

Memorandum 2007-4

**Statutory Clarification and Simplification of CID Law:
Member Elections**

In this study, the Commission is working to reorganize and simplify common interest development statutory law. The intention is to make CID law easier to understand and use by improving its presentation and resolving ambiguities and conflicts.

Most of the improvements in the proposed law will be technical. Some noncontroversial substantive improvements will also be included. However, if a proposed change is determined to be controversial, it will not be included in the proposed law. Instead, it will be identified for separate study by the Commission. This is not intended as a way of dismissing or prejudging the merits of controversial proposals. It merely separates "lightning rod" issues from the larger body of inoffensive improvements, so as to increase the likelihood that the larger body of noncontroversial improvements will be enacted.

This memorandum presents and discusses material relating to CID member election procedures. It would be best to use a light touch in reorganizing these provisions. Recent legislation has made significant changes to the law governing election procedures. See 2006 Cal. Stat. ch. 310 (SB 1560 (Battin)), 2005 Cal. Stat. ch. 450 (SB 61 (Battin)). Associations statewide have adjusted their governing documents and procedures to the new law. Unless there is broad consensus that a substantive change to the new law is called for, we should be cautious about disrupting the newly established rules.

A staff draft of the proposed law is attached. The draft is cumulative and includes previously reviewed material. For ease of reference, material in the draft that is new or significantly different from the previous draft has been shaded with a grey background.

With completion of the election material, the staff draft will be about 80 percent complete. The issues that still need to be covered are insurance, property

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ownership and maintenance, and construction defect litigation. The staff also intends to revisit some issues related to accounting practices.

Unless otherwise indicated, statutory references in this memorandum are to the Civil Code.

APPLICATION OF CORPORATIONS CODE

Most homeowner associations are nonprofit corporations and are therefore governed by the election provisions of the Corporations Code.

However, recent legislation added new election provisions to the Davis-Stirling Act. See Sections 1363.03, 1363.04, and 1363.09. The main procedural provision, Section 1363.03, expressly supersedes any inconsistent provision of the Corporations Code. See Section 1363.03(n).

As a result, election procedures are now governed by a combination of provisions drawn from both the Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”) and the Corporations Code. Those provisions must be read together to determine which law governs on a particular point. Areas of overlap must be analyzed to determine whether the provisions can be reconciled.

The staff has attempted to simplify things. Where a Corporations Code section is clearly inconsistent with the rules provided in the Davis-Stirling Act, its inapplicability has been stated expressly. See Section 4025. The substance of other Corporations Code provisions has been simplified and imported into the Davis-Stirling Act. The source provision is then declared inapplicable.

These changes would reduce the degree of overlap and interpretive uncertainty.

There are a few sections of the Corporations Code that are self-contained and do not overlap with provisions of the Davis-Stirling Act. Those sections have been left in place and are incorporated by cross-reference. See, e.g., Corp. Code §§ 7514 (form of proxy), 7517 (acceptance of ballots), 7613 (proxy use), 7615 (cumulative voting).

ELECTION RULES

Existing Section 1363.03(a) requires that an association adopt an **operating rule** to address certain aspects of election procedure.

The proposed law would generalize that provision, to require only that the association's **governing documents** address the specified matters. See proposed Section 4625.

The term "governing documents" includes operating rules, but it also includes the declaration, articles, and bylaws. See proposed Section 4150.

Many associations will already have election rules in their declarations or bylaws that address the points identified in Section 1363.03(a). There is no point in requiring such an association to go to the expense and trouble of adopting an operating rule to reiterate an existing provision of the declaration or bylaws.

If an association decides to change an election rule or adopt a new rule, it should be free to do so in the declaration or bylaws, as well as by operating rule. Member approval is required for an amendment of the declaration or bylaws, so there would be no reduction in member input if an association were allowed to address election matters in any type of governing document.

ELECTION INSPECTOR

Corporations Code Section 7614 authorizes a board to appoint election inspectors and specifies the duties to be performed by an election inspector.

That provision has been superseded by existing Section 1363.03(c), which **requires** the use of an election inspector in CID elections.

Section 1363.03(c) is restated in proposed Section 4635.

Standard of Care

The proposed law continues a provision establishing a standard of care for an election inspector. It requires that the inspector perform the statutory duties "to the best of his or her ability." Section 1363.03(c)(4).

The staff has concerns about that standard. It appears to be subjective and variable. An incompetent inspector would not be required to act competently; an exceptional inspector would be held to an exceptionally high standard of care. It is not clear how that standard would be applied in the courts.

However, the language is drawn from the Corporations Code and does not seem to have caused any problems there. The staff did not find any case interpreting the standard.

Given the fact that this is existing language, derived from the Corporations Code, the staff recommends against changing it. If the Commission feels differently, an objective standard of reasonable care could be used instead.

Qualifications

There are a few peculiarities having to do with the qualifications to serve as an election inspector. Those matters are raised for public comment in the staff note following proposed Section 4025.

SECRET BALLOTS

Perhaps the most significant effect of the recent election legislation is the provision of detailed mandatory procedures for the conduct of secret ballots in certain types of elections.

Those provisions apply to any member vote on assessment changes, the amendment of governing documents, the election or removal of directors, and the designation of common area property for a member's exclusive use. Section 1363.03(b).

The procedure is clearly modeled after the absentee ballot procedure used in public elections. A ballot that does not identify the voter is to be placed into an "inside" envelope that does not identify the voter. The inside envelope is sealed and placed into an "outside" envelope, which does identify the voter.

The voter's identity and voting rights are determined from the information on the outside envelope. The inside envelope is then extracted for eventual counting of the enclosed ballot.

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

Votes are handled and counted by the mandatory election inspector (see "Election Inspector" below).

The secret ballot provisions are restated in proposed Sections 4640 (secret ballots), 4645 (counting ballots), 4650 (ballot custody and inspection).

Issues relating to the secret ballot procedure are discussed below.

Scope of Application

By its own terms, the secret ballot requirements of Section 1363.03 only apply to "elections regarding assessments legally requiring a vote, election and removal of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property

pursuant to Section 1363.07.” That covers the most common types of member elections.

However, there are other provisions of the Corporations Code that require member approval of a proposed action. See Corp. Code §§ 7233 (approval of contract between association and director), 7235 (approval of loan to director), 7237 (indemnification of corporate agent), 7911 (sale of assets), 8012 (merger), 8610 (dissolution), 8719 (distribution of assets on dissolution). Those matters should come up much less frequently than the matters described in Section 1363.03 (if at all). However, if they do come up, the staff sees no reason why different voting procedures should be used. The retention of different procedures for different types of member elections complicates the law for no clear purpose.

Proposed Section 4640 simplifies the law by providing that the statutory procedure applies to any election in which the approval of the members is required by law. That would encompass the current scope of the secret ballot procedure, the handful of less common member election Corporations Code provisions listed above, and any new member approval requirement that might be added to the law in the future. A staff note following proposed Section 4640 invites public comment on the proposed change.

Differential Voting Power

In many associations, the number of votes that a member may cast in an election depends on the number of separate interests owned by the member. For example, a member who owns three units in a condominium complex could cast three votes in a member election.

In some associations, members are divided into different classes for the purposes of voting. The members of different classes may have different voting power, or a decision may require a certain number of votes from a particular class in order to be approved.

These situations could create difficulties under the double envelope voting procedure. An election inspector who opens an outside envelope may have no way of knowing whether the ballot contained in the sealed inside envelope correctly reflects the voter’s voting class or power. If the inspector opens the inside envelope, then the secrecy of the ballot is breached. By law any member may witness the ballot counting process. Would a member be entitled to watch as an inside envelope is opened to check its contents against the voter’s voting class and power?

Existing law does not address these issues. One minor change, that should be helpful without being disruptive, would be the addition of the following language (in proposed Section 4645(c), with emphasis added):

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

That seems self-evident, but it might be helpful to state it expressly.

Beyond that, it might be possible to develop some specific procedures to address differential voting power. However, the staff is inclined to wait until there is some practical experience under the new law before recommending any changes. It may be that associations can work the issues out in practice, in which case a further change in the law would just be disruptive.

Cumulative Voting

The governing documents of an association may require that directors be elected using cumulative voting. Cumulative voting is a voting system in which each voter may cast a number of votes equal the number of seats to be filled. For example, if there are three vacancies being filled, a member who owns one separate interest could cast three votes. Those votes can be combined in any fashion. All three could be cast for one candidate; two votes could be cast for one candidate and one vote for another; etc. The candidates who receive the highest vote totals fill the vacant seats. See Corp. Code § 7615 (cumulative voting).

Corporations Code Section 7513(e) provides that cumulative voting may not be used to elect a director if ballots are cast by mail. It is not clear why that limitation exists. It might be that the added complexity of the process would lead to more errors and therefore more spoiled ballots. But it isn't clear that concern about errors would justify an outright prohibition.

Section 1363.03(b) provides: "An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents." That could be read as contradicting Corporations Code Section 7513(e), because the secret ballot process is so clearly designed to facilitate voting by mail. If so, then the prohibition on cumulative voting by mail would be superseded.

However the two provisions can be harmonized. Section 1363.03 does not **require** the use of mailed ballots. If mailed ballots are not used, then there is no conflict.

The attached draft resolves the matter by restating, in proposed Section 4640(f), the prohibition on cumulative voting by mail. That seems consistent with a strict reading of existing law. However, it is not clear whether that result is the best policy or is what the Legislature intended. A staff note following Section 4640 asks for comment on the issue.

County Model

In addition to setting out detailed procedures for voting by secret ballot, Section 1363.03(e) provides: “The association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots....”

That requirement may be problematic. It appears that there is no single statewide standard that can serve as a model. Instead, the election official in each county seems to be charged with developing local procedures to preserve the confidentiality of absentee ballots. See Elec. Code § 3017(b). That raises the question of which counties should be used as a model? And how many counties?

The staff feels that the specified double envelope procedure is more than adequate to protect the confidentiality of secret ballots. It isn’t clear why an association should be required to look beyond that detailed body of law.

The proposed law does not continue the “county model” requirement. The staff invites comment on whether that approach will cause any problems.

In-Person Voting

The double envelope procedure is expressly modeled after the absentee ballot procedure used in public elections. See Section 1363.03(e). The complexity of that procedure is necessary to ensure voter anonymity when a ballot is **mailed**. The person who receives the mailed ballot needs to verify the identity and eligibility of the voter (outside envelope) without being able to see how the voter voted (inside envelope).

Secrecy does not require that degree of complexity when a vote is cast in person. The election inspector verifies the voter’s identity and eligibility. The voter marks the ballot privately, then places it in the ballot box. That process would be much simpler than what existing Section 1363.03 requires.

Existing Section 1363.03 does not allow for a simplified procedure to be used when a vote is conducted in person. It probably should. Procedural complexity adds costs and leads to errors, which can spawn disputes. Complexity is especially problematic for small associations, many of which are self-managed.

Recall that half of all associations have 25 units or fewer; two-thirds have 50 units or fewer. Levy, 2005 Cal. Community Ass'n Stat. 1 (2005).

The staff invites public comment on the merits of adding a provision along the following lines, to create an optional alternative procedure that could be used to cast secret ballots in person:

(a) Notwithstanding Section 4640, an association may opt to use the procedure provided in this section for a ballot that is cast in person. This section does not apply to a mailed ballot.

(b) The election inspector shall determine the identity, eligibility, voting class, and voting power of a member who votes in person. The election inspector shall provide the member with one ballot for each vote the member may cast. If the members of the association are divided into classes for the purposes of voting, the ballot shall be marked to indicate the voting class of the member. The ballot shall not identify the member in any other way.

(c) If the association allows proxy voting, a member who votes in person shall present to the election inspector any proxy held by the member. The election inspector shall verify the proxy and provide a ballot to the proxyholder to vote pursuant to the proxy. If the proxy includes specific instructions on how to vote, the election inspector shall indelibly mark the ballot to implement the instructions.

(d) The association shall provide a voting booth or other private space in which the member can mark the ballot without revealing how the member voted.

(e) The member shall place the marked ballot into a locked ballot box.

(f) The ballot shall be counted pursuant to subdivisions (c) and (d) of Section 4645 and is governed by Section 4650.

In addition to the greater simplicity of this procedure, it would provide a straightforward way to handle differential voting power, voting classes, and the voting of proxies.

Because the provision is optional, it would not require that an association change its governing documents or practices. An association that is satisfied with the double-envelope system could simply ignore the alternative.

However, the change would be substantive. If there is significant opposition, it would need to be deferred for separate study.

PROXY VOTING

Existing Section 1363.03 permits the use of proxies in a secret ballot election. That is good policy, because the use of proxies may be necessary in order to achieve a quorum.

Section 1363.03 states a handful of rules for the use of proxies: (1) the proxy must be written and signed, (2) a proxy may not be used as a substitute for a ballot, (3) associations are not required to distribute proxy forms, (4) if the proxy includes specific instructions on how to vote, the instructions must be stated on an attached page which is given to the proxyholder, (5) a proxy is revocable, under Corporations Code Section 7613, until received by the election inspector. See Section 1363.03(d).

There is no guidance given on how a proxy is to be used in conjunction with the double-envelope secret ballot procedure. Nor is it clear how proxy voting could be implemented under that system. An election inspector must verify the proxy in order to confirm that the proxyholder is allowed to cast a ballot for the member who gave the proxy. When would that take place, and how? A proxy can include specific instructions on how to vote. The election inspector would need to verify that those instructions were followed. How could an election inspector accomplish that without inspecting the sealed ballot?

It would be helpful to think these issues through and provide a statutory procedure. However, the staff believes that the issues are too complex and potentially controversial to be resolved in this phase of our study. **The issue should be added to the list of topics for separate study.**

TELECONFERENCE

Proposed Section 4590 allows for the use of teleconferencing at a member meeting. That section requires that any vote cast by a member who is participating by teleconference be cast orally. That requirement is at odds with the secret ballot provisions of Section 1363.03.

The conflict could be resolved in two ways: (1) don't allow a person who participates by teleconference to vote, or (2) make clear that the teleconference voting provision controls.

The staff prefers the latter approach. It would be better to give a member a choice on whether to waive secrecy and vote orally, rather than foreclose the opportunity to participate by teleconference.

Proposed Section 4590 has been amended to make clear that a vote cast by teleconference is not subject to the ballot secrecy requirements.

NOMINATION PROCEDURES

Corporations Code Section 7520 requires that a nonprofit mutual benefit corporation adopt reasonable procedures for the nomination of a candidate for the board of directors.

Similarly, Section 1363.03 requires that an association's operating rules provide a reasonable procedure for nomination of candidates. The rules must permit self-nomination, and "may" permit nomination from the floor and the use of write-in candidates. Those rules are continued in proposed Section 4660(a)-(d).

Proposed Section 4660(e) would preserve an existing rule from Corporations Code Section 7522(d): if, after the close of nominations, the number of qualified nominees is less than or equal to the number of seats to be filled, the nominees are deemed elected without further action. That is a sensible rule. There is no point in conducting a costly election if there is only one possible outcome.

CAMPAIGN ACTIVITY

Both the Davis-Stirling Act and the Corporations Code include provisions that govern the use of association resources in campaign activity. Issues relating to those provisions are discussed below.

