

Memorandum 2010-37

**Common Interest Development Law: Nonresidential Associations
(Discussion of Issues)**

This memorandum continues the Commission’s study of the application of the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1378) (hereafter, “Davis-Stirling Act”) to a nonresidential common interest development (“CID”). The study is intended to build upon Civil Code Section 1373, a section of the Davis-Stirling Act enacted in 1978, that exempted commercial or industrial CIDs from eight of the then-existing provisions of that act.

The following material, discussed below, is attached as an Exhibit:

	<i>Exhibit p.</i>
• Ed Weber, Siskiyou County (2/18/09)	1
• Jeffrey Wagner, Walnut Creek (5/31/10)	3

At its August 2009 meeting, after receiving substantial input from a working group consisting of CID attorneys and property managers (hereafter, “stakeholder working group”), the Commission decided which of the current provisions of the Davis-Stirling Act should continue to apply to commercial and industrial CIDs. The Commission then directed the staff to prepare a draft of proposed legislation to implement those decisions. Minutes (Aug. 2009), p. 5.

The Commission indicated a preference that the legislation, rather than simply expanding the scope of Section 1373, instead propose a new stand-alone body of law that would recodify all provisions of the Davis-Stirling Act that the Commission determined should remain applicable to nonresidential CIDs. Enactment of this separate body of law would allow those CIDs to be entirely exempted from the existing Davis-Stirling Act, which in turn would allow the statutory law governing those CIDs to grow and develop independently from the law governing residential CIDs.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

At its February 2010 meeting, the Commission approved a draft of proposed legislation for inclusion in a tentative recommendation in this study, conditioned on deletions and revisions that the Commission directed at the meeting. Minutes (Feb. 2010), pp. 5-6.

The legislation approved by the Commission at the February meeting is attached to this memorandum. The deletions directed by the Commission at the February meeting have been incorporated in the attachment; the revisions directed by the Commission are discussed in this memorandum.

All statutory references that follow are to sections of the Civil Code, unless otherwise noted.

REVISIONS DIRECTED BY THE COMMISSION

The revisions to the proposed legislation directed by the Commission at the February 2010 meeting are discussed below.

Section 6600 (Conflicting Governing Document Provisions)

One of the sections of the proposed legislation, Section 6600, would provide a hierarchy of supremacy for the main types of documents that govern a CID — the CID’s declaration, articles of incorporation, bylaws, and operating rules — for the purpose of resolving conflicts between provisions in those documents. Section 6600, while based in part on existing provisions of law, would be a new section of law that would not continue an existing section of the Davis-Stirling Act.

At the Commission’s February 2010 meeting, the Commission directed the staff to draft an exception to Section 6600 for a governing document provision that is “required by law,” indicating that such a provision should not be subordinate to any contrary provision of a superior document. Minutes (Feb. 2010), p. 6.

In other words, if a statute requires that a governing document include a particular provision, then that provision should control over any inconsistent provision in the association’s governing documents, even if the inconsistent provision is expressed in a document of superior dignity. For example, if a statute requires that the association adopt a specified operating rule, then that operating rule should presumably control over an inconsistent provision in the

association's declaration, despite the fact that operating rules must ordinarily yield to the declaration. See Section 1357.110(c).

That general concept seems clear, but the staff is unsure how it should be implemented. The uncertainty results from the fact that there are two possible ways that a statute might "require" a governing document provision:

- (1) A statute might require that an association adopt a governing document provision on a particular topic, *without specifying the substantive content of the provision*. For example, Section 1363.03(a)(4) requires that an association adopt an operating rule stating the qualifications for voting in a CID election, but it does not specify what those qualifications should be.
- (2) A statute might require that an association adopt a governing document provision *with a specified substantive effect*. For example, Section 1363.03(a)(2) requires that an association adopt an operating rule guaranteeing that candidates in an election be granted equal access to association meeting space. There is no flexibility on that substantive content.

In the staff's view, a provision of the second type should be included in the exception under discussion here. If the Legislature mandates that a governing document express a particular rule, then the resulting governing document provision is a direct expression of a nondiscretionary statutory requirement. It should therefore control over an inconsistent governing document provision, even if expressed in a document of superior dignity.

The staff is uncertain whether a provision of the first type should be included in the exception under discussion. For example, if a statute requires that an association adopt an operating rule setting out voting qualifications, without stating what those rules should be, can the association adopt standards that contradict rules already expressed in a superior document? Could a later amendment of a superior document trump the operating rule?

In other words, is it reasonable to conclude that a provision of the first type reflects the Legislature's intention that an association be given discretion as to the content of the mandated rule, without regard for any superior governing document provisions addressing the same topic?

The staff would like to receive guidance from the Commission on that issue before drafting implementing language.

Section 6612 (Conflict with Applicable Law)

At the February 2010 meeting, the Commission also directed the staff to revise Section 6612 of the proposed legislation, to correct two ambiguous references in the section to a “governing” provision of law. Minutes (Feb. 2010), pp. 6-7. The staff’s proposed draft of the section had read as follows:

6612. Notwithstanding a contrary provision of the governing documents, in the event of a conflict between a provision of a governing document and any governing provision of law, including, but not limited to, a statute, ordinance, regulation, building code, or court decision, the governing provision of law shall prevail.

The Commission directed the staff to delete the word “governing” from the two references in the section to a “governing provision of law.” However, in the minutes memorializing that decision, the staff inadvertently deleted the word “governing” from the phrase “governing documents.” Minutes (Feb. 2010), p. 7.

That was an error. The staff recommends that **Section 6612 be revised to read as follows:**

6612. Notwithstanding a contrary provision of the governing documents, in the event of a conflict between a provision of a governing document and any ~~governing~~ provision of law, including, but not limited to, a statute, ordinance, regulation, building code, or court decision, the ~~governing~~ provision of law shall prevail.

Section 6870(d) (Construction Defect Litigation)

The Commission also requested the staff at the February 2010 meeting to revise proposed Section 6870(d), a section intended to continue Section 1375(d) of the existing Davis-Stirling Act without substantive change.

Section 1375 generally relates to construction defect litigation contemplated by a CID association. Section 1375(d) allows a prospective defendant in such litigation (the “respondent”) to request a pre-complaint “meet and confer” meeting with the board of directors of the CID association. A sentence in Section 1375(d) provides that this meeting “shall be subject to subdivision (b) of Section 1363.05,” a section of the Davis-Stirling Act generally governing meetings in a CID.

Section 1363.05(b) provides as follows:

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

As originally proposed by the staff, proposed Section 6870(d) would have replaced the existing cross-reference with the language shown in italics, below:

Within 25 days of the date the association serves the Notice of Commencement of Legal Proceedings, the respondent may request in writing to meet and confer with the board. Unless the respondent and the association otherwise agree, there shall be not more than one meeting, which shall take place no later than 10 days from the date of the respondent's written request, at a mutually agreeable time and place. *Any member of the association may attend the meeting, except if the board adjourns to executive session.* The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and the respondent consent in writing to their admission.

At the February 2010 meeting, concerns were raised about whether that language correctly captures the meaning of the existing cross-reference to Section 1363.05(b). See Minutes (February 2010), p. 7.

The question is difficult because the proposed law would not continue the application of Section 1363.05 to a nonresidential CID. This means that the section cannot simply be revised to refer to the proposed provision that would continue the substance of Section 1363.05(b). Instead, the substance of the referenced provision must be restated in proposed Section 6870(d).

Section 1363.05(b) states the general rules for open and closed sessions in an association board meeting. Board meetings are open to the members, except as to matters that may (or must) be considered in closed session. A meeting to "consider litigation" may be closed. *Id.*

The meet and confer meeting authorized in Section 1375 would seem to fit within the scope of the litigation basis for a closed session. That interpretation is strengthened by the last sentence of Section 1375(d), which provides that

discussions held in the meet and confer meeting are privileged. It would be unusual for discussions held in an open meeting to be considered privileged.

If this is correct, then the cross-reference to Section 1363.05(b) was probably intended to make clear that this meet and confer meeting may be conducted in a closed session. A leading CID treatise interprets the provision that way. See *Sproul and Rosenberry, Advising California Common Interest Communities*, § 10.71 (“[Section 1375(d)] meetings may be conducted in executive session, excluding the association’s members ...”).

Consistent with that reading of Section 1375(d), the staff recommends that **the cross-reference in proposed Section 6870(d) be revised to read as shown in italics below:**

(d) Within 25 days of the date the association serves the Notice of Commencement of Legal Proceedings, the respondent may request in writing to meet and confer with the board. Unless the respondent and the association otherwise agree, there shall be not more than one meeting, which shall take place no later than 10 days from the date of the respondent’s written request, at a mutually agreeable time and place. *The meeting may be conducted in executive session, excluding the association’s members.* The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and the respondent consent in writing to their admission.

APPLICATION OF PROPOSED LEGISLATION

Two issues relating to the scope of application of the proposed law should be addressed by the Commission before approving a tentative recommendation.

Mixed Use CIDs

To this point in this study, the Commission has not fully addressed the extent to which the study should include statutory treatment of what is sometimes referred to as a “mixed use CID.” A mixed use CID is generally understood to be either (1) a single CID containing both residential and nonresidential units, or (2) a more complex arrangement in which residential and nonresidential owners, at least one group of which is organized as a CID, have legal obligations to each other through a master association, reciprocal easement, or some other instrument. See email from Jeffrey Wagner on behalf of the stakeholder working group, Exhibit p. 2.

The proposed legislation would apply only to CIDs that are limited to commercial and industrial uses. See proposed Sections 6506, 6556. Thus, if a CID includes even a single residence, it would *not* be governed by the proposed legislation, and would therefore continue to be governed by the Davis-Stirling Act. This is consistent with the approach in existing Section 1373, which applies only to CIDs that are exclusively commercial or industrial.

It is less clear how the proposed law would apply to the second type of mixed use association. For example, suppose that an exclusively residential CID and an exclusively commercial CID are jointly governed by a master association. How would the proposed law apply to that more complex scenario? (This is not a new problem — the same issue arises under existing Section 1373.)

If the Commission desired to provide that clarity, the Commission could either (1) begin to educate itself about the various types of mixed use CIDs, with an eye toward eventually revising the proposed legislation in this study to incorporate statutory treatment of these CIDs, or (2) consider a separate study, to be commenced following the completion of this study, that would explore the appropriate statutory treatment of these complex types of arrangements.

From time to time, different members of the stakeholders working group have pressed the Commission to resolve the ambiguities that can arise in the more complex mixed use scenarios. **The staff agrees that the issue should be studied.** However, in the most recent communication from the stakeholder group, they indicated a preference that the issue be set aside for separate study, after the main proposal is fully developed. See Exhibit p. 2.

Analysis

The recommendation of the stakeholder working group may be the most efficient way for the Commission to proceed. Based on what the Commission has heard to date, the study of mixed use CIDs will likely be very complex, involving practical details of real estate development law and practice. It therefore might make sense to proceed with the main thrust of the proposed law before circling back to address the more complex (and less common) scenarios.

Furthermore, it is possible that the mixed use issues could raise political questions that could undermine support for the main proposal. Again, this would seem to support the notion of bifurcating the study, with the main portion proceeding first, to be followed by the more difficult and less certain portion.

Of course, whatever comments are received in response to the tentative recommendation might cast the question in a different light. But based on the input the Commission has received to date, the staff recommends that **the Commission defer consideration of the statutory treatment of mixed use CIDs until after completion of the present study.**

Nomenclature (“Nonresidential CID”)

The proposed legislation would apply to “a common interest development that is *limited to industrial or commercial uses* by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located.” Sections 6506, 6556 (emphasis added). Existing Section 1373 has the same scope of application.

Although such CIDs could be described as “commercial or industrial CIDs,” the proposed law refers to them as “nonresidential CIDs.” The Commission has received a comment from a CID owner that questions the appropriateness of that terminology.

Ed Weber writes to describe his CID, which has no permanent residences, but appears to be neither commercial nor industrial. Exhibit p. 1. Instead, the separate interests in his development, known as the “R-Ranch,” are sites on a 5,300 acre parcel of land that are used for recreational camping. Mr. Weber asserts that there are a handful of other similar developments throughout the state.

As the proposed law is not intended to govern the R-Ranch and similar properties (which, while “nonresidential,” are not limited to commercial or industrial uses), Mr. Weber asserts that labeling the CIDs that *are* to be governed by the proposed law as “nonresidential” would be confusing.

This strikes the staff as a reasonable point. The terminology used in the proposed law should be clear and accurate. Arguably, the terminology would be improved by using the term “commercial or industrial CIDs,” rather than “nonresidential CIDs.” While this naming issue would have no effect on the scope of application of the law, it would appear to describe the governed class more accurately. **Should that change be made?**

NEW DAVIS-STIRLING ACT PROVISION

At the August 2009 meeting, the Commission made decisions regarding which decisions of the existing Davis-Stirling Act should apply to nonresidential CIDs. Memorandum 2009-32.

Since that time, a new provision has been added to the Davis-Stirling Act: Section 1366.4. See 2009 Cal. Stat. ch. 431.

Section 1366.4 relates to how the assessments of separate interests in a CID may be calculated. The section provides that, with limited exceptions, the amount of such an assessment may not be based on the taxable value of a separate interest.

The new provision was included in the proposed law as proposed Section 6806:

6806. (a) Except as provided in subdivision (b), notwithstanding any provision of this part or the governing documents to the contrary, an association shall not levy assessments on separate interests within the common interest development based on the taxable value of the separate interests unless the association, on or before December 31, 2009, in accordance with its governing documents, levied assessments on those separate interests based on their taxable value, as determined by the tax assessor of the county in which the separate interests are located.

(b) An association that is responsible for paying taxes on the separate interests within the common interest development may levy that portion of assessments on separate interests that is related to the payment of taxes based on the taxable value of the separate interest, as determined by the tax assessor.

The Commission now needs to make a policy decision on whether that provision should be applied to nonresidential CIDs.

Review of Prior Methodology

In determining which provisions of the Davis-Stirling Act should apply to nonresidential CIDs, the Commission first grouped all provisions of the Davis-Stirling Act into functional categories (e.g., establishment of a CID, meetings, notices, assessments, etc.). Memorandum 2009-32. The Commission then made decisions for each category of provisions, based on appropriate policy criteria. The Commission also considered input from several commenters, including relatively comprehensive comment from the stakeholder working group. See Memorandum 2009-32, Exhibit pp. 1-19.

This memorandum uses the same basic method in evaluating Section 1366.4.

Whether Provision is Foundational or Operational

One policy criteria applied by the Commission is whether the provision at issue is “foundational” or “operational.” Foundational provisions relate to the formation and basic character of CIDs. They define the CID form of property ownership. For the most part, they are necessary to the existence of a CID. By contrast, an operational provision specifies the manner in which the association’s governing association is to be operated. Such provisions address meeting procedures, voting, accounting, record-keeping, etc. See discussion in First Supplement to Memorandum 2009-24.

As a general matter, it seems clear that foundational provisions should be applied to all CIDs. They are necessary and are equally important for both residential and nonresidential communities.

It is less clear that any particular operational provision should apply to nonresidential CIDs. An operational provision may have been developed to assist or protect homeowners, with little regard for how it would affect sophisticated business property owners. As a general matter, operational provisions need to be examined, under other criteria, to determine whether they should apply to nonresidential CIDs.

It is unclear whether Section 1366.4 is a foundational provision. It does relate to one of the core financial concerns in a CID, the levying of assessments to fund the managing association and maintain common property.

However, it might have been enacted by the Legislature to ensure equity between homeowners, who might otherwise be assessed at widely different rates, despite the fact that they are receiving equivalent services. Such a protection might not be as necessary for business property owners, who can be expected to contract for whatever funding obligations suit their circumstances and needs. There is arguably less need for a statutory override in that context.

Although the question is relatively close, the staff suggests that Section 1366.4 appears to be at least *more* foundational than operational, as it relates to basic payment obligations of the owners and the total funding available to a CID, rather than the manner in which those funds are to be collected or disbursed. Consideration of this factor would therefore point, although perhaps not strongly, toward continued applicability to nonresidential CIDs.

Exemption From Provisions Regulating Financial Management

Another criterion applied by the Commission was general deference to business property owners on financial and accounting matters. While homeowners may require special protections to safeguard the uniquely important investment one has in one's home, it is less clear that businesses need to be safeguarded against making poor financial decisions. What's more, micromanagement of business financial matters could interfere unduly with a business' ability to make good planning decisions. See discussion in Memorandum 2009-24, pp. 13-16.

Because Section 1366.4 regulates financial arrangements within a CID, the criteria discussed here weighs in favor of nonresidential CIDs being exempted from the provision.

Public Comment

In addition to applying relevant policy criteria, the Commission has been very attentive to input from interested persons. The decisions made in the course of this study could have significant beneficial or deleterious effects when applied in practice. It is therefore important to solicit and consider stakeholder input.

The stakeholder working group has not advocated that nonresidential CIDs be exempted from Section 1366.4. First Supplement to Memorandum 2009-18, Exhibit p. 5. The group has also not raised any objection to the inclusion of proposed Section 6806 in the legislation.

No other commenter has expressed a position on whether Section 1366.4 should be applicable to nonresidential CIDs.

Conclusion

The staff is unsure how to treat Section 1366.4. The provision is not so foundational to the essential nature or operation of a CID as to be indispensable. However, the provision does touch on a core principle of the CID structure, shared obligation for common expenses.

The staff invites public comment on the issue, which may help to resolve the matter. If the Commission cannot reach a clear decision, the provision should probably be preserved, out of deference to a recent legislative policy decision.

PRIOR COMMISSION DECISIONS

Subsequent to the Commission's approval of the proposed legislation at the February 2010 meeting, the stakeholder working group had submitted lengthy comment requesting further changes to the proposed legislation. Based on time and resource constraints, the staff was unable to prepare an analysis of these requests for the upcoming Commission meeting.

If the Commission so requests, the staff will present such an analysis before preparing the tentative recommendation.

Alternatively, the Commission may want to defer consideration of these latest comments from the stakeholder working group until after circulation of the tentative recommendation. The comments could then be considered in conjunction with whatever other public comment that the Commission receives. This approach would allow the Commission to consider broader public input before making a decision to reverse a previously made decision. If instead the Commission were to consider the second round of stakeholder comments now, there is nothing preventing another interested group from submitting comments urging reversal of prior decisions. **In the interests of making steady progress on the study, it might be best to proceed with the draft as already approved by the Commission, and consider all comments on that tentative recommendation.**

The staff requests direction from the Commission as to when it wishes to receive and consider an analysis of the latest comments submitted by the stakeholder working group on the content of the proposed legislation in this study.

TECHNICAL CORRECTION

The staff has noted and corrected a typographical error in Section 6546 of the proposed legislation, which defines a CID declaration. The information referenced in that section is required by Section 6614 of the proposed legislation, not Section 6616.

WHAT'S NEXT

If the Commission decides to postpone consideration of the latest comment from the stakeholder working group, the next step would be to prepare a draft of the narrative "preliminary part" of the tentative recommendation. Once that is

approved, the entire tentative recommendation could be approved for public circulation.

During that process, the staff will also make technical adjustments to the proposed law to keep it parallel with the draft being prepared in the related study on *Statutory Clarification and Simplification of CID Law* study. See Memorandum 2010-36. As the Commission has decided that the proposed nonresidential CID statute should draw its organization and language from the recodification draft, changes made in that draft should also be carried over into the nonresidential CID legislation.

