, as those
7 bases are defined in Sections 12926 and 12926.1 of the Government Code, and
8 except as otherwise provided in Section 12940 of the Government Code.

9 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
10 (a) shall not be construed to apply to housing for older persons, as defined in
11 Section 12955.9 of the Government Code. With respect to familial status, nothing
12 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
13 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
14 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
15 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
16 apply to subdivision (a).

17 (c) A qualified developer shall certify compliance with this section and Section
18 50955 according to requirements specified by the pertinent criteria of the agency.

19 **Comment.** Subdivision (b) of Section 51602 is amended to correct an obsolete reference to
20 former Civil Code Section 1360.

21 **Health & Safety Code § 116048 (amended). Swimming pool records**

22 SEC. _____. Section 116048 of the Health and Safety Code is amended to read:

23 116048. (a) On or after January 1, 1987, for public swimming pools in any
24 common interest development, as defined in Section ~~1354~~ 4100 of the Civil Code,
25 that consists of fewer than 25 separate interests, as defined in ~~subdivision (l) of~~
26 ~~Section 1354~~ Section 4185 of the Civil Code, the person operating ~~each such a~~
27 pool open for use shall be required to keep a record of the information required by
28 subdivision (a) of Section 65523 of Title 22 of the California Administrative
29 Code, except that the information shall be recorded at least two times per week
30 and at intervals no greater than four days apart.

31 (b) On or after January 1, 1987, any rule or regulation of the department that is
32 in conflict with subdivision (a) is invalid.

33 **Comment.** Section 116048 is amended to correct obsolete references to former Civil Code
34 Sections 1351 and 1351(l) and to make a stylistic revision.

35 **Ins. Code § 790.031 (amended). Application of certain requirements**

36 SEC. _____. Section 790.031 of the Insurance Code is amended to read:

37 790.031. The requirements of subdivision (b) of Section 790.034, and Sections
38 2071.1 and 10082.3 shall apply only to policies of residential property insurance
39 as defined in Section 10087, policies and endorsements containing those
40 coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1
41 of Division 2, policies issued by the California Earthquake Authority pursuant to

1 Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies
2 and endorsements that insure against property damage and are issued to common
3 interest developments or to associations managing common interest developments,
4 as those terms are defined in ~~Section 1351~~ Sections 4100 and 4080 of the Civil
5 Code, and to policies issued pursuant to Section 120 that insure against property
6 damage to residential units or contents thereof owned by one or more persons
7 located in this state.

8 **Comment.** Section 790.031 is amended to correct an obsolete reference to former Civil Code
9 Section 1351.

10 **Rev. & Tax Code § 2188.6 (amended). Assessment of separate condominium unit**

11 SEC. _____. Section 2188.6 of the Revenue and Taxation Code is amended to
12 read:

13 2188.6. (a) Unless a request for exemption has been recorded pursuant to
14 subdivision (d), prior to the creation of a condominium as defined in Section 783
15 of the Civil Code, the county assessor may separately assess each individual unit
16 ~~which that~~ is shown on the condominium plan of a proposed condominium project
17 when all of the following documents have been recorded as required by law:

18 (1) A subdivision final map or parcel map, as described in Sections 66434 and
19 66445, respectively, of the Government Code.

20 (2) A condominium plan, as defined in ~~subdivision (e) of Section 1351~~ Section
21 4120 of the Civil Code.

22 (3) A declaration, as defined in ~~subdivision (h) of Section 1351~~ Section 4135 of
23 the Civil Code.

24 (b) The tax due on each individual unit shall constitute a lien solely on that unit.

25 (c) The lien created pursuant to this section shall be a lien on an undivided
26 interest in a portion of real property coupled with a separate interest in space
27 called a unit as described in ~~subdivision (f) of Section 1351~~ Section 4125 of the
28 Civil Code.

29 (d) The record owner of the real property may record with the condominium
30 plan a request that the real property be exempt from separate assessment pursuant
31 to this section. If a request for exemption is recorded, separate assessment of a
32 condominium unit shall be made only in accordance with Section 2188.3.

33 (e) This section shall become operative on January 1, 1990, and shall apply to
34 condominium projects for which a condominium plan is recorded after that date.

35 **Comment.** Subdivision (a) of Section 2188.6 is amended to correct an obsolete reference to
36 former Civil Code Sections 1351(c) and 1351(h) and to make a stylistic revision.

37 Subdivision (c) of Section 2188.6 is amended to correct an obsolete reference to former Civil
38 Code Section 1351(f).

39 **Veh. Code § 21107.7 (amended). Private road not open to public use**

40 SEC. _____. Section 21107.7 of the Vehicle Code is amended to read:

41 21107.7. (a) Any city or county may, by ordinance or resolution, find and
42 declare that there are privately owned and maintained roads as described in the

1 ordinance or resolution within the city or county that are not generally held open
2 for use of the public for purposes of vehicular travel but, by reason of their
3 proximity to or connection with highways, the interests of any residents residing
4 along the roads and the motoring public will best be served by application of the
5 provisions of this code to those roads. No ordinance or resolution shall be enacted
6 unless there is first filed with the city or county a petition requesting it by a
7 majority of the owners of any privately owned and maintained road, or by at least
8 a majority of the board of directors of a common interest development, as defined
9 by Section ~~1351~~ 4100 of the Civil Code, that is responsible for maintaining the
10 road, and without a public hearing thereon and 10 days' prior written notice to all
11 owners of the road or all of the owners in the development. Upon enactment of the
12 ordinance or resolution, the provisions of this code shall apply to the privately
13 owned and maintained road if appropriate signs are erected at the entrance to the
14 road of the size, shape, and color as to be readily legible during daylight hours
15 from a distance of 100 feet, to the effect that the road is subject to the provisions
16 of this code. The city or county may impose reasonable conditions and may
17 authorize the owners, or board of directors of the common interest development, to
18 erect traffic signs, signals, markings, and devices ~~which~~ that conform to the
19 uniform standards and specifications adopted by the Department of
20 Transportation.