The Davis-Stirling Act provides as follows:

- If an association includes a campaign message in its association newsletter or other media, it must provide equal access to all candidates and advocates. The association may not edit the content of a campaign message published pursuant to the equal access rule, except to add a statement of nonresponsibility. Section 1363.03(a)(1).
- An association must provide access to common area meeting space (if any exists) for campaign purposes. Equal access must be provided, at no cost. Section 1363.03(a)(2).
- An association may not use its funds for campaign purposes with respect to a pending **director** election. Section 1363.04(a).
- An association may not use its funds for campaign purposes in a pending election **other than the election of a director**, except to the extent necessary to comply with legal requirements. Section 1363.04(a).

- The term “campaign purposes” is defined broadly. It includes any use of a candidate’s picture or name in a communication of the association (other than in ballot materials). Section 1363.04(b).

It is not clear why Section 1363.04(a) differentiates between director elections and all other elections. The distinction strongly suggests that the use of association funds for “campaign purposes” is absolutely prohibited when a director election is pending, even if the expenditure is required by law. That seems unworkable. Suppose a sitting member of the board is running for reelection. The minutes of a board meeting include the name of the candidate, in describing the action of the board. Under Section 1363.04(a), the minutes would be an impermissible campaign communication.

The staff believes that a better rule would be to exempt any legally required communication from the prohibition. That is the approach used in proposed Section 4665.

VOTING RIGHTS

Proposed Section 4670 imports some important substantive rules that are addressed by Corporations Code Sections 7610-7612 and Section 2792.18 of Title 10 of the California Code of Regulations. Proposed Section 4670 addresses three issues:

- Subdivision (a) establishes a default rule for the number of votes a member may cast (one per separate interest owned). That rule is based on the existing Department of Real Estate Regulation and therefore is likely to reflect the most common arrangement. It can, however, be overridden by the governing documents.
- Subdivision (b) provides a rule for what happens when there is more than one owner of a separate interest — all owners are members, but they may only cast one vote between them. The new provision does not address how joint owners will decide how to cast their joint vote.

If the Commission wishes to address the issue, one easily administered solution would be to provide that an association shall only count the first vote cast for a jointly held membership. The members can either agree between themselves how to vote or race to the ballot box.

- Subdivision (c) provides a simplified rule for setting the record date for an election (i.e., the date on which voting eligibility is determined).

All of these matters could have been left to the Corporations Code to resolve, but it is relatively easy to import them into the Davis-Stirling Act and they address matters that will come up in every election.

ACTION BY WRITTEN CONSENT

Under Corporations Code Section 7516, any action that requires the approval of the members may be approved by the unanimous written consent of the members. This provides a useful alternative where a proposal is entirely uncontroversial.

Recall that over half of all associations have 25 members or fewer. Suppose that such an association wishes to amend a bylaw. The proposed change is acceptable to every member of the association. Section 7516 would allow those members to make the amendment by simply signing a document assenting to the change. The complex procedures for notification of a member meeting, double envelope secret balloting, the hiring of an election inspector, and ballot counting at an open meeting could be avoided.

Proposed Section 4675 preserves the existing written consent alternative and states expressly that it is not governed by the general election procedures.

JUDICIAL ENFORCEMENT

Existing Section 1363.09 establishes an equitable cause of action for a violation of the election law or election rules in the governing documents. For the most part, that provision is restated without substantive change in proposed Section 4680. However, there is some uncertainty about one part of the provision, which is discussed below.

Section 1363.09(c) provides as follows:

A cause of action under Section 1363.03 with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

The meaning of that provision is not entirely clear. Is the enumeration of potential violations meant to be limiting? In other words, are there requirements of Section 1363.03 that could not be considered in a small claims proceeding? For

example, Section 1363.09(c) says nothing about proxies. Does that mean that an action alleging a violation of the law governing proxies cannot be brought in small claims court? The staff does not see why that result would have been intended.

Similarly, the subdivision says nothing about a violation of the governing documents. Is an action alleging a violation of an association's own election rules barred from small claims court? That might make sense. The variability of governing documents would make adjudication more difficult than a case that presents only statutory requirements. The Legislature may have intended that the small claims court not be burdened with governing documents disputes.

Finally, is it appropriate for the small claims division to have jurisdiction in a proceeding of this type? As a general rule, the small claims division has very limited equitable powers. The court may grant rescission, restitution, reformation, or specific performance, **but only in conjunction with an award of money damages**. Code Civ. Proc. § 116.220(b).

A report of the National Institute for Consumer Justice summarizes a number of the arguments against empowering the small claims court to grant injunctive relief (Gould, *Staff Report on the Small Claims Courts*, 36 (Nat. Inst. Cons. Just. 1972):

Though it is important and pragmatic to give small claims courts adjudicators some equitable power, it would be wise to stop short of giving them power to issue an injunction or temporary restraining order. The injunction and temporary restraining order have such a large impact that their issuance should come only after a formal procedure, even if the hearing is only *ex parte*. Moreover, if the adjudicators of the small claims courts are inferior to those of the regular civil court where the injunction can normally be obtained, even if only because of their lack of judicial experience, it would be dangerous to vest such far-reaching power in such a person. It is one thing to allow a judge to be able to tell a businessman to repair a watch; it is quite another to enable that judge to enjoin that businessman from making watches. For the most part small claims courts should deal with personal one-to-one relationships. Once a case becomes far-reaching or complex enough to warrant the issuance of an injunction, the case should probably be treated with a formal procedure. And, if for no other reason than appearance, it would not be wise to give a small claims court judge injunctive power. One could imagine the impact of a wide ranging injunction being handed down by a small claims court judge, even if that same judge *qua* civil court judge could have issued the same injunction.

For a general discussion of the equitable powers of the small claims court, see CLRC Memorandum 2001-43.

Notwithstanding these concerns, the question of whether these actions should be heard by the small claims court has been decided by the Legislature. It would be beyond the scope of the current reorganization project to revisit that decision. **The staff will add the issue to the list of matters for future study.**

Respectfully submitted,

Brian Hebert
Executive Secretary

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PROPOSED LEGISLATION

1 **☞ Staff Note.** This is a work in progress. The proposed organizational structure and section
2 numbering may change. Additional material will be added. Accordingly, some cross-references
3 have not yet been updated. These references appear within [brackets] or as underscored spaces:

4 ____.

5 For ease of reference, material that is new or significantly different from a previous draft has
6 been shaded with a grey background.

7 **Civ. Code §§ 4000-____ (added). Common Interest Developments**

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

10 PART 5. COMMON INTEREST DEVELOPMENTS

11 CHAPTER 1. PRELIMINARY PROVISIONS

12 Article 1. General Provisions

13 § 4000. Short title

14 4000. This part shall be known and may be cited as the Davis-Stirling Common
15 Interest Development Act.

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

17 § 4005. Effect of headings

18 4005. Division, part, title, chapter, and article headings do not in any manner
19 affect the scope, meaning, or intent of this part.

20 **Comment.** Section 4005 continues former Section 1350.5 without substantive change. It is a
21 standard provision found in many codes. See, e.g., Evid. Code § 5; Fam. Code § 5; Prob. Code §
22 4.

23 § 4010. Continuation of prior law

24 4010. A provision of this part, insofar as it is substantially the same as a
25 previously existing provision relating to the same subject matter, shall be
26 considered as a restatement and continuation thereof and not as a new enactment,
27 and a reference in a statute to the provision of this part shall be deemed to include
28 a reference to the previously existing provision unless a contrary intent appears.

29 **Comment.** Section 4010 is new. It is a standard provision found in many codes. See, e.g., Bus.
30 & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a); Veh. Code § 2. See also
31 Gov't Code §§ 9604 (construction of restatements and continuations), 9605 (construction of
32 amended statutory provision). The last clause makes clear that a statutory reference to a provision
33 within this part includes a reference to the former law from which it is drawn. Cf. Gov't Code §
34 9604 (reference to previously existing provision deemed reference to restatement or
35 continuation).

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

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

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

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

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

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

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

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

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

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

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

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

44 **§ 4015. Application of part**

45 4015. (a) This part applies to a common interest development.

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

48 **Comment.** Subdivision (a) of Section 4015 continues the substance of the first clause of
49 former Section 1352. The part of former Section 1352 that is not continued in this section is
50 continued in Section 6000 (creation of common interest development).

51 Subdivision (b) continues the substance of former Section 1374 without substantive change.

1 See also Section 4095 (“common area”), 4100 (“common interest development”).

2 **☞ Staff Note.** Is subdivision (b) necessary, given that the definition of “common interest
3 development” requires the existence of common area? See proposed Section 4100.

4 **§ 4020. Nonresidential development**

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

9 (1) Section 4025.

10 (2) Section 4620.

11 (3) Article 7 (commencing with Section 4800) of Chapter 3.

12 (4) Article 2 (commencing with Section 5510) of Chapter 5.

13 (5) Article 3 (commencing with Section 5550) of Chapter 5.

14 (6) Subdivision (b) of Section 5575.

15 (7) Section 5580.

16 (8) Article 5 (commencing with Section 6100) of Chapter 7.

17 (9) [Section 1368.]

18 (10) [Section 1378.]

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

24 **Comment.** Section 4020 continues former Section 1373 without substantive change.

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

26 **§ 4025. Application of Corporations Code**

27 4025. (a) **Except as otherwise provided, an association that is incorporated is**
28 **governed by this part and by the Corporations Code.**

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

31 (1) Section 7211.

32 (2) Chapter 5 (commencing with Section 7510) of Part 3 of Division 2.

33 (3) Sections 7610, 7611, 7612, 7614, and 7616.

34 (4) Chapter 13 (commencing with Section 8310) of Part 3 of Division 2.

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

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

39 **Comment.** Section 4025 is new.

40 The provisions referenced in subdivision (a)(1) are superseded by Sections 4505-4515,
41 4520(d)-(e).

1 Subdivision (a)(2) continues the substance of former Section 1356.2(m) without substantive
2 change, except that Corporations Code Section 8332, 8334-8338 are also superseded.

3 The chapter cited in subdivision (a)(3) is superseded by Sections 4700 to 4830.

4 Subdivision (b) makes clear that this part may apply specified provisions of the Corporations
5 Code to an association that is unincorporated. See, e.g., Sections 4405(a)(2), [6120(d) & (f)].

6 See also Section 4080 (“association”).

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

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

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

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

15 **§ 4035. “Delivered to the board”**

16 4035. If a provision of this part requires that a document be “delivered to the
17 board” the document shall be delivered by first-class mail, postage prepaid, to the
18 person designated in the member handbook (Section 4810) to receive documents
19 on behalf of the association. If no person has been designated to receive
20 documents, the document shall be delivered to the president of the association.

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

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

24 **§ 4040. “Individual notice”**

25 4040. (a) If a provision of this part requires “individual notice,” the notice shall
26 be delivered to the person to be notified by one of the following methods:

27 (1) Personal delivery.

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

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

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

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

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

39 **Comment.** Section 4040 is new. See also Sections 4080 (“association”), 4150 (“governing
40 documents”), 4160 (“member”).

41 Subdivision (b) generalizes the substance of former Sections 1365.1(c) and 1367.4(k).

1 **☞ Staff Note.** Existing Section 1350.7(d) provides that an agreement to a particular method of
2 notice delivery cannot be inferred from an unrecorded provision of the governing documents.
3 That provision has been recast in Section 4040(b) to eliminate the reference to recordation.
4 Instead, the restated provision makes clear that agreement to a particular method of notice shall
5 not be inferred from a provision of the governing documents other than the declaration. This
6 eliminates any implication that a less formal governing document (e.g., an operating rule) could
7 be used to mandate use of a particular method of notice if the document is subsequently recorded.
8 The Commission invites comment on whether this change would create any problems.

9 **§ 4045. “General notice”**

10 4045. If a provision of this part requires “general notice,” the notice shall be
11 provided to all members by one or more of the following methods:

12 (a) Any method provided for delivery of an individual notice (Section 4040).

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

15 (c) Posting in a location that is accessible to all members and that has been
16 designated in the member handbook (Section 4810) for the posting of general
17 notices by the association.

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

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

23 **Comment.** Section 4045 restates part of the substance of former Section 1350.7.

24 Subdivision (c) is new.

25 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
26 4810 (“member handbook”).

27 **§ 4050. Time and proof of delivery**

28 4050. (a) This section governs the delivery of a document pursuant to this part.

29 (b) If a document is delivered by mail, delivery is complete at the time of
30 deposit into the mail, but if this part specifies a time period after delivery for
31 notice or for any other action or response, the time period is extended as follows:

32 (1) If the place of mailing and the address of delivery are both in the State of
33 California, by five calendar days.

34 (2) If either the place of mailing or the address of delivery is outside the State of
35 California, by 10 calendar days.

36 (3) If either the place of mailing or the address of delivery is outside the United
37 States, by 20 calendar days.

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

40 (d) An affidavit of delivery of a notice, that is executed by the secretary,
41 assistant secretary, or managing agent of the association, is prima facie evidence
42 of delivery.

1 **Comment.** The first clause of subdivision (b) of Section 4050 continues part of the substance
2 of former Section 1350.7(b)(2).

3 The second clause of subdivision (b) and paragraphs (b)(1)-(3) are drawn from Code Civ. Proc.
4 § 1013(a).

5 Subdivision (c) continues part of the substance of former Section 1350.7(b)(3).

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

7 **§ 4055. Delivery failure**

8 4055. (a) If a notice to a member is returned by the United States Postal Service
9 marked to indicate that the United States Postal Service is unable to deliver the
10 notice to the member at the given address, the association shall address any future
11 notices to that member to the address of a separate interest owned by the member.

12 (b) If electronic delivery of a notice to a member fails, the association shall not
13 deliver any future notice to that member electronically, unless the member
14 provides a new address or the association determines that a technical problem with
15 the given address has been corrected.

16 **Comment.** Section 4055 is new.

17 **§ 4060. Approved by the board**

18 4060. If a provision of this part requires that an action be approved by the board,
19 the action shall be approved or ratified by the vote of the board or by the vote of a
20 committee authorized to exercise the powers of the board, pursuant to Article 2
21 (commencing with Section 4500) of Chapter 3.

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

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

25 **§ 4065. Approved by a majority of all members**

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

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

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

36 **§ 4070. Approved by a majority of a quorum of the members**

37 4070. If a provision of this part requires that an action be approved by a majority
38 of a quorum of the members, the action shall be approved or ratified by an
39 affirmative vote of members representing more than 50 percent of the votes cast in
40 an election at which a quorum is achieved, or if the governing documents of an
41 association divide the members into two or more classes for the purposes of

1 voting, by an affirmative vote of members representing more than 50 percent of
2 the votes cast in an election at which a quorum is achieved, in each class that is
3 required to approve the action.

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

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

7 Article 2. Definitions

8 § 4075. Application of definitions

9 4075. Unless the provision or context otherwise requires, the definitions in this
10 article govern the construction of this part.

11 **Comment.** Section 4075 continues the introductory clause of former Section 1351 without
12 substantive change.

13 § 4080. “Association”

14 4080. “Association” means a nonprofit corporation or unincorporated
15 association created for the purpose of managing a common interest development.

16 **Comment.** Section 4080 continues the substance of former Section 1351(a).

17 See also Sections 4100 (“common interest development”), 4500 (existence of association).

18 § 4085. “Board”

19 4085. “Board” means the board of directors of an association.

20 **Comment.** Section 4085 is new. It is added for drafting convenience.