Respectfully submitted,

Steve Cohen
Staff Counsel

EMAIL FROM ED WEBER
(FEBRUARY 18, 2009)

Hi Brian!

My background in language and journalism has driven me to drop you this observation.

The term you are using, "nonresidential," to refer to commercial/industrial CIDs is improper and counter to your goal to clarify the law, in my view. Please let me tell you why you might find this important.

I am one of 2,500 shareholders who comprise the R-Ranch Property Owners Association. We manage 5,300 acres of land that we own along the Klamath River, and adjacent to I-5 in Siskiyou County CA. the only permanent buildings are the common structures.

Since our founding 35 years ago, we refer to ourselves in legal documents as a nonresidential association. Due to the historic use of the term, I ask you to consider changing your new use to avoid future confusion.

Shareholders use R-Ranch as a vacation property and provide their own trailer, camper or RV which can hook up at any of our 300 campsites during their stay. Our CC&Rs limit residency to prevent permanent residence, and to retain our fit under state law as a vacation property.

I believe there are 5 other such historic properties in other areas of the state.

My only intention is to assist you in achieving your goals.

**EMAIL FROM STEVE COHEN TO JEFFREY WAGNER
(APRIL 27, 2010)**

Jeff,

Commission staff is trying to get a better sense of exactly what you, Craig, Duncan, and the stakeholder group have been referring to when speaking about “mixed use” issue(s), and what the group is hoping that the Commission might do relating to the issue(s), as part of the nonresidential CID study. I am writing to you at this time in your role as a “point person,” hoping that to the extent some or all of the above persons or entities might have different answers to questions that follow, you can do your best to synthesize those viewpoints in formulating answers.

Here are a couple specific questions to start. Based on your answers, I will then be able to send you appropriate and to the point follow up questions.

1. Do the “mixed use” issue(s) that your group is primarily concerned about relate to:
 - a. what law should govern a master association whose members consist of one or more residential CIDs, and one or more nonresidential CIDs,
 - b. what law should govern a land use situation that does not involve a master association, but in which there exists a reciprocal easement agreement exists between one or more residential CIDs, and one or more nonresidential CIDs,
 - c. what law should govern a single CID containing both residential and nonresidential units,
 - d. something else, or
 - e. some combination of one or more of the above.

2. Whatever the primary concern, which of the following would your group prefer:
 - a. that the Commission study the issues underlying the group’s concern at this time, with an eye toward including legislation addressing that concern in the same bill that would exempt nonresidential CIDs from the Davis-Stirling Act, and create a new body of law applicable only to nonresidential CIDs,
 - b. that the Commission study the issues underlying the group’s concern at this time, but with an eye toward eventually recommending separate stand-alone legislation addressing the concern (perhaps not as seamless, requires that this legislation stand or fall on its own, but also avoids the risk of “clouding” the nonresidential CID exemption legislation with possibly complex and/or controversial matters),
 - c. that the Commission wait to study the identified “mixed use” issue(s) until after the Commission has concluded its study of purely nonresidential CIDs and recommended legislation to the Legislature that consists solely of nonresidential CID exemption legislation.

Please feel free to call me rather than reply to this email if that would be more comfortable for you. As always, thanks very much for your help with this project.

EMAIL FROM JEFFREY WAGNER (MAY 31, 2010)

I was hoping to have our recommendations as to how to apply the Davis-Stirling Act (i.e. the recodified Residential Act) and the new NonResidential Act to mixed use projects but more work needs to be done before we will be in a position to do so. In any event I wanted to respond as best I could at this stage to your two questions below.

Question #1. Mixed use projects can involve a wide variety of organizational structures including single associations with residential and commercial members, master associations with either individual commercial and residential members, subassociation members or a combination of both and reciprocal easement agreements with commercial and residential individuals and/or associations as parties. Whether we end up with two separate Acts or a single Act with a commercial/industrial exemption, it would be helpful to have some legislative guidance on how the Acts or the exemption apply to these projects. As noted above, we hope to provide the Commission with some suggestions in this area.

Question #2. Our consensus is 2c.

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# NONRESIDENTIAL COMMON INTEREST DEVELOPMENTS

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## PROPOSED LEGISLATION

1 **Civ. Code § 1373 (amended). Nonresidential common interest developments**

2 SECTION 1. Section 1373 of the Civil Code is amended to read:

3 1373. (a) This title does not apply to a common interest development that is  
4 limited to industrial or commercial uses by zoning or by a declaration of  
5 covenants, conditions, and restrictions that has been recorded in the official  
6 records of each county in which the common interest development is located.

7 **Comment.** Section 1373 is amended to make the provisions of the Davis-Stirling Common  
8 Interest Development Act inapplicable to common interest developments that are exclusively  
9 nonresidential. Many provisions of the act are continued and made applicable to exclusively  
10 nonresidential common interest developments by the Nonresidential Common Interest  
11 Development Act, Part 5.5 (commencing with Section 6500) of Division 4. For the disposition of  
12 a particular section of the Davis-Stirling Common Interest Development Act, see *Nonresidential*  
13 *Common Interest Developments*, \_\_ Cal. L. Revision Comm'n Reports \_\_ (201\_).

14 **Civ. Code §§ 6500-6876 (added). Nonresidential common interest developments**

15 SEC. \_\_\_\_. Part 5.5 (commencing with Section 6500) is added to Division 4 of  
16 the Civil Code to read:

17 **Staff Note.** Each of the provisions below has a parenthetical description following the section  
18 number in its heading. The descriptions have the following meanings:

19 **(UNCHANGED).** A section with this description would continue existing law almost  
20 verbatim, to the extent that existing law presently applies to a nonresidential common interest  
21 development. Minor technical changes might be made to (1) correct a cross-reference to reflect  
22 the new number of the referenced provision, (2) add or modify subdivision or paragraph  
23 designators (e.g., unnumbered paragraphs might be designated as subdivisions), or (3) conform to  
24 technical stylistic conventions (e.g., to avoid use of the word “such” or the phrase “he or she”). If  
25 any of these changes are made, they will be clearly identified in the Comment following the  
26 section.

27 **(REVISED).** A section with this description would continue or restate existing law verbatim to  
28 the extent that existing law presently applies to a nonresidential common interest development,  
29 except as specifically indicated in the Comment and “Staff Note” that follow the section. Changes  
30 made to a “(REVISED)” section may include the rewording of ambiguous or confusing language  
31 or minor substantive improvements to existing law. Any such changes will be expressly  
32 identified.

33 **(NEW).** A section with this description would be largely new. A boxed “Staff Note” following  
34 the Comment will explain the purpose of the new section.

1                   PART 5.5. NONRESIDENTIAL COMMON  
2                   INTEREST DEVELOPMENTS

3                   CHAPTER 1. GENERAL PROVISIONS

4                   Article 1. Preliminary Provisions

5   § 6500 (NEW). Short title

6       6500. This part shall be known and may be cited as the Nonresidential Common  
7   Interest Development Act.

8       **Comment.** Section 6500 is new.

9       Common interest developments in general are governed by the Davis-Stirling Common Interest  
10   Development Act. See Sections 1350-1378. However, common interest developments that are  
11   exclusively nonresidential were exempted from the provisions of that act by 2011 Cal. Stat. ch.  
12   \_\_\_\_. See Section 1373.

13       This part (Sections 6500-6876) was added to establish a separate body of law, largely based on  
14   provisions of the Davis-Stirling Common Interest Development Act, that would apply to and  
15   govern exclusively nonresidential common interest developments.

16       The Comments to the sections of this act identify sections of the Davis-Stirling Common  
17   Interest Development Act that are sources of the provisions of this act, and describe how each  
18   provision in this act compares with its source. The following discussion is intended to provide  
19   guidance in interpreting terminology used to describe that comparison.

20       (1) *Continues*. A provision of this act “continues” a provision of the Davis-Stirling Common  
21   Interest Development Act if it continues the substance of the Davis-Stirling Common Interest  
22   Development Act provision to the extent that provision formerly applied to a nonresidential  
23   common interest development.

24       (2) *Continues without change*. A provision of this act continues a provision of the Davis-  
25   Stirling Common Interest Development Act “without change” if the two provisions are identical  
26   or nearly so. In some cases, there may be insignificant technical differences, such as where  
27   punctuation is changed without a change in meaning.

28       (3) *Continues without substantive change*. A provision of this act continues a provision of the  
29   Davis-Stirling Common Interest Development Act “without substantive change” if the  
30   substantive law remains the same, but the language differs to an insignificant degree.

31       (4) *Restates*. A provision of this act “restates” a provision of the Davis-Stirling Common  
32   Interest Development Act if the substantive law remains the same but the language differs to a  
33   significant degree.

34       (5) *Exceptions, additions, omissions*. If a provision of the Davis-Stirling Common Interest  
35   Development Act is “continued” or “restated” by a provision of this act, the Comment may say  
36   that the provision is continued or restated, but also note the specific differences as “exceptions  
37   to,” “additions to,” or “omissions from” the former provision.

38       (6) *Generalizes*. A provision of this act may be described as “generalizing” a provision of the  
39   Davis-Stirling Common Interest Development Act. This description means that a limited rule has  
40   been expanded to cover a broader class of cases.

41       (7) *New*. A provision of this act is described as “new” where it has no direct source in prior  
42   statutes.

43       (8) *Drawn from, consistent with*. A variety of other terms are used to indicate the relationship  
44   between a provision of this act and its source. For example, a provision may be “drawn from”  
45   another provision. In these cases, it may be useful to consult any available commentary or  
46   interpretation of the source from which the new provision is drawn for background information.

1 **§ 6502 (REVISED). Effect of headings**

2 6502. Division, part, title, chapter, article, and section headings do not in any  
3 manner affect the scope, meaning, or intent of this part.

4 **Comment.** Section 6502 continues Section 1350.5 without change, except that “article” has  
5 been added to the list of headings and the last word of the sentence is replaced with “part.” For  
6 further information, see the Law Revision Comment to Section 6500.

7 Section 6502 is a standard provision found in many codes. See, e.g., Evid. Code § 5; Fam.  
8 Code § 5; Prob. Code § 4.

9 **Staff Note.** Proposed Section 6502 would add “article” to the list of headings in existing  
10 Section 1350.5. The omission of articles from that list appears to have been inadvertent.

11 **§ 6504 (NEW). Continuation of other provision of law**

12 6504. (a) Insofar as a provision of this part is substantially the same and relates  
13 to the same subject matter as a provision of Title 6 (commencing with Section  
14 1350) of Part 4 of Division 2, the provision of this part shall be construed as a  
15 restatement and continuation of the provision of that title, and not as a new  
16 enactment, to the extent the provision of that title applied to a nonresidential  
17 common interest development prior to the enactment of the act that added this  
18 section. In that instance, a reference in a statute to the provision of this part shall  
19 be deemed to include a reference to the provision of Title 6 (commencing with  
20 Section 1350) of Part 4 of Division 2 that it restates and continues, unless a  
21 contrary intent appears.

22 (b) A reference in the governing documents of a nonresidential common interest  
23 development, to a provision of Title 6 (commencing with Section 1350) of Part 4  
24 of Division 2 that is restated and continued in this part, is deemed to include a  
25 reference to the provision of this part that restates and continues the referenced  
26 provision.

27 **Comment.** Section 6504 is new. Subdivision (a) is drawn from a standard provision found in  
28 many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a);  
29 Veh. Code § 2. See also Gov’t Code §§ 9604 (construction of restatements and continuations),  
30 9605 (construction of amended statutory provision). The second sentence of subdivision (a)  
31 makes clear that a statutory reference to a provision within this part includes a reference to the  
32 law from which it is drawn. *Cf.* Gov’t Code § 9604 (reference to previously existing provision  
33 deemed reference to restatement or continuation).

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

36 **Staff Note.** This provision is drawn from a standard transitional provision. It clarifies that a  
37 provision in this part that restates the substance of a provision of the Davis-Stirling Act is to be  
38 treated as a continuation of that Davis-Stirling Act provision, and not as a new enactment, to the  
39 extent the Davis-Stirling Act provision applied to a nonresidential common interest development  
40 prior to the enactment of the act that added this section. Thus, a reference to a Davis-Stirling Act  
41 provision in a court opinion, to the extent that provision was applicable to a nonresidential  
42 common interest development prior to the enactment of the act that added this section, is also to  
43 be treated as a reference to a provision in this part that restates or continues the Davis-Stirling Act  
44 provision.

45 Subdivision (b) would expressly extend that principle to references in an association’s  
46 governing documents.

1 **§ 6506 (REVISED). Application of part**

2 6506. (a) This part applies only to a nonresidential common interest  
3 development.

4 (b) Nothing in this part may be construed to apply to a development wherein  
5 there does not exist a common area as defined in Section 6532. This subdivision is  
6 declaratory of existing law.

7 **Comment.** Subdivision (a) of Section 6506 is consistent with Section 1373, except that this  
8 part additionally exempts exclusively nonresidential common interest developments from  
9 application of the following provisions: Section 1350.7, the provisions of Section 1353 that  
10 require notice if a development is within an airport influence area or within the jurisdiction of the  
11 San Francisco Bay Conservation and Development Commission, Section 1353.7, Sections  
12 1363(d), (e), (f), (h), and (i), Section 1363.03, Section 1363.04, Section 1363.05, Section  
13 1363.07, Section 1363.09, Section 1363.1, Sections 1363.810 through 1363.850, Section 1363.2,  
14 Section 1365.1, Section 1365.2, Section 1365.2.5, Section 1365.7, the last two sentences of  
15 Section 1366(a), Section 1366(d), Section 1366(e), Section 1366.2, Section 1367.1(c), Section  
16 1367.1(n), Section 1367.4, Section 1367.5, Section 1367.6, and Sections 1369.510 through  
17 1369.590. For further information, see the Law Revision Comment to Section 6500.

18 See also Section 6556 (“nonresidential common interest development”).

19 A common interest development is created as provided in Section 6508.

20 Subdivision (b) continues Section 1374 without change, except that the term “title” is replaced  
21 with “part” and a cross-reference is updated to reflect the location of the referenced provision. For  
22 further information, see the Law Revision Comment to Section 6500.

23 **Staff Note.** This proposed legislation is intended to apply only to a CID that is exclusively  
24 nonresidential (i.e., that does not contain any residential separate interests). Mixed use  
25 developments would continue to be governed by the existing Davis-Stirling Act. That rule is  
26 expressed in proposed Section 6506(a) and in proposed Section 6556, which defines  
27 “nonresidential common interest development” using language drawn from existing Section  
28 1373. The Commission invites comment on whether there are any problems with that approach.  
29 For example, are there any scenarios in which the proposed definition of “nonresidential common  
30 interest development” might include a development that has one or more residential separate  
31 interests? If so, suggestions for how to eliminate that possibility are invited.

32 **§ 6508 (REVISED). Creation of common interest development**

33 6508. (a) Subject to Section 6506, this part applies and a common interest  
34 development is created whenever a separate interest coupled with an interest in the  
35 common area or membership in the association is, or has been, conveyed,  
36 provided all of the following are recorded:

37 (1) A declaration.

38 (2) A condominium plan, if any exists.

39 (3) A final map or parcel map, if Division 2 (commencing with Section 66410)  
40 of Title 7 of the Government Code requires the recording of either a final map or  
41 parcel map for the common interest development.

42 (b) Notwithstanding subdivision (a), this part governs a stock cooperative that  
43 has not recorded a declaration.

44 **Comment.** Subdivision (a) of Section 6508 continues Section 1352 without change, except to  
45 make the provision subject to the general rule of application of this part. For further information,  
46 see the Law Revision Comment to Section 6500.

1 Subdivision (b) is new. It reflects the fact that some stock cooperatives are created without a  
2 recorded declaration.

3 **Staff Note.** Proposed Section 6508(b) is new. It preserves the application of this part to a  
4 stock cooperative when the cooperative lacks a recorded declaration.

5 The Commission invites comment on whether a nonresidential common interest development  
6 may be organized as a stock cooperative.

7 **§ 6510 (UNCHANGED). Construction of zoning ordinance**

8 6510. 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 6510 continues Section 1372 without change. For further information, see  
13 the Law Revision Comment to Section 6500.

14 **§ 6512 (NEW). Delivery to an association**

15 6512. If a provision of this part requires that a document be delivered to an  
16 association, the document shall be delivered by first-class mail, postage prepaid, or  
17 by certified mail. If no person has been designated to receive documents, the  
18 document shall be delivered to the president or secretary of the association.

19 **Comment.** Section 6512 is new. It provides a standard rule for delivery of a document to the  
20 association.

21 **Staff Note.** (1) Section 5310 is a new provision that would aggregate various disclosures  
22 required to be made to members in a residential CID. It is not included in this proposed  
23 legislation.

24 (2) Proposed Section 6512 is new. It would provide a clear rule for official communication  
25 with the association.

26 **§ 6514 (NEW). Individual notice**

27 6514. (a) If a provision of this part requires “individual delivery” or “individual  
28 notice,” the notice shall be delivered to the member to be notified by one of the  
29 following methods:

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

32 (2) E-mail, facsimile, or other electronic means, if the recipient has agreed to  
33 that method of delivery. The agreement obtained by the association shall be  
34 consistent with the conditions for obtaining consumer consent described in Section  
35 20 of the Corporations Code.

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

38 (c) For the purposes of this section, an unrecorded provision of the governing  
39 documents providing for a particular method of delivery does not constitute  
40 agreement by a member to that method of delivery.

1 **Comment.** Section 6514 is new. It specifies acceptable methods for delivery of a notice to an  
2 individual member, as distinguished from a notice that is to be delivered to every member. See  
3 Section 6516 (general notice). The methods listed in subdivision (a) are drawn from Section  
4 1350.7(b)(2)-(3).

5 Subdivision (b) generalizes a part of Section 1367.1(k).

6 Subdivision (c) is drawn from Section 1350.7(d). It precludes use of electronic delivery  
7 methods when the recipient has not consented to use of those methods or has withdrawn such  
8 consent.

9 **Staff Note.** Proposed Section 6514 is new. It is drawn from and generalizes much of the  
10 substance of existing Section 1350.7.

11 **§ 6516 (NEW). General notice**

12 6516. (a) If a provision of this part requires “general delivery” or “general  
13 notice,” the notice shall be provided by one or more of the following methods:

14 (1) Any method provided for delivery of an individual notice (Section 6514).

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

17 (3) Posting in a location that is accessible to all members, if the location has  
18 been designated for the posting of general notices by the association .

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

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

24 (b) Notwithstanding subdivision (a), if a member requests to receive general  
25 notices by individual delivery, all general notices to that member shall be  
26 delivered pursuant to Section 6514.

27 **Comment.** Section 6516 is new. It specifies acceptable methods for delivery of a notice to the  
28 membership generally, as distinguished from a notice that is to be delivered to a specific member.  
29 See Section 6514 (individual notice). Nothing in this section prevents an association from using  
30 supplemental notice methods, such as posting on an Internet website, so long as one or more  
31 methods authorized by this section are also used.

32 Subdivision (b) reserves the right of any member, on request, to receive general notices by the  
33 delivery methods provided for delivery of an individual notice. Thus, in an association that posts  
34 general notices to its website, individual members would still have the right, on request, to  
35 receive those notices by mail.

36 **Staff Note.** (1) Section 5310 is a new provision that would aggregate various disclosures  
37 required to be made to members in a residential CID. It is not included in this proposed  
38 legislation.