21 (b) The department shall not be required to provide patrol or enforce any
22 provisions of this code on any privately owned and maintained road subjected to
23 the provisions of this code under this section, except those provisions applicable to
24 private property other than by action under this section.

25 (c) As used in this section, "privately owned and maintained roads" includes
26 roads owned and maintained by a city, county or district that are not dedicated to
27 use by the public or are not generally held open for use of the public for purposes
28 of vehicular travel.

29 **Comment.** Subdivision (a) of Section 21107.7 is amended to correct an obsolete reference to
30 former Civil Code Section 1351 and to make a stylistic revision.

31 **Veh. Code § 22651 (amended). Circumstances permitting removal**

32 SEC. _____. Section 22651 of the Vehicle Code is amended to read:

33 22651. A peace officer, as defined in Chapter 4.5 (commencing with Section
34 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried
35 employee, who is engaged in directing traffic or enforcing parking laws and
36 regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is
37 located, may remove a vehicle located within the territorial limits in which the
38 officer or employee may act, under the following circumstances:

39 (a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a
40 tube or tunnel where the vehicle constitutes an obstruction to traffic.

1 (b) When a vehicle is parked or left standing upon a highway in a position so as
2 to obstruct the normal movement of traffic or in a condition so as to create a
3 hazard to other traffic upon the highway.

4 (c) When a vehicle is found upon a highway or public land and a report has
5 previously been made that the vehicle is stolen or a complaint has been filed and a
6 warrant thereon is issued charging that the vehicle is embezzled.

7 (d) When a vehicle is illegally parked so as to block the entrance to a private
8 driveway and it is impractical to move the vehicle from in front of the driveway to
9 another point on the highway.

10 (e) When a vehicle is illegally parked so as to prevent access by firefighting
11 equipment to a fire hydrant and it is impracticable to move the vehicle from in
12 front of the fire hydrant to another point on the highway.

13 (f) When a vehicle, except a highway maintenance or construction equipment, is
14 stopped, parked, or left standing for more than four hours upon the right-of-way of
15 a freeway that has full control of access and no crossings at grade and the driver, if
16 present, cannot move the vehicle under its own power.

17 (g) When the person in charge of a vehicle upon a highway or public land is, by
18 reason of physical injuries or illness, incapacitated to an extent so as to be unable
19 to provide for its custody or removal.

20 (h) (1) When an officer arrests a person driving or in control of a vehicle for an
21 alleged offense and the officer is, by this code or other law, required or permitted
22 to take, and does take, the person into custody.

23 (2) When an officer serves a notice of an order of suspension or revocation
24 pursuant to Section 13388 or 13389.

25 (i) (1) When a vehicle, other than a rented vehicle, is found upon a highway or
26 public land, or is removed pursuant to this code, and it is known that the vehicle
27 has been issued five or more notices of parking violations to which the owner or
28 person in control of the vehicle has not responded within 21 calendar days of
29 notice of citation issuance or citation issuance or 14 calendar days of the mailing
30 of a notice of delinquent parking violation to the agency responsible for processing
31 notices of parking violation or the registered owner of the vehicle is known to
32 have been issued five or more notices for failure to pay or failure to appear in
33 court for traffic violations for which a certificate has not been issued by the
34 magistrate or clerk of the court hearing the case showing that the case has been
35 adjudicated or concerning which the registered owner's record has not been
36 cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17,
37 the vehicle may be impounded until that person furnishes to the impounding law
38 enforcement agency all of the following:

39 (A) Evidence of his or her identity.

40 (B) An address within this state at which he or she can be located.

41 (C) Satisfactory evidence that all parking penalties due for the vehicle and all
42 other vehicles registered to the registered owner of the impounded vehicle, and all
43 traffic violations of the registered owner, have been cleared.

1 (2) The requirements in subparagraph (C) of paragraph (1) shall be fully
2 enforced by the impounding law enforcement agency on and after the time that the
3 Department of Motor Vehicles is able to provide access to the necessary records.

4 (3) A notice of parking violation issued for an unlawfully parked vehicle shall
5 be accompanied by a warning that repeated violations may result in the
6 impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full
7 amount of parking penalties or bail has been deposited, that person may demand to
8 be taken without unnecessary delay before a magistrate, for traffic offenses, or a
9 hearing examiner, for parking offenses, within the county in which the offenses
10 charged are alleged to have been committed and who has jurisdiction of the
11 offenses and is nearest or most accessible with reference to the place where the
12 vehicle is impounded. Evidence of current registration shall be produced after a
13 vehicle has been impounded, or, at the discretion of the impounding law
14 enforcement agency, a notice to appear for violation of subdivision (a) of Section
15 4000 shall be issued to that person.