21 See also Section 4080 (“association”).

22 § 4090. “Board meeting”

23 4090. “Board meeting” means a congregation of a majority of the directors at
24 the same time and place to hear, discuss, or deliberate upon any item that is within
25 the authority of the board.

26 **Comment.** Section 4090 restates the substance of former Section 1363.05(f), with the
27 following changes:

28 (1) The reference to association business “scheduled to be heard by the board” has been
29 replaced with a reference to any business within the authority of the board. The requirements
30 of this article apply regardless of whether the matters to be considered have been formally
31 scheduled.

32 (2) The exception for matters considered in executive session is continued in Section 5030.

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

35 **Staff Note.** The requirement that a meeting be a gathering of directors “at the same time and
36 place” excludes business that is conducted by a series of separate conversations, electronic mail
37 messages, and the like. This is a significant loophole that has been closed in the state and local
38 open meeting laws. For example, Government Code Section 11122.5(b) provides, with certain
39 enumerated exceptions, that:

1 [Any] use of direct communication, personal intermediaries, or technological devices that is
2 employed by a majority of the members of the state body to develop a collective concurrence
3 as to action to be taken on an item by the members of the state body is prohibited.

4 That provision ensures that business that should be conducted in the open is not discussed
5 privately, through informal contacts. However, such a restriction does impose a procedural
6 burden, which may be too onerous for volunteer directors conducting board business in their
7 spare time. The Commission invites comment on this issue.

8 The Commission also invites comment on whether the policies served by open meeting
9 requirements would be better served if the existing procedure for the conduct of board business
10 without a meeting (on the unanimous written consent of the directors) were modified or
11 eliminated. See Corp. Code § 7211(b).

12 **§ 4095. “Common area”**

13 4095. (a) “Common area” means the entire common interest development
14 except the separate interests therein.

15 (b) In a development in which the entire development is comprised of separate
16 interests, common area may consist of mutual or reciprocal easement rights
17 appurtenant to the separate interests.

18 **Comment.** Section 4095 continues former Section 1351(b) without substantive change, except
19 that language providing that “[the] estate in the common area may be a fee, a life estate, an estate
20 for years, or any combination of the foregoing” is continued in Section ____.

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

22 **Staff Note.** The language providing that “[the] estate in the common area may be a fee, a life
23 estate, an estate for years, or any combination of the foregoing” is substantive and is not required
24 as part of the definition of the term. It will be located with other provisions that relate to the form
25 of title in a CID. See, e.g., Civ. Code § 1362.

26 **§ 4100. “Common interest development”**

27 4100. (a) “Common Interest development” means a real property development
28 in which a separate interest is coupled with either of the following:

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

31 (b) In a development where there is no common area other than that established
32 by mutual or reciprocal easement rights appurtenant to the separate interests,
33 “common interest development” means a development in which a separate interest
34 is coupled with membership in an association with the power to enforce an
35 obligation of an owner of a separate interest with respect to the beneficial use and
36 enjoyment of common area by means of an assessment that may become a lien
37 upon the separate interest.

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

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

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

3 See also Sections 4080 (“association”), 4095 (“common area”), 4125 (“condominium
4 project”), 4175 (“planned development”), 4185 (“separate interest”), 4190 (“stock cooperative”).

5 **§ 4105. “Community apartment project”**

6 4105. “Community apartment project” means a real property development in
7 which a right of exclusive occupancy of a specified part of the development is
8 coupled with an undivided interest in the development as a whole.

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

10 **§ 4110. “Community service organization”**

11 4110. (a) “Community service organization” means a nonprofit entity, other than
12 the association, that is organized to provide services to residents of a common
13 interest development or to the public in addition to the residents, to the extent that
14 the common area is available to the public.

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

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

20 **Staff Note.** The Commission invites comment on whether the definition of “community
21 service organization” should be expanded to include a nonprofit entity organized to provide
22 services to an association directly, rather than to its residents. For example, a nonprofit entity may
23 be organized to maintain part of the common area that is dedicated as closed natural habitat.
24 Arguably, that is a service to the association and not to the residents.

25 **§ 4115. “Condominium”**

26 4115. “Condominium” means a separate interest in a condominium project,
27 coupled with an undivided interest in all or part of the common area of the
28 condominium project.

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

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

33 **§ 4120. “Condominium plan”**

34 4120. “Condominium plan” means a plan of the type described in Section 6075.

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

36 **§ 4125. “Condominium project”**

37 4125. (a) “Condominium project” means a real property development in which
38 separate ownership of a specified part of the development is coupled with an
39 undivided interest in all or part of the common area.

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

5 (c) The boundaries of the undivided interest in the common area shall be
6 described on a recorded final map, parcel map, or condominium plan.

7 (d) The boundaries of a separate interest shall be described on a recorded final
8 map, parcel map, or condominium plan. A description of a separate interest may
9 refer to (1) boundaries described in the recorded final map, parcel map, or
10 condominium plan, (2) physical boundaries, either in existence, or to be
11 constructed, such as walls, floors, and ceilings of a structure or any portion
12 thereof, (3) an entire structure containing one or more separate interests, or (4) any
13 combination thereof.

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

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

18 See also Sections 4095 (“common area”), 4115 (“condominium”), 4120 (“condominium
19 plan”), 4185 (“separate interest”).

20 **Staff Notes.** (1) Proposed Section 4125 restates existing Section 1351(f) in order to parallel
21 the language and construction used in proposed Sections 4105 (“community apartment project”),
22 4175 (“planned development”), and 4190 (“stock cooperative”). The section also eliminates
23 duplicative language and makes fuller use of defined terms. These changes are intended to
24 improve clarity and are not intended to affect the substance of the existing definition of
25 “condominium project.” The Commission requests public input on whether any of the drafting
26 changes would have a substantive effect.

27 (2) The content of subdivision (e) has been left unchanged because its purpose is unclear. Does
28 the provision merely reflect the fact that a separate interest may include noncontiguous parcels of
29 land? If so, is it necessary? Does its presence in this section imply that a separate interest in one
30 of the other types of CIDs must be a single contiguous parcel?

31 **§ 4130. “Declarant”**

32 4130. “Declarant” means the person or group of persons designated in the
33 declaration as declarant, or if no declarant is designated, the person or group of
34 persons who sign the original declaration or who succeed to special rights,
35 preferences, or privileges designated in the declaration as belonging to the person
36 who signed the original declaration.

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

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

39 **§ 4135. “Declaration”**

40 4135. “Declaration” means the document, however denominated, that contains
41 information that is substantially equivalent to the information required by Section
42 6025.

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

4 ☞ **Staff Note.** The Commission invites comment on whether the proposed change to Section
5 1351(h) would cause any problems.

6 **§ 4140. “Director”**

7 4140. “Director” means a natural person elected, designated, or selected to serve
8 on the board.

9 **Comment.** Section 4140 is new. It is added for drafting convenience. See Corp. Code §§ 7220,
10 7224-7225, 7520-7527 (election or selection of director).

11 See also Section 4085 (“board”).

12 **§ 4145. “Exclusive use common area”**

13 4145. (a) “Exclusive use common area” means a part of the common area
14 designated by the declaration to be used exclusively by one or more, but fewer
15 than all, of the members. The right of exclusive use is appurtenant to the separate
16 interests of those members.

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

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

27 **Comment.** Section 4145 restates former Section 1351(i) without substantive change, except
28 that the reference in subdivision (c) to “telephone” wiring is generalized.

29 See also Sections 4095 (“common area”), 4135 (“declaration”), 4160 (“member”), 4185
30 (“separate interest”).

31 ☞ **Staff Note.** The reference to “telephone” wiring is technologically obsolete. It has been
32 generalized so that it would include other types of wiring (e.g., Internet connection wiring,
33 television cable, etc.). Would that change create any problems? Note that this provision does not
34 authorize the installation of such wiring, it merely classifies the wiring as exclusive use common
35 area.

36 **§ 4150. “Governing documents”**

37 4150. “Governing documents” means the declaration, bylaws, articles of
38 incorporation or association, and operating rules.

39 **Comment.** Section 4150 continues the substance of former Section 1351(j) except that the
40 phrase “any other documents ... which govern the operation of the common interest development
41 or association” has been replaced with a reference to the association’s operating rules.

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

1 **☞ Staff Note.** Proposed Section 4150 would not replace the existing catch-all provision with a
2 specific reference to the operating rules. This would eliminate any existing uncertainty as to the
3 types of documents affected by provisions that apply to the governing documents. See, e.g.,
4 existing Sections 1355 (governing documents may specify procedure for amendment of
5 declaration); 1360.5 (amendment of governing documents triggers pet restriction override), 1368
6 (provision of governing documents to prospective purchaser). The Commission invites comment
7 on whether the proposed change would cause any problems.

8 **§ 4155. “Managing agent”**

9 4155. (a) “Managing agent” means a person who, for compensation or in
10 expectation of compensation, exercises control over the assets of a common
11 interest development.

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

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

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

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

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

19 **§ 4160. “Member”**

20 4160. “Member” means an owner of a separate interest in a common interest
21 development.

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

23 See also Section 4100 (“common interest development”), 4185 (“separate interest”).

24 **§ 4163. “Member election”**

25 4163. “Member election” means a vote of the members on a matter that requires
26 the approval of the members. “Member election” does not include a vote of the
27 board or other appointed or elected body.

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

29 See also Section 4100 (“common interest development”), 4185 (“separate interest”).

30 **§ 4165. “Operating rule”**

31 4165. “Operating rule” means a regulation adopted by the board that applies
32 generally to the management and operation of the common interest development
33 or the conduct of the business and affairs of the association.

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

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

37 **§ 4170. “Person”**

38 4170. “Person” means an individual, corporation, government or governmental
39 subdivision or agency, business trust, estate, trust, partnership, limited liability
40 company, association, or other entity.

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

2 **§ 4175. “Planned development”**

3 4175. “Planned development” means a real property development of any of the
4 following types:

5 (a) A development, other than a condominium project, in which separate
6 ownership of a specified part of the development is coupled with an undivided
7 interest in the common area.

8 (b) A development in which separate ownership of a specified part of the
9 development is coupled with: (1) membership in an association that owns the
10 common area, and (2) an appurtenant right to the beneficial use and enjoyment of
11 the common area.

12 (c) If the common area consists entirely of mutual or reciprocal easement rights
13 appurtenant to the separate interests, a development in which separate ownership
14 of a specified part of the development is coupled with membership in an
15 association that has the power to enforce an obligation of an owner of a separate
16 interest with respect to the beneficial use and enjoyment of the common area by
17 means of an assessment that may become a lien upon the separate interests in
18 accordance with Article 3 (commencing with Section 5600) of Chapter 5.

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

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

23 **§ 4180. “Rule change”**

24 4180. “Rule change” means the adoption, amendment, or repeal of an operating
25 rule by the board.

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

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

28 **§ 4185. “Separate interest”**

29 4185. (a) In a community apartment project or stock cooperative, “separate
30 interest” means the exclusive right to occupy an apartment or unit.

31 (b) In a condominium project or planned development, “separate interest” means
32 a separately owned lot, parcel, area, space, or unit.

33 (c) Unless the declaration or a condominium plan otherwise provides, if walls,
34 floors, or ceilings are designated as boundaries of a separate interest, the interior
35 surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets
36 located within the separate interest are part of the separate interest and any other
37 portions of the walls, floors, or ceilings are part of the common area.

38 **Comment.** Section 4185 restates former Section 1351(l) without substantive change, except
39 that language providing that “[the] estate in a separate interest may be a fee, a life estate, an estate
40 for years, or any combination of the foregoing” is continued in Section ____.

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

1 **☞ Staff Note.** Existing language providing that “[the] estate in a separate interest may be a fee,
2 a life estate, an estate for years, or any combination of the foregoing” is substantive and is not
3 required as part of the definition of the term. It will be located with other provisions that relate to
4 the form of title in a CID. See, e.g., Civ. Code § 1362.

5 **§ 4190. “Stock cooperative”**

6 4190. (a) “Stock cooperative” means a real property development in which a
7 right of exclusive occupancy of a specified part of the development is coupled
8 with an ownership interest in a corporation that is formed or availed of primarily
9 for the purpose of holding title to the development as a whole.

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

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

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

18 **Comment.** Section 4190 continues former Section 1351(m) without substantive change, except
19 that language providing that the corporation’s ownership of the development may be “either in
20 fee simple or for a term of years” is continued in Section ____.

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

22 **☞ Staff Note.** Existing language providing that the corporation’s ownership of the development
23 may be “either in fee simple or for a term of years” is substantive and is not required as part of
24 the definition of the term. It will be located with other provisions that relate to the form of title in
25 a CID. See, e.g., Civ. Code § 1362.

26 **CHAPTER 2. MEMBER RIGHTS**

27 **Article 1. Bill of Rights [Reserved]**

28 **Article 2. Limitation of Association Authority**
29 **to Regulate Property Use**

30 **§ 4300. Application of article**

31 4300. This article includes provisions that limit the authority of an association to
32 regulate the use of a member’s separate interest. Nothing in this article is intended
33 to affect the application of any other provision that limits the authority of an
34 association to regulate the use of a member’s separate interest, including, but not
35 limited to, the following provisions:

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

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

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

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

3 (e) Section 12927 of the Government Code, relating to the modification of
4 property to accommodate a disability.

5 (f) Section 1597.40 of the Health and Safety Code, relating to the operation of a
6 family day care home.

7 **Comment.** Section 4300 is new. It provides a non-exclusive list of provisions outside of this
8 part that limit the authority of an association to regulate separate interest property use.

9 **Staff Note.** The Commission requests comment on whether there are any other provisions
10 that should be added to the nonexclusive list of cross-references provided in Section 4300.

11 Note that existing Section 1360 would not be continued in the proposed law. The section
12 provides rules for a modification that is necessary to accommodate a disability. It is limited by its
13 own terms to a separate interest that is wholly contained within a building (e.g., a condominium
14 unit).

15 The issue of accommodation of a disability is addressed more comprehensively in Government
16 Code Section 12927. Proposed Section 4300(e) acknowledges the application of that section to a
17 CID. See also [Section 1378] (association decision on modification of separate interest must
18 comply with Fair Employment and Housing Act). The Commission requests input on whether the
19 omission of existing Section 1360 would cause any problems.

20 § 4305. Noncommercial display

21 4305. (a) Except as otherwise provided in this section, the governing documents
22 of an association may not prohibit the display of the flag of the United States or
23 any other noncommercial sign, poster, flag, or banner within a member's separate
24 interest or exclusive use common area.

25 (b) Notwithstanding Section 434.4 of the Government Code, an association may
26 prohibit the display of the flag of the United States or any other noncommercial
27 sign, poster, flag, or banner within a member's separate interest or exclusive use
28 common area if any of the following conditions is satisfied:

29 (1) The display endangers public health or safety.

30 (2) The display violates a local, state, or federal statute or regulation.

31 (3) The display includes the painting of architectural surfaces, or includes lights,
32 roofing, siding, paving materials, plants, or balloons, or any other building,
33 landscaping, or architectural materials.

34 (4) The display is not a flag and is more than 9 square feet in size.

35 (c) An association may prohibit the display of a flag other than the flag of the
36 United States, if the flag is more than 15 square feet in size.

37 (d) In an action under this section to challenge a prohibition on the display of the
38 flag of the United States, the prevailing party shall be awarded reasonable
39 attorney's fees and costs.