39 (2) Proposed Section 6516 is new. It would enhance efficiency by allowing an association to  
40 “broadcast” notices of general interest, while reserving the right of individual members to receive  
41 those notices as individual notices on request.

42 **§ 6518 (NEW). Time and proof of delivery**

43 6518. (a) This section governs the delivery of a document pursuant to this part.

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

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

5 **Comment.** Section 6518 is new. Subdivision (b) is drawn from the second sentence of Section  
6 1350.7(b)(2).

7 Subdivision (c) is drawn from the second sentence of Section 1350.7(b)(3).

8 **Staff Note.** Proposed Section 6518 is new. It would generalize the timing rules provided in  
9 existing Section 1350.7, so that they would apply to any notice delivered by the specified  
10 methods. This will provide greater certainty in resolving timing disputes.

11 **§ 6520 (NEW). Minimum font size**

12 6520. In any notice, ballot, report, or other writing that the association is  
13 required to prepare and deliver to a member pursuant to this part, the text shall be  
14 printed in a 12 point font or larger.

15 **Comment.** Section 6520 is new. This section does not apply to an association record that was  
16 not prepared for delivery to a member.

17 **Staff Note.** Proposed Section 6520 is new. It would generalize and standardize the minimum  
18 font size rules provided in existing Sections 1365(d) and 1365.1(a), so that they would apply to  
19 any notice or report delivered to a member pursuant to this part.

20 The Commission invites comment on whether this consumer oriented provision is needed or  
21 desirable in a nonresidential common interest development.

22 **§ 6522 (NEW). Approved by majority of all members**

23 6522. If a provision of this part requires that an action be approved by a majority  
24 of all members, the action shall be approved or ratified by an affirmative vote of  
25 members representing more than 50 percent of the total voting power of the  
26 association.

27 **Comment.** Section 6522 is new. It is added for drafting convenience. This section only  
28 governs an election conducted pursuant to a provision of this part. An election that is not required  
29 by this part would be governed by the association's governing documents.

30 **Staff Note.** Proposed Section 6522 is new. It would add guidance on the procedure for  
31 approval of a proposed action that must be approved "by a majority of all members."

32 **§ 6524 (NEW). Approved by majority of quorum of members**

33 6524. If a provision of this part requires that an action be approved by a majority  
34 of a quorum of the members, the action shall be approved or ratified by an  
35 affirmative vote of members representing more than 50 percent of the votes cast in  
36 an election at which a quorum is achieved.

37 **Comment.** Section 6524 is new. It is added for drafting convenience. This section only  
38 governs an election conducted pursuant to a provision of this part. An election that is not required  
39 by this part would be governed by the association's governing documents.

1 **☞ Staff Note.** Proposed Section 6524 is new. It would add guidance on the procedure for  
2 approval of a proposed action that must be approved “by a majority of a quorum of the  
3 members.”

4 Article 2. Definitions

5 **§ 6526 (REVISED). Application of definitions**

6 6526. The definitions in this article govern the construction of this part.

7 **Comment.** Section 6526 restates the substance of the introductory clause of Section 1351. For  
8 further information, see the Law Revision Comment to Section 6500.

9 **☞ Staff Note.** Proposed Section 6526 recasts the introductory clause of Section 1351 to better  
10 fit within the new organization, without any substantive change in its meaning.

11 **§ 6528 (UNCHANGED). “Association”**

12 6528. “Association” means a nonprofit corporation or unincorporated  
13 association created for the purpose of managing a common interest development.

14 **Comment.** Section 6528 continues Section 1351(a) without change. For further information,  
15 see the Law Revision Comment to Section 6500.

16 **§ 6530 (NEW). “Board”**

17 6530. “Board” means the board of directors of the association.

18 **Comment.** Section 6530 is new.

19 **☞ Staff Note.** Proposed Section 6530 is added for drafting convenience.

20 **§ 6532 (REVISED). “Common area”**

21 6532. (a) “Common area” means the entire common interest development  
22 except the separate interests therein. The estate in the common area may be a fee,  
23 a life estate, an estate for years, or any combination of the foregoing.

24 (b) Notwithstanding subdivision (a), in a planned development described in  
25 subdivision (b) of Section 6562, the common area may consist of mutual or  
26 reciprocal easement rights appurtenant to the separate interests.

27 **Comment.** Subdivision (a) of Section 6532 continues the first sentence of Section 1351(b)  
28 without change. For further information, see the Law Revision Comment to Section 6500.

29 Subdivision (b) continues the substance of the second sentence of Section 1351(b), but restates  
30 it for clarity. For further information, see the Law Revision Comment to Section 6500.

31 **☞ Staff Note.** Proposed Section 6532(b) would restate the second sentence of existing Section  
32 1351(b), to improve its clarity without changing its meaning.

33 **§ 6534 (UNCHANGED). “Common interest development”**

34 6534. “Common interest development” means any of the following:

35 (a) A community apartment project.

36 (b) A condominium project.

37 (c) A planned development.

1 (d) A stock cooperative.

2 **Comment.** Section 6534 continues Section 1351(c) without change. For further information,  
3 see the Law Revision Comment to Section 6500.

4 **§ 6536 (UNCHANGED). “Community apartment project”**

5 6536. “Community apartment project” means a development in which an  
6 undivided interest in land is coupled with the right of exclusive occupancy of any  
7 apartment located thereon.

8 **Comment.** Section 6536 continues Section 1351(d) without change. For further information,  
9 see the Law Revision Comment to Section 6500.

10 **☞ Staff Note.** The Commission invites comment on whether a nonresidential common interest  
11 development may be organized as a community apartment project.

12 **§ 6540 (REVISED). “Condominium plan”**

13 6540. “Condominium plan” means a plan consisting of:

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

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

20 (c) A certificate consenting to the recordation of the condominium plan pursuant  
21 to this part that is signed and acknowledged as provided in Section 6624.

22 **Comment.** Section 6540 continues the introduction of Section 1351(e) without change, with  
23 the following exceptions: (1) The enumerated items are set out as subdivisions. (2) A reference to  
24 “this title” has been changed to “this part.” (3) The list of persons who must sign and  
25 acknowledge the certificate consenting to recordation of the condominium plan has been replaced  
26 with a reference to the section governing the creation and recordation of a condominium plan. For  
27 further information, see the Law Revision Comment to Section 6500.

28 **☞ Staff Note.** Proposed Section 6540 would include only the definition of the term  
29 “condominium plan.” Procedural provisions in Section 1351, relating to the creation or  
30 amendment of a condominium plan, would be located elsewhere. See proposed Sections 6624 and  
31 6626.

32 **§ 6542 (UNCHANGED). “Condominium project”**

33 6542. (a) A “condominium project” means a development consisting of  
34 condominiums.

35 (b) A condominium consists of an undivided interest in common in a portion of  
36 real property coupled with a separate interest in space called a unit, the boundaries  
37 of which are described on a recorded final map, parcel map, or condominium plan  
38 in sufficient detail to locate all boundaries thereof. The area within these  
39 boundaries may be filled with air, earth, or water, or any combination thereof, and  
40 need not be physically attached to land except by easements for access and, if  
41 necessary, support. The description of the unit may refer to (1) boundaries

1 described in the recorded final map, parcel map, or condominium plan, (2)  
2 physical boundaries, either in existence, or to be constructed, such as walls, floors,  
3 and ceilings of a structure or any portion thereof, (3) an entire structure containing  
4 one or more units, or (4) any combination thereof.

5 (c) The portion or portions of the real property held in undivided interest may be  
6 all of the real property, except for the separate interests, or may include a  
7 particular three-dimensional portion thereof, the boundaries of which are described  
8 on a recorded final map, parcel map, or condominium plan. The area within these  
9 boundaries may be filled with air, earth, or water, or any combination thereof, and  
10 need not be physically attached to land except by easements for access and, if  
11 necessary, support.

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

14 **Comment.** Section 6542 restates Section 1351(f) without change, except that the section has  
15 been organized into subdivisions for ease of reference. For further information, see the Law  
16 Revision Comment to Section 6500.

17 **§ 6544 (UNCHANGED). “Declarant”**

18 6544. “Declarant” means the person or group of persons designated in the  
19 declaration as declarant, or if no declarant is designated, the person or group of  
20 persons who sign the original declaration or who succeed to special rights,  
21 preferences, or privileges designated in the declaration as belonging to the signator  
22 of the original declaration.

23 **Comment.** Section 6544 continues Section 1351(g) without change. For further information,  
24 see the Law Revision Comment to Section 6500.

25 **§ 6546 (UNCHANGED). “Declaration”**

26 6546. “Declaration” means the document, however denominated, that contains  
27 the information required by Section 6614.

28 **Comment.** Section 6546 continues Section 1351(h) without change, except that the word  
29 “which” has been replaced with “that” and the cross-reference has been updated to reflect the new  
30 location of the portion of the referenced provision that is continued in this part. For further  
31 information, see the Law Revision Comment to Section 6500.

32  **Staff Note.** Section 4255 would continue portions of existing Section 1353, requiring special  
33 disclosures as to airport vicinity and jurisdiction of the San Francisco Bay Conservation and  
34 Development Commission, which this proposed legislation would make inapplicable to a  
35 nonresidential CID.

36 **§ 6548 (NEW). “Director”**

37 6548. “Director” means a natural person elected, designated, or selected to serve  
38 on the board.

39 **Comment.** Section 6548 is new. It is added for drafting convenience.

40  **Staff Note.** Proposed Section 6548 is added for drafting convenience.

1 § 6550 (REVISED). “Exclusive use common area”

2 6550. (a) “Exclusive use common area” means a portion of the common area  
3 designated by the declaration for the exclusive use of one or more, but fewer than  
4 all, of the owners of the separate interests and which is or will be appurtenant to  
5 the separate interest or interests.

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

12 (c) Notwithstanding the provisions of the declaration, internal and external  
13 communication wiring designed to serve a single separate interest, but located  
14 outside the boundaries of the separate interest, are exclusive use common area  
15 allocated exclusively to that separate interest. For the purposes of this section,  
16 “wiring” includes nonmetallic transmission lines.

17 **Comment.** Section 6550 restates Section 1351(i) without change, except that the term  
18 “telephone” has been replaced with “communication,” the last sentence of subdivision (c) is new,  
19 and several references to “common areas” are singularized. For further information, see the Law  
20 Revision Comment to Section 6500.

21  **Staff Note.** (1) Proposed Section 6550(c) has been revised to refer to “communication”  
22 wiring rather than “telephone” wiring. This modernization reflects the changing nature of  
23 communication technology.

24 (2) The last sentence of proposed Section 6550(c) is added to include transmission media other  
25 than metallic wire (e.g., fiber optic cable).

26 § 6552 (UNCHANGED). “Governing documents”

27 6552. “Governing documents” means the declaration and any other documents,  
28 such as bylaws, operating rules of the association, articles of incorporation, or  
29 articles of association, which govern the operation of the common interest  
30 development or association.

31 **Comment.** Section 6552 continues Section 1351(j) without change. For further information,  
32 see the Law Revision Comment to Section 6500.

33 § 6554 (NEW). “Member”

34 6554. “Member” means either of the following persons:

35 (a) An owner of a separate interest.

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

39 **Comment.** Section 6554 is new. It is added for drafting convenience.

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

1 **☞ Staff Note.** Proposed Section 6554 is added for drafting convenience. Subdivision (b)  
2 acknowledges that a person other than an owner of a separate interest may be designated as a  
3 member in the governing documents, for specified purposes.

4 **§ 6556 (NEW). “Nonresidential common interest development”**

5 6556. A “nonresidential common interest development” means a common  
6 interest development that is limited to industrial or commercial uses by zoning or  
7 by a declaration of covenants, conditions, and restrictions that has been recorded  
8 in the official records of each county in which the common interest development is  
9 located.

10 **Comment.** Section 6556 is drawn from Section 1373(a). It is added for drafting convenience.

11 **☞ Staff Note.** The Commission invites comment as to the adequacy of this definition of  
12 nonresidential common interest development.

13 **§ 6558 (REVISED). “Occupant”**

14 6558. “Occupant” means an owner, guest, invitee, tenant, lessee, sublessee, or  
15 other person in possession of a separate interest.

16 **Comment.** Section 6558 restates and generalizes Section 1364(e), deleting an inapplicable  
17 reference to “resident.” For further information, see the Law Revision Comment to Section 6500.

18 **☞ Staff Note.** Proposed Section 6558 would restate and generalize an existing definition of  
19 “occupant” to provide guidance with respect to other provisions that use the same term.

20 **§ 6560 (NEW). “Person”**

21 6560. “Person” means an individual, corporation, government or governmental  
22 subdivision or agency, business trust, estate, trust, partnership, limited liability  
23 company, association, or other entity.

24 **Comment.** Section 6560 is new. It is added for drafting convenience.

25 **☞ Staff Note.** Proposed Section 6560 is new. It reflects the standard statutory definition of  
26 “person” as including both natural persons and legal entities. See, e.g., Prob. Code § 56.

27 **§ 6562 (REVISED). “Planned development”**

28 6562. “Planned development” means a development (other than a community  
29 apartment project, a condominium project, or a stock cooperative) having either or  
30 both of the following features:

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

34 (b) A power exists in the association to enforce an obligation of an owner of a  
35 separate interest with respect to the beneficial use and enjoyment of the common  
36 area by means of an assessment that may become a lien upon the separate interests  
37 in accordance with Article 2 (commencing with Section 6808) of Chapter 6.

38 **Comment.** Section 6562 continues Section 1351(k) without change, with the following  
39 exceptions: (1) The cross-reference has been updated to reflect the new location of the lien

1 provisions of former Section 1367.1. (2) “Which” has been changed to “that” for grammatical  
2 purposes. For further information, see the Law Revision Comment to Section 6500.

3 **Staff Note.** Proposed Section 6562(b) replaces the existing reference in Section 1351(k) to  
4 “Section 1367 or 1367.1” with a reference to “Article 2 (commencing with Section 6808) of  
5 Chapter 6.” That reference encompasses all of the provisions of Sections 1367 and 1367.1 under  
6 which an “assessment ... may become a lien.”

7 **§ 6564 (UNCHANGED). “Separate interest”**

8 6564. (a) “Separate interest” has the following meanings:

9 (1) In a community apartment project, “separate interest” means the exclusive  
10 right to occupy an apartment, as specified in Section 6536.

11 (2) In a condominium project, “separate interest” means an individual unit, as  
12 specified in Section 6542.

13 (3) In a planned development, “separate interest” means a separately owned lot,  
14 parcel, area, or space.

15 (4) In a stock cooperative, “separate interest” means the exclusive right to  
16 occupy a portion of the real property, as specified in Section 6566.

17 (b) Unless the declaration or condominium plan, if any exists, otherwise  
18 provides, if walls, floors, or ceilings are designated as boundaries of a separate  
19 interest, the interior surfaces of the perimeter walls, floors, ceilings, windows,  
20 doors, and outlets located within the separate interest are part of the separate  
21 interest and any other portions of the walls, floors, or ceilings are part of the  
22 common area.

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

25 **Comment.** Section 6564 continues Section 1351(l) without change, except that the last two  
26 unnumbered paragraphs of Section 1351(l) are designated as subdivisions (b) and (c), cross-  
27 references are updated to reflect the new location of referenced provisions, and a reference to  
28 “common areas” is singularized. For further information, see the Law Revision Comment to  
29 Section 6500.

30 **§ 6566 (UNCHANGED). “Stock cooperative”**

31 6566. “Stock cooperative” means a development in which a corporation is  
32 formed or availed of, primarily for the purpose of holding title to, either in fee  
33 simple or for a term of years, improved real property, and all or substantially all of  
34 the shareholders of the corporation receive a right of exclusive occupancy in a  
35 portion of the real property, title to which is held by the corporation. The owners’  
36 interest in the corporation, whether evidenced by a share of stock, a certificate of  
37 membership, or otherwise, shall be deemed to be an interest in a common interest  
38 development and a real estate development for purposes of subdivision (f) of  
39 Section 25100 of the Corporations Code.

40 **Comment.** Section 6566 continues the first paragraph of Section 1351(m) without change. For  
41 further information, see the Law Revision Comment to Section 6500.

1 **Staff Note.** The Commission invites comment on whether a nonresidential common interest  
2 development may be organized as a stock cooperative.

3 CHAPTER 2. GOVERNING DOCUMENTS

4 Article 1. General Provisions

5 **§ 6600 (NEW). Document authority**

6 6600. (a) The articles of incorporation may not include a provision that is  
7 inconsistent with the declaration. To the extent of any inconsistency between the  
8 articles of incorporation and the declaration, the declaration controls.

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

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

17 (d) This section does not apply to a stock cooperative.

18 **Comment.** Subdivision (a) of Section 6600 is new.

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

21 Subdivision (c) is drawn from Section 1357.110, which provides that an operating rule may not  
22 be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

23 Subdivision (d) reflects the fact that some stock cooperatives are created without a recorded  
24 declaration.

25 **Staff Note.** Proposed Section 6600 is new. It would provide guidance in resolving conflicts  
26 between different governing documents.

27 **§ 6602 (UNCHANGED). Liberal construction of instruments**

28 6602. Any deed, declaration, or condominium plan for a common interest  
29 development shall be liberally construed to facilitate the operation of the common  
30 interest development, and its provisions shall be presumed to be independent and  
31 severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of  
32 Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the  
33 governing documents.

34 **Comment.** Section 6602 continues Section 1370 without change, except that “this division”  
35 has been replaced with “Division 2” and the phrase “of a common interest development” has not  
36 been continued. For further information, see the Law Revision Comment to Section 6500.

1 § 6604 (UNCHANGED). **Boundaries of units**

2 6604. In interpreting deeds and condominium plans, 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 6604 continues Section 1371 without change. For further information, see  
11 the Law Revision Comment to Section 6500.

12  **Staff Note.** The Commission has received comment suggesting that Section 1371 is  
13 inadequate to address some situations. The Commission invites further comment on this issue and  
14 particularly invites specific suggestions for how the language of proposed Section 6604 should be  
15 changed to address any problems with the scope of the section.

16 § 6606 (REVISED). **Deletion of unlawful restrictive covenants**

17 6606. (a) No declaration or other governing document shall include a restrictive  
18 covenant in violation of Section 12955 of the Government Code.

19 (b) Notwithstanding any other provision of law or provision of the governing  
20 documents, the board, without approval of the members, shall amend any  
21 declaration or other governing document that includes a restrictive covenant  
22 prohibited by this section to delete the restrictive covenant, and shall restate the  
23 declaration or other governing document without the restrictive covenant but with  
24 no other change to the declaration or governing document.

25 (c) If the declaration is amended under this section, the board shall record the  
26 restated declaration in each county in which the common interest development is  
27 located. If the articles of incorporation are amended under this section, the board  
28 shall file a certificate of amendment pursuant to Section 7814 of the Corporations  
29 Code.

30 (d) If after providing written notice to an association (Section 6512) requesting  
31 that the association delete a restrictive covenant that violates subdivision (a), and  
32 the association fails to delete the restrictive covenant within 30 days of receiving  
33 the notice, the Department of Fair Employment and Housing, a city or county in  
34 which a common interest development is located, or any person may bring an  
35 action against the association for injunctive relief to enforce subdivision (a). The  
36 court may award attorney's fees to the prevailing party.