16 (4) A vehicle shall be released to the legal owner, as defined in Section 370, if
17 the legal owner does all of the following:

18 (A) Pays the cost of towing and storing the vehicle.

19 (B) Submits evidence of payment of fees as provided in Section 9561.

20 (C) Completes an affidavit in a form acceptable to the impounding law
21 enforcement agency stating that the vehicle was not in possession of the legal
22 owner at the time of occurrence of the offenses relating to standing or parking. A
23 vehicle released to a legal owner under this subdivision is a repossessed vehicle
24 for purposes of disposition or sale. The impounding agency shall have a lien on
25 any surplus that remains upon sale of the vehicle to which the registered owner is
26 or may be entitled, as security for the full amount of the parking penalties for all
27 notices of parking violations issued for the vehicle and for all local administrative
28 charges imposed pursuant to Section 22850.5. The legal owner shall promptly
29 remit to, and deposit with, the agency responsible for processing notices of
30 parking violations from that surplus, on receipt of that surplus, the full amount of
31 the parking penalties for all notices of parking violations issued for the vehicle and
32 for all local administrative charges imposed pursuant to Section 22850.5.

33 (5) The impounding agency that has a lien on the surplus that remains upon the
34 sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4)
35 has a deficiency claim against the registered owner for the full amount of the
36 parking penalties for all notices of parking violations issued for the vehicle and for
37 all local administrative charges imposed pursuant to Section 22850.5, less the
38 amount received from the sale of the vehicle.

39 (j) When a vehicle is found illegally parked and there are no license plates or
40 other evidence of registration displayed, the vehicle may be impounded until the
41 owner or person in control of the vehicle furnishes the impounding law
42 enforcement agency evidence of his or her identity and an address within this state
43 at which he or she can be located.

1 (k) When a vehicle is parked or left standing upon a highway for 72 or more
2 consecutive hours in violation of a local ordinance authorizing removal.

3 (l) When a vehicle is illegally parked on a highway in violation of a local
4 ordinance forbidding standing or parking and the use of a highway, or a portion
5 thereof, is necessary for the cleaning, repair, or construction of the highway, or for
6 the installation of underground utilities, and signs giving notice that the vehicle
7 may be removed are erected or placed at least 24 hours prior to the removal by a
8 local authority pursuant to the ordinance.

9 (m) Wherever the use of the highway, or a portion of the highway, is authorized
10 by a local authority for a purpose other than the normal flow of traffic or for the
11 movement of equipment, articles, or structures of unusual size, and the parking of
12 a vehicle would prohibit or interfere with that use or movement, and signs giving
13 notice that the vehicle may be removed are erected or placed at least 24 hours
14 prior to the removal by a local authority pursuant to the ordinance.

15 (n) Whenever a vehicle is parked or left standing where local authorities, by
16 resolution or ordinance, have prohibited parking and have authorized the removal
17 of vehicles. A vehicle shall not be removed unless signs are posted giving notice
18 of the removal.

19 (o) (1) When a vehicle is found or operated upon a highway, public land, or an
20 offstreet parking facility under the following circumstances:

21 (A) With a registration expiration date in excess of six months before the date it
22 is found or operated on the highway, public lands, or the offstreet parking facility.

23 (B) Displaying in, or upon, the vehicle, a registration card, identification card,
24 temporary receipt, license plate, special plate, registration sticker, device issued
25 pursuant to Section 4853, or permit that was not issued for that vehicle, or is not
26 otherwise lawfully used on that vehicle under this code.

27 (C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or
28 falsified registration card, identification card, temporary receipt, license plate,
29 special plate, registration sticker, device issued pursuant to Section 4853, or
30 permit.

31 (2) When a vehicle described in paragraph (1) is occupied, only a peace officer,
32 as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of
33 the Penal Code, may remove the vehicle.

34 (3) For the purposes of this subdivision, the vehicle shall be released to the
35 owner or person in control of the vehicle only after the owner or person furnishes
36 the storing law enforcement agency with proof of current registration and a
37 currently valid driver's license to operate the vehicle.

38 (4) As used in this subdivision, "offstreet parking facility" means an offstreet
39 facility held open for use by the public for parking vehicles and includes a publicly
40 owned facility for offstreet parking, and privately owned facilities for offstreet
41 parking where a fee is not charged for the privilege to park and which are held
42 open for the common public use of retail customers.

1 (p) When the peace officer issues the driver of a vehicle a notice to appear for a
2 violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5,
3 or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle
4 so removed from the highway or public land, or from private property after having
5 been on a highway or public land, shall not be released to the registered owner or
6 his or her agent, except upon presentation of the registered owner's or his or her
7 agent's currently valid driver's license to operate the vehicle and proof of current
8 vehicle registration, or upon order of a court.

9 (q) Whenever a vehicle is parked for more than 24 hours on a portion of
10 highway that is located within the boundaries of a common interest development,
11 as defined in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code, and
12 signs, as required by Section 22658.2, have been posted on that portion of
13 highway providing notice to drivers that vehicles parked thereon for more than 24
14 hours will be removed at the owner's expense, pursuant to a resolution or
15 ordinance adopted by the local authority.

16 (r) When a vehicle is illegally parked and blocks the movement of a legally
17 parked vehicle.