40 **Comment.** Section 4305 continues former Sections 1353.5 and 1353.6 without substantive
41 change, except that Section 4305(b)(2) now applies to a flag of the United States.

42 **Staff Note.** Proposed Section 4305 preserves two existing distinctions between the
43 treatment of the U.S. flag and any other noncommercial display: (1) an association may not limit
44 the display of a U.S. flag that is more than 15 square feet in size, and (2) a person who prevails in
45 challenging a restriction on the display of the U.S. flag is entitled to attorney's fees. The

1 Commission invites comment on whether those distinctions should be preserved (and if not,
2 whether the special rules should be eliminated or generalized).

3 **§ 4310. Pets**

4 4310. (a) No governing documents shall prohibit the owner of a separate interest
5 within a common interest development from keeping at least one pet within the
6 common interest development, subject to reasonable rules and regulations of the
7 association. This section may not be construed to affect any other rights provided
8 by law to an owner of a separate interest to keep a pet within the development.

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

12 (c) If the association implements a rule or regulation restricting the number of
13 pets an owner may keep, the new rule or regulation shall not apply to prohibit an
14 owner from continuing to keep any pet that the owner currently keeps in his or her
15 separate interest if the pet otherwise conforms with the previous rules or
16 regulations relating to pets.

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

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

23 **Comment.** Section 4310 continues former Section 1360.5 without change.

24 **§ 4315. Roofing materials**

25 4315. (a) An association may not require that a homeowner install or repair a
26 roof in a manner that is in violation of Section 13132.7 of the Health and Safety
27 Code.

28 (b) The governing documents of a common interest development located within
29 a very high fire severity zone, as designated by the Director of Forestry and Fire
30 Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of
31 Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to
32 Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of
33 the Government Code, shall allow for at least one type of fire retardant roof
34 covering material that meets the requirements of Section 13132.7 of the Health
35 and Safety Code.

36 **Comment.** Section 4315 continues former Section 1353.7 without substantive change. See also
37 [Section 1378(a)(3)] (Notwithstanding a contrary provision of the governing documents, a
38 decision on a proposed change may not violate any governing provision of law, including, but not
39 limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of
40 Division 3 of Title 2 of the Government Code), or a building code or other applicable law
41 governing land use or public safety.”).

1 **§ 4320. Television antenna or satellite dish**

2 4320. (a) Except as otherwise provided in this section, a provision of the
3 governing documents is void to the extent that it would prohibit or restrict the use
4 or installation of an antenna.

5 (b) The following restrictions on the use or installation of an antenna are not
6 void pursuant to this section:

7 (1) A restriction or prohibition that is consistent with a provision of law that
8 imposes the same restriction or prohibition.

9 (2) A requirement that the antenna not be visible from a street or from the
10 common area.

11 (3) A restriction that does not significantly increase the cost of the antenna,
12 including all related equipment, or significantly decrease its efficiency or
13 performance.

14 (4) A requirement that the association approve the installation before installation
15 takes place.

16 (5) A requirement that an association approve the installation of an antenna on
17 the separate interest of a member other than the member seeking to install the
18 antenna.

19 (6) A provision for the maintenance, repair, or replacement of roofs or other
20 building components.

21 (7) A requirement that the installer indemnify or reimburse the association or a
22 member for loss or damage caused by the installation, maintenance, or use of the
23 antenna.

24 (c) Whenever approval is required for the installation or use of an antenna, the
25 application for approval shall be processed by the appropriate approving entity for
26 the common interest development in the same manner as an application for
27 approval of an architectural modification to the property, and the issuance of a
28 decision on the application shall not be willfully delayed.

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

31 (e) For the purposes of this section "antenna" means a video or television
32 antenna, including a satellite dish, of less than 36 inches in diameter or diagonal
33 measurement.

34 **Comment.** Section 4320 restates the substance of former Section 1376.

35 **Staff Notes.** (1) Proposed Section 4320 would significantly revise existing Section 1376, to
36 improve its clarity. The Commission requests comment on whether any of the revisions would
37 make a substantive change in the law.

38 (2) Proposed subdivision (a) replaces the phrase "a covenant, condition, or restriction contained
39 in a deed, contract, security instrument, or other instrument affecting the transfer or sale of, or an
40 interest in, a common interest development" with the more general term "a provision of the
41 governing documents." The Commission requests comment on whether that simplification in
42 phrasing would cause a substantive change in the law.

43 (3) Proposed subdivision (b)(5) seems to be subsumed within subdivision (b)(4). The
44 Commission requests comment on whether subdivision (b)(5) can be deleted without substantive
45 effect?

1 (4) Proposed subdivision (b)(6) seems to be subsumed within subdivision (b)(7). The
2 Commission requests comment on whether subdivision (b)(6) can be deleted without substantive
3 effect?

4 (5) Under existing law, the right to install and use an antenna is limited to “video or
5 television.” A federal regulation preempting CC&Rs that restrict the installation of antennas
6 seems to have a broader scope. See 47 C.F.R. § 1.4000 (protecting, among other things the use of
7 an antenna to receive “direct broadcast satellite service, including direct-to-home satellite
8 service,” which might include satellite audio or data reception). The Commission requests
9 comment on whether the right to install an antenna or dish should be generalized to include any
10 device within the specified size limitations.

11 **§ 4325. Marketing restriction**

12 4325. (a) A provision of the governing documents that arbitrarily or
13 unreasonably restricts a member’s ability to market the member’s interest in a
14 common interest development is void.

15 (b) An association shall not charge a fee in connection with the marketing of a
16 member’s interest that exceeds the actual cost to the association that results from
17 the marketing of the member’s interest.

18 (c) An association shall not require that a member use a particular real estate
19 broker to market the member’s interest.

20 (d) For the purposes of this section, “market” and “marketing” mean listing,
21 advertising, or obtaining or providing access to show the member’s interest.

22 **Comment.** Subdivision (a) of Section 4325 restates the substance of former Section 1368.1(a).
23 The phrase “rule or regulation” has been generalized to include any provision of the association’s
24 governing documents.

25 Subdivision (b) restates the substance of former Section 1368.1(b)(1). Subdivision (b) is a
26 specific application of the general rule provided in 5575(b).

27 Subdivision (c) restates the substance of former Section 1368.1(b)(2). Language making clear
28 that the provision does not affect marketing by an association is not continued because the
29 restated language makes clear that the limitation only affects marketing by an individual member.

30 Subdivision (d) continues former Section 1368.1(c) without substantive change.

31 Subdivision (e) continues former Section 1368.1(d) without substantive change.

32 **§ 4330. Access to separate interest property**

33 4330. Except as otherwise provided in law, an order of the court, or an order
34 pursuant to a final and binding arbitration decision, an association may not deny a
35 member or other occupant of a separate interest physical access to the separate
36 interest, either by restricting access through the common area, or by restricting
37 access solely to the separate interest.

38 **Comment.** Section 4330 continues the substance of former Section 1361.5.

39 **CHAPTER 3. COMMUNITY ASSOCIATION GOVERNANCE**

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Article 1. Association Existence and Powers

§ 4400. Association

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

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

§ 4405. Association powers

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

(1) The powers granted in this part.

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

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

Comment. Section 4405 restates the substance of former Section 1363(c).

§ 4410. Standing

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

(a) Enforcement of the governing documents.

(b) Damage to the common area.

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

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

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

§ 4415. Comparative fault

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

(b) The comparative fault of the association or its managing agents may be raised by way of defense, but shall not be the basis for a cross-action or separate action against the association or its managing agents for contribution or implied

1 indemnity, where the only damage was sustained by the association or its
2 members.

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

7 (d) In an action involving damages described in subdivision (b), (c), or (d) of
8 Section 4410, the defendant or cross-defendant may allege and prove the
9 comparative fault of the association or its managing agents as a setoff to the
10 liability of the defendant or cross-defendant even if the association is not a party to
11 the litigation or is no longer a party whether by reason of settlement, dismissal, or
12 otherwise.

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

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

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

18 **§ 4420. No limitation of rights**

19 4420. Except as expressly provided by statute, the rights of members provided in
20 this chapter may not be limited by contract or by the governing documents.

21 **Comment.** Section 4420 generalizes the substance of Corporations Code Section 8313.

22 **Staff Note.** Proposed Section 4420 is drawn from existing Corporations Code Section 8313.
23 The existing section only applies to provisions that govern reports and records. Proposed Section
24 4420 would expand the scope of application to include the provisions that govern board and
25 member meetings, elections, director conduct, and managing agents. The Commission invites
26 comment on whether that expansion would create problems. The Commission also invites
27 comment on whether proposed Section 4420 should be expanded further, to encompass the entire
28 Davis-Stirling Common Interest Development Act.

29 **Article 2. Board Meeting**

30 **§ 4500. Short title**

31 4500. This article shall be known and may be cited as the Common Interest
32 Development Open Meeting Act.

33 **Comment.** Section 4500 continues the substance of former Section 1363.05(a).

34 **§ 4505. Convening or adjourning a meeting**

35 4505. (a) A board meeting may be called by the board chair, the president, the
36 vice president, the secretary, or any two directors.

37 (b) A majority of the directors present at a meeting, whether or not a quorum is
38 present, may adjourn the meeting to another time and place.

39 **Comment.** Subdivision (a) of Section 4505 is comparable to Corporations Code Section
40 7211(a)(1).

1 Subdivision (b) is comparable to the first sentence of Corporations Code Section 7211(a)(4).
2 See Section 4025. See also Section 4520(d) (notice of meeting adjourned for more than 24 hours).

3 **§ 4510. Quorum**

4 4510. Unless the governing documents provide otherwise, a majority of the total
5 number of directors authorized by the governing documents constitutes a quorum.
6 The governing documents may not provide for a quorum that is less than one-fifth
7 of the number of directors authorized, or less than two, whichever is larger.

8 **Comment.** Section 4510 is comparable to Corporations Code Section 7211(a)(7). See Section
9 4025. Note that in an association with only one director, one director is a majority of the total
10 number of directors and would therefore constitute a quorum.

11 **§ 4515. Board action**

12 4515. (a) Except as otherwise provided by law, an action approved by a majority
13 of directors present at a meeting at which a quorum is present is the action of the
14 board. The governing documents may not provide a lower threshold for approval
15 of a board action.

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

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

21 **§ 4520. Notice of board meeting**

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

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

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

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

1 (e) Notice of a meeting need not be given to a director who does any of the
2 following:

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

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

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

10 **Comment.** Subdivisions (a) and (b) of Section 4520 restate the substance of former Section
11 1363.05(g), with three changes:

12 (1) The term “bylaws” has been broadened to “governing documents.”

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

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

17 Subdivision (c) restates the substance of former Section 1363.05(h).

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

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

20 **Staff Notes.** (1) Proposed Section 4520(a) would require that the notice of a meeting include
21 an agenda for the meeting. That would increase the value of advance notice of a meeting, by
22 letting a member know whether the meeting will include discussion of matters of interest to the
23 member. The Commission invites comments on this minor substantive change.

24 (2) As in existing law, proposed Section 4520(a) would not require notice of a meeting if “the
25 time and place of a meeting is fixed by the governing documents.” That exemption makes sense if
26 the only purpose of the notice is to inform as to the time and place of the meeting. If, however,
27 the notice is expanded to include the agenda for a meeting, notice would be useful even if the
28 time and place of the meeting could be determined from the governing documents. The
29 Commission invites comments on whether the specified exception should be discontinued.

30 **§ 4525. Board meeting open**

31 4525. (a) Any member may attend a board meeting, except for any part of the
32 meeting held in executive session.

33 (b) Any member may speak at a board meeting, except for any part of the
34 meeting held in executive session. The board may set a reasonable time limit for
35 member testimony at a board meeting.

36 **Comment.** Subdivision (a) of Section 4525 continues part of the substance of former Section
37 1363.05(b). The part of former Section 1363.05(b) that described the basis for meeting in
38 executive session is continued in Section 4540(a)-(b).

39 Subdivision (b) continues the substance of former Section 1363.05(i), except that the
40 establishment of a time limit on member testimony is now optional.

41 **§ 4530. Board meeting location**

42 4530. A board meeting shall be held within the common interest development
43 unless the board determines that a larger meeting room is required than is
44 available within the common interest development. A board meeting held outside

1 of the common interest development shall be held as close as is practicable to the
2 common interest development.

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

5 **§ 4535. Teleconference**

6 4535. (a) If all of the following conditions are satisfied, a director who is not
7 physically present at the noticed location of a board meeting may participate in the
8 meeting by teleconference:

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

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

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

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

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

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

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

25 **Comment.** Section 4535 is comparable to Corporations Code Section 7211(a)(6) and
26 Government Code Sections 11123(b) & 54953(b). See also Section 4090 (“board meeting”
27 defined).

28 **§ 4540. Executive session**

29 4540. (a) The board may adjourn to executive session to consider litigation,
30 matters relating to the formation of contracts with third parties, member discipline,
31 an assessment dispute, or personnel matters.

32 (b) The board shall adjourn to executive session to consider member discipline
33 or an assessment dispute, if requested to do so by the member who is the subject
34 of the matter to be considered.

35 (c) The board shall adjourn to executive session to consider a request for a
36 payment plan made under Section 5620 or to make a decision on whether to
37 foreclose on a lien under Section 5655.

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

1 **Comment.** Subdivisions (a)-(c) of Section 4540 continue part of the substance of former
2 Section 1363.05(b). The remainder of former Section 1363.05(b) is continued in Section 4525(a).

3 Subdivision (c) generalizes part of the substance of former Section 1363.05(b) that allowed a
4 subject of disciplinary action to attend an executive session at which the disciplinary action is
5 considered.

6 ☞ **Staff Note.** Proposed Section 4540(a) continues existing law that allows a board to conduct
7 certain proceedings in closed session, without regard for whether the subject of those proceedings
8 would prefer that they be conducted in open session. The Commission invites comment on
9 whether that is the proper rule. If the only purpose served by conducting member discipline and
10 assessment dispute proceedings in closed session is to protect the member’s privacy, should the
11 member have the option to insist that the proceeding be conducted in the open? What other
12 interests are served by conducting such proceedings in closed session (e.g., avoiding a claim of
13 defamation, protecting complainant privacy, etc)?

14 **§ 4545. Action without a meeting**

15 4545. (a) An action required or permitted to be taken by the board may be taken
16 without a meeting, if all directors individually or collectively consent in writing to
17 that action. The written consent shall be filed with the minutes of the proceedings
18 of the board.

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

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

24 **§ 4550. Minutes**

25 4550. (a) Within 30 days after a board meeting, including a meeting held in
26 executive session, the board shall prepare minutes of the board meeting.

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

29 (c) A member may request a copy of the minutes under Article 3 (commencing
30 with Section 4700). Notwithstanding Section 4705, a request for a copy of meeting
31 minutes is not required to include a statement of the purpose for the request.

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

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

37 Subdivision (b) restates the substance of former Section 1363.05(c). Language addressing the
38 timing of the preparation of the minutes for a meeting held in executive session is not continued.
39 Subdivision (a) provides a general timing rule.

40 Subdivision (c) continues the substance of the second sentence of former Section 1363.05(d).
41 The second sentence of subdivision (c) makes express what is implicit in former Section
42 1363.05(d), that a member has an absolute right to inspect meeting minutes and is not required to
43 state a permissible purpose in order to obtain a copy.