37 **Comment.** Section 6606 continues Section 1352.5 without change, with the following  
38 exceptions: (1) Subdivision (b) is revised to replace the term "board of directors of an  
39 association" with the defined term "board." See Section 6530 ("board" defined). (2) Subdivision  
40 (b) is revised to replace "owners" with "members." See Section 6554 ("member" defined). (3)  
41 subdivision (c) is added. (4) Subdivision (d) is revised to include a reference to the provision  
42 governing notice to an association (Section 6512). For further information, see the Law Revision  
43 Comment to Section 6500.

1 **Staff Note.** Proposed Section 6606(c) is added to require that a governing document that is in  
2 the public record be publicly updated to reflect an amendment made pursuant to this section.

3 **§ 6608 (REVISED). Deletion of declarant provisions in governing documents**

4 6608. (a) Notwithstanding any provision of the governing documents to the  
5 contrary, the board may, after the declarant has completed construction of the  
6 development, has terminated construction activities, and has terminated marketing  
7 activities for the sale, lease, or other disposition of separate interests within the  
8 development, adopt an amendment deleting from any of the governing documents  
9 any provision which is unequivocally designed and intended, or which by its  
10 nature can only have been designed or intended, to facilitate the declarant in  
11 completing the construction or marketing of the development. However,  
12 provisions of the governing documents relative to a particular construction or  
13 marketing phase of the development may not be deleted under the authorization of  
14 this subdivision until that construction or marketing phase has been completed.

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

20 (c) At least 30 days prior to taking action pursuant to subdivision (a), the board  
21 shall deliver to all members, by individual delivery (Section 6514), (1) a copy of  
22 all amendments to the governing documents proposed to be adopted under  
23 subdivision (a), and (2) a notice of the time, date, and place the board will consider  
24 adoption of the amendments. The board may consider adoption of amendments to  
25 the governing documents pursuant to subdivision (a) only at a meeting that is open  
26 to all members, who shall be given opportunity to make comments thereon. All  
27 deliberations of the board on any action proposed under subdivision (a) shall only  
28 be conducted in an open meeting.

29 (d) The board may not amend the governing documents pursuant to this section  
30 without the approval of a majority of a quorum of the members (Section 6524).  
31 For the purposes of this section, “quorum” means members representing more than  
32 50 percent of the voting power of the association, excluding members who own  
33 more than two separate interests in the development.

34 **Comment.** Section 6608 continues Section 1355.5 without change, with the following  
35 exceptions: (1) The phrase “his or her” is not continued in subdivision (a). (2) The phrase “of a  
36 common interest development” has not been continued in subdivision (a). (3) The terms “board of  
37 directors” and “board of directors of the association” are replaced throughout with the defined  
38 term “board.” See Section 6530 (“board” defined). (4) The defined term “declarant” is used  
39 throughout, in place of “developer.” See Section 6544 (“declarant” defined). (5) Subdivision (b)  
40 has been revised to use numerals to number the listed items, rather than letters. (6) Subdivisions  
41 (c) and (d) are revised to use the defined term “member.” See Section 6554 (“member” defined).  
42 (7) Subdivision (c) is revised to provide for individual delivery of the specified notice. See  
43 Section 6514. (8) Subdivision (c) is revised to delete the unnecessary word “such.” (9)  
44 Subdivision (c) is revised to replace “which” with “that.” (10) Subdivision (d) is revised to use

1 the standard term “approval of a majority of a quorum of the members.” See Section 6524. (11)  
2 The quorum rule provided in subdivision (d) is revised to make clear that a quorum is based on a  
3 majority of the voting power (excluding those who own more than two units), and not on a  
4 majority of the members. This avoids uncertainty about the calculation of a quorum when a single  
5 separate interest is owned by more than one person. For further information, see the Law  
6 Revision Comment to Section 6500.

7 **☞ Staff Note.** The quorum rule provided in proposed Section 6608(d) is revised to make clear  
8 that a quorum is based on a majority of the *voting power* (excluding those who own more than  
9 two units), and not on a majority of the *owners*. This avoids uncertainty about the calculation of a  
10 quorum when a single separate interest is owned by more than one person.

11 **§ 6610 (NEW). Correction of statutory cross-reference**

12 6610. (a) Notwithstanding any other provision of law or provision of the  
13 governing documents, if the governing documents include a reference to a  
14 provision of the Davis Stirling Common Interest Development Act that was  
15 continued in a new provision by the act that added this section, the board may  
16 amend the governing documents, solely to correct the cross-reference, by adopting  
17 a board resolution that shows the correction.

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

22 **Comment.** Section 6610 is new. It is intended to provide a simplified method to correct  
23 statutory cross-references in an association’s governing documents that are required as a result of  
24 the enactment of the act that added this section. No other amendment can be made under this  
25 section.

26 **☞ Staff Note.** Proposed Section 6610 is new. It would provide a simplified method to update  
27 statutory cross-references to reflect changes made by the proposed law. This would reduce the  
28 transitional complications resulting from the enactment of this act.

29 **§ 6612 (NEW). Conflict with applicable law**

30 6612. Notwithstanding a contrary provision of the governing documents, in the  
31 event of a conflict between a provision of a document and any governing  
32 provision of law, including, but not limited to, a statute, ordinance, regulation,  
33 building code, or court decision, the provision of law shall prevail.

34 **Comment.** Section 6612 is new. It is added to make clear that an association’s governing  
35 documents are subordinate to the law and are not enforceable to the extent they are contradicted  
36 by the law.

37 **☞ Staff Note.** Proposed Section 6612 is new. It makes clear that an association’s governing  
38 documents are subordinate to the law and are not enforceable to the extent they are contradicted  
39 by the law. It is drawn from more specific provisions of the Davis-Stirling Act that are not  
40 included in this legislation.

Article 2. Declaration

§ 6614 (REVISED). Content of declaration

6614. (a) A declaration, recorded on or after January 1, 1986, shall contain a legal description of the common interest development, and a statement that the common interest development is a community apartment project, condominium project, planned development, stock cooperative, or combination thereof. The declaration shall additionally set forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.

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

**Comment.** Subdivision (a) of Section 6614 continues the first two sentences of Section 1353(a)(1) without change. For further information, see the Law Revision Comment to Section 6500.

Subdivision (b) continues Section 1353(b) without change, with the following exceptions: (1) The defined term “member” is used in place of “owner.” See Section 6554 (“member” defined). (2) The defined term “declarant” is used in place of “original signator of the declaration.” See Section 6544 (“declarant” defined). For further information, see the Law Revision Comment to Section 6500.

**Staff Note.** Proposed Section 6614(b) would use the defined term “declarant” in place of “original signator of the declaration.” That would seem to be a slight substantive change, as the existing language could be read to apply only to the *original* declarant (as opposed to any successor declarant). However, the staff does not see any good policy reason to preclude a successor declarant, who may own a large percentage of the separate interests within a CID, from having a say as to what is appropriate for inclusion in the declaration. The Commission invites comment on whether the proposed change would cause any problems.

§ 6616 (REVISED). Amendment authorized

6616. Except to the extent that a declaration provides by its express terms that it is not amendable, in whole or in part, a declaration that fails to include provisions permitting its amendment at all times during its existence may be amended at any time.

**Comment.** Section 6616 continues the first sentence of Section 1355(b) without change, except “which” is replaced with “that.” For further information, see the Law Revision Comment to Section 6500.

**Staff Note.** Proposed Section 6616 continues the authority to amend a declaration that is silent as to whether it may be amended, but does not continue the procedure specified for doing so. Instead, the amendment would be made using the general procedure for amending a declaration, which is provided in proposed Section 6620.

§ 6618 (REVISED). Amendment to extend term of declaration authorized

6618. (a) The Legislature finds that there are common interest developments that have been created with deed restrictions which do not provide a means for the members to extend the term of the declaration. The Legislature further finds that covenants and restrictions, contained in the declaration, are an appropriate method

1 for protecting the common plan of developments and to provide for a mechanism  
2 for financial support for the upkeep of common area including, but not limited to,  
3 roofs, roads, heating systems, and recreational facilities. If declarations terminate  
4 prematurely, common interest developments may deteriorate and the supply of  
5 affordable units could be impacted adversely. The Legislature further finds and  
6 declares that it is in the public interest to provide a vehicle for extending the term  
7 of the declaration if members having more than 50 percent of the votes in the  
8 association choose to do so.

9 (b) A declaration that specifies a termination date, but that contains no provision  
10 for extension of the termination date, may be extended by the approval of  
11 members pursuant to Section 6620.

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

15 **Comment.** Subdivision (a) of Section 6618 continues Section 1357(a) without change, except  
16 that a reference to “common areas” is singularized, a reference to “housing” is deleted, and the  
17 defined term “member” is used. See Section 6554 (“member” defined). For further information,  
18 see the Law Revision Comment to Section 6500.

19 Subdivision (b) restates part of the substance of Section 1357(b), authorizing extension of the  
20 termination date of a declaration that does not provide for extension of the termination date. The  
21 procedure for extension of the termination date provided in Section 1357(b)-(c) is not continued.  
22 An extension would instead be made pursuant to the general procedure for amendment of a  
23 declaration. See Section 6620. For further information, see the Law Revision Comment to Section  
24 6500.

25 Subdivision (c) continues Section 1357(d) without change. For further information, see the  
26 Law Revision Comment to Section 6500.

27 **Staff Note.** Proposed Section 6618 continues the authority to amend a declaration to extend  
28 its term, but does not continue the procedure specified for doing so. Instead, the extension would  
29 be made using the general procedure for amending a declaration, which is provided in proposed  
30 Section 6620.

31 **§ 6620 (REVISED). Amendment procedure**

32 6620. (a) A declaration may be amended pursuant to the governing documents  
33 or this part. An amendment is effective after (1) the proposed amendment has been  
34 delivered by individual notice to all members not less than 15 days and not more  
35 than 60 days prior to any approval being solicited, (2) the approval of the  
36 percentage of members required by the governing documents has been given, (3)  
37 that fact has been certified in a writing executed and acknowledged by the officer  
38 designated in the declaration or by the association for that purpose, or if no one is  
39 designated, by the president of the association, and (4) that writing has been  
40 recorded in each county in which a portion of the common interest development is  
41 located.

42 (b) If the governing documents do not specify the percentage of members who  
43 must approve an amendment of the declaration, an amendment may be approved  
44 by a majority of all members (Section 6522).

1 **Comment.** Subdivision (a) of Section 6620 restates Section 1355(a), with the following  
2 exceptions: (1) The first word is replaced with “a.” (2) “Title” is replaced with “part.” (3) A  
3 reference to a statutory exception that is not continued in this part is deleted. (4) A notice  
4 requirement drawn from Section 1355(b) is added. (5) The defined term “member” is used. See  
5 Section 6554 (“member” defined). For further information, see the Law Revision Comment to  
6 Section 6500.

7 Subdivision (b) generalizes a rule stated in Sections 1355(b) and 1357. For further information,  
8 see the Law Revision Comment to Section 6500.

9  **Staff Note.** Proposed Section 6620(b) would provide a default rule on member approval of an  
10 amendment where the governing documents are silent on the matter. That rule is drawn from  
11 Sections 1355(b) and 1357.

12 Article 3. Articles of Incorporation

13 § 6622 (REVISED). Content of articles

14 6622. (a) The articles of incorporation of a common interest development  
15 association filed with the Secretary of State on or after January 1, 1995, shall  
16 include a statement, which shall be in addition to the statement of purposes of the  
17 corporation, that does all of the following:

18 (1) Identifies the corporation as an association formed to manage a common  
19 interest development under the Nonresidential Common Interest Development  
20 Act.

21 (2) States the business or corporate office of the association, if any, and, if the  
22 office is not on the site of the common interest development, states the nine-digit  
23 ZIP Code, front street, and nearest cross street for the physical location of the  
24 common interest development.

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

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

30 **Comment.** Section 6622 continues Section 1363.5 without change, except that a reference to  
31 this part is substituted for a reference to the Davis Stirling Common Interest Development Act,  
32 and a cross-reference to the definition of “managing agent” has not been continued. For further  
33 information, see the Law Revision Comment to Section 6500.

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

Article 4. Condominium Plan

§ 6624 (REVISED). Recordation of condominium plan

6624. (a) The certificate consenting to the recordation of a condominium plan that is required by subdivision (c) of Section 6540 shall be signed and acknowledged by all of the following persons:

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

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

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

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

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

(c) In the event a conversion to condominiums of a community apartment project or stock cooperative has been approved by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government Code, the certificate need only be signed by those owners, trustees, beneficiaries, and mortgagees approving the conversion.

**Comment.** Section 6624 restates Section 1351(e)(3), except that the last paragraph of (e)(3) is not continued in this section and a cross-reference to Section 6540(c) is added to the first paragraph. For further information, see the Law Revision Comment to Section 6500.

**Staff Note.** Proposed Section 6624 would restate the procedural provisions of existing Section 1351(e). Doing so necessitates a number of minor nonsubstantive language revisions.

§ 6626 (REVISED). Amendment or revocation of condominium plan

6626. A condominium plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the persons who, at the time of amendment or revocation, are persons whose signatures are required under Section 6624.

**Comment.** Section 6626 continues the last paragraph of Section 1351(e) without change, except that language is added to make clear that the persons whose signatures are required for amendment or revocation of a condominium plan are the persons who fall within the groups described in Section 6624 at the time of amendment or revocation. For further information, see the Law Revision Comment to Section 6500.

**Staff Note.** Proposed Section 6626 is revised to make its meaning more clear, as described in the Comment following the section.

1 CHAPTER 3. OWNERSHIP AND TRANSFER OF INTERESTS

2 Article 1. Ownership Rights and Interests

3 § 6650 (UNCHANGED). Ownership of common area

4 6650. Unless the declaration otherwise provides, in a condominium project, or in  
5 a planned development in which the common area is owned by the owners of the  
6 separate interests, the common area is owned as tenants in common, in equal  
7 shares, one for each unit or lot.

8 **Comment.** Section 6650 continues Section 1362 without change, except that the references to  
9 “common areas” are singularized. For further information, see the Law Revision Comment to  
10 Section 6500.

11 § 6652 (UNCHANGED). Appurtenant rights and easements

12 6652. Unless the declaration otherwise provides:

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

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

22 **Comment.** Section 6652 continues Section 1361 without change, except that the references to  
23 “common areas” are singularized. For further information, see the Law Revision Comment to  
24 Section 6500.

25 § 6654 (REVISED). Access to separate interest property

26 6654. Except as otherwise provided in law, an order of the court, or an order  
27 pursuant to a final and binding arbitration decision, an association may not deny a  
28 member or occupant physical access to the member’s or occupant’s separate  
29 interest, either by restricting access through the common area to the separate  
30 interest, or by restricting access solely to the separate interest.

31 **Comment.** Section 6654 continues Section 1361.5 without change, with the following  
32 exceptions: (1) The phrase “his or her” has been replaced with “the member’s or occupant’s.” (2)  
33 References to the “owner’s” separate interest have been revised to omit the word “owner’s.” This  
34 will help to avoid any implication that the reference does not also apply to an “occupant” of a  
35 separate interest. (3) The defined term “member” is used in place of “owner” throughout. See  
36 Section 6554 (“member” defined). (4) The references to “common areas” is singularized. For  
37 further information, see the Law Revision Comment to Section 6500.

38 **Staff Note.** Although it is clear that Section 1361.5 is intended to protect both owners and  
39 occupants of separate interests, that section twice refers to the “owner’s separate interest,”  
40 without any reference to an occupant. That could create the impression that the Legislature  
41 intended to draw some sort of distinction between owners and occupants, which the staff does not

1 believe to be the case. Proposed Section 6654 would adjust the language of Section 1361.5 to  
2 avoid that implication. Note also that the defined term “member” is used in place of “owner”  
3 throughout.

4 Article 2. Restrictions on Transfers

5 **§ 6656 (REVISED). Partition of condominium project**

6 6656. (a) Except as provided in this section, the common area in a condominium  
7 project shall remain undivided, and there shall be no judicial partition thereof.  
8 Nothing in this section shall be deemed to prohibit partition of a cotenancy in a  
9 condominium.

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

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

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

23 (3) The project has been in existence more than 50 years, is obsolete and  
24 uneconomic, and owners of separate interests holding in the aggregate more than a  
25 50-percent interest in the common area oppose repair or restoration of the project.

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

28 **Comment.** Section 6656 continues Section 1359 without change, except that references to  
29 “common areas” are singularized and subdivision (b)(4) is rephrased to avoid use of “such.” For  
30 further information, see the Law Revision Comment to Section 6500.

31  **Staff Note.** Proposed Section 6656(b)(4) would rephrase Section 1359(b)(4) to avoid use of  
32 the word “such,” which is strongly disfavored in statutory drafting. The Commission invites  
33 comment on whether the rephrasing would cause any substantive change in the meaning of the  
34 provision.

35 **§ 6658 (UNCHANGED). Lien for work performed in condominium project**

36 6658. (a) In a condominium project, no labor performed or services or materials  
37 furnished with the consent of, or at the request of, an owner in the condominium  
38 project or the owners’ agent or contractor shall be the basis for the filing of a lien  
39 against any other property of any other owner in the condominium project unless  
40 that other owner has expressly consented to or requested the performance of the

1 labor or furnishing of the materials or services. However, express consent shall be  
2 deemed to have been given by the owner of any condominium in the case of  
3 emergency repairs thereto.

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

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

11 **Comment.** Section 6658 continues Section 1369 without change, except for the following  
12 changes: (1) Subdivisions are added. (2) The phrase "his or her" is replaced with references to the  
13 owner throughout. (3) A reference to "common areas" is singularized. (4) The word "which" is  
14 replaced with "that" in subdivision (c). For further information, see the Law Revision Comment  
15 to Section 6500.

16 Article 3. Transfer of Separate Interest

17 **§ 6660 (UNCHANGED). Community apartment project**

18 6660. In a community apartment project, any conveyance, judicial sale, or other  
19 voluntary or involuntary transfer of the separate interest includes the undivided  
20 interest in the community apartment project. Any conveyance, judicial sale, or  
21 other voluntary or involuntary transfer of the owner's entire estate also includes  
22 the owner's membership interest in the association.

23 **Comment.** Section 6660 continues Section 1358(a) without change. For further information,  
24 see the Law Revision Comment to Section 6500.

25  **Staff Note.** The Commission invites comment on whether a nonresidential common interest  
26 development may be organized as a community apartment project, or whether this provision is  
27 unnecessary.

28 **§ 6662 (UNCHANGED). Condominium project**

29 6662. In a condominium project the common area is not subject to partition,  
30 except as provided in Section 6656. Any conveyance, judicial sale, or other  
31 voluntary or involuntary transfer of the separate interest includes the undivided  
32 interest in the common area. Any conveyance, judicial sale, or other voluntary or  
33 involuntary transfer of the owner's entire estate also includes the owner's  
34 membership interest in the association.

35 **Comment.** Section 6662 continues Section 1358(b) without change, except that the cross-  
36 reference is updated to reflect the new location of the referenced provision and references to  
37 "common areas" are singularized. For further information, see the Law Revision Comment to  
38 Section 6500.

1    **§ 6664 (UNCHANGED). Planned development**

2       6664. In a planned development, any conveyance, judicial sale, or other  
3 voluntary or involuntary transfer of the separate interest includes the undivided  
4 interest in the common area, if any exists. Any conveyance, judicial sale, or other  
5 voluntary or involuntary transfer of the owner’s entire estate also includes the  
6 owner’s membership interest in the association.

7       **Comment.** Section 6664 continues Section 1358(c) without change, except that a reference to  
8 “common areas” is singularized. For further information, see the Law Revision Comment to  
9 Section 6500.