18 (s) (1) When a vehicle, except highway maintenance or construction equipment,
19 an authorized emergency vehicle, or a vehicle that is properly permitted or
20 otherwise authorized by the Department of Transportation, is stopped, parked, or
21 left standing for more than eight hours within a roadside rest area or viewpoint.

22 (2) For purposes of this subdivision, a roadside rest area or viewpoint is a
23 publicly maintained vehicle parking area, adjacent to a highway, utilized for the
24 convenient, safe stopping of a vehicle to enable motorists to rest or to view the
25 scenery. If two or more roadside rest areas are located on opposite sides of the
26 highway, or upon the center divider, within seven miles of each other, then that
27 combination of rest areas is considered to be the same rest area.

28 (t) When a peace officer issues a notice to appear for a violation of Section
29 25279.

30 **Comment.** Subdivision (q) of Section 22651 is amended to correct an obsolete reference to
31 former Civil Code Section 1351(c).

32 **Veh. Code § 22651.05 (amended). Circumstances permitting trained volunteers to remove**
33 **vehicle**

34 SEC. ____. Section 22651.05 of the Vehicle Code is amended to read:

35 22651.05. (a) A trained volunteer of a state or local law enforcement agency,
36 who is engaged in directing traffic or enforcing parking laws and regulations, of a
37 city, county, or jurisdiction of a state agency in which a vehicle is located, may
38 remove or authorize the removal of a vehicle located within the territorial limits in
39 which an officer or employee of that agency may act, under any of the following
40 circumstances:

41 (1) When a vehicle is parked or left standing upon a highway for 72 or more
42 consecutive hours in violation of a local ordinance authorizing the removal.

1 (2) When a vehicle is illegally parked or left standing on a highway in violation
2 of a local ordinance forbidding standing or parking and the use of a highway, or a
3 portion thereof, is necessary for the cleaning, repair, or construction of the
4 highway, or for the installation of underground utilities, and signs giving notice
5 that the vehicle may be removed are erected or placed at least 24 hours prior to the
6 removal by local authorities pursuant to the ordinance.

7 (3) Wherever the use of the highway, or a portion thereof, is authorized by local
8 authorities for a purpose other than the normal flow of traffic or for the movement
9 of equipment, articles, or structures of unusual size, and the parking of a vehicle
10 would prohibit or interfere with that use or movement, and signs giving notice that
11 the vehicle may be removed are erected or placed at least 24 hours prior to the
12 removal by local authorities pursuant to the ordinance.

13 (4) Whenever a vehicle is parked or left standing where local authorities, by
14 resolution or ordinance, have prohibited parking and have authorized the removal
15 of vehicles. A vehicle may not be removed unless signs are posted giving notice of
16 the removal.

17 (5) Whenever a vehicle is parked for more than 24 hours on a portion of
18 highway that is located within the boundaries of a common interest development,
19 as defined in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code, and
20 signs, as required by Section 22658.2, have been posted on that portion of
21 highway providing notice to drivers that vehicles parked thereon for more than 24
22 hours will be removed at the owner's expense, pursuant to a resolution or
23 ordinance adopted by the local authority.

24 (b) The provisions of this chapter that apply to a vehicle removed pursuant to
25 Section 22651 apply to a vehicle removed pursuant to subdivision (a).

26 (c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his
27 or her own free will, provides services, without any financial gain, to a local or
28 state law enforcement agency, and who is duly trained and certified to remove a
29 vehicle by a local or state law enforcement agency.

30 **Comment.** Subdivision (a) of Section 22651.05 is amended to correct an obsolete reference to
31 former Civil Code Section 1351(c).

32 **Veh. Code § 22658 (amended). Towing charge**

33 SEC. ____. Section 22658 of the Vehicle Code is amended to read:

34 22658. (a) The owner or person in lawful possession of private property,
35 including an association of a common interest development as defined in ~~Section~~
36 ~~1351~~ Sections 4080 and 4100 of the Civil Code, may cause the removal of a
37 vehicle parked on the property to a storage facility that meets the requirements of
38 subdivision (n) under any of the following circumstances:

39 (1) There is displayed, in plain view at all entrances to the property, a sign not
40 less than 17 inches by 22 inches in size, with lettering not less than one inch in
41 height, prohibiting public parking and indicating that vehicles will be removed at
42 the owner's expense, and containing the telephone number of the local traffic law

1 enforcement agency and the name and telephone number of each towing company
2 that is a party to a written general towing authorization agreement with the owner
3 or person in lawful possession of the property. The sign may also indicate that a
4 citation may also be issued for the violation.

5 (2) The vehicle has been issued a notice of parking violation, and 96 hours have
6 elapsed since the issuance of that notice.

7 (3) The vehicle is on private property and lacks an engine, transmission, wheels,
8 tires, doors, windshield, or any other major part or equipment necessary to operate
9 safely on the highways, the owner or person in lawful possession of the private
10 property has notified the local traffic law enforcement agency, and 24 hours have
11 elapsed since that notification.

12 (4) The lot or parcel upon which the vehicle is parked is improved with a single-
13 family dwelling.