44 Subdivision (d) restates the substance of former Section 1363.05(e).

1 (b) An association may hold a special member meeting, pursuant to Section
2 4600.

3 (c) A member meeting shall be held within the common interest development
4 unless the board determines that a larger meeting room is required than is
5 available within the common interest development. A member meeting held
6 outside of the common interest development shall be held as close as is practicable
7 to the common interest development.

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

11 **Comment.** Subdivision (a) of Section 4575 is comparable to Corporations Code Section
12 7510(b).

13 Subdivision (b) is comparable to part of the substance of Corporations Code Section 7510(e).
14 See Section 4600.

15 Subdivision (c) is new.

16 Subdivision (d) restates the substance of former Section 1363(d).

17 **§ 4580. Quorum**

18 4580. (a) Unless the bylaws provide otherwise, the quorum for a member
19 meeting is one-third of the voting power of the association, **represented in person**
20 **or by proxy.**

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

24 **Comment.** Section 4580 is comparable to the first two sentences of Corporations Code Section
25 7512(a).

26 **Staff Note.** Corporations Code Section 7512 provides that the bylaws may set a different
27 quorum. Should that provision be broadened to allow a quorum requirement to be stated in the
28 declaration or articles?

29 **§ 4585. Member action**

30 4585. (a) Unless this part or the governing documents require a greater number
31 of votes, an action approved by a majority of a quorum of the members (Section
32 4070) is the action of the members.

33 (b) A meeting at which a quorum is initially present may continue to transact
34 business notwithstanding the withdrawal of members, if any action taken is
35 approved by affirmative votes equaling at least a majority of the number of votes
36 required for a quorum or, if a higher percentage of the vote is required by law or
37 the governing documents, by that higher percentage.

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

41 **Comment.** Section 4585 is comparable to the third sentence of Corporations Code Section
42 7512(a) and subdivisions (c)-(d) of that section.

1 **§ 4590. Teleconference**

2 4590. (a) If all of the following conditions are satisfied, a member who is not
3 physically present at the noticed location of a member meeting may participate in
4 the meeting by teleconference:

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

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

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

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

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

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

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

22 **§ 4595. Notice of regular meeting**

23 4595. (a) The board shall deliver individual notice (Section 4040) of a regular
24 meeting to each member who, on the date of the notice, is entitled to vote at the
25 meeting. The notice shall be delivered at least 10 days, but not more than 90 days,
26 before the date of the meeting.

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

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

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

38 (2) The members shall not act on any matter that is not described in the notice
39 and that requires the approval of the members under Section 7222, 7224, 7233,
40 7812, 8610, or 8719 of the Corporations Code, unless the matter is required to be
41 approved by the unanimous vote of those entitled to vote on the matter, or the

1 general nature of the matter is described in each of the documents waiving notice
2 under Section 4610.

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

5 **Comment.** Section 4595 is comparable to Corporations Code Sections 7511(a), (f); 7512(b);
6 7611(a). The introductory clause of subdivision (c) of Section 4595 continues the substance of
7 former Section 1363(e).

8 **Staff Note.** Proposed Section 4595(c) restates the substance of Corporations Code Section
9 7511(f). The Commission invites comment on whether the restatement would result in a
10 substantive change.

11 **§ 4600. Special meeting of the members**

12 4600. (a) The following persons may call a special meeting of the members at
13 any time, for any lawful purpose, by adoption of a board resolution or by delivery
14 of a written request to the board (Section 4035) that states the business to be
15 transacted at the special meeting:

16 (1) The board.

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

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

19 (4) Members representing five percent or more of the voting power of the
20 association.

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

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

27 (2) The location of the special meeting.

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

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

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

36 **Comment.** Section 4600 is comparable to Corporations Code Sections 7510(e) and 7511(a),
37 (c).

38 **Staff Note.** Proposed Section 4600(c) continues existing law that allows a person who validly
39 calls a special meeting to set the meeting date and distribute notices, if the board fails to do so in
40 the time provided. In addition, it would provide for reimbursement of the cost of notice from the
41 association. The Commission invites comment on that minor change.

1 **§ 4605. Meeting adjournment**

2 4605. (a) Unless the governing documents provide otherwise, a member meeting
3 may be adjourned to another time or place without giving written notice of the
4 reconvened meeting, if both of the following conditions are satisfied:

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

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

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

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

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

14 **§ 4610. Waiver of requirements**

15 4610. (a) Notwithstanding the requirements of this article, a court may find that
16 a notice is valid if it was given in a fair and reasonable manner.

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

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

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

26 (3) The member provides a waiver of notice, consent to hold the meeting, or
27 approval of the minutes of the meeting. The waiver, consent, or approval shall be
28 written and shall be filed with the association's records and made part of the
29 minutes of the meeting. Unless expressly required by law or the governing
30 documents, the waiver, consent, or approval need not include a description of the
31 business to be transacted at the meeting.

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

36 **Comment.** Subdivision (a) of Section 4610 is comparable to Corporations Code Section
37 7511(g).

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

39 **§ 4615. Court-ordered meeting**

40 4615. (a) If an association is required to hold a member meeting or conduct a
41 written ballot and does not do so, a member or the Attorney General may apply to

1 the superior court for a summary order compelling the association to hold the
2 member meeting or conduct the written ballot.

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

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

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

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

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

14 (d) The court may issue any appropriate order, including an order that sets the
15 time and place of a meeting and the record date for determination of members
16 entitled to vote, requires that notice of the meeting be delivered, or specifies the
17 form or content of the notice.

18 (e) If a regular member meeting or a written ballot is held pursuant to a court
19 order issued under this section, a quorum is not required for that meeting or
20 written ballot, notwithstanding any contrary provision of this part or the governing
21 documents.

22 **Comment.** Section 4615 is comparable to Corporations Code Sections 7510(c)-(d) and
23 7511(c).

24 **Staff Note.** Proposed Section 4615(e) restates the first sentence of Corporations Code Section
25 7510(d). The Commission would like to receive comment on whether the restated provision
26 would cause any substantive change in the law. The Commission also requests comment on the
27 policy reflected in proposed subdivision (e). Why should the quorum requirement be waived
28 when a court orders that a regular meeting be held? Should the same result apply when the court
29 orders that a special meeting be held? Would it be better to recast the provision so that it does not
30 apply in every case, but is available to the court as one possible “appropriate order” that it can
31 issue in granting relief?

32 **§ 4620. Court-ordered modification of meeting requirements**

33 4620. (a) A director, officer, or member may petition the superior court for an
34 order modifying any requirement of this part or the governing documents that
35 governs the conduct of a member meeting or a written ballot.

36 (b) If the court determines that it would be impractical or unduly difficult for the
37 association to conduct a member meeting or otherwise obtain the consent of the
38 members, the court may order that a member meeting or written ballot be held and
39 may, to the extent it is fair and equitable to do so, modify or dispense with any
40 provision of this part or of the governing documents that relates to the conduct of a
41 member meeting or written ballot, including any quorum requirement or provision
42 requiring a specified number or percentage of votes for member approval of a
43 matter.

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

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

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

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

11 (3) A reasonable amendment of the declaration.

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

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

18 **Comment.** Section 4620 is comparable to Corporations Code Section 7515.
19 Subdivision (d)(3) continues the general substance of former Section 1356.

20 Article 4. Member Election

21 § 4625. Application of article

22 4625. This article governs a member election. This article does not govern a
23 vote of directors or other appointed or elected officials.

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

25 Former Section 1363.03(l) is not continued. The substance of that provision is continued in
26 Section 4080 (“association” defined).

27 Former Section 1363.03(n) is not continued. The substance of that provision is continued in
28 Section 4025(d) (application of Corporations Code).

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

31 § 4630. Election provisions in governing documents

32 4630. The governing documents shall address all of the following matters:

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

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

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

36 (d) The calculation of voting power.

37 (e) If the governing documents permit the use of proxies, procedures for the use
38 of proxies.

39 (f) The selection of an election inspector.

40 **Comment.** Section 4630 restates part of the substance of former Section 1363.03(a)(3)-(5),
41 except that the required provisions may be included in any governing documents and not just in

1 the operating rules. The provision of former Section 1363.03(a)(3) that relates to procedures for
2 nomination of candidates is continued in Section 4660.

3 **§ 4635. Selection of election inspector**

4 4635. (a) An election shall be overseen by one or three election inspectors,
5 selected by the association for that purpose.

6 (b) An election inspector shall be an independent third party, and may include a
7 person with experience administering elections or with special evidence of
8 integrity, such as a volunteer poll worker with the county registrar of voters, a
9 licensee of the California Board of Accountancy, or a notary public.

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

11 (1) A director.

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

13 (3) A person who is related to a person identified in paragraphs (1) or (2).

14 (4) Unless the governing documents expressly provide otherwise, an employee
15 or contractor of the association.

16 (d) An election inspector shall determine which members are entitled to vote and
17 the voting power of each; determine the authenticity, validity, and effect of any
18 proxies; receive ballots; hear and decide all challenges and questions in any way
19 arising out of or in connection with the right to vote; count and tabulate all votes;
20 determine when the polls open and close; determine the results of the election; and
21 perform any other task that may be required to conduct the election with fairness
22 to all members.

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

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

29 Subdivisions (b)-(c) restate former Section 1363.03(c)(2).

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

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

32 **Staff Note.** Existing Section 1363.03(c)(2) disqualifies certain persons from serving as
33 election inspector. Those rules are restated in proposed Section 4635(c). It is not clear what
34 degree of kinship is sufficient to disqualify a person under proposed subdivision (c)(3). Should
35 that ambiguity be addressed? Nor is it clear why kinship is disqualifying with respect to the first
36 two classes of disqualified persons (director or candidate) but not the fourth (employee or
37 contractor). Should the kinship rule be generalized to include a relation of an employee or
38 contractor of an association?

39 **§ 4640. Secret ballots**

40 4640. (a) A member election that is required by law shall be governed by this
41 section.

1 (b) The association shall deliver the following voting materials to every member
2 who is entitled to vote, by first-class mail or personal delivery, not less than 30
3 days prior to the deadline for voting:

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

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

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

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

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

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

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

18 (3) Seal and sign the outside envelope.

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

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

23 (e) Except for the meeting required by Section 4645, a member election
24 conducted pursuant to this section can be conducted entirely by mail. For the
25 purposes of determining the existence of a quorum, a ballot received by the
26 election inspector by mail shall be treated in the same way as a vote cast by a
27 member present at a meeting.

28 (f) Cumulative voting may be used, pursuant to Section 7615 of the
29 Corporations Code, so long as ballots are not cast by mail.

30 **Comment.** Subdivision (a) of Section 4640 generalizes part of the substance of former Section
31 1363.03(b).

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

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

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

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

41 The first sentence of subdivision (e) restates former Section 1363.03(k). The second sentence
42 restates part of the substance of former Section 1363.03(b). See also Corp. Code § 7513(b).

43 Subdivision (f) is drawn from Corporations Code Section 7513(e).

44 **Staff Notes.** (1) Proposed Section 4640(a) would broaden the application of the secret ballot
45 procedure provided in Civil Code Section 1363.03. It would apply to all matters in which a
46 member election is required by law. This would include a handful of elections required under the

1 Corporations Code that do not currently fall within the scope of Section 1363.03. See Corp. Code
2 §§ 7233 (approval of contract between association and director), 7235 (approval of loan to
3 director), 7237 (indemnification of corporate agent), 7911 (sale of assets), 8012 (merger), 8610
4 (dissolution), 8719 (distribution of assets on dissolution). Those types of member elections,
5 though relatively uncommon, are deserving of secrecy protections. The Commission invites
6 comment on this proposed change.

7 (2) Proposed Section 4640(f) continues the limitations on cumulative voting stated in
8 Corporations Code Section 7513(e). That appears to be consistent with existing Civil Code
9 Section 1363.03. The Commission invites comment on whether that is the correct reading of
10 Section 1363.03.

11 § 4645. Counting ballots

12 4645. (a) A ballot cast pursuant to this article shall be counted pursuant to this
13 section.

14 (b) Prior to opening and counting a ballot, the election inspector shall verify the
15 identity, eligibility to vote, voting power, and voting class of the member who cast
16 the ballot. A decision to accept or reject a ballot is governed by Section 7517 of
17 the Corporations Code.

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

22 (d) The election inspector shall certify the results of the election to the board, in
23 writing. The results shall be noted in the minutes of the meeting at which the
24 ballots were counted and delivered to all members by general notice (Section
25 4045) within 15 days after the votes are counted.

26 **Comment.** Section 4645 restates former Section 1363.03(f)-(g), except that the second
27 sentence of subdivision (b) is new.

28 **Staff Note.** Existing Section 1363.03(f) provides that votes will be opened and counted “in
29 public” at a meeting of the board or a member meeting. In general, an association meeting need
30 not be open to the general public. Proposed Section 4645(c) continues the existing provision, but
31 the Commission invites comment on whether the meeting should be open to the general public.

32 § 4650. Ballot custody and inspection

33 4650. (a) A ballot cast pursuant to this article shall remain in the custody of the
34 election inspector until it is opened and counted.

35 (b) Once the ballots are opened and counted, the election inspector shall
36 maintain custody of the ballots until the time for challenge of the election result
37 under Section 4680 has passed.

38 (c) The ballots shall be transferred to the association after the time for challenge
39 of the election result under Section 4680 has passed.

40 (d) On the written request of a member, the election inspector shall make the
41 ballots available for inspection by the member or the member’s agent.

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

4 **Comment.** Section 4650 restates former Section 1363.03(h)-(i).

5 **§ 4655. Proxies**

6 4655. (a) For the purposes of this article, “proxy” means a written authorization
7 signed by a member or the member’s agent that gives another member the power
8 to vote on behalf of the member who gave the proxy. For the purposes of this
9 section, “signed” means the placing of the member’s name on the proxy (whether
10 by manual signature, typewriting, telegraphic transmission, or otherwise) by the
11 member or authorized representative of the member.

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

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

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

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

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

20 (g) A proxy is revocable until it is received by the election inspector.

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

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

26 **Comment.** Subdivisions (a)-(h) of Section 4655 restate former Section 1363.03(d).

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

28 **§ 4660. Nomination of candidate for board**

29 4660. (a) The governing documents of an association shall include a reasonable
30 procedure for the nomination of candidates in the election of a director.

31 (b) The governing documents shall not prohibit self-nomination.

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

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

35 (e) The governing documents may provide a reasonable period for the
36 submission of nominations. If after the close of nominations, the number of
37 qualified people nominated is equal to or less than the number of directors to be
38 elected, the board may declare the nominees elected without further action.

39 **Comment.** Subdivisions (a)-(b) of Section 4660 restate part of the substance of former Section
40 1363.03(a)(3). The part of the former paragraph that relates to director qualifications is continued
41 in Section 4630.

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

1 Subdivision (e) is drawn from Corporations Code Section 7522(d).

2 **§ 4665. Campaign related information**

3 4665. (a) An association may not use its funds to provide campaign related
4 information, except as otherwise provided in this section.

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

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

17 (d) For the purposes of this section, “campaign related information” includes,
18 but is not limited to, the following information:

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

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

23 (3) Information that includes the photograph or name of a candidate within 30
24 days before an election.

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

28 **Comment.** Section 4665 restates former Sections 1363.03(a)(1)-(2) and 1363.04.