10   **§ 6666 (UNCHANGED). Stock cooperative**

11       6666. In a stock cooperative, any conveyance, judicial sale, or other voluntary or  
12 involuntary transfer of the separate interest includes the ownership interest in the  
13 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary  
14 or involuntary transfer of the owner’s entire estate also includes the owner’s  
15 membership interest in the association.

16       **Comment.** Section 6666 continues Section 1358(d) without change. For further information,  
17 see the Law Revision Comment to Section 6500.

18    ☞ **Staff Note.** The Commission invites comment on whether a nonresidential common interest  
19 development may be organized as a stock cooperative, or whether this provision is unnecessary.

20   **§ 6668 (UNCHANGED). Transfer of exclusive use common area**

21       6668. Nothing in this article prohibits the transfer of exclusive use areas,  
22 independent of any other interest in a common interest subdivision, if  
23 authorization to separately transfer exclusive use areas is expressly stated in the  
24 declaration and the transfer occurs in accordance with the terms of the declaration.

25       **Comment.** Section 6668 continues the next to last paragraph of Section 1358 without change,  
26 except that “section” is replaced with “article.” For further information, see the Law Revision  
27 Comment to Section 6500.

28   **§ 6670 (UNCHANGED). Severability of interests**

29       6670. Any restrictions upon the severability of the component interests in real  
30 property which are contained in the declaration shall not be deemed conditions  
31 repugnant to the interest created within the meaning of Section 711. However,  
32 these restrictions shall not extend beyond the period in which the right to partition  
33 a project is suspended under Section 6656.

34       **Comment.** Section 6670 continues the last paragraph of Section 1358 without change, with the  
35 following exceptions: (1) A superfluous reference to the “Civil Code” is omitted. (2) The cross-  
36 reference is updated to reflect the new location of the referenced provision. For further  
37 information, see the Law Revision Comment to Section 6500.

1 CHAPTER 4. PROPERTY USE AND MAINTENANCE

2 Article 1. Use of Separate Interest

3 § 6700 (NEW). Application of article

4 6700. This article includes provisions that limit the authority of an association to  
5 regulate the use of a member’s separate interest. Nothing in this article is intended  
6 to affect the application of any other provision that limits the authority of an  
7 association to regulate the use of a member’s separate interest, including, but not  
8 limited to, the following provisions:

9 (a) Sections 712 and 713, relating to the display of signs.

10 (b) Sections 714 and 714.1, relating to solar energy systems.

11 (c) Section 714.5, relating to structures that are constructed offsite and moved to  
12 the property in sections or modules.

13 (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the  
14 Government Code, relating to racial restrictions.

15 **Comment.** Section 6700 is new. It provides a non-exclusive list of provisions outside of this  
16 part that limit the authority of an association to regulate separate interest property use.

17 **Staff Note.** (1) Subdivisions (e) and (f) of this section reference statutory provisions that  
18 by their terms have no application to nonresidential developments.

19 (2) Proposed Section 6700 is new. It introduces the article and lists other provisions that protect  
20 separate interest use rights.

21 § 6702 (UNCHANGED). Display of U.S. flag

22 6702. (a) Except as required for the protection of the public health or safety, no  
23 declaration or other governing document shall limit or prohibit, or be construed to  
24 limit or prohibit, the display of the flag of the United States by a member on or in  
25 the member’s separate interest or within the member’s exclusive use common  
26 area.

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

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

34 **Comment.** Section 6702 continues Section 1353.5 without change, except that a superfluous  
35 cross-reference to governing definitions is omitted and the defined term “member” is used in  
36 place of “owner.” See Section 6554 (“member” defined). For further information, see the Law  
37 Revision Comment to Section 6500.

38 § 6704 (UNCHANGED). Noncommercial sign

39 6704. (a) The governing documents may not prohibit posting or displaying of  
40 noncommercial signs, posters, flags, or banners on or in a member’s separate

1 interest, except as required for the protection of public health or safety or if the  
2 posting or display would violate a local, state, or federal law.

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

9 (c) An association may prohibit noncommercial signs and posters that are more  
10 than 9 square feet in size and noncommercial flags or banners that are more than  
11 15 square feet in size.

12 **Comment.** Section 6704 continues Section 1353.6 without change, except that the redundant  
13 phrase “including the operating rules” is not continued and the defined term “member” is used in  
14 place of “owner.” See Section 6554 (“member” defined). For further information, see the Law  
15 Revision Comment to Section 6500.

16 **§ 6706 (REVISED). Pets**

17 6706. (a) No governing documents shall prohibit the owner of a separate interest  
18 within a common interest development from keeping at least one pet within the  
19 common interest development, subject to reasonable rules and regulations of the  
20 association. This section may not be construed to affect any other rights provided  
21 by law to an owner of a separate interest to keep a pet within the development.

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

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

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

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

36 **Comment.** Section 6704 continues Section 1360.5 without change, except that a reference to  
37 “homeowner” has been replaced with “owner” in subdivision (b), and “his or her” has been  
38 replaced with “the owner’s” in subdivision (c). For further information, see the Law Revision  
39 Comment to Section 6500.

40 **§ 6708 (UNCHANGED). Television antenna or satellite dish**

41 6708. (a) Any covenant, condition, or restriction contained in any deed, contract,  
42 security instrument, or other instrument affecting the transfer or sale of, or any

1 interest in, a common interest development that effectively prohibits or restricts  
2 the installation or use of a video or television antenna, including a satellite dish, or  
3 that effectively prohibits or restricts the attachment of that antenna to a structure  
4 within that development where the antenna is not visible from any street or  
5 common area, except as otherwise prohibited or restricted by law, is void and  
6 unenforceable as to its application to the installation or use of a video or television  
7 antenna that has a diameter or diagonal measurement of 36 inches or less.

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

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

18 (2) Requirement of a member to obtain the approval of the association for the  
19 installation of a video or television antenna that has a diameter or diagonal  
20 measurement of 36 inches or less on a separate interest owned by another.

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

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

27 (c) Whenever approval is required for the installation or use of a video or  
28 television antenna, including a satellite dish, the application for approval shall be  
29 processed by the appropriate approving entity for the common interest  
30 development in the same manner as an application for approval of an architectural  
31 modification to the property, and the issuance of a decision on the application shall  
32 not be willfully delayed.

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

35 **Comment.** Section 6708 restates Section 1376 without change, except that the defined term  
36 “member” is used in place of “owner.” See Section 6554 (“member” defined). See also 47 C.F.R.  
37 § 1.4000. For further information, see the Law Revision Comment to Section 6500.

38 **Staff Note:** In prior comments, it has been suggested that existing Section 1376 is largely  
39 preempted by the FCC regulation cited in the Comment above and should not be continued. See  
40 Memorandum 2008-43, p. 43. The staff requests public comment on the merits of that suggestion.

1 **§ 6710 (REVISED). Marketing restriction**

2 6710. (a) Any governing document of an association that arbitrarily or  
3 unreasonably restricts an owner’s ability to market the owner’s interest in a  
4 common interest development is void.

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

7 (1) Imposes an assessment or fee in connection with the marketing of an  
8 owner’s interest in an amount that exceeds the association’s actual or direct costs.

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

14 (c) For purposes of this section, “market” and “marketing” mean listing,  
15 advertising, or obtaining or providing access to show the owner’s interest in the  
16 development.

17 (d) This section does not apply to rules or regulations made pursuant to Section  
18 712 or 713 regarding real estate signs.

19 **Comment.** Section 6710 continues Section 1368.1 without change, with the following  
20 exceptions: (1) The phrase “rule or regulation” is replaced with “governing document.” This  
21 broadens the application of the section so that it governs any provision in the governing  
22 documents and not just an operating rule. (2) The phrase “his or her” is replaced with “the  
23 owner’s” in subdivision (a). (3) A reference to a statutory limitation that is not continued in this  
24 part is deleted. (4) A reference to “common areas” is singularized. For further information, see  
25 the Law Revision Comment to Section 6500.

26 **Staff Note.** (1) Section 5600(b) would continue existing Section 1366.1, which is  
27 inapplicable to a nonresidential CID pursuant to Section 1373.

28 (2) Proposed Section 6710 would apply to any governing document, and not just to a “rule or  
29 regulation” (which is unclear and may only encompass an operating rule).

30 **§ 6712 (UNCHANGED). Low water-using plants**

31 6712. (a) Notwithstanding any other law, a provision of the governing  
32 documents shall be void and unenforceable if it does any of the following:

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

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

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

39 (B) Any regulation or restriction on the use of water adopted pursuant to Section  
40 353 or 375 of the Water Code.

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

1       **Comment.** Section 6712 continues Section 1353.8 without change, except that surplus  
2 language is not continued (i.e., the phrases “of any,” “of a common interest development,” and  
3 “and regulations”). The term “governing documents” includes all governing documents of a  
4 common interest development. See Section 6552 (“governing documents” defined). For further  
5 information, see the Law Revision Comment to Section 6500.

6                               Article 2. Modification of Separate Interest

7       **§ 6714 (REVISED). Improvements to separate interest**

8       6714. (a) Subject to the governing documents and applicable law, a member  
9 may do the following:

10       (1) Make any improvement or alteration within the boundaries of the member’s  
11 separate interest that does not impair the structural integrity or mechanical systems  
12 or lessen the support of any portions of the common interest development.

13       (2) Modify the member’s separate interest, at the member’s expense, to facilitate  
14 access for persons who are blind, visually handicapped, deaf, or physically  
15 disabled, or to alter conditions which could be hazardous to these persons. These  
16 modifications may also include modifications of the route from the public way to  
17 the door of the separate interest for the purposes of this paragraph if the separate  
18 interest is on the ground floor or already accessible by an existing ramp or  
19 elevator. The right granted by this paragraph is subject to the following conditions:

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

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

24       (C) Modifications external to the dwelling shall not prevent reasonable passage  
25 by other occupants, and shall be removed by the member when the separate  
26 interest is no longer occupied by persons requiring those modifications who are  
27 blind, visually handicapped, deaf, or physically disabled.

28       (D) Any member who intends to modify a separate interest pursuant to this  
29 paragraph shall submit plans and specifications to the association for review to  
30 determine whether the modifications will comply with the provisions of this  
31 paragraph. The association shall not deny approval of the proposed modifications  
32 under this paragraph without good cause.

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

35       **Comment.** Section 6714 continues Section 1360 without change, with the following  
36 exceptions: (1) The scope of the provision is broadened to apply to any separate interest, and not  
37 just a unit in a condominium project. (2) The phrase “his or her” is not continued in subdivision  
38 (a)(2)(D). (3) The defined term “member” is used in place of “owner” throughout. See Section  
39 6554 (“member” defined). (4) The defined term “occupant” is used in place of “resident.” See  
40 Section 6558 (“occupant” defined). For further information, see the Law Revision Comment to  
41 Section 6500.

1 **☞ Staff Note.** Proposed Section 6714 would broaden the scope of Section 1360 to include all  
2 CIDs, and not just condominiums. References to “units” are replaced with references to “separate  
3 interests.” References to condominium associations are changed to refer to associations generally.

4 Article 3. Maintenance

5 **§ 6716 (UNCHANGED). Maintenance responsibility generally**

6 6716. (a) Unless otherwise provided in the declaration of a common interest  
7 development, the association is responsible for repairing, replacing, or maintaining  
8 the common area, other than exclusive use common area, and the owner of each  
9 separate interest is responsible for maintaining that separate interest and any  
10 exclusive use common area appurtenant to the separate interest.

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

14 **Comment.** Subdivision (a) of Section 6716 continues Section 1364(a) without change, except  
15 that references to “common areas” are singularized. For further information, see the Law  
16 Revision Comment to Section 6500.

17 Subdivision (b) continues Section 1364(c) without change. For further information, see the  
18 Law Revision Comment to Section 6500.

19 **§ 6718 (REVISED). Wood-destroying pests or organisms**

20 6718. (a) In a community apartment project, condominium project, or stock  
21 cooperative, unless otherwise provided in the declaration, the association is  
22 responsible for the repair and maintenance of the common area occasioned by the  
23 presence of wood-destroying pests or organisms.

24 (b) In a planned development, unless a different maintenance scheme is  
25 provided in the declaration, each owner of a separate interest is responsible for the  
26 repair and maintenance of that separate interest as may be occasioned by the  
27 presence of wood-destroying pests or organisms. Upon approval of the majority of  
28 all members of the association (Section 6522), that responsibility may be  
29 delegated to the association, which shall be entitled to recover the cost thereof as a  
30 special assessment.

31 **Comment.** Subdivision (a) of Section 6718 continues Section 1364(b)(1) without change,  
32 except that a superfluous cross-reference to governing definitions has not been continued. For  
33 further information, see the Law Revision Comment to Section 6500.

34 Subdivision (b) continues Section 1364(b)(2) without change, with the following exceptions:  
35 (1) A superfluous cross-reference to a governing definition has not been continued. (2) A cross-  
36 reference to Section 6522 is added. (3) The last sentence is revised to avoid use of the word  
37 “such.” For further information, see the Law Revision Comment to Section 6500.

38 **☞ Staff Note.** The last sentence of Section 1364(b)(2) has been restated, in proposed Section  
39 6718(b), to avoid use of the word “such.” Standard legislative drafting practice is to avoid the use  
40 of “such” as a shorthand reference for a previously described thing.

1 **§ 6720 (REVISED). Temporary removal of occupant to perform treatment of wood-**  
2 **destroying pests**

3 6720. (a) The association may cause the temporary, summary removal of any  
4 occupant of a common interest development for such periods and at such times as  
5 may be necessary for prompt, effective treatment of wood-destroying pests or  
6 organisms.

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

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

14 (1) Personal delivery of a copy of the notice to the occupants, and if an occupant  
15 is not the owner, individual delivery (Section 6514) of a copy of the notice to the  
16 owner.

17 (2) Individual delivery (Section 6514) to the occupant at the address of the  
18 separate interest, and if the occupant is not the owner, individual delivery (Section  
19 6514) of a copy of the notice to the owner.

20 **Comment.** Section 6720 continues Section 1364(d) without change, except that subdivision (c)  
21 is revised to improve its clarity and to incorporate the “individual delivery” notice procedure. For  
22 further information, see the Law Revision Comment to Section 6500.

23  **Staff Note.** Proposed Section 6720(c) is revised to improve its clarity and to incorporate the  
24 “individual delivery” notice procedure.

25 **§ 6722 (REVISED). Exclusive use communication wiring**

26 6722. (a) Notwithstanding the provisions of the declaration, a member is entitled  
27 to reasonable access to the common area for the purpose of maintaining the  
28 internal and external communication wiring made part of the exclusive use  
29 common area of the member’s separate interest pursuant to subdivision (c) of  
30 Section 6550. The access shall be subject to the consent of the association, whose  
31 approval shall not be unreasonably withheld, and which may include the  
32 association’s approval of telephone wiring upon the exterior of the common area,  
33 and other conditions as the association determines reasonable.

34 (b) For the purposes of this section, “wiring” includes, without limitation,  
35 nonmetallic transmission lines.

36 **Comment.** Subdivision (a) of Section 6722 continues Section 1364(f) without change, with the  
37 following exceptions: (1) The reference to “telephone wiring” has been generalized to  
38 accommodate non-telephonic communication wiring. (2) A cross-reference is updated to reflect  
39 the new location of the referenced provision. (3) The defined term “member” is used in place of  
40 “owner.” See Section 6554 (“member” defined). (4) References to “common areas” are  
41 singularized. For further information, see the Law Revision Comment to Section 6500.

42 Subdivision (b) is new.

1 **Staff Note.** Proposed Section 6722 would expand the scope of Section 1364(f) slightly, to  
2 include non-telephonic communication wiring (e.g., Ethernet) and non-metallic lines (e.g., fiber-  
3 optic).

4 CHAPTER 5. ASSOCIATION GOVERNANCE

5 Article 1. Association Existence and Powers

6 **§ 6750 (UNCHANGED). Association**

7 6750. A common interest development shall be managed by an association that  
8 may be incorporated or unincorporated. The association may be referred to as a  
9 community association.

10 **Comment.** Section 6750 continues Section 1363(a) without change. For further information,  
11 see the Law Revision Comment to Section 6500.

12 **§ 6752 (UNCHANGED). Association powers**

13 6752. (a) Unless the governing documents provide otherwise, and regardless of  
14 whether the association is incorporated or unincorporated, the association may  
15 exercise the powers granted to a nonprofit mutual benefit corporation, as  
16 enumerated in Section 7140 of the Corporations Code, except that an  
17 unincorporated association may not adopt or use a corporate seal or issue  
18 membership certificates in accordance with Section 7313 of the Corporations  
19 Code.

20 (b) The association, whether incorporated or unincorporated, may exercise the  
21 powers granted to an association in this part.

22 **Comment.** Section 6752 continues former Section 1363(c) without change, except that  
23 subdivisions are added and “title” is replaced with “part.” For further information, see the Law  
24 Revision Comment to Section 6500.

25 **§ 6754 (UNCHANGED). Standing**

26 6754. An association established to manage a common interest development has  
27 standing to institute, defend, settle, or intervene in litigation, arbitration,  
28 mediation, or administrative proceedings in its own name as the real party in  
29 interest and without joining with it the members, in matters pertaining to the  
30 following:

31 (a) Enforcement of the governing documents.

32 (b) Damage to the common area.

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

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

1       **Comment.** Section 6754 continues Section 1368.3 without change, except that the defined  
2 term “member” is used in place of “owner.” See Section 6554 (“member” defined). For further  
3 information, see the Law Revision Comment to Section 6500.

4       **§ 6756 (UNCHANGED). Comparative fault**

5       6756. (a) In an action maintained by an association pursuant to subdivision (b),  
6 (c), or (d) of Section 6754, the amount of damages recovered by the association  
7 shall be reduced by the amount of damages allocated to the association or its  
8 managing agents in direct proportion to their percentage of fault based upon  
9 principles of comparative fault. The comparative fault of the association or its  
10 managing agents may be raised by way of defense, but shall not be the basis for a  
11 cross-action or separate action against the association or its managing agents for  
12 contribution or implied indemnity, where the only damage was sustained by the  
13 association or its members. It is the intent of the Legislature in enacting this  
14 subdivision to require that comparative fault be pleaded as an affirmative defense,  
15 rather than a separate cause of action, where the only damage was sustained by the  
16 association or its members.

17       (b) In an action involving damages described in subdivision (b), (c), or (d) of  
18 Section 6754, the defendant or cross-defendant may allege and prove the  
19 comparative fault of the association or its managing agents as a setoff to the  
20 liability of the defendant or cross-defendant even if the association is not a party to  
21 the litigation or is no longer a party whether by reason of settlement, dismissal, or  
22 otherwise.

23       (c) Subdivisions (a) and (b) apply to actions commenced on or after January 1,  
24 1993.

25       (d) Nothing in this section affects a person’s liability under Section 1431, or the  
26 liability of the association or its managing agent for an act or omission that causes  
27 damages to another.

28       **Comment.** Section 6756 continues Section 1368.4 without change. For further information,  
29 see the Law Revision Comment to Section 6500.

30                               Article 2. Conflict of Interest

31       **§ 6758 (REVISED). Interested director**

32       6758. (a) Notwithstanding any other law, and regardless of whether an  
33 association is incorporated or unincorporated, the provisions of Sections 7223 and  
34 7224 of the Corporations Code shall apply to any contract or other transaction  
35 authorized, approved, or ratified by the board or a committee of the board.