14 (b) The tow truck operator removing the vehicle, if the operator knows or is able
15 to ascertain from the property owner, person in lawful possession of the property,
16 or the registration records of the Department of Motor Vehicles the name and
17 address of the registered and legal owner of the vehicle, shall immediately give, or
18 cause to be given, notice in writing to the registered and legal owner of the fact of
19 the removal, the grounds for the removal, and indicate the place to which the
20 vehicle has been removed. If the vehicle is stored in a storage facility, a copy of
21 the notice shall be given to the proprietor of the storage facility. The notice
22 provided for in this section shall include the amount of mileage on the vehicle at
23 the time of removal and the time of the removal from the property. If the tow truck
24 operator does not know and is not able to ascertain the name of the owner or for
25 any other reason is unable to give the notice to the owner as provided in this
26 section, the tow truck operator shall comply with the requirements of subdivision
27 (c) of Section 22853 relating to notice in the same manner as applicable to an
28 officer removing a vehicle from private property.

29 (c) This section does not limit or affect any right or remedy that the owner or
30 person in lawful possession of private property may have by virtue of other
31 provisions of law authorizing the removal of a vehicle parked upon private
32 property.

33 (d) The owner of a vehicle removed from private property pursuant to
34 subdivision (a) may recover for any damage to the vehicle resulting from any
35 intentional or negligent act of a person causing the removal of, or removing, the
36 vehicle.

37 (e)(1) An owner or person in lawful possession of private property, or an
38 association of a common interest development, causing the removal of a vehicle
39 parked on that property is liable for double the storage or towing charges
40 whenever there has been a failure to comply with paragraph (1), (2), or (3) of
41 subdivision (a) or to state the grounds for the removal of the vehicle if requested
42 by the legal or registered owner of the vehicle as required by subdivision (f).

1 (2) A property owner or owner's agent or lessee who causes the removal of a
2 vehicle parked on that property pursuant to the exemption set forth in
3 subparagraph (A) of paragraph (1) of subdivision (I) and fails to comply with that
4 subdivision is guilty of an infraction, punishable by a fine of one thousand dollars
5 (\$1,000).

6 (f) An owner or person in lawful possession of private property, or an
7 association of a common interest development, causing the removal of a vehicle
8 parked on that property shall notify by telephone or, if impractical, by the most
9 expeditious means available, the local traffic law enforcement agency within one
10 hour after authorizing the tow. An owner or person in lawful possession of private
11 property, an association of a common interest development, causing the removal
12 of a vehicle parked on that property, or the tow truck operator who removes the
13 vehicle, shall state the grounds for the removal of the vehicle if requested by the
14 legal or registered owner of that vehicle. A towing company that removes a
15 vehicle from private property in compliance with subdivision (I) is not responsible
16 in a situation relating to the validity of the removal. A towing company that
17 removes the vehicle under this section shall be responsible for the following:

18 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

19 (2) The removal of a vehicle other than the vehicle specified by the owner or
20 other person in lawful possession of the private property.

21 (g)(1)(A) Possession of a vehicle under this section shall be deemed to arise
22 when a vehicle is removed from private property and is in transit.

23 (B) Upon the request of the owner of the vehicle or that owner's agent, the
24 towing company or its driver shall immediately and unconditionally release a
25 vehicle that is not yet removed from the private property and in transit.

26 (C) A person failing to comply with subparagraph (B) is guilty of a
27 misdemeanor.

28 (2) If a vehicle is released to a person in compliance with subparagraph (B) of
29 paragraph (1), the vehicle owner or authorized agent shall immediately move that
30 vehicle to a lawful location.

31 (h) A towing company may impose a charge of not more than one-half of the
32 regular towing charge for the towing of a vehicle at the request of the owner, the
33 owner's agent, or the person in lawful possession of the private property pursuant
34 to this section if the owner of the vehicle or the vehicle owner's agent returns to
35 the vehicle after the vehicle is coupled to the tow truck by means of a regular
36 hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by
37 means of a conventional trailer, and before it is removed from the private property.
38 The regular towing charge may only be imposed after the vehicle has been
39 removed from the property and is in transit.

40 (i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section
41 is excessive if the charge exceeds the greater of the following:

42 (i) That which would have been charged for that towing or storage, or both,
43 made at the request of a law enforcement agency under an agreement between a

1 towing company and the law enforcement agency that exercises primary
2 jurisdiction in the city in which is located the private property from which the
3 vehicle was, or was attempted to be, removed, or if the private property is not
4 located within a city, then the law enforcement agency that exercises primary
5 jurisdiction in the county in which the private property is located.

6 (ii) That which would have been charged for that towing or storage, or both,
7 under the rate approved for that towing operator by the California Highway Patrol
8 for the jurisdiction in which the private property is located and from which the
9 vehicle was, or was attempted to be, removed.

10 (B) A towing operator shall make available for inspection and copying his or her
11 rate approved by the California Highway Patrol, if any, ~~with in~~ within 24 hours of
12 a request without a warrant to law enforcement, the Attorney General, district
13 attorney, or city attorney.

14 (2) If a vehicle is released within 24 hours from the time the vehicle is brought
15 into the storage facility, regardless of the calendar date, the storage charge shall be
16 for only one day. Not more than one day's storage charge may be required for a
17 vehicle released the same day that it is stored.

18 (3) If a request to release a vehicle is made and the appropriate fees are tendered
19 and documentation establishing that the person requesting release is entitled to
20 possession of the vehicle, or is the owner's insurance representative, is presented
21 within the initial 24 hours of storage, and the storage facility fails to comply with
22 the request to release the vehicle or is not open for business during normal
23 business hours, then only one day's storage charge may be required to be paid
24 until after the first business day. A business day is any day in which the lienholder
25 is open for business to the public for at least eight hours. If a request is made more
26 than 24 hours after the vehicle is placed in storage, charges may be imposed on a
27 full calendar day basis for each day, or part thereof, that the vehicle is in storage.