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

33 **Staff Note.** The last sentence of proposed Section 4665(b) is new. It provides express
34 immunity from liability for information that it is required to provide under this section. That
35 immunity is consistent with Corporations Code Section 7525. Section 7525 also provides for
36 indemnification of the association by any person who submits campaign information. The
37 Commission invites comment on whether such a provision should be preserved in the proposed
38 law.

39 **§ 4670. Voting rights**

40 4670. (a) Unless the governing documents provide otherwise, a member who is
41 entitled to vote may cast one vote for each separate interest that the member owns.

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

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

8 **Comment.** Subdivision (a) of Section 4670 is drawn from 10 Cal. Code Regs. § 2792.18(a). It
9 states a default rule that can be overridden by the governing documents. See also Corp. Code §
10 7312(d).

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

16 Subdivision (c) is drawn from Corporations Code Section 7611(b)-(d). See also Section 4595
17 (member meeting notice), which is drawn from Corporations Code Section 7611(a).

18 **§ 4675. Action by unanimous written consent**

19 4675. Any action required or permitted to be taken by the members may be
20 taken without a meeting, if all members individually or collectively consent in
21 writing to the action. The written consent shall be filed with the minutes of the
22 proceedings of the members. The action by written consent shall have the same
23 force and effect as the unanimous vote of the members. Action under this section
24 is not governed by Sections 4625 through 4670, inclusive.

25 **Comment.** Section 4675 is drawn from Corporations Code Section 7516.

26 **§ 4680. Judicial enforcement**

27 4680. (a) A member of an association may bring a civil action for a violation of
28 this part or the governing documents in conducting a member election.

29 (b) If the court finds a violation, it may grant any equitable relief that is
30 appropriate, including nullification of the election results, declaratory relief,
31 injunction, and restitution. The court may impose a civil penalty of up to five
32 hundred dollars (\$500) for each violation, except that each identical violation shall
33 be subject to only one penalty if the violation affects each member of the
34 association equally.

35 (c) An action under this section shall be brought within one year of the violation.
36 In the absence of fraud, an election is conclusively presumed to be valid if no
37 action is brought under this section within one year.

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

40 (e) If the court finds that an action brought under this section is frivolous,
41 unreasonable, or without foundation, it may award reasonable costs and expenses,
42 including reasonable attorney's fees, to the association.

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

4 **Comment.** Section 4680 restates former Sections 1363.09, except that the second sentence of
5 subdivision (c) is drawn from Corporations Code Section 7527.

6 **Staff Notes.** (1) The remedy provided in existing Civil Code Section 1363.09 is largely
7 inconsistent with the judicial remedy provided in Corporations Code Section 7616. Section
8 1363.09 was probably intended to control, even though there is no express provision stating the
9 supremacy of Section 1363.09 over the Corporations Code (as there is for Section 1363.03).
10 Proposed Section 4025 eliminates any ambiguity on the point, providing that Corporations Code
11 Section 7616 does not apply to a CID. The Commission invites comment on whether any part of
12 Section 7616 should be imported into proposed Section 4680.

13 (2) Section 1363.09 provides for an award of costs and expenses to the association if the court
14 finds that an action brought under that section is “frivolous, unreasonable, or without foundation.”
15 That seems to be aimed at limiting an award of association fees to a case involving a frivolous
16 claim. However, the language may be too broad for that purpose. It allows for an award of fees
17 where the action was “without foundation.” The meaning of that phrase is unclear, but it could be
18 read to encompass any case in which the court finds against the plaintiff. The Commission
19 requests comment on whether it might be better to use language drawn from Code of Civil
20 Procedure Section 1038, which governs an award of fees in a frivolous case brought under the
21 Tort Claims Act. For example: “The court may award reasonable costs and expenses, including
22 reasonable attorney’s fees, to the association if it finds that the action was not brought in good
23 faith and with reasonable cause.” The same issue arises under proposed Section 4735(g).

24 Article 5. Inspection of Records

25 § 4700. Scope of inspection right

26 4700. (a) Except as otherwise provided in this article, a member may inspect the
27 following association records:

28 (1) The governing documents and any other document that governs the
29 operation of the common interest development or its association.

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

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

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

35 (5) A balance sheet, income and expense statement, budget comparison, or
36 general ledger. This paragraph applies to any record of the types described,
37 regardless of whether the record is interim or final, audited or unaudited, prepared
38 pursuant to a fixed schedule or on an ad hoc basis. For the purposes of this
39 paragraph, a “general ledger” is a report that shows all transactions that occurred
40 in an association account over a specified period of time.

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

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

- 1 (8) An executed contract.
- 2 (9) Written board approval of a vendor or contractor proposal or invoice.
- 3 (10) A state or federal tax return.
- 4 (11) A record of the compensation provided to an employee or contractor. The
5 compensation information shall be indicated by job classification or title and may
6 not refer to an individual employee or contractor by name or by other identifying
7 information. Except as provided in this subdivision, personnel records are not
8 subject to inspection.
- 9 (12) Information required by the member to comply with [Section 1368].
- 10 (13) Written correspondence of the association, other than correspondence that
11 relates to personnel matters, member discipline, an assessment dispute or a request
12 for a payment plan for overdue assessments.
- 13 (b) Notwithstanding subdivision (a), a member may not inspect the following
14 association records:
- 15 (1) A record that was prepared three or more fiscal years before the fiscal year in
16 which the inspection request is delivered. This paragraph does not apply to the
17 governing documents or the minutes of a member meeting, a board meeting, or a
18 meeting of a committee that exercises a power of the board. The governing
19 documents and meeting minutes must be made available for inspection
20 permanently.
- 21 (2) A record that is protected from disclosure by an evidentiary privilege.
22 Examples include documents subject to the attorney-client privilege or relating to
23 litigation in which the association is or may become involved.
- 24 (3) The agenda or minutes of a board or committee meeting held in executive
25 session.
- 26 (4) A record of a disciplinary action, collection activity, or a payment plan for
27 overdue assessments, that involves a person other than the person making the
28 request.
- 29 (5) An interior architectural plan of a separate interest.
- 30 (6) A plan showing any security features of a separate interest.
- 31 (7) A record of a good or service provided to a member for a fee.
- 32 (c) Inspection under this article may be made in person or by an agent or
33 attorney and the right of inspection includes the right to copy and make extracts.
- 34 **Comment.** Subdivision (a) of Section 4700 continues the substance of former Section
35 1365.2(a), except for the following changes:
- 36 Subdivision (a)(1) is new. Documents that are not “governing documents” within the meaning
37 of Section 4150, but that “govern the operation of the common interest development or its
38 association” include, without limitation, a board resolution, a roster of officers, written
39 instructions to an agent, or an informal policy statement or procedure manual.
- 40 Subdivision (a)(2) includes an electronic mail address in the information that must be provided
41 as part of the membership list. The substantive limitations on use of a membership list are not
42 included in this section. They are continued in Sections 4715 and 4725.
- 43 Subdivision (a)(3) generalizes the requirements for inspection of documents prepared pursuant
44 to former Section 1365. Any document that is delivered to the membership generally is subject to
45 inspection.

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

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

7 Subdivision (a)(11) continues the substance of former Section 1365.2(d)(1)(E)(v) & (d)(2).

8 Subdivision (a)(13) is new. The new provisions does not affect the existing rule that privileged
9 communications are not subject to inspection. See subdivision (b)(2)

10 Subdivision (b)(1) continues the substance of Section 1365.2(i) except that governing
11 documents are required to be made available for inspection permanently.

12 Subdivision (b)(2) continues the substance of former Section 1365.2(d)(1)(C).

13 Subdivision (b)(3) continues the substance of former Section 1365.2(d)(1)(E)(iv).

14 Subdivision (b)(4) continues the substance of former Section 1365.2(d)(1)(E)(ii).

15 Subdivision (b)(5)-(6) continues the substance of former Section 1365.2(d)(1)(E)(vi).

16 Subdivision (b)(7) continues the substance of former Section 1365.2(d)(1)(E)(i).

17 Subdivision (c) restates the substance of former Section 1365.2(b)(2) and is comparable to
18 Corporations Code Section 8311.

19 Nothing in this section affects the scope of discovery in a civil or criminal case.

20 **☞ Staff Notes.** Proposed Section 4700 restates portions of Section 1365.2 that define the scope
21 of the record inspection right. The Commission requests comment on the following issues relating
22 to this section:

23 (1) Section 1365.2 (a)(1)(C) provides for the inspection of certain financial documents
24 provided that they are “interim,” “unaudited,” and “periodic or as compiled.” The proposed
25 section does not continue that limitation. A final document or one that has been audited would
26 still be relevant to a member interested in tracking association finances. Is there a good policy
27 reason to restore the omitted limitation?

28 (2) The proposed law continues Section 1365.2(a)(1)(E), which provides for inspection of a:
29 “Written board approval of a vendor or contractor proposal or invoice.” The Commission is
30 unsure of the purpose of that provision. It would seem that most contract approval decisions
31 would be memorialized in meeting minutes rather than in a separate written document. What
32 purpose is served by that provision?

33 (3) The concept of “enhanced association records” established in Section 1365.2(a)(2) is not
34 continued. The only application of that definition occurs in Section 1365.2(c)(5), which
35 authorizes billing for time spent redacting personal information from “enhanced association
36 records.” The proposed law broadens the compensation provision; any redaction that is required,
37 in any type of document, imposes costs and should be compensated.

38 (4) Proposed Section 4700(b)(1) would limit the time that records remain subject to inspection.
39 Is that provision necessary if Section 4780 (record retention periods) is added? If the limit were
40 removed, a record would be subject to inspection as long as the association is required to
41 maintain it.

42 § 4705. Inspection procedure

43 4705. (a) A member may deliver to the board (Section 4035) a written request to
44 inspect an association record. The request shall identify the record to be inspected
45 and shall state a purpose for the inspection that is reasonably related to the
46 member’s interest as a member. The request may designate an agent to inspect the
47 record on the member’s behalf.

48 (b) Except as provided in Sections 4710, 4715 and 4725, the association shall
49 make the requested record available for inspection according to the following
50 deadlines:

1 (1) For a record prepared in the current fiscal year, within 10 business days after
2 the request is delivered.

3 (2) For a record prepared in a prior fiscal year, within 30 calendar days after the
4 request is delivered.

5 (3) For a record that has not yet been prepared, within 10 business days after the
6 request is delivered or the record is prepared, whichever is later.

7 (4) For the membership list, within five business days.

8 (c) If the association has a business office in the common interest development,
9 the requested record shall be made available for inspection in that office. If the
10 association does not have a business office in the common interest development,
11 the record shall be made available for inspection at a location agreed to by the
12 association and the member who submitted the request.

13 (d) At the member's request, a copy of a specifically identified record shall be
14 delivered to the member by individual delivery (Section 4040). If the record exists
15 in electronic form, the association shall comply with a member request that the
16 record be provided in electronic form. Notwithstanding the other provisions of this
17 subdivision, the association may not provide a record in electronic form if the
18 form of the record prevents a necessary redaction.

19 **Comment.** Subdivision (a) of Section 4705 is new.

20 Subdivision (b) continues part of the substance of former Section 1365.2(j). Special deadlines
21 for inspection of specific types of records have been subsumed within the general deadlines.

22 Subdivisions (c) and (d) continue the substance of former Section 1365.2(c), (h).

23 **Staff Note.** Section 1365.2(c) does not specify where records are to be inspected if the
24 association has no business office in the development and the association and requesting member
25 cannot agree on a location. The only option offered is for the member to receive mailed copies of
26 specifically identified records. That may not be feasible when a member is reviewing the records
27 generally and does not wish to have copies of all of the records. The Commission invites
28 comment on whether some other alternative should be offered.

29 **§ 4710. Redaction**

30 4710. (a) Before making a record available for inspection, the association shall
31 redact all of the following information from the record:

32 (1) Any financial account number.

33 (2) Any password or personal identification number.

34 (3) Any social security number or taxpayer identification number.

35 (4) Any driver's license number.

36 (5) Any other information, if it is reasonably probable that disclosure of the
37 information will compromise the privacy of a member, lead to unauthorized use of
38 a person's identity or financial resources, or to other fraud.

39 (b) Before providing a membership list, the association shall redact the name
40 and address of any person who has elected to have that information redacted from
41 the membership list pursuant to Section 4715.

42 (c) If the member requests, the association shall provide a written statement
43 explaining the legal justification for any redaction made.

1 **Comment.** Section 4710(a) restates former Section 1365.2(d)(1) except that the duty to redact
2 certain information has been made mandatory.

3 Subdivision (c) restates the substance of former Section 1365.2(d)(4).

4 ☞ **Staff Note.** Under Section 1365.2(d)(1), redaction of personal information is optional. It is
5 not clear why a CID director should have discretion in this regard. Proposed Section 4710 would
6 make redaction mandatory. The Commission invites comment on this proposed change.

7 **§ 4715. Optional redaction from membership list**

8 4715. (a) A member may elect, in writing, to have the member's name and
9 address redacted from the membership list.

10 (b) A member who requests the membership list may also request that the
11 association deliver material to any member whose information is redacted from
12 the membership list. The association shall deliver the material to those members
13 by individual delivery (Section 4040), within 10 business days after delivery of the
14 request.

15 **Comment.** Section 4715 restates former Section 1365.2(a)(1)(I)(iii).

16 **§ 4720. Fees**

17 4720. (a) The association may charge a fee to recover the direct and actual cost
18 to copy or deliver a record. The association shall inform the member of the fee
19 amount, and the member shall agree to pay the fee, before a copy is made or a
20 record delivered.

21 (b) The association may charge a fee of up to ten dollars (\$10) per hour, not to
22 exceed two hundred dollars (\$200) per written request, for the time actually and
23 reasonably spent to retrieve and redact a record. The association shall inform the
24 member of the estimated fee amount, and the member shall agree to pay the fee,
25 before the record is retrieved and redacted.

26 **Comment.** Section 4720 continues former Section 1365.2(b)(1), (c)(4)-(5) without substantive
27 change, except that the authority to charge a fee for redaction has been generalized.

28 **§ 4725. Permissible purpose**

29 4725. (a) A member may only inspect and use an association record for a
30 purpose that is reasonably related to the requesting member's interest as a
31 member. A member may not inspect or use an association record for a commercial
32 purpose.

33 (b) The association may deny a record inspection request if it believes, in good
34 faith and with a substantial basis, that the record will be used for an impermissible
35 purpose or that disclosure of the record would violate a member's constitutional
36 rights.

37 **Comment.** Subdivision (a) of Section 4725 continues the substance of former Section
38 1365.2(e). See also Corp. Code § 8338 (use of membership list).

39 Subdivision (b) is comparable to Corporations Code Sections 8331(a) and 8332, but it applies
40 to any record and not just the association's membership list.

1 **§ 4730. Denial of request**

2 4730. (a) An association that denies a request for records under this article shall
3 provide the requesting member a notice of denial, by individual delivery (Section
4 4040), within 10 business days after delivery of the inspection request.

5 (b) The notice of denial shall include all of the following information:

6 (1) An explanation of the basis for the denial decision.

7 (2) An offer to attempt to resolve the matter through the association’s internal
8 dispute resolution procedure provided pursuant to Article 2 (commencing with
9 Section 5050) of Chapter 4. The offer may include an alternative proposal for
10 achieving the member’s purpose.

11 **Comment.** Section 4730 is new.