36       (b) A director or member of a committee shall not vote or otherwise act on  
37 behalf of the association with respect to any of the following matters:

38       (1) Discipline of the director or committee member.

39       (2) An assessment against the director or committee member for damage to the  
40 common area or facilities.

1 (3) A request, by the director or committee member, for a payment plan for  
2 overdue assessments.

3 (4) A decision whether to foreclose on a lien on the separate interest of the  
4 director or committee member.

5 (5) Review of a proposed physical change to the separate interest of the director  
6 or committee member.

7 (6) A grant of exclusive use common area to the director or committee member.

8 (c) Nothing in this section limits any other provision of law or the governing  
9 documents that governs a decision in which a director may have an interest.

10 **Comment.** Subdivision (a) of Section 6758 continues Section 1365.6 without substantive  
11 change, except that the reference to Corporations Code Section 310, which governs for-profit  
12 corporations, has been replaced with a reference to Corporations Code Sections 7233 and 7234,  
13 which state equivalent rules for nonprofit mutual benefit corporations. For further information,  
14 see the Law Revision Comment to Section 6500.

15 Subdivisions (b) and (c) are new.

16 **Staff Note.** (1) Proposed Section 6758(a) would correct an apparently erroneous reference to  
17 Corporations Code Section 310, which governs for-profit corporations. The reference would be  
18 replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent  
19 rules for nonprofit mutual benefit corporations.

20 (2) Subdivision (b) is added to provide simplified guidance to association board members on  
21 impermissible conflicts. Subdivision (c) makes clear that the section is not intended as a complete  
22 codification of the law governing director conflicts of interest.

23 Article 3. Government Assistance

24 **§ 6760 (UNCHANGED). Director training course**

25 6760. To the extent existing funds are available, the Department of Consumer  
26 Affairs and the Department of Real Estate shall develop an on-line education  
27 course for the board regarding the role, duties, laws, and responsibilities of  
28 directors and prospective directors, and the nonjudicial foreclosure process.

29 **Comment.** Section 6760 continues Section 1363.001 without substantive change, except that  
30 the term “board of directors” has been replaced with the defined term “board” and the defined  
31 term “director” is used in place of “board member.” See Sections 6530 (“board” defined), 6548  
32 (“director” defined). For further information, see the Law Revision Comment to Section 6500.

33 **§ 6762 (UNCHANGED). State registry**

34 6762. (a) To assist with the identification of common interest developments,  
35 each association, whether incorporated or unincorporated, shall submit to the  
36 Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that  
37 the Secretary of State shall prescribe, the following information concerning the  
38 association and the development that it manages:

39 (1) A statement that the association is formed to manage a common interest  
40 development under the Nonresidential Common Interest Development Act.

41 (2) The name of the association.

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

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

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

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

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

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

15 (9) The type of common interest development, as defined in Section 6534,  
16 managed by the association.

17 (10) The number of separate interests, as defined in Section 6564, in the  
18 development.

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

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

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

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

32 (d) The penalty for an incorporated association's noncompliance with the initial  
33 or biennial filing requirements of this section shall be suspension of the  
34 association's rights, privileges, and powers as a corporation and monetary  
35 penalties, to the same extent and in the same manner as suspension and monetary  
36 penalties imposed pursuant to Section 8810 of the Corporations Code.

37 (e) The Secretary of State shall make the information submitted pursuant to  
38 paragraph (4) of subdivision (a) available only for governmental purposes and  
39 only to Members of the Legislature and the Business, Transportation and Housing  
40 Agency, upon written request. All other information submitted pursuant to this  
41 section shall be subject to public inspection pursuant to the California Public  
42 Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title

1 of the Government Code. The information submitted pursuant to this section  
2 shall be made available for governmental or public inspection.

3 **Comment.** Section 6762 continues Section 1363.6 without change, except that a reference to  
4 this part is substituted for a reference to the Davis-Stirling common Interest Development Act,  
5 cross-references are updated to reflect the new location of the referenced provisions, the  
6 redundant phrase “of the association” is omitted in subdivision (a)(4), and obsolete transitional  
7 dates are omitted in subdivisions (d) and (e). For further information, see the Law Revision  
8 Comment to Section 6500.

9 CHAPTER 6. FINANCES

10 Article 1. Assessment Setting

11 **§ 6800 (REVISED). Levy of assessment**

12 6800. The association shall levy regular and special assessments sufficient to  
13 perform its obligations under the governing documents and this title.

14 **Comment.** Subdivision (a) of Section 6800 restates the first sentence of Section 1366(a)  
15 without substantive change, except that a statutory exception not applicable to a nonresidential  
16 common interest development is deleted. For further information, see the Law Revision Comment  
17 to Section 6500.

18  **Staff Note.** Section 5605 would continue portions of existing Section 1366(a) that this  
19 proposed legislation would make inapplicable to a nonresidential CID, and portions of existing  
20 Section 1366(b), which is inapplicable to a nonresidential CID pursuant to existing Section 1373.  
21 Subdivision (b) of this section would continue existing Section 1366.1, which this proposed  
22 legislation would make inapplicable to a nonresidential CID.

23 **§ 6804 (REVISED). Exemption from execution**

24 6804. (a) Regular assessments imposed or collected to perform the obligations  
25 of an association under the governing documents or this title shall be 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 exemption shall not apply to any consensual pledges, liens, or  
31 encumbrances that have been approved by a majority of a quorum of members  
32 (Section 6524) at a member meeting or election, or to any state tax lien, or to any  
33 lien for labor or materials supplied to the common area.

34 **Comment.** Section 6804 continues Section 1366(c) without change, with the following  
35 exceptions: (1) Subdivisions are added. (2) A reference to approval of a majority of members  
36 casting a vote at a meeting at which a quorum is established has been replaced with a reference to  
37 the standard provision on approval by a majority of a quorum of members (Section 6524). (3)  
38 Quorum-related language from Section 1366(b)-(c) is not continued. For further information, see  
39 the Law Revision Comment to Section 6500.

40 See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing  
41 documents”), 6554 (“member”).

1 **Staff Note.** Both Section 1366(a) and (b) contain the following sentence: “For the purposes  
2 of this section, ‘quorum’ means more than 50 percent of the owners of an association.” Although  
3 those provisions purport to apply to the “section” as a whole, the fact that the sentence is repeated  
4 in subdivisions (a) and (b) suggests that the intention may have been to limit the application of  
5 the sentence to just those subdivisions. If so, then the special quorum rule would not apply to the  
6 reference in Section 1366(c) to “any consensual pledges, liens, or encumbrances that have been  
7 approved by the owners of an association, *constituting a quorum*, casting a majority of the votes  
8 at a meeting or election of the association...” (Emphasis added.) Proposed Section 6804 is  
9 drafted on the basis of that interpretation, and does not include the special quorum rule.

10 **§ 6806 (UNCHANGED). Property tax value as basis for assessments**

11 6806. (a) Except as provided in subdivision (b), notwithstanding any provision  
12 of this part or the governing documents to the contrary, an association shall not  
13 levy assessments on separate interests within the common interest development  
14 based on the taxable value of the separate interests unless the association, on or  
15 before December 31, 2009, in accordance with its governing documents, levied  
16 assessments on those separate interests based on their taxable value, as determined  
17 by the tax assessor of the county in which the separate interests are located.

18 (b) An association that is responsible for paying taxes on the separate interests  
19 within the common interest development may levy that portion of assessments on  
20 separate interests that is related to the payment of taxes based on the taxable value  
21 of the separate interest, as determined by the tax assessor.

22 **Comment.** Proposed Section 6806 continues Section 1366.4 without change, except that “title”  
23 is changed to “part.” For further information, see the Law Revision Comment to Section 6500.

24 **Article 2. Assessment Payment and Delinquency**

25 **§ 6808 (UNCHANGED). Assessment debt and delinquency**

26 6808. (a) A regular or special assessment and any late charges, reasonable fees  
27 and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as  
28 determined in accordance with subdivision (b), shall be a debt of the owner of the  
29 separate interest at the time the assessment or other sums are levied.

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

32 **Comment.** Subdivision (a) of Section 6808 continues the first sentence of Section 1367.1(a)  
33 without change, except that a cross-reference is updated to reflect the new location of the  
34 referenced provision. For further information, see the Law Revision Comment to Section 6500.

35 Subdivision (b) continues Section 1366(f) without change. For further information, see the Law  
36 Revision Comment to Section 6500.

37 **Staff Note.** Subdivisions (b) and (c) would continue portions of existing Section 1366, which  
38 this proposed legislation would make inapplicable to a nonresidential CID.

39 **§ 6810 (REVISED). Payments**

40 6810. (a) Any payments made by the owner of a separate interest toward  
41 assessments shall first be applied to the assessments owed, and, only after the

1 assessments owed are paid in full shall the payments be applied to the fees and  
2 costs of collection, attorney’s fees, late charges, or interest.

3 (b) When an owner makes a payment, the owner may request a receipt and the  
4 association shall provide it. The receipt shall indicate the date of payment and the  
5 person who received it.

6 (c) The association shall provide a mailing address for overnight payment of  
7 assessments.

8 **Comment.** Section 6810 continues Section 1367.1(b) without substantive change, with the  
9 following exceptions: (1) A reference to assessment debt “set forth, as required in subdivision  
10 (a)” is not continued. (2) Subdivisions are added. For further information, see the Law Revision  
11 Comment to Section 6500.

12 **Staff Note.** Existing Section 1367.1(b) refers to payments made toward “the debt set forth, as  
13 required in subdivision (a)...” The purpose of that language is unclear and it is potentially  
14 problematic. It could be understood as limiting the right established in Section 1367.1(b) to debts  
15 that have been properly noticed, pursuant to Section 1367.1(a). In other words, if the association  
16 makes a technical mistake in describing the debt, the member’s right to pay off the principal first  
17 might not apply. The staff sees no policy reason for such a result. The limiting language would  
18 not be continued in proposed Section 6810.

19 **§ 6812 (REVISED). Pre-lien notice**

20 6812. At least 30 days prior to recording a lien upon the separate interest of the  
21 owner of record to collect a debt that is past due under Section 6808, the  
22 association shall notify the owner of record in writing by certified mail of the  
23 following:

24 (a) A general description of the collection and lien enforcement procedures of  
25 the association and the method of calculation of the amount, a statement that the  
26 owner of the separate interest has the right to inspect the association records  
27 pursuant to Section 8333 of the Corporations Code, and the following statement in  
28 14-point boldface type, if printed, or in capital letters, if typed:

29 “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN  
30 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS,  
31 IT MAY BE SOLD WITHOUT COURT ACTION.”

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

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

39 **Comment.** Section 6812 continues the second sentence of Section 1367.1(a), and paragraphs  
40 (1) to (3) of that provision, inclusive, without change, except that a cross-reference to another  
41 provision of the Davis-Stirling Common Interest Development Act is updated to reflect the new  
42 location of the referenced provision. For further information, see the Law Revision Comment to  
43 Section 6500.

1 **Staff Note.** Section 5205 would continue parts of existing Section 1365.2, which this  
2 proposed legislation would make inapplicable to a nonresidential CID. The reference to Section  
3 8333 of the Corporations Code is contained in existing law. Subdivisions (d) through (f) of this  
4 section would continue portions of existing Sections 1367.1, 1363.810 et seq, and 1369.510 et  
5 seq, all sections that this proposed legislation would make inapplicable to a nonresidential CID.

6 **§ 6814 (UNCHANGED). Notice of delinquent assessment**

7 6814. (a) The amount of the assessment, plus any costs of collection, late  
8 charges, and interest assessed in accordance with subdivision (b) of Section 6808,  
9 shall be a lien on the owner's separate interest in the common interest  
10 development from and after the time the association causes to be recorded with the  
11 county recorder of the county in which the separate interest is located, a notice of  
12 delinquent assessment, which shall state the amount of the assessment and other  
13 sums imposed in accordance with subdivision (b) of Section 6808, a legal  
14 description of the owner's separate interest in the common interest development  
15 against which the assessment and other sums are levied, and the name of the  
16 record owner of the separate interest in the common interest development against  
17 which the lien is imposed.

18 (b) The itemized statement of the charges owed by the owner described in  
19 subdivision (b) of Section 6812 shall be recorded together with the notice of  
20 delinquent assessment.

21 (c) In order for the lien to be enforced by nonjudicial foreclosure as provided in  
22 Sections 6820 and 6822, the notice of delinquent assessment shall state the name  
23 and address of the trustee authorized by the association to enforce the lien by sale.

24 (d) The notice of delinquent assessment shall be signed by the person designated  
25 in the declaration or by the association for that purpose, or if no one is designated,  
26 by the president of the association.

27 (e) A copy of the recorded notice of delinquent assessment shall be mailed by  
28 certified mail to every person whose name is shown as an owner of the separate  
29 interest in the association's records, and the notice shall be mailed no later than 10  
30 calendar days after recordation.

31 (f) Upon receipt of a written request by an owner identifying a secondary  
32 address for purposes of collection notices, the association shall send additional  
33 copies of any notices required by this section to the secondary address provided.  
34 The association shall notify owners of their right to submit secondary addresses to  
35 the association. The owner's request shall be in writing and shall be mailed to the  
36 association in a manner that shall indicate the association has received it. The  
37 owner may identify or change a secondary address at any time, provided that, if a  
38 secondary address is identified or changed during the collection process, the  
39 association shall only be required to send notices to the indicated secondary  
40 address from the point the association receives the request.

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

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

3 **Comment.** Subdivisions (a)-(e) of Section 6814 continue the first five sentences of Section  
4 1367.1(d) without change, except that cross-references are updated to reflect the new location of  
5 the referenced provisions. For further information, see the Law Revision Comment to Section  
6 6500.

7 Subdivision (f) continues Section 1367.1(k) without change, except that a requirement that a  
8 specified notification to owners be included in the annual budget has been deleted. For further  
9 information, see the Law Revision Comment to Section 6500.

10 Subdivision (g) continues Section 1367.1(l) without change. For further information, see the  
11 Law Revision Comment to Section 6500.

12  **Staff Note.** Section 5310 is a new provision that would aggregate various disclosures  
13 required to be made to members in a residential CID. It is not included in this proposed  
14 legislation.

15 **§ 6816 (REVISED). Lien priority**

16 6816. A lien created pursuant to Section 6814 shall be prior to all other liens  
17 recorded subsequent to the notice of delinquent assessment, except that the  
18 declaration may provide for the subordination thereof to any other liens and  
19 encumbrances.

20 **Comment.** Section 6816 continues Section 1367.1(f) without change, with the following  
21 exceptions: (1) The phrase “notice of assessment” is replaced with the more specific “notice of  
22 delinquent assessment.” (2) A cross-reference is updated to reflect the new location of the  
23 referenced provision. For further information, see the Law Revision Comment to Section 6500.

24  **Staff Note.** Section 1367.1(f) refers to the “notice of assessment.” It appears that the intention  
25 was to refer to the “notice of delinquent assessment” specified in Section 1367.1(d). In order to  
26 avoid any ambiguity, proposed Section 6816 uses the more specific term.

27 **§ 6818 (REVISED). Lien release**

28 6818. (a) Within 21 days of the payment of the sums specified in the notice of  
29 delinquent assessment, the association shall record or cause to be recorded in the  
30 office of the county recorder in which the notice of delinquent assessment is  
31 recorded a lien release or notice of rescission and provide the owner of the  
32 separate interest a copy of the lien release or notice that the delinquent assessment  
33 has been satisfied.

34 (b) If it is determined that a lien previously recorded against the separate interest  
35 was recorded in error, the party who recorded the lien shall, within 21 calendar  
36 days, record or cause to be recorded in the office of the county recorder in which  
37 the notice of delinquent assessment is recorded a lien release or notice of  
38 rescission and provide the owner of the separate interest with a declaration that the  
39 lien filing or recording was in error and a copy of the lien release or notice of  
40 rescission.

41 **Comment.** Subdivision (a) of Section 6818 continues the sixth sentence of Section 1367.1(d)  
42 without change. For further information, see the Law Revision Comment to Section 6500.

43 Subdivision (b) continues Section 1367.1(i) without change. For further information, see the  
44 Law Revision Comment to Section 6500.

1 **Staff Note.** Subdivision (c) would continue existing Section 1367.5, which this proposed  
2 legislation would make inapplicable to a nonresidential CID.

3 Article 3. Assessment Collection

4 **§ 6820 (REVISED). Collection generally**

5 6820. (a) Except as otherwise provided in this article, after the expiration of 30  
6 days following the recording of a lien created pursuant to Section 6814, the lien  
7 may be enforced in any manner permitted by law, including sale by the court, sale  
8 by the trustee designated in the notice of delinquent assessment, or sale by a  
9 trustee substituted pursuant to Section 2934a.

10 (b) Nothing in Article 2 (commencing with Section 6808) or in subdivision (a)  
11 of Section 726 of the Code of Civil Procedure prohibits actions against the owner  
12 of a separate interest to recover sums for which a lien is created pursuant to Article  
13 2 (commencing with Section 6808) or prohibits an association from taking a deed  
14 in lieu of foreclosure.

15 **Comment.** Subdivision (a) of Section 6820 continues the second sentence of Section  
16 1367.1(g), with the following exceptions: (1) The introductory clause has been broadened to  
17 recognize the application of all restrictions on collection that are provided in this article. See, e.g.,  
18 Section 6826 (limitation on assignment). (2) Cross-references are updated to reflect the new  
19 location of the referenced provisions. For further information, see the Law Revision Comment to  
20 Section 6500.

21 Subdivision (b) continues Section 1367.1(h) without change, except that cross-references are  
22 updated to reflect the new location of the referenced provisions. For further information, see the  
23 Law Revision Comment to Section 6500.

24 **§ 6822 (UNCHANGED). Foreclosure**

25 6822. (a) Any sale by the trustee shall be conducted in accordance with Sections  
26 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages  
27 and deeds of trust.

28 (b) In addition to the requirements of Section 2924, a notice of default shall be  
29 served by the association on the owner's legal representative in accordance with  
30 the manner of service of summons in Article 3 (commencing with Section 415.10)  
31 of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The owner's legal  
32 representative shall be the person whose name is shown as the owner of a separate  
33 interest in the association's records, unless another person has been previously  
34 designated by the owner as his or her legal representative in writing and mailed to  
35 the association in a manner that indicates that the association has received it.

36 (c) The fees of a trustee may not exceed the amounts prescribed in Sections  
37 2924c and 2924d, plus the cost of service for the notice of default pursuant to  
38 subdivision (b).

39 **Comment.** Subdivision (a) Section 6822 continues the third sentence of Section 1367.1(g)  
40 without change. For further information, see the Law Revision Comment to Section 6500.

41 Subdivision (b) continues Section 1367.1(j) without change. For further information, see the  
42 Law Revision Comment to Section 6500.

1 Subdivision (c) continues the fourth sentence and paragraph (1) of Section 1367.1(g), without  
2 change. For further information, see the Law Revision Comment to Section 6500.

3 **Staff Note.** Section 5705 would continue existing Section 1367.4, which this proposed  
4 legislation would make inapplicable to a nonresidential CID.]

5 **§ 6824 (REVISED). Property damage and fines**

6 6824. (a) A monetary charge imposed by the association as a means of  
7 reimbursing the association for costs incurred by the association in the repair of  
8 damage to common area and facilities caused by a member, an occupant of the  
9 member's separate interest, or the member's guest, invitee, or tenant may become  
10 a lien against the member's separate interest enforceable by the sale of the interest  
11 under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is  
12 set forth in the governing documents. It is the intent of the Legislature not to  
13 contravene Section 2792.26 of Title 10 of the California Code of Regulations, as  
14 that section appeared on January 1, 1996, for associations of subdivisions that are  
15 being sold under authority of a subdivision public report, pursuant to Part 2  
16 (commencing with Section 11000) of Division 4 of the Business and Professions  
17 Code.