28 (j)(1) A person who charges a vehicle owner a towing, service, or storage charge
29 at an excessive rate, as described in subdivision (h) or (i), is civilly liable to the
30 vehicle owner for four times the amount charged.

31 (2) A person who knowingly charges a vehicle owner a towing, service, or
32 storage charge at an excessive rate, as described in subdivision (h) or (i), or who
33 fails to make available his or her rate as required in subparagraph (B) of paragraph
34 (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more
35 than two thousand five hundred dollars (\$2,500), or by imprisonment in the county
36 jail for not more than three months, or by both that fine and imprisonment.

37 (k)(1) A person operating or in charge of a storage facility where vehicles are
38 stored pursuant to this section shall accept a valid credit card or cash for payment
39 of towing and storage by a registered owner or the owner's agent claiming the
40 vehicle. "Credit card" means "credit card" as defined in subdivision (a) of Section
41 1747.02 of the Civil Code, except for the purposes of this section, credit card does
42 not include a credit card issued by a retail seller.

1 (2) A person described in paragraph (1) shall conspicuously display, in that
2 portion of the storage facility office where business is conducted with the public, a
3 notice advising that all valid credit cards and cash are acceptable means of
4 payment.

5 (3) A person operating or in charge of a storage facility who refuses to accept a
6 valid credit card or who fails to post the required notice under paragraph (2) is
7 guilty of a misdemeanor, punishable by a fine of not more than two thousand five
8 hundred dollars (\$2,500), or by imprisonment in the county jail for not more than
9 three months, or by both that fine and imprisonment.

10 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is
11 civilly liable to the registered owner of the vehicle or the person who tendered the
12 fees for four times the amount of the towing and storage charges.

13 (5) A person operating or in charge of the storage facility shall have sufficient
14 moneys on the premises of the primary storage facility during normal business
15 hours to accommodate, and make change in, a reasonable monetary transaction.

16 (6) Credit charges for towing and storage services shall comply with Section
17 1748.1 of the Civil Code. Law enforcement agencies may include the costs of
18 providing for payment by credit when making agreements with towing companies
19 as described in subdivision (i).

20 (l)(1)(A) A towing company shall not remove or commence the removal of a
21 vehicle from private property without first obtaining the written authorization from
22 the property owner or lessee, including an association of a common interest
23 development, or an employee or agent thereof, who shall be present at the time of
24 removal and verify the alleged violation, except that presence and verification is
25 not required if the person authorizing the tow is the property owner, or the owner's
26 agent who is not a tow operator, of a residential rental property of 15 or fewer
27 units that does not have an onsite owner, owner's agent or employee, and the
28 tenant has verified the violation, requested the tow from that tenant's assigned
29 parking space, and provided a signed request or electronic mail, or has called and
30 provides a signed request or electronic mail within 24 hours, to the property owner
31 or owner's agent, which the owner or agent shall provide to the towing company
32 within 48 hours of authorizing the tow. The signed request or electronic mail shall
33 contain the name and address of the tenant, and the date and time the tenant
34 requested the tow. A towing company shall obtain within 48 hours of receiving the
35 written authorization to tow a copy of a tenant request required pursuant to this
36 subparagraph. For the purpose of this subparagraph, a person providing the written
37 authorization who is required to be present on the private property at the time of
38 the tow does not have to be physically present at the specified location of where
39 the vehicle to be removed is located on the private property.

40 (B) The written authorization under subparagraph (A) shall include all of the
41 following:

42 (i) The make, model, vehicle identification number, and license plate number of
43 the removed vehicle.

1 (ii) The name, signature, job title, residential or business address and working
2 telephone number of the person, described in subparagraph (A), authorizing the
3 removal of the vehicle.

4 (iii) The grounds for the removal of the vehicle.

5 (iv) The time when the vehicle was first observed parked at the private property.

6 (v) The time that authorization to tow the vehicle was given.

7 (C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing
8 company prior to payment of a towing or storage charge shall provide a photocopy
9 of the written authorization to the vehicle owner or the agent.

10 (ii) If the vehicle was towed from a residential property, the towing company
11 shall redact the information specified in clause (ii) of subparagraph (B) in the
12 photocopy of the written authorization provided to the vehicle owner or the agent
13 pursuant to clause (i).

14 (iii) The towing company shall also provide to the vehicle owner or the agent a
15 separate notice that provides the telephone number of the appropriate local law
16 enforcement or prosecuting agency by stating “If you believe that you have been
17 wrongfully towed, please contact the local law enforcement or prosecuting agency
18 at [insert appropriate telephone number].” The notice shall be in English and in the
19 most populous language, other than English, that is spoken in the jurisdiction.

20 (D) A towing company shall not remove or commence the removal of a vehicle
21 from private property described in subdivision (a) of Section 22953 unless the
22 towing company has made a good faith inquiry to determine that the owner or the
23 property owner’s agent complied with Section 22953.

24 (E)(i) General authorization to remove or commence removal of a vehicle at the
25 towing company’s discretion shall not be delegated to a towing company or its
26 affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire
27 hydrant or in a fire lane, or in a manner which interferes with an entrance to, or
28 exit from, the private property.