12 **§ 4735. Action to enforce**

13 4735. (a) If an association has not complied with a document inspection request
14 within the time provided, the requesting member may bring an action in the
15 superior court to enforce the record inspection request. The action may be filed in
16 the small claims division of the superior court if the amount of the demand does
17 not exceed the jurisdiction of that court.

18 (b) If the court determines that there is no legal basis for the failure to comply
19 with the record inspection request, it shall order compliance.

20 (c) If the court determines that disclosure is not required under this article, that
21 disclosure would violate a member’s constitutional rights, or that there is a
22 reasonable probability that disclosure would lead to misuse of a record, it shall
23 modify or set aside the record inspection request.

24 (d) The court may grant any other relief appropriate to the circumstances,
25 including the following relief:

26 (1) If the association acted unreasonably in denying the request, the imposition
27 of a civil penalty of up to \$500 against the association.

28 (2) The tolling of any deadline affected by association delay in providing access
29 to a record.

30 (3) The postponement of a scheduled board meeting or member meeting, if
31 association delay in providing access to a record would prejudice the requesting
32 member’s interest in a decision to be made at the meeting.

33 (4) The appointment of an investigator or accountant to inspect or audit
34 association records on behalf of the requesting member. The cost of investigation
35 shall ordinarily be borne by the requesting member, but the court may order that
36 the association bear or share the cost.

37 (5) An order requiring that the association distribute material to the membership
38 on behalf of the requesting member, in lieu of disclosing the membership list.

39 (e) The association bears the burden of proving the legal grounds for
40 noncompliance with the records request.

1 (f) If the court finds that the association acted unreasonably in denying the
2 record inspection request, it shall award reasonable costs and expenses, including
3 reasonable attorney’s fees, to the requesting member.

4 (g) If the court finds that an action brought under this section is frivolous,
5 unreasonable, or without foundation, it may award reasonable costs and expenses,
6 including reasonable attorney’s fees, to the association.

7 (h) Nothing in this section limits the right of the association to bring an action
8 under Section 4740.

9 **Comment.** Subdivisions (a)-(c) of Section 4735 are comparable to former Section 1365.2(f)
10 and Corporations Code Sections 8336 (action to enforce inspection right) and 8337 (costs and
11 expenses).

12 Subdivision (d)(1) continues part of the substance of former Section 1365.2(f).

13 Subdivision (d)(2) is new. It authorizes the court to toll a procedural deadline if the
14 association’s delay in providing access to a record affected the member’s ability to comply with
15 the deadline. For example, Section 6120 provides for a member meeting to reverse a rule change,
16 within 30 calendar days after notice of the rule change. The signatures of five percent or more of
17 the members are required to call the meeting. A member who requests access to the membership
18 list in order to solicit signatures might be unable to meet the deadline due to association delay in
19 providing the list. Subdivision (b)(2) would authorize the court to toll that time period to prevent
20 injustice. See also subdivision (b)(3); Corp. Code § 8335 (postponement of meeting).

21 Subdivision (d)(3) is comparable to Corporations Code Section 8335, except that it applies to
22 all records and not just to a membership list.

23 Subdivision (d)(4) is comparable to Corporations Code Section 8336.

24 Subdivision (d)(5) is comparable to Corporations Code Sections 8331(g) and 8332.

25 Subdivision (e) is comparable to former Section 1365.2(a)(1)(I)(ii) and Corporations Code
26 Sections 8331(f)(1) and 8332, except that it applies to all records and not just to a membership
27 list.

28 Subdivisions (f)-(g) continue part of the substance of former Section 1365.2(f).

29 Subdivision (h) is comparable to Corporations Code Section 8331(j).

30 **Staff Notes.** (1) Section 1365.2(f) provides for an award of costs and expenses to the
31 requesting member if the association acted “unreasonably” in withholding access to records. That
32 is different standard from the standard provided in Corporations Code Section 8337, which
33 provides for an award of costs to the member if the association acted “without justification.”
34 Proposed Section 4735(f) continues the standard provided in the Davis-Stirling Act on the
35 grounds that, in general, a specific standard is intended to control over a general one.

36 (2) Section 1365.2(f) provides for an award of costs and expenses to the association if the court
37 finds that the requesting member’s action is “frivolous, unreasonable, or without foundation.”
38 That seems to be aimed at limiting an award of association fees to a case involving a frivolous
39 claim. However, the language may be too broad for that purpose. It allows for an award of fees
40 where the action was “without foundation.” The meaning of that phrase is unclear, but it could be
41 read to encompass any case in which the court finds against the plaintiff. The Commission
42 requests comment on whether it might be better to use language drawn from Code of Civil
43 Procedure Section 1038, which governs an award of fees in a frivolous case brought under the
44 Tort Claims Act. For example: “The court may award reasonable costs and expenses, including
45 reasonable attorney’s fees, to the association if it finds that the action was not brought in good
46 faith and with reasonable cause.” The same issue arises under proposed Section 4680(e).

47 **§ 4740. Action to enjoin improper use of records**

48 4740. An association may bring an action for injunctive relief and actual
49 damages against any person who misuses association records. In addition, a court

1 in its discretion may award exemplary damages for a fraudulent or malicious
2 misuse of association records. If the association prevails in an action brought
3 under this section, the court shall award the association reasonable costs and
4 expenses, including reasonable attorney's fees.

5 **Comment.** Section 4740 is comparable to Corporations Code Section 8338(b)-(d).

6 **§ 4745. Limited liability**

7 4745. An association, or an officer, director, employee, agent, or volunteer of an
8 association, is not liable for damages that result from a failure to withhold or
9 redact information pursuant to this article, unless the failure to withhold or redact
10 the information was intentional, willful, or negligent.

11 **Comment.** Section 4745 restates the substance of former Section 1365.2(d)(3).

12  **Staff Note.** Former Section 1356.2(d)(3) immunizes the association and its officers and
13 agents from liability for damages resulting from a breach of the duty to withhold or redact certain
14 personal information. However, that provision seems to allow for liability where the breach was
15 merely negligent. Should the liability limitation provision be strengthened or otherwise modified,
16 especially if the duty to redact is made mandatory? See proposed Section 4710 and note. For
17 example, broader protection could be given to individuals by eliminating simple negligence as a
18 basis for personal liability.

19 **§ 4750. Application of article**

20 4750. (a) For the purposes of this article, a community service organization is
21 deemed to be an association, and a member of the community service organization
22 or similar entity is deemed to be a member of an association.

23 (b) This article does not apply to common interest development in which
24 separate interests are being offered for sale by a subdivider under the authority of a
25 public report issued by the Department of Real Estate, so long as the subdivider or
26 all subdividers offering those separate interests for sale, or any employees of those
27 subdividers or any other person who receives direct or indirect compensation from
28 any of those subdividers, comprise a majority of the members of the board of
29 directors of the association. Notwithstanding the foregoing, this article applies to a
30 common interest development no later than 10 years after the close of escrow for
31 the first sale of a separate interest to a member of the general public pursuant to
32 the public report issued for the first phase of the development.

33 (c) If two or more associations have consolidated any of their functions under a
34 joint neighborhood association or other joint organization, the members of each
35 participating association shall have access to the records of the joint organization
36 as if they were the records of the participating association.

37 **Comment.** Subdivision (a) of Section 4750 continues the substance of former Section
38 1365.2(g).

39 Subdivision (b) continues the substance of former Section 1365.2(n).

40 Subdivision (c) continues part of the substance of former Section 1363(i).

41  **Staff Note.** Subdivision (b) exempts a CID from the application of this article if it is still in
42 the period of developer control. Presumably, such a development would be subject to the record
43 inspection provisions of the Corporations Code. It seems appropriate that some record inspection

1 right be preserved. A member's interest in the proper management of a CID is not reduced simply
2 because the association is within the control of the developer. The Commission requests comment
3 on whether this exemption serves a useful purpose and should be continued.

4 Article 6. Record Keeping

5 § 4775. Duty to maintain records

6 4775. (a) An association shall maintain at least one copy of the following
7 association records, for the periods specified in Section 4780:

8 (1) The original governing documents and any amendment of or addition to the
9 governing documents.

10 (2) The membership list, including the name, address, and membership class of
11 each member.

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

14 (4) A written waiver, consent, or approval received under Section 4610.

15 (5) A report prepared pursuant to Article 7 (commencing with Section 4800).

16 (6) Books and records of account.

17 (7) A tax return or other tax-related record.

18 (8) A deed or other record that relates to title of real property within the
19 common interest development.

20 (9) A record that relates to the design, construction, or physical condition of the
21 common interest development.

22 (10) A record that relates to a proposed modification of a member's separate
23 interest.

24 (11) A record that relates to litigation involving the association or legal services
25 provided to the association.

26 (12) An employment or payroll record.

27 (13) An insurance policy or record relating to insurance coverage or claims.

28 (14) A contract to which the association is a party.

29 (15) A loan document.

30 (16) A ballot, proxy, or other record that relates to an election.

31 (17) A reserve funding study.

32 (18) A record that relates to enforcement of a restriction.

33 (b) The association may keep a record in paper form or in any other form that
34 can be converted to a paper copy, provided that the paper copy accurately portrays
35 the content of the record. A paper copy produced from a non-paper record is
36 admissible in evidence and is accepted for all other purposes, to the same extent as
37 an original paper record of the same information.

38 **Comment.** Subdivisions (a)(2)-(3), (a)(6), and (b) of Section 4775 are comparable to
39 Corporations Code Section 8320. The other provisions of subdivision (a) are new.

1 **§ 4780. Record retention periods**

2 4780. (a) Unless a longer period is required by law or by the governing
3 documents, an association shall retain a record listed in Section 4775 for at least
4 four years after its date of execution or, in the case of a document that expires or
5 becomes superseded, four years after the document has expired or been
6 superseded.

7 (b) The association shall retain the following records permanently:

8 (1) The original governing documents and each amendment of or addition to the
9 governing documents.

10 (2) The minutes of a member meeting, board meeting, or meeting of a
11 committee that exercises a power of the board.

12 (4) A tax return or other tax-related record.

13 (5) A deed or other record that relates to title of real property within the
14 common interest development.

15 (6) A record that relates to the design, construction, or physical condition of the
16 common interest development.

17 (c) This section does not apply to a record that is discarded or destroyed before
18 January 1, 2008.

19 **Comment.** Section 4780 is new. Subdivision (a) states a default retention period of four years,
20 but makes clear that other law or an association’s governing documents may impose a longer
21 retention period.

22 Subdivision (c) provides that the requirements of this section only apply to a record held by an
23 association at the time that the section became operative. Note that other record retention
24 requirements may govern documents that were held by the association before that date. See, e.g.,
25 Section 4770(b) (period during which records must be made available for member inspection); 22
26 Cal. Code Regs. § 1085-2 (four year period for retention of employment records); 26 C.F.R. §
27 1.6001-1 (retention of federal tax records while material to assessment or collection of tax); 29
28 C.F.R. §§ 516.5 (three year period for retention of payroll records).

29 **Staff Note.** The Commission invites comment on whether the proposed retention periods
30 would be helpful and are of appropriate length. The Commission also requests information about
31 any other record retention requirement that could apply to a homeowner association.

32 **§ 4785. Director inspection**

33 4785. A director shall have the absolute right at any reasonable time to inspect
34 all association books, records, and documents of every kind and to inspect the
35 common area.

36 **Comment.** Section 4785 is comparable to Corporations Code Section 8334.

37 **Staff Note.** Corporations Code Section 8334 confers on a director an “absolute” right to
38 inspect association records. In one case applying that section, the court concluded that the
39 director’s right to inspect records must yield to the right of a member to cast a secret ballot. See
40 *Chantiles v. Lake Forest II Master Homeowners Ass’n*, 37 Cal. App. 4th 914 (1995) (director did
41 not have right to review ballots and proxies; director’s attorney permitted to prepare tallies
42 without revealing individual member votes).

43 The specific issue in *Chantiles* should not arise again. Section 1363.03(c)(3)(E), which
44 becomes operative on July 1, 2006, will require that an independent election inspector count all
45 votes in a CID election. Furthermore, the ballots will not identify the person who cast the ballot.

1 See Section 1363.03(e). In addition, Section 1363.03(f) provides that any member may witness
2 the process of counting the ballots.

3 The Commission invites comment on whether the changes to election procedure are sufficient
4 to protect member privacy. If not, should Section 4785 be revised to better balance member
5 privacy and a director's duty as a fiduciary?

6 Article 7. Annual Reports

7 § 4800. Annual budget report

8 4800. (a) From 30 to 90 days before the end of the fiscal year, the board shall
9 prepare an annual budget report.

10 (b) The annual budget report shall include all of the following information:

11 (1) The estimated revenue and expenses for the operating and reserve accounts,
12 on an accrual basis.

13 (2) The reserve funding study prepared pursuant to Section 5555.

14 (3) The statement of the association's insurance coverage, prepared pursuant to
15 [subdivision (e) of Section 1365].

16 (c) The board shall promptly deliver a copy of the current annual budget report
17 to any member who requests a copy, at no cost to the member.

18 (d) The type used in the annual budget report shall be at least 12 points in size.

19 **Comment.** Section 4800 continues part of the substance of former Sections 1365(a) & (e);
20 1365.2.5.

21 § 4805. Annual financial statement

22 4805. (a) Within 120 days after the end of the fiscal year, the board of an
23 association that receives ten thousand dollars (\$10,000) or more in gross revenues
24 or receipts during the fiscal year shall prepare an annual financial statement.

25 (b) If the association receives more than seventy-five thousand dollars (\$75,000)
26 in a fiscal year, the annual financial statement shall be reviewed by a licensee of
27 the California Board of Accountancy using generally accepted accounting
28 principles.

29 (c) The annual financial statement shall include all of the following information:

30 (1) A balance sheet as of the end of the fiscal year and an income statement and
31 statement of changes in financial position for the fiscal year.

32 (2) If the financial statement is reviewed by an independent accountant, a copy
33 of the accountant's report.

34 (3) If the financial statement is not reviewed by an independent accountant, the
35 certificate of an authorized officer of the association that the financial statement
36 was prepared without audit from the books and records of the association.

37 (4) If the association is incorporated, a statement of any transaction or
38 indemnification of a type described in Section 8322 of the Corporations Code.

39 (d) The board shall promptly deliver a copy of the current annual financial
40 statement to any member who requests a copy, at no cost to the member.

1 (e) The type used in the annual financial statement shall be at least 12 points in
2 size.

3 **Comment.** Section 4805 is comparable to Corporations Code Section 8321, except that
4 subdivision (b) continues the substance of former Section 1365(b).

5 **§ 4810. Member handbook**

6 4810. (a) Within 120 days after the end of the fiscal year, the board shall prepare
7 a member handbook that contains all of the following information:

8 (1) A statement explaining that a member may submit a request to have notices
9 sent to up to two different specified addresses.

10 (2) The name and address of the person designated to receive official
11 communications to the board, pursuant to Section 4035.

12 (3) Notice of a member's right to receive copies of meeting minutes, pursuant to
13 subdivision (d) of Section 4550.

14 (4) The statement required by Section 5670.

15 (5) A statement describing the association's policies and practices in enforcing
16 lien rights or other legal remedies for default in the payment of assessments.

17 (6) A summary of alternative dispute resolution procedures, pursuant to Sections
18 5070 and 5115.

19 (7) A summary of any requirements for association approval of a physical
20 change to property, pursuant to [subdivision (c) of Section 1378].