18 (b) A monetary penalty imposed by the association as a disciplinary measure for  
19 failure of a member to comply with the governing documents, except for the late  
20 payments, may not be characterized nor treated in the governing documents as an  
21 assessment that may become a lien against the member's separate interest  
22 enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

23 **Comment.** Subdivision (a) of Section 6824 continues the seventh and eighth sentences of  
24 Section 1367.1(d) without change, except that (1) the section makes clear that a member may be  
25 liable for damage caused by an occupant of the member's separate interest or an invitee and (2) a  
26 reference to "common areas" is singularized. For further information, see the Law Revision  
27 Comment to Section 6500.

28 On January 1, 1996, Section 2792.26 of Title 10 of the California Code of Regulations read as  
29 follows:

30 2792.26. (a) The Association cannot be empowered to cause a forfeiture or abridgement of  
31 an owner's right to the full use and enjoyment of his individually-owned subdivision interest  
32 on account of the failure by the owner to comply with provisions of the governing  
33 instruments or of duly-added rules of operation for common areas and facilities except by  
34 judgment of a court or a decision arising out of an arbitration or on account of a foreclosure  
35 or sale under a power of sale for failure of the owner to pay assessments duly levied by the  
36 Association.

37 (b) The governing instruments shall include provisions which authorize the governing body  
38 to impose monetary penalties, temporary suspensions of an owner's rights as a member of the  
39 Association or other appropriate discipline for failure to comply with the governing  
40 instruments provided that the procedures for notice and hearing, satisfying the minimum  
41 requirements of subdivision (h) of Section 1363 of the Civil Code, are followed with respect  
42 to the accused member before a decision to impose discipline is reached.

43 (c) A monetary penalty imposed by the Association as a disciplinary measure for failure of  
44 a member to comply with the governing instruments or as a means of reimbursing the  
45 Association for costs incurred by the Association in the repair of damage to common areas  
46 and facilities for which the member was allegedly responsible or in bringing the member and

1 his subdivision interest into compliance with the governing instruments may not be  
2 characterized nor treated in the governing instruments as an assessment which may become a  
3 lien against the member's subdivision interest enforceable by a sale of the interest in  
4 accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

5 (d) The provisions of subdivision (c) do not apply to charges imposed against an owner  
6 consisting of reasonable late payment penalties for delinquent assessments and/or charges to  
7 reimburse the Association for the loss of interest and for costs reasonably incurred (including  
8 attorney's fees) in its efforts to collect delinquent assessments.

9 Subdivision (b) continues Section 1367.1(e) without change, with the following exceptions: (1)  
10 The introductory clause "except as indicated in subdivision (d)" is not continued. (2) The  
11 undefined term "governing instruments" is replaced with the defined term "governing  
12 documents." (3) The undefined term "subdivision separate interest" is replaced with the defined  
13 term "separate interest." For further information, see the Law Revision Comment to Section  
14 6500.

15 **Staff Note.** (1) Proposed Section 6824(a) would expand the scope of the existing rule  
16 governing reimbursement of costs incurred for damage caused by an owner or the owner's guest  
17 or tenant, to also include damage caused by an owner's invitee or a resident of the owner's  
18 separate interest.

19 (2) Proposed Section 6824(b) would omit the introductory clause of Section 1367.1(e): "Except  
20 as indicated in subdivision (d)..." The staff sees nothing in Section 1367.1(d) that would operate  
21 as an exception to the rule stated in Section 1367.1(e).

22 (3) Proposed Section 6824(b) would substitute the defined term "governing documents" for the  
23 undefined term "governing instruments."

24 (4) Proposed Section 6824(b) would substitute the defined term "separate interest" for the  
25 undefined term "subdivision separate interest."

26 **§ 6826 (REVISED). Assignment or pledge**

27 6826. (a) An association may not voluntarily assign or pledge the association's  
28 right to collect payments or assessments, or to enforce or foreclose a lien to a third  
29 party, except when the assignment or pledge is made to a financial institution or  
30 lender chartered or licensed under federal or state law, when acting within the  
31 scope of that charter or license, as security for a loan obtained by the association.

32 (b) Nothing in subdivision (a) restricts the right or ability of an association to  
33 assign any unpaid obligations of a former member to a third party for purposes of  
34 collection.

35 **Comment.** Section 6826 continues the first sentence of Section 1367.1(g) without change, with  
36 the following exceptions: (1) The provision is divided into subdivisions. (2) An introductory  
37 clause is added in subdivision (b) to make the relationship between the two provisions clearer.  
38 For further information, see the Law Revision Comment to Section 6500.

39 **Staff Note.** Proposed Section 6826 would break the first sentence of Section 1367.1(g) into  
40 two subdivisions and add an introductory clause in the second provision, to better define their  
41 relationship. (In existing law the two provisions are joined by a semi-colon and the ambiguous  
42 conjunction "however.").

43 **§ 6828 (NEW). Application of article**

44 6828. (a) Except as otherwise provided, this article applies to a lien created on or  
45 after January 1, 2013.

1 (b) A lien created before January 1, 2013, is governed by the law in existence at  
2 the time the lien was created.

3 **Comment.** Section 6828 is new. A lien created on or after January 1, 1986, and before January  
4 1, 2003, is governed by Section 1367. A lien created on or after January 1, 2003 and before the  
5 enactment of the act that added this section, is governed by Section 1367.1 and Section 1367.4.

6 **Staff Note.** Under existing law, Section 1367 governs liens recorded on or after January 1,  
7 1986, but before January 1, 2003. Liens that are recorded on or after January 1, 2003, are  
8 governed by Section 1367.1 (except that inconsistent provisions of Section 1367.4 govern debts  
9 for assessments that arise on or after January 1, 2006). However, as this proposed legislation  
10 would make a portion of Section 1367.1 and the entirety of Section 1367.4 inapplicable to a  
11 nonresidential CID, for those CIDs the relevant date in this provision would be the effective date  
12 of this legislation.

13 CHAPTER 7. INSURANCE AND LIABILITY

14 § 6840 (UNCHANGED). **Limitation of member liability**

15 6840. (a) It is the intent of the Legislature to offer civil liability protection to  
16 owners of the separate interests in a common interest development that have  
17 common area owned in tenancy-in-common if the association carries a certain  
18 level of prescribed insurance that covers a cause of action in tort.

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

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

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

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

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

33 **Comment.** Section 6840 continues Section 1365.9 without change, except that a superfluous  
34 cross-reference to a governing definition is not continued, a reference to “common areas” is  
35 singularized, and subdivision (b)(1) is revised to replace “which” with “that.” For further  
36 information, see the Law Revision Comment to Section 6500.

1 CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT

2 Article 1. Disciplinary Action

3 **§ 6850 (REVISED). Schedule of monetary penalties**

4 6850. If an association adopts or has adopted a policy imposing any monetary  
5 penalty, including any fee, on any association member for a violation of the  
6 governing documents, the board shall adopt and distribute to each member, by  
7 personal delivery or first-class mail, a schedule of the monetary penalties that may  
8 be assessed for those violations, which shall be in accordance with authorization  
9 for member discipline contained in the governing documents.

10 **Comment.** Section 6850 continues the first sentence of Section 1363(g) without change, with  
11 the following exceptions: (1) A reference to the “rules of the association” is superfluous and is  
12 not continued. The term “governing documents” encompasses rules. See Section 6552. (2) A  
13 clause making clear that a violation of the governing documents can include a violation by a  
14 member’s guest or invitee is not continued in this section. The substance of that clause is  
15 continued in Section 6852. (3) The term “board of directors” has been replaced with the defined  
16 term “board.” See Section 6530 (“board” defined). For further information, see the Law Revision  
17 Comment to Section 6500.

18 **Staff Note.** (1) Section 5310 is a new provision that would aggregate various disclosures  
19 required to be made to members in a residential CID. It is not included in this proposed  
20 legislation.

21 (2) Existing Section 1363(g) makes clear that a violation of the governing documents includes  
22 a violation by a member’s guest or invitee. That principle would be generalized, to include a  
23 tenant or other resident of a member’s separate interest, in proposed Section 6850.

24 **§ 6852 (NEW). Responsibility for guest, invitee, tenant, or resident**

25 6852. For the purposes of this article, a member may be held responsible for a  
26 violation of the governing documents or damage to the common area caused by  
27 the member’s guest, invitee, or tenant, or occupant of the member’s separate  
28 interest.

29 **Comment.** Section 6852 is new. It generalizes a clause of Section 1363(g), which provided  
30 that a member may be liable for a violation of the governing documents by the member’s guest or  
31 invitee. For further information, see the Law Revision Comment to Section 6500.

32 **Staff Note.** Proposed Section 6852 would fill a gap in existing law, which recognizes a  
33 member’s vicarious liability for conduct of a guest or invitee, but not for a tenant or other  
34 occupant of the member’s separate interest.

35 **§ 6854 (REVISED). No effect on authority of board**

36 6854. Nothing in Section 6850 shall be construed to create, expand, or reduce  
37 the authority of the board to impose monetary penalties on an association member  
38 for a violation of the governing documents.

39 **Comment.** Section 6854 restates Section 1363(j) without substantive change, except that a  
40 reference to “this section” has been replaced with a reference to the disciplinary provision in  
41 Section 1363 that has been continued in this part, the term “board of directors of the association”

1 has been replaced with the defined term “board,” and the phrase “or rules of the association” has  
2 not been continued. See Section 6530 (“board” defined), 6552 (“governing documents” includes  
3 the operating rules of the association). For further information, see the Law Revision Comment to  
4 Section 6500..

5 **Staff Note.** (1) Section 5855 would continue existing Section 1363(h), which this proposed  
6 legislation would make inapplicable to a nonresidential CID.

7 (2) Existing Section 1363(j) refers to the entirety of Section 1363. Proposed Section 6854  
8 would only refer to the provision of Section 1363 relating to member discipline that is continued  
9 in this part.

## 10 Article 4. Civil Actions

### 11 § 6856 (UNCHANGED). Enforcement of governing documents

12 6856. (a) The covenants and restrictions in the declaration shall be enforceable  
13 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind  
14 all owners of separate interests in the development. Unless the declaration states  
15 otherwise, these servitudes may be enforced by any owner of a separate interest or  
16 by the association, or by both.

17 (b) A governing document other than the declaration may be enforced by the  
18 association against an owner of a separate interest or by an owner of a separate  
19 interest against the association.

20 (c) In an action to enforce the governing documents, the prevailing party shall be  
21 awarded reasonable attorney’s fees and costs.

22 **Comment.** Section 6856 continues Section 1354 without change. For further information, see  
23 the Law Revision Comment to Section 6500.

### 24 § 6858 (NEW). Enforcement of this part

25 6858. In addition to any other remedy provided by law, a member may bring an  
26 action in superior court to enforce a provision of this part.

27 **Comment.** Section 6858 is new. Relief under this section may include a writ of mandate, an  
28 injunction, or other appropriate relief.

29 **Staff Note.** Proposed Section 6858 would make clear that a member may bring a civil action  
30 to enforce any requirement of this part.

## 31 CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

### 32 § 6870 (REVISED). Actions for damages

33 6870. (a) Before an association files a complaint for damages against a builder,  
34 developer, or general contractor (“respondent”) of a common interest development  
35 based upon a claim for defects in the design or construction of the common  
36 interest development, all of the requirements of this section shall be satisfied with  
37 respect to the builder, developer, or general contractor.

1 (b) The association shall serve upon the respondent a “Notice of  
2 Commencement of Legal Proceedings.” The notice shall be served by certified  
3 mail to the registered agent of the respondent, or if there is no registered agent,  
4 then to any officer of the respondent. If there are no current officers of the  
5 respondent, service shall be upon the person or entity otherwise authorized by law  
6 to receive service of process. Service upon the general contractor shall be  
7 sufficient to initiate the process set forth in this section with regard to any builder  
8 or developer, if the builder or developer is not amenable to service of process by  
9 the foregoing methods. This notice shall toll all applicable statutes of limitation  
10 and repose, whether contractual or statutory, by and against all potentially  
11 responsible parties, regardless of whether they were named in the notice, including  
12 claims for indemnity applicable to the claim for the period set forth in subdivision  
13 (c). The notice shall include all of the following:

14 (1) The name and location of the project.

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

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

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

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

23 (c) Service of the notice shall commence a period, not to exceed 180 days,  
24 during which the association, the respondent, and all other participating parties  
25 shall try to resolve the dispute through the processes set forth in this section. This  
26 180-day period may be extended for one additional period, not to exceed 180 days,  
27 only upon the mutual agreement of the association, the respondent, and any parties  
28 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any  
29 extensions beyond the first extension shall require the agreement of all  
30 participating parties. Unless extended, the dispute resolution process prescribed by  
31 this section shall be deemed completed. All extensions shall continue the tolling  
32 period described in subdivision (b).

33 (d) Within 25 days of the date the association serves the Notice of  
34 Commencement of Legal Proceedings, the respondent may request in writing to  
35 meet and confer with the board. Unless the respondent and the association  
36 otherwise agree, there shall be not more than one meeting, which shall take place  
37 no later than 10 days from the date of the respondent’s written request, at a  
38 mutually agreeable time and place. Any member of the association may attend the  
39 meeting, except if the board adjourns to executive session. The discussions at the  
40 meeting are privileged communications and are not admissible in evidence in any  
41 civil action, unless the association and the respondent consent in writing to their  
42 admission.

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

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

17 (2) The respondent shall provide written notice by certified mail to all  
18 subcontractors, design professionals, their insurers, and the insurers of any  
19 additional insured whose identities are known to the respondent or readily  
20 ascertainable by review of the project files or other similar sources and whose  
21 potential responsibility appears on the face of the notice. This notice to  
22 subcontractors, design professionals, and insurers shall include a copy of the  
23 Notice of Commencement of Legal Proceedings, and shall specify the date and  
24 manner by which the parties shall meet and confer to select a dispute resolution  
25 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its  
26 obligation to participate in the meet and confer or serve a written acknowledgment  
27 of receipt regarding this notice, advise the recipient that it will waive any  
28 challenge to selection of the dispute resolution facilitator if it elects not to  
29 participate in the meet and confer, advise the recipient that it may be bound by any  
30 settlement reached pursuant to subdivision (d) of Section 6872, advise the  
31 recipient that it may be deemed to have waived rights to conduct inspection and  
32 testing pursuant to subdivision (c) of Section 6872, advise the recipient that it may  
33 seek the assistance of an attorney, and advise the recipient that it should contact its  
34 insurer, if any. Any subcontractor or design professional, or insurer for that  
35 subcontractor, design professional, or additional insured, who receives written  
36 notice from the respondent regarding the meet and confer shall, prior to the meet  
37 and confer, serve on the respondent a written acknowledgment of receipt. That  
38 subcontractor or design professional shall, within 10 days of service of the written  
39 acknowledgment of receipt, provide to the association and the respondent a  
40 Statement of Insurance that includes both of the following:

41 (A) The names, addresses, and contact persons, if known, of all insurance  
42 carriers, whether primary or excess and regardless of whether a deductible or self-  
43 insured retention applies, whose policies were in effect from the commencement

1 of construction of the subject project to the present and which potentially cover the  
2 subject claims.

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

4 (3) Any subcontractor or design professional, or insurer for that subcontractor,  
5 design professional, or additional insured, who so chooses, may, at any time, make  
6 a written request to the dispute resolution facilitator for designation as a peripheral  
7 party. That request shall be served contemporaneously on the association and the  
8 respondent. If no objection to that designation is received within 15 days, or upon  
9 rejection of that objection, the dispute resolution facilitator shall designate that  
10 subcontractor or design professional as a peripheral party, and shall thereafter seek  
11 to limit the attendance of that subcontractor or design professional only to those  
12 dispute resolution sessions deemed peripheral party sessions or to those sessions  
13 during which the dispute resolution facilitator believes settlement as to peripheral  
14 parties may be finalized. Nothing in this subdivision shall preclude a party who  
15 has been designated a peripheral party from being reclassified as a nonperipheral  
16 party, nor shall this subdivision preclude a party designated as a nonperipheral  
17 party from being reclassified as a peripheral party after notice to all parties and an  
18 opportunity to object. For purposes of this subdivision, a peripheral party is a party  
19 having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

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

1 dispute resolution facilitator in consultation with the respondent shall maintain a  
2 contact list of the participating parties.

3 (2) No later than 10 days prior to the case management meeting, the dispute  
4 resolution facilitator shall disclose to the parties all matters that could cause a  
5 person aware of the facts to reasonably entertain a doubt that the proposed dispute  
6 resolution facilitator would be able to resolve the conflict in a fair manner. The  
7 facilitator's disclosure shall include the existence of any ground specified in  
8 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any  
9 attorney-client relationship the facilitator has or had with any party or lawyer for a  
10 party to the dispute resolution process, and any professional or significant personal  
11 relationship the facilitator or his or her spouse or minor child living in the  
12 household has or had with any party to the dispute resolution process. The  
13 disclosure shall also be provided to any subsequently noticed subcontractor or  
14 design professional within 10 days of the notice.

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

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

28 (5) Any subcontractor or design professional who receives notice of the  
29 association's claim without having previously received timely notice of the meet  
30 and confer to select the dispute resolution facilitator shall be notified by the  
31 respondent regarding the name, address, and telephone number of the dispute  
32 resolution facilitator. Any such subcontractor or design professional may serve  
33 upon the parties and the dispute resolution facilitator a written objection to the  
34 dispute resolution facilitator within 15 days of receiving notice of the claim.  
35 Within seven days after service of this objection, the subcontractor or design  
36 professional may petition the superior court to replace the dispute resolution  
37 facilitator. The court may replace the dispute resolution facilitator only upon a  
38 showing of good cause, liberally construed. Failure to satisfy the deadlines set  
39 forth in this subdivision shall constitute a waiver of the right to challenge the  
40 dispute resolution facilitator.

41 (6) The costs of the dispute resolution facilitator shall be apportioned in the  
42 following manner: one-third to be paid by the association; one-third to be paid by  
43 the respondent; and one-third to be paid by the subcontractors and design

1 professionals, as allocated among them by the dispute resolution facilitator. The  
2 costs of the dispute resolution facilitator shall be recoverable by the prevailing  
3 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil  
4 Procedure, provided however that any nonsettling party may, prior to the filing of  
5 the complaint, petition the facilitator to reallocate the costs of the dispute  
6 resolution facilitator as they apply to any nonsettling party. The determination of  
7 the dispute resolution facilitator with respect to the allocation of these costs shall  
8 be binding in any subsequent litigation. The dispute resolution facilitator shall take  
9 into account all relevant factors and equities between all parties in the dispute  
10 resolution process when reallocating costs.

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

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

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

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

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

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

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

29 (h) At the case management meeting, the parties shall, with the assistance of the  
30 dispute resolution facilitator, reach agreement on a case management statement,  
31 which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive,  
32 except that the parties may dispense with one or more of these elements if they  
33 agree that it is appropriate to do so. The case management statement shall provide  
34 that the following elements shall take place in the following order:

35 (1) Establishment of a document depository, located in the county where the  
36 project is located, for deposit of documents, defect lists, demands, and other  
37 information provided for under this section. All documents exchanged by the  
38 parties and all documents created pursuant to this subdivision shall be deposited in  
39 the document depository, which shall be available to all parties throughout the  
40 prefiling dispute resolution process and in any subsequent litigation. When any  
41 document is deposited in the document depository, the party depositing the  
42 document shall provide written notice identifying the document to all other parties.