29 (ii) In those cases in which general authorization is granted to a towing company
30 or its affiliate to undertake the removal or commence the removal of a vehicle that
31 is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that
32 interferes with an entrance to, or exit from, private property, the towing company
33 and the property owner, or owner’s agent, or person in lawful possession of the
34 private property shall have a written agreement granting that general authorization.

35 (2) If a towing company removes a vehicle under a general authorization
36 described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully
37 parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that
38 interferes with an entrance to, or exit from, the private property, the towing
39 company shall take, prior to the removal of that vehicle, a photograph of the
40 vehicle that clearly indicates that parking violation. Prior to accepting payment,
41 the towing company shall keep one copy of the photograph taken pursuant to this
42 paragraph, and shall present that photograph and provide, without charge, a

1 photocopy to the owner or an agent of the owner, when that person claims the
2 vehicle.

3 (3) A towing company shall maintain the original written authorization, or the
4 general authorization described in subparagraph (E) of paragraph (1) and the
5 photograph of the violation, required pursuant to this section, and any written
6 requests from a tenant to the property owner or owner's agent required by
7 subparagraph (A) of paragraph (1), for a period of three years and shall make them
8 available for inspection and copying within 24 hours of a request without a
9 warrant to law enforcement, the Attorney General, district attorney, or city
10 attorney.

11 (4) A person who violates this subdivision is guilty of a misdemeanor,
12 punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
13 or by imprisonment in the county jail for not more than three months, or by both
14 that fine and imprisonment.

15 (5) A person who violates this subdivision is civilly liable to the owner of the
16 vehicle or his or her agent for four times the amount of the towing and storage
17 charges.

18 (m)(1) A towing company that removes a vehicle from private property under
19 this section shall notify the local law enforcement agency of that tow after the
20 vehicle is removed from the private property and is in transit.

21 (2) A towing company is guilty of a misdemeanor if the towing company fails to
22 provide the notification required under paragraph (1) within 60 minutes after the
23 vehicle is removed from the private property and is in transit or 15 minutes after
24 arriving at the storage facility, whichever time is less.

25 (3) A towing company that does not provide the notification under paragraph (1)
26 within 30 minutes after the vehicle is removed from the private property and is in
27 transit is civilly liable to the registered owner of the vehicle, or the person who
28 tenders the fees, for three times the amount of the towing and storage charges.

29 (4) If notification is impracticable, the times for notification, as required
30 pursuant to paragraphs (2) and (3), shall be tolled for the time period that
31 notification is impracticable. This paragraph is an affirmative defense.

32 (n) A vehicle removed from private property pursuant to this section shall be
33 stored in a facility that meets all of the following requirements:

34 (1)(A) Is located within a 10-mile radius of the property from where the vehicle
35 was removed.

36 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a
37 towing company has prior general written approval from the law enforcement
38 agency that exercises primary jurisdiction in the city in which is located the
39 private property from which the vehicle was removed, or if the private property is
40 not located within a city, then the law enforcement agency that exercises primary
41 jurisdiction in the county in which is located the private property.

42 (2)(A) Remains open during normal business hours and releases vehicles after
43 normal business hours.

1 (B) A gate fee may be charged for releasing a vehicle after normal business
2 hours, weekends, and state holidays. However, the maximum hourly charge for
3 releasing a vehicle after normal business hours shall be one-half of the hourly tow
4 rate charged for initially towing the vehicle, or less.

5 (C) Notwithstanding any other provision of law and for purposes of this
6 paragraph, “normal business hours” are Monday to Friday, inclusive, from 8 a.m.
7 to 5 p.m., inclusive, except state holidays.

8 (3) Has a public pay telephone in the office area that is open and accessible to
9 the public.

10 (o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to
11 assist vehicle owners or their agents by, among other things, allowing payment by
12 credit cards for towing and storage services, thereby expediting the recovery of
13 towed vehicles and concurrently promoting the safety and welfare of the public.

14 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further
15 the safety of the general public by ensuring that a private property owner or lessee
16 has provided his or her authorization for the removal of a vehicle from his or her
17 property, thereby promoting the safety of those persons involved in ordering the
18 removal of the vehicle as well as those persons removing, towing, and storing the
19 vehicle.

20 (3) It is the intent of the Legislature in the adoption of subdivision (g) to
21 promote the safety of the general public by requiring towing companies to
22 unconditionally release a vehicle that is not lawfully in their possession, thereby
23 avoiding the likelihood of dangerous and violent confrontation and physical injury
24 to vehicle owners and towing operators, the stranding of vehicle owners and their
25 passengers at a dangerous time and location, and impeding expedited vehicle
26 recovery, without wasting law enforcement’s limited resources.

27 (p) The remedies, sanctions, restrictions, and procedures provided in this section
28 are not exclusive and are in addition to other remedies, sanctions, restrictions, or
29 procedures that may be provided in other provisions of law, including, but not
30 limited to, those that are provided in Sections 12110 and 34660.

31 **Comment.** Subdivision (a) of Section 22658 is amended to correct an obsolete reference to
32 former Civil Code Section 1351. Subdivision (i) is amended to make a technical correction.

DISPOSITION OF FORMER LAW

The table below shows the relationship between the provisions of the existing Davis-Stirling Common Interest Development Act and the corresponding provisions of the proposed law.

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
1350.....	4000	1361.5.....	5810
1350.5.....	4005	1362.....	5800
1350.7.....	4040, 4045	1363(a).....	4400
1351(a).....	4080	1363(b).....	omitted, see 4080
1351(b).....	4095	1363(c).....	4405
1351(c).....	4100	1363(d).....	4575(d)
1351(d).....	4105	1363(e).....	4595(c)
1351(e).....	4120, 6075, 6080	1363(f).....	omitted, see 4700-4750
1351(f).....	4125	1363(g).....	5000, 5015
1351(g).....	4130	1363(h).....	5005
1351(h).....	4135	1363(i).....	4560(b)
1351(i).....	4145	1363(j).....	omitted, see 5000
1351(j).....	4150	1363.001.....	4950
1351(k).....	4175	1363.03(a).....	4630, 4665(a)-(b), 4670
1351(l).....	4185	1363.03(b), (e), (f), (g), (k).....	4635(f), 4640, 4650
1351(m).....	4190	1363.03(c).....	4635
1352.....	4015, 6000	1363.03(d).....	4660
1352.5.....	6150	1363.03(h), (i).....	4655
1353.....	6025, 6030, 6035	1363.03(j).....	4665(b)-(d)
1353.5.....	5730	1363.03(l).....	omitted, see 4080
1353.6.....	5730	1363.03(m).....	4625
1353.7.....	5740	1363.03(n).....	omitted, see 4025
1353.8.....	5755	1363.03(o).....	omitted
1354.....	5125	1363.04.....	4670
1355.....	6040, 6045	1363.05(a).....	4500
1355.5.....	6050	1363.05(b).....	4525, 4540
1356.....	4620	1363.05(c)-(e).....	4550
1357.....	6040	1363.05(f).....	4520(a)-(b)
1357.100(a).....	4165	1363.05(g).....	4520(c)
1357.100(b).....	4180	1363.05(h).....	4525
1357.110.....	6100	1363.05(i).....	4528
1357.120.....	6110	1363.05(j).....	4090
1357.130.....	6115	1363.07.....	5900
1357.140.....	6120	1363.09.....	4555(a)-(b), 4685
1357.150.....	6125	1363.1.....	4900
1358(a).....	5925	1363.2.....	4905
1358(b).....	5930	1363.5.....	6060
1358(c).....	5935	1363.6.....	4960
1358(d).....	5940	1363.810.....	5050(a)-(b)
1358, next to last ¶.....	5945	1363.820.....	5055
1358, last ¶.....	5950	1363.830.....	5060
1359.....	5905	1363.840.....	5065
1360.....	5760	1363.850.....	5070
1360.5.....	5735	1364(a).....	5700
1361.....	5805		

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
1364(b)-(e).....	5705	1367.4(d).....	5650(b)
1364(f).....	5710	1367.5.....	5635(c)
1365(a).....	4800, 5500(c), 5555(b)-(c), (e), 5560	1368(a).....	5825
1365(b).....	4820	1368(b).....	5830
1365(c).....	4805(b), 5510(a)	1368(c)(1).....	5875
1365(d).....	4820	1368(c)(2).....	5880
1365(e).....	4810(a)(5)	1368(c)(3).....	4110
1365.1.....	4040, 5670	1368(d).....	5840
1365.2.....	4700-4725, 4735, 4745-4750, 4800	1368(e).....	5845
1365.2.5.....	4800, 5555	1368(f).....	5835
1365.3.....	4815	1368(g).....	omitted
1365.5.....	5500(d), 5510(b), 5515, 5520, 5550, 5555(a), 5555(b)(1), 5555(b)(3)-(4), 5560	1368.1(a).....	5750(a)
1365.6.....	4855	1368.1(b).....	5750(b)-(c)
1365.7.....	5680	1368.1(c).....	5750(d)
1365.9.....	5685	1368.1(d).....	5750(e)
1366(a)-(b).....	5575(a), 5580(a)-(c), (e)	1368.3.....	4410
1366(c).....	5585	1368.4.....	4415
1366(d).....	5580(d)	1368.5.....	6215
1366(e)-(f).....	5606(a)-(c)	1369.....	5910
1366.1.....	5575(b)	1369.510.....	5075
1366.2.....	5665	1369.520.....	5080
1367(a).....	5605(d)	1369.530.....	5085
1367(b)-(g).....	omitted, see 5675	1369.540.....	5090
1367.1(a).....	5605(d), 5615	1369.550.....	5095
1367.1(b).....	5600	1369.560.....	5100
1367.1(c).....	5620, 5625, 5630(g), 5655(a)	1369.570.....	5105
1367.1(d).....	5630(a)-(e), 5635(a), 5640(a)	1369.580.....	5110
1367.1(e).....	5640(b)	1369.590.....	5115
1367.1(f).....	5630(f)	1370.....	6175
1367.1(g).....	5610, 5645(a), 5655(b)	1371.....	6180
1367.1(h).....	5630(h)	1372.....	4030
1367.1(i).....	5635(b)	1373.....	4020
1367.1(j).....	5655(c)	1374.....	4015(b)
1367.1(k).....	4040(b)	1375.....	6200
1367.1(l).....	5630(i)	1375.05.....	6205
1367.4(a).....	omitted	1375.1.....	6210
1367.4(b).....	5625, 5645(b), 5650(a)	1376.....	5745
1367.4(c).....	5655(a), 5660	1378.....	5775