1 The costs of maintaining the document depository shall be apportioned among the  
2 parties in the same manner as the costs of the dispute resolution facilitator.

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

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

17 (4) Invasive testing conducted by the association, if the association deems  
18 appropriate. All parties may observe and photograph any testing conducted by the  
19 association pursuant to this paragraph, but may not take samples or direct testing  
20 unless, by mutual agreement, costs of testing are shared by the parties.

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

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

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

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

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

42 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the  
43 time the case management statement is established, set deadlines for the

1 occurrence of each event set forth in the case management statement, taking into  
2 account such factors as the size and complexity of the case, and the requirement of  
3 this section that this dispute resolution process not exceed 180 days absent  
4 agreement of the parties to an extension of time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (I) Except for the purpose of in camera review as provided in subdivision (c) of  
4 Section 6872, all defect lists and demands, communications, negotiations, and  
5 settlement offers made in the course of the prelitigation dispute resolution process  
6 provided by this section shall be inadmissible pursuant to Sections 1119 to 1124,  
7 inclusive, of the Evidence Code and all applicable decisional law. This  
8 inadmissibility shall not be extended to any other documents or communications  
9 which would not otherwise be deemed inadmissible.

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

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

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

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

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

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

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

1 same force and effect as the determination of a postfiling application or motion for  
2 good faith settlement.

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

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

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

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

18 (p) As used in this section:

19 (1) “Association” shall have the same meaning as defined in Section 6528.

20 (2) “Builder” means the declarant, as defined in Section 6544.

21 (3) “Common interest development” shall have the same meaning as in Section  
22 6534, except that it shall not include developments or projects with less than 20  
23 units.

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

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

29 (s) This section shall become inoperative on July 1, 2017, and, as of January 1,  
30 2018, is repealed, unless a later added statute, that becomes operative on or before  
31 January 1, 2018, deletes or extends the dates on which it becomes inoperative and  
32 is repealed.

33 **Comment.** Section 6870 continues Section 1375 without change, with the following  
34 exceptions: (1) Cross-references are updated to reflect the new location of the referenced  
35 provisions. (2) A reference to “homeowner” in paragraph (4) of subdivision (b) has been changed  
36 to “owner.” (3) The terms “board of directors” and “board of directors of the association” have  
37 been replaced throughout with the defined term “board.” See Section 6530 (“board” defined). (4)  
38 A reference in Section 1375(d) to a meeting subject to Section 1363.05(b) has been replaced with  
39 the relevant substance of Section 1363.05(b). Section 1363.05 is not continued in this part.

40 For further information, see the Law Revision Comment to Section 6500.

41 **Staff Note.** Proposed Section 6870(d) would replace a provision requiring that a referenced  
42 meeting be “subject to subdivision (b) of Section 1363.05” with a provision substantively  
43 describing the manner in which the referenced meeting is to be conducted. Section 1363.05(b) is  
44 not continued in this part. The Commission invites comment on whether this change would  
45 materially affect the operation of any provision of this section.

1 **§ 6872 (UNCHANGED). Action following pre-filing dispute resolution**

2 6872. (a) Upon the completion of the mandatory pre-filing dispute resolution  
3 process described in Section 6870, if the parties have not settled the matter, the  
4 association or its assignee may file a complaint in the superior court in the county  
5 in which the project is located. Those matters shall be given trial priority.

6 (b) In assigning trial priority, the court shall assign the earliest possible trial  
7 date, taking into consideration the pretrial preparation completed pursuant to  
8 Section 6870, and shall deem the complaint to have been filed on the date of  
9 service of the Notice of Commencement of Legal Proceedings described under  
10 Section 6870.

11 (c) Any respondent, subcontractor, or design professional who received timely  
12 prior notice of the inspections and testing conducted under Section 6870 shall be  
13 prohibited from engaging in additional inspection or testing, except if all of the  
14 following specific conditions are met, upon motion to the court:

15 (1) There is an insurer for a subcontractor or design professional, that did not  
16 have timely notice that legal proceedings were commenced under Section 6870 at  
17 least 30 days prior to the commencement of inspections or testing pursuant to  
18 paragraph (6) of subdivision (h) of Section 6870.

19 (2) The insurer's insured did not participate in any inspections or testing  
20 conducted under the provisions of paragraph (6) of subdivision (h) of Section  
21 6870.

22 (3) The insurer has, after receiving notice of a complaint filed in superior court  
23 under subdivision (a), retained separate counsel, who did not participate in the  
24 Section 6870 dispute resolution process, to defend its insured as to the allegations  
25 in the complaint.

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

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

30 If the court permits additional inspections or testing upon finding that these  
31 requirements are met, any additional inspections or testing shall be limited to the  
32 extent reasonably necessary to avoid the likelihood of prejudice and shall be  
33 coordinated among all similarly situated parties to ensure that they occur without  
34 unnecessary duplication. For purposes of providing notice to an insurer prior to  
35 inspections or testing under paragraph (6) of subdivision (h) of Section 6870, if  
36 notice of the proceedings was not provided by the insurer's insured, notice may be  
37 made via certified mail either by the subcontractor, design professional,  
38 association, or respondent to the address specified in the Statement of Insurance  
39 provided under paragraph (2) of subdivision (e) of Section 6870. Nothing herein  
40 shall affect the rights of an intervenor who files a complaint in intervention. If the  
41 association alleges defects that were not specified in the pre-filing dispute  
42 resolution process under Section 6870, the respondent, subcontractor, and design  
43 professionals shall be permitted to engage in testing or inspection necessary to

1 respond to the additional claims. A party who seeks additional inspections or  
2 testing based upon the amendment of claims shall apply to the court for leave to  
3 conduct those inspections or that testing. If the court determines that it must  
4 review the defect claims alleged by the association in the pre-filing dispute  
5 resolution process in order to determine whether the association alleges new or  
6 additional defects, this review shall be conducted in camera. Upon objection of  
7 any party, the court shall refer the matter to a judge other than the assigned trial  
8 judge to determine if the claim has been amended in a way that requires additional  
9 testing or inspection.

10 (d) Any subcontractor or design professional who had notice of the facilitated  
11 dispute resolution conducted under Section 6870 but failed to attend, or attended  
12 without settlement authority, shall be bound by the amount of any settlement  
13 reached in the facilitated dispute resolution in any subsequent trial, although the  
14 affected party may introduce evidence as to the allocation of the settlement. Any  
15 party who failed to participate in the facilitated dispute resolution because the  
16 party did not receive timely notice of the mediation shall be relieved of any  
17 obligation to participate in the settlement. Notwithstanding any privilege  
18 applicable to the pre-filing dispute resolution process provided by Section 6870,  
19 evidence may be introduced by any party to show whether a subcontractor or  
20 design professional failed to attend or attended without settlement authority. The  
21 binding effect of this subdivision shall in no way diminish or reduce a nonsettling  
22 subcontractor or design professional's right to defend itself or assert all available  
23 defenses relevant to its liability in any subsequent trial. For purposes of this  
24 subdivision, a subcontractor or design professional shall not be deemed to have  
25 attended without settlement authority because it asserted defenses to its potential  
26 liability.

27 (e) Notice of the facilitated dispute resolution conducted under Section 6870  
28 must be mailed by the respondent no later than 20 days prior to the date of the first  
29 facilitated dispute resolution session to all parties. Notice shall also be mailed to  
30 each of these parties' known insurance carriers. Mailing of this notice shall be by  
31 certified mail. Any subsequent facilitated dispute resolution notices shall be served  
32 by any means reasonably calculated to provide those parties actual notice.

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

1 (g)(1) The only method of seeking judicial relief for the failure of the  
2 association or the respondent to complete the dispute resolution process under  
3 Section 6870 shall be the assertion, as provided for in this subdivision, of a  
4 procedural deficiency to an action for damages by the association against the  
5 respondent after that action has been filed. A verified application asserting a  
6 procedural deficiency shall be filed with the court no later than 90 days after the  
7 answer to the plaintiff's complaint has been served, unless the court finds that  
8 extraordinary conditions exist.

9 (2) Upon the verified application of the association or the respondent alleging  
10 substantial noncompliance with Section 6870, the court shall schedule a hearing  
11 within 21 days of the application to determine whether the association or  
12 respondent has substantially complied with this section. The issue may be  
13 determined upon affidavits or upon oral testimony, in the discretion of the court.

14 (3)(A) If the court finds that the association or the respondent did not  
15 substantially comply with this paragraph, the court shall stay the action for up to  
16 90 days to allow the noncomplying party to establish substantial compliance. The  
17 court shall set a hearing within 90 days to determine substantial compliance. At  
18 any time, the court may, for good cause shown, extend the period of the stay upon  
19 application of the noncomplying party.

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

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

30 (i) This section shall become inoperative on July 1, 2010, and, as of January 1,  
31 2011, is repealed, unless a later added statute that is added before January 1, 2011,  
32 deletes or extends the dates on which it becomes inoperative and is repealed.

33 **Comment.** Section 6872 continues Section 1375.05 without change, except that cross-  
34 references are updated to reflect the new location of the referenced provisions. For further  
35 information, see the Law Revision Comment to Section 6500.

36 **§ 6874 (UNCHANGED). Notice of resolution**

37 6874. (a) As soon as is reasonably practicable after the association and the  
38 builder have entered into a settlement agreement or the matter has otherwise been  
39 resolved regarding alleged defects in the common areas, alleged defects in the  
40 separate interests that the association is obligated to maintain or repair, or alleged  
41 defects in the separate interests that arise out of, or are integrally related to, defects  
42 in the common areas or separate interests that the association is obligated to

1 maintain or repair, where the defects giving rise to the dispute have not been  
2 corrected, the association shall, in writing, inform only the members of the  
3 association whose names appear on the records of the association that the matter  
4 has been resolved, by settlement agreement or other means, and disclose all of the  
5 following:

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

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

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

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

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

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

24 **Comment.** Section 6874 continues Section 1375.1 without change. For further information,  
25 see the Law Revision Comment to Section 6500.

26 **§ 6876 (UNCHANGED). Notice of civil action**

27 6876. (a) Not later than 30 days prior to the filing of any civil action by the  
28 association against the declarant or other developer of a common interest  
29 development for alleged damage to the common areas, alleged damage to the  
30 separate interests that the association is obligated to maintain or repair, or alleged  
31 damage to the separate interests that arises out of, or is integrally related to,  
32 damage to the common areas or separate interests that the association is obligated  
33 to maintain or repair, the board shall provide a written notice to each member of  
34 the association who appears on the records of the association when the notice is  
35 provided. This notice shall specify all of the following:

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

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

40 (3) The time and place of this meeting.

41 (b) Notwithstanding subdivision (a), if the association has reason to believe that  
42 the applicable statute of limitations will expire before the association files the civil

1 action, the association may give the notice, as described above, within 30 days  
2 after the filing of the action.

3 **Comment.** Section 6876 continues Section 1368.5 without change, except that the term “board  
4 of directors of the association” has been replaced with the defined term “board.” See Section  
5 6530 (“board” defined). For further information, see the Law Revision Comment to Section 6500.

6 **Uncodified (added). Operative date**

7 This act becomes operative on January 1, 2013.

DISPOSITION OF EXISTING LAW

The table below shows the disposition of each provision of the existing Davis-Stirling Common Interest Development Act in the proposed law.

| <i>Existing Provision</i>                   | <i>Proposed Provision(s)</i> | <i>Existing Provision</i>  | <i>Proposed Provision(s)</i> |
|---------------------------------------------|------------------------------|----------------------------|------------------------------|
| 1350.....                                   | not continued                | 1357.130.....              | not continued                |
| 1350.5.....                                 | 6502                         | 1357.140.....              | not continued                |
| 1350.7.....                                 | not continued                | 1357.150.....              | not continued                |
| 1351 (intro.).....                          | 6526                         | 1358(a).....               | 6660                         |
| 1351(a).....                                | 6528                         | 1358(b).....               | 6662                         |
| 1351(b).....                                | 6532                         | 1358(c).....               | 6664                         |
| 1351(c).....                                | 6534                         | 1358(d).....               | 6666                         |
| 1351(d).....                                | 6536                         | 1358 (last ¶).....         | 6670                         |
| 1351(e)(1)-(2).....                         | 6540                         | 1358 (next to last ¶)..... | 6668                         |
| 1351(e)(3) (except last ¶).....             | 6624                         | 1359.....                  | 6656                         |
| 1351(e)(3) (last ¶).....                    | 6626                         | 1360.....                  | 6714                         |
| 1351(f).....                                | 6542                         | 1360.5.....                | 6706                         |
| 1351(g).....                                | 6544                         | 1361.....                  | 6652                         |
| 1351(h).....                                | 6546                         | 1361.5.....                | 6654                         |
| 1351(i).....                                | 6550                         | 1362.....                  | 6650                         |
| 1351(j).....                                | 6552                         | 1363(a).....               | 6750                         |
| 1351(k).....                                | 6562                         | 1363(b).....               | not continued                |
| 1351(l).....                                | 6564                         | 1363(c).....               | 6752                         |
| 1351(m).....                                | 6566                         | 1363(d).....               | not continued                |
| 1352.....                                   | 6508(a)                      | 1363(e).....               | not continued                |
| 1352.5.....                                 | 6606(a)-(b), (d)             | 1363(f).....               | not continued                |
| 1353(a)(1) (1st & 2d sent.).....            | 6614(a)                      | 1363(g) (1st sent.).....   | 6850                         |
| 1353(a)(1)-(4) (except 1st & 2d sent.)..... | not continued                | 1363(g) (2d sent.).....    | not continued                |
| 1353(b).....                                | 6614(b)                      | 1363(h).....               | not continued                |
| 1353.5.....                                 | 6702                         | 1363(i).....               | not continued                |
| 1353.6.....                                 | 6704                         | 1363(j).....               | 6854                         |
| 1353.7.....                                 | not continued (but see 6612) | 1363.001.....              | 6760                         |
| 1353.8.....                                 | 6712                         | 1363.005.....              | not continued                |
| 1354.....                                   | 6856                         | 1363.03.....               | not continued                |
| 1355(a) (1st sent.).....                    | 6620(a) (1st sent.)          | 1363.04.....               | not continued                |
| 1355(a)(1).....                             | 6620(a)(2)                   | 1363.05.....               | not continued                |
| 1355(a)(2).....                             | 6620(a)(3)                   | 1363.07.....               | not continued                |
| 1355(a)(3).....                             | 6620(a)(4)                   | 1363.09.....               | not continued                |
| 1355(b) (1st sent.).....                    | 6616                         | 1363.1.....                | not continued                |
| 1355(b)(1).....                             | 6620(a)(1)                   | 1363.2.....                | not continued                |
| 1355(b)(2).....                             | 6620(a)(2), 6620(b)          | 1363.5.....                | 6622                         |
| 1355(b)(3).....                             | 6620(a)(3)                   | 1363.6.....                | 6762                         |
| 1355.5.....                                 | 6608                         | 1363.810.....              | not continued                |
| 1356.....                                   | not continued                | 1363.820.....              | not continued                |
| 1357(a).....                                | 6618(a)                      | 1363.830.....              | not continued                |
| 1357(b) (1st sent.).....                    | 6618(b), 6620                | 1363.840.....              | not continued                |
| 1357(c).....                                | not continued                | 1363.850.....              | not continued                |
| 1357(d).....                                | 6618(c)                      | 1364(a).....               | 6716(a)                      |
| 1357.100.....                               | not continued                | 1364(b).....               | 6718                         |
| 1357.110.....                               | not continued                | 1364(c).....               | 6716(b)                      |
| 1357.120.....                               | not continued                | 1364(d)-(e).....           | 6720                         |
|                                             |                              | 1364(f).....               | 6722                         |

| <i>Existing Provision</i>        | <i>Proposed Provision(s)</i> | <i>Existing Provision</i> | <i>Proposed Provision(s)</i> |
|----------------------------------|------------------------------|---------------------------|------------------------------|
| 1365.....                        | not continued                | 1367.1(h).....            | 6820(b)                      |
| 1365.1.....                      | not continued                | 1367.1(i).....            | 6818(b)                      |
| 1365.2.....                      | not continued                | 1367.1(j).....            | 6822(b)                      |
| 1365.2.5.....                    | not continued                | 1367.1(k).....            | 6814(f)                      |
| 1365.3.....                      | not continued                | 1367.1(l).....            | 6814(g)                      |
| 1365.5.....                      | not continued                | 1367.1(m).....            | not continued (but see 6828) |
| 1365.6.....                      | 6758(a)                      | 1367.1(n).....            | not continued                |
| 1365.7.....                      | not continued                | 1367.4.....               | not continued                |
| 1365.9.....                      | 6840                         | 1367.5.....               | not continued                |
| 1366(a) (1st sent. only).....    | 6800                         | 1367.6.....               | not continued                |
| 1366(a) (except 1st sent.).....  | not continued                | 1368.....                 | not continued                |
| 1366(b).....                     | not continued                | 1368.1.....               | 6710                         |
| 1366(c).....                     | 6804                         | 1368.3.....               | 6754                         |
| 1366(d).....                     | not continued                | 1368.4.....               | 6756                         |
| 1366(e).....                     | not continued                | 1368.5.....               | 6150                         |
| 1366(f).....                     | 6808(c)                      | 1369.....                 | 6658                         |
| 1366.1.....                      | not continued                | 1369.510.....             | not continued                |
| 1366.2.....                      | not continued                | 1369.520.....             | not continued                |
| 1366.4.....                      | 6806                         | 1369.530.....             | not continued                |
| 1367.....                        | not continued (but see 6828) | 1369.540.....             | not continued                |
| 1367.1(a) (1st sent.).....       | 6808(a)                      | 1369.550.....             | not continued                |
| 1367.1(a) (2d sent.).....        | 6812 (intro.)                | 1369.560.....             | not continued                |
| 1367.1(a)(1)-(6).....            | 6812(a)-(f)                  | 1369.570.....             | not continued                |
| 1367.1(b).....                   | 6810                         | 1369.580.....             | not continued                |
| 1367.1(c).....                   | not continued                | 1369.590.....             | not continued                |
| 1367.1(d) (1st - 5th sent.)..... | 6814(a)-(e)                  | 1370.....                 | 6602                         |
| 1367.1(d) (6th sent.).....       | 6818(a)                      | 1371.....                 | 6604                         |
| 1367.1(d) (7th & 8th sent.)..... | 6824(a)                      | 1372.....                 | 6510                         |
| 1367.1(e).....                   | 6824(b)                      | 1373.....                 | 6506(a), 6556                |
| 1367.1(f).....                   | 6816                         | 1374.....                 | 6506(b)                      |
| 1367.1(g) (1st sent.).....       | 6826                         | 1375.....                 | 6000                         |
| 1367.1(g) (2d sent.).....        | 6820(a)                      | 1375.05.....              | 6050                         |
| 1367.1(g) (3d sent.).....        | 6822(a)                      | 1375.1.....               | 6100                         |
| 1367.1(g) (4th sent.).....       | 6822(c) (intro.)             | 1376.....                 | 6708                         |
| 1367.1(g)(1)-(2).....            | 6822(c)(1)-(2)               | 1378.....                 | not continued                |