21 (8) The location, if any, designated for posting of a general notice (Section
22 4045).

23 (9) Any other information that is required by law or the governing documents or
24 that the board determines to be appropriate for inclusion.

25 (b) The board shall promptly deliver a copy of the current member handbook to
26 any new member and to any member who requests a copy, at no cost to the
27 member.

28 (c) The type used in the annual financial statement shall be at least 12 points in
29 size.

30 **Comment.** Section 4810 is new.

31 Subdivision (a)(5) continues the substance of former Section 1365(d).

32 **§ 4815. Community service organization report**

33 4815. (a) Unless the governing documents impose more stringent standards, a
34 community service organization that receives 10 percent or more of its funding
35 from an association or its members shall prepare and distribute to the association
36 an annual report that includes all of the following information:

37 (1) A financial statement.

38 (2) A detailed statement of administrative costs that identifies the person paid
39 for each cost.

1 (3) If the report is not consistent with the requirements of Article 5
2 (commencing with Section 4700), a statement describing the noncompliance in
3 detail.

4 (4) If a community service organization is responsible for the maintenance of
5 major components for which an association would otherwise be responsible,
6 information regarding those components that the association requires to complete
7 disclosures and reserve reports required under [this article.]

8 (b) An association may rely upon information received from a community
9 service organization.

10 **Comment.** Section 4815 restates the substance of former Section 1365.3 except that the report
11 must be made annually.

12 **Staff Notes.** (1) Existing Section 1365.3 requires that a report prepared by a community
13 service organization be consistent with the provisions of Section 1365.2 and “comply with the
14 standards.” The Commission is unsure of the meaning of that requirement and invites comment
15 on the issue. Is the requirement intended to incorporate the redaction provisions of Section
16 1365.2(d)?

17 (2) The reference in proposed Section 4815(a)(4) to “this article” is a reference to the
18 provisions relating to reserve funding, which have not yet been added to the proposed law. The
19 reference will be corrected when reserve fund requirements are addressed.

20 **§ 4820. Notice of availability**

21 4820. (a) When a report is prepared pursuant to Section 4800, 4805, 4810, or
22 4815, the board shall deliver individual notice (Section 4040) to all members of
23 the availability of the report.

24 (b) The notice of availability shall include a general description of the content of
25 the report and instructions on how to request, at no cost, a complete copy of the
26 report.

27 (c) A board may deliver, by individual notice (Section 4040) to all members, a
28 complete copy of a report instead of the notice of availability of the report.

29 **Comment.** Section 4820 is new.

30 **§ 4825. Financial statement**

31 4825. A financial statement required by this article shall be prepared in
32 conformity with generally accepted accounting principles or some other basis of
33 accounting that reasonably sets forth the assets and liabilities and the income and
34 expenses of the association or community service organization and discloses the
35 accounting basis used in its preparation.

36 **Comment.** Section 4825 is similar to Corporations Code Section 5012.

37 **§ 4830. Judicial enforcement**

38 4830. (a) Any member may bring an action in superior court to enforce the
39 requirements of this article. The court may, for good cause shown, extend the time
40 for compliance with the requirements of this article.

1 (b) In any action or proceeding under this section, if the court finds the failure of
2 the association to comply with the requirements of this article to be without
3 justification, the court may award the member reasonable expenses, including
4 attorney's fees, in connection with the action or proceeding.

5 **Comment.** Section 4830 generalizes the substance of Corporations Code Section 8323.

6 Article 8. Director Standard of Conduct

7 **§ 4850. Director standard of conduct**

8 4850. (a) An association officer or director is not personally liable for a tortious
9 act or omission of the officer or director, in excess of the amount of insurance
10 coverage specified in paragraph (6), if all of the following requirements are met:

11 (1) The officer or director is a volunteer.

12 (2) The officer or director is a tenant of a separate interest or an owner of no
13 more than two separate interests.

14 (3) The association is exclusively residential.

15 (4) The act or omission was performed within the scope of the officer's or
16 director's association duties.

17 (4) The act or omission was performed in good faith.

18 (5) The act or omission was not willful, wanton, or grossly negligent.

19 (6) The association maintained and had in effect, at the time of the act or
20 omission and at the time that a claim is made, insurance coverage for the general
21 liability of the association and for the individual liability of an officer or director
22 of the association for negligent acts or omissions in that capacity. In an association
23 with 100 or fewer separate interests, the coverage for each type of liability shall be
24 at least five hundred thousand dollars (\$500,000). In an association of more than
25 100 separate interests, the coverage for each type of liability shall be at least one
26 million dollars (\$1,000,000).

27 (b) For the purposes of this section, "volunteer" does not include the declarant or
28 a person who receives direct or indirect compensation as an employee of the
29 declarant, or as an employee of a financial institution that purchased a separate
30 interest at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on
31 real property. Payment of actual expenses incurred by a director or officer in the
32 execution of the duties of that position does not affect the director's or officer's
33 status as a volunteer.

34 (c) Nothing in this section limits the liability of the association for its negligent
35 act or omission or for any negligent act or omission of an officer or director of the
36 association.

37 (d) For the purposes of this section, an officer's or director's association duties
38 include making a decision on whether to conduct an investigation of the common
39 interest development for latent deficiencies before the expiration of the applicable
40 statute of limitations and whether to commence a civil action against the builder
41 for defects in design or construction. This subdivision is intended to clarify the

1 application of this section. It is not intended to expand or limit the fiduciary duties
2 owed by a director or officer.

3 **Comment.** Section 4850 restates the substance of former Section 1365.7. See also Corp. Code
4 § 7231 (standard of care and liability of director of nonprofit mutual benefit corporation).

5 **§ 4855. Transaction involving incorporated association and director or officer**

6 4855. A contract or other transaction between an incorporated association and a
7 director or officer of the association is governed by Sections 7233 to 7235,
8 inclusive, of the Corporations Code.

9 **Comment.** Section 4855 is new. Nothing in this section is intended to expand or limit the law
10 governing a transaction between an incorporated association and a director or officer of the
11 association.

12 **Staff Note.** Section 4 of AB 2100 (Laird) would add a provision on self-interested
13 decisionmaking by a director. If that bill is enacted, the Commission will revise this provision to
14 conform to the change.

15 **Article 9. Managing Agent**

16 **§ 4900. Prospective managing agent disclosure**

17 4900. (a) A prospective managing agent of a common interest development shall
18 provide a written disclosure to the board before entering into a management
19 agreement. The disclosure shall be provided as soon as is practicable after entering
20 into negotiations, but in no event more than 90 days before entering into an
21 agreement.

22 (b) The disclosure required under this section shall contain all of the following
23 information:

24 (1) The name and business address of each owner or general partner of the
25 managing agent. If the managing agent is a corporation, the disclosure shall
26 include the name and business address of each shareholder owning more than 10
27 percent of the shares of the corporation and each director or officer of the
28 corporation

29 (2) For each person named in paragraph (1), a list of any relevant license or
30 professional certification or designation held by that person. A license,
31 certification, or designation is relevant if it relates to a service to be provided by
32 the managing agent, including architectural design, construction, engineering, real
33 estate, accounting, real property management, or community association
34 management. The list shall indicate the type of license, certification, or
35 designation, the issuing authority, the issuance date, and any expiration date.

36 **Comment.** Section 4900 restates the substance of former Section 1363.1. See also Section
37 4100 (“managing agent” defined).

38 **Staff Notes.** (1) Proposed Section 4900 significantly revises Section 1363.1. The
39 Commission would like to receive comment on whether the revisions would make any change to
40 the substance of the existing section.

1 (2) Section 1363.1(a) requires that the disclosure be made no later than 90 days before entering
2 into an agreement. If that requirement is adhered to, the contracting process would take at least 90
3 days to complete. Is that time frame realistic in practice? Should the 90 day minimum be adjusted
4 or deleted?

5 **§ 4905. Trust fund account**

6 4905. (a) A managing agent who receives funds belonging to an association,
7 other than for deposit into an escrow account or account under the control of the
8 association, shall deposit the funds into a trust fund account.

9 (b) The trust fund account shall be maintained in California, in a federally
10 insured financial institution. The account shall be maintained in the name of the
11 managing agent as trustee for the association or in the name of the association.

12 (c) On the written request of the board, the trust fund account shall be created as
13 an interest bearing account. No interest earned on funds in the account shall inure
14 directly or indirectly to the benefit of the managing agent or to an employee of the
15 managing agent.

16 (d) The managing agent shall inform the board of the nature of the trust fund
17 account, including a statement of how any interest will be calculated and paid,
18 whether service charges will be paid to the depository and by whom, and whether
19 there are any notice requirements or penalties for withdrawal of funds from the
20 account.

21 (e) Funds in a trust fund account may only be disbursed in accordance with
22 written instructions from the association that is entitled to the funds.

23 (f) The managing agent shall maintain a separate record of the receipt and
24 disposition of all funds described in this section, including any interest earned on
25 the funds.

26 (g) The managing agent shall not commingle the funds of an association with
27 the funds of any other person, except as provided in subdivision (h).

28 (h) A managing agent who commingled the funds of two or more associations
29 on or before February 26, 1990 may continue to do so if all of the following
30 requirements are met:

31 (1) The board of each affected association has given its written assent to the
32 commingling.

33 (2) The managing agent maintains a fidelity and surety bond in an amount that is
34 adequate to protect each association and that provides each association at least 10
35 days' notice before cancellation. The managing agent shall provide each affected
36 board with the name and address of the bonding company, the amount of the bond,
37 and the expiration date of the bond. If there are any changes in the bond coverage
38 or the company that provides the coverage, the managing agent shall disclose that
39 fact to the board of each affected association as soon as practical, but in no event
40 more than 10 days after the change.

41 (3) The managing agent provides a written statement to each affected board
42 describing any benefit received by the managing agent from the commingled
43 account or the financial institution where the funds will be on deposit.

1 (4) A completed payment on behalf of an association is deposited within 24
2 hours or the next business day and does not remain commingled for more than 10
3 calendar days. As used in this subdivision, “completed payment” means funds
4 received that clearly identify the account to which the funds are to be credited.

5 (i) The prevailing party in an action to enforce this section shall be entitled to
6 recover reasonable legal fees and court costs.

7 (j) As used in this section, “financial institution” has the meaning provided in
8 Section 31041 of the Financial Code.

9 **Comment.** Section 4905 restates the substance of former Section 1363.2. See also Section
10 4100 (“managing agent” defined).

11 **Staff Notes.** (1) Proposed Section 4905 significantly revises Section 1363.2. The
12 Commission would like to receive comment on whether the revisions would make any change to
13 the substance of the existing section.

14 (2) The Commission invites comment on whether proposed Section 4905(h) continues to serve
15 a useful purpose. It would seem to be the better practice not to allow commingling at all. Should
16 subdivision (h) be deleted? A transitional period could be provided for the separation of accounts
17 that are currently commingled under that provision.

18 CHAPTER 4. DISPUTE RESOLUTION AND ENFORCEMENT

19 Article 1. Disciplinary Action

20 § 5000. Authority to impose disciplinary fine

21 5000. An association shall not fine a member for a violation of the governing
22 documents unless, at the time of the violation, the governing documents expressly
23 authorize the use of a fine and include a schedule of the amounts that can be
24 assessed for each type of violation.

25 **Comment.** Section 5000 restates the substance of former Section 1363(g), with two
26 exceptions:

27 (1) It does not continue language relating to the distribution of copies of the enforcement
28 policy. Distribution of the governing documents is governed by other law. See Sections
29 [1368(a)(1)] (seller’s disclosure), 4700(a)(1) (record inspection), 6115 (notice of proposed rule
30 change).

31 (2) It provides that the authority to fine and schedule of fine amounts must exist at the time of
32 the violation. This prevents ex post facto punishment.

33 **Staff Note.** The authority to impose a fine is a significant power. Should a board that is not
34 authorized to impose fines by the declaration, articles, or bylaws be able to grant itself that power
35 by adopting an operating rule (which can be adopted by the board unilaterally)? Or should the
36 authority to impose fines derive only from the declaration, articles, or bylaws?

37 § 5005. Disciplinary hearing

38 5005. (a) The board shall only impose discipline at a meeting of the board at
39 which the accused member shall have an opportunity to be heard.

1 (b) At least 10 days before meeting to hear a disciplinary matter, the board shall
2 deliver an individual notice to the accused member (Section 4040) that includes all
3 of the following information:

4 (1) The provision of the governing documents that the member is alleged to
5 have violated and a brief summary of the facts constituting the alleged violation.

6 (2) The penalty that may be imposed for the violation.

7 (3) The time, date, and location of the meeting at which the matter will be heard.

8 (4) A statement that the accused member has a right to attend the meeting,
9 address the board, and request that the matter be considered in closed executive
10 session.

11 (c) Within 15 days after hearing a disciplinary matter, the board shall deliver a
12 written decision to the accused member, by individual notice (Section 4040). If the
13 board imposes a penalty, the written decision shall state the provision of the
14 governing documents violated and the penalty for the violation.

15 **Comment.** Section 5005 restates the substance of former Section 1363(h), with the following
16 changes:

17 (1) Subdivision (a) is new. It states expressly what is clearly implied.

18 (2) Subdivision (b)(2) is new.

19 **Staff Note.** The disciplinary hearing provision only applies to a violation of the governing
20 documents. However, a board can also impose a monetary charge to recover the cost to repair
21 damage to the common area that was caused by the member or the member's guest or tenant.
22 There is no provision for a hearing to consider whether the member actually caused the damage.
23 A charge to reimburse for repair of damages can lead to nonjudicial foreclosure. See Section
24 1367.1(d). Should there be some sort of hearing required before such a charge can be assessed
25 against a member?

26 § 5015. Responsibility for guest, invitee, or tenant

27 5015. For the purposes of this article, a member is responsible for a violation of
28 the governing documents by the member's guest, invitee, or tenant.

29 **Comment.** Section 5015 is consistent with former Sections 1363(g), except that the rule has
30 been broadened to provide that a member is responsible for a tenant's violation.

31 **Staff Note.** Existing Section 1363(g) provides that a member is responsible for a violation of
32 the governing documents by the member's guest or invitee. By contrast, existing Sections
33 1367(b) and 1367.1(d) provide that a member may be charged for damage to the common area
34 caused by the member or the member's guest or tenant.

35 Proposed Section 5015 would resolve that inconsistency by broadening the scope of
36 responsibility to include a violation by a member's tenant. The damage reimbursement provisions
37 of Sections 1367 and 1367.1 will be given the same scope (i.e., a member will be liable for
38 damage caused by the member's guest, invitee, and tenant). The Commission invites comment on
39 that approach.

40 § 5020. Removing vehicle from common interest development

41 5020. The authority of an association to cause the removal of a vehicle from a
42 common interest development is governed by Section 22658.2 of the Vehicle
43 Code.

1 (b) The procedure shall provide for prompt deadlines. The procedure shall state
2 the maximum time for the association to act on a request invoking the procedure.

3 (c) If the procedure is invoked by a member, the association shall participate in
4 the procedure.

5 (d) If the procedure is invoked by the association, the member may elect not to
6 participate in the procedure. If the member participates but the dispute is resolved
7 other than by agreement of the member, the member shall have a right of appeal to
8 the association's board of directors.

9 (e) A resolution of a dispute pursuant to the procedure, that is not in conflict
10 with the law or the governing documents, binds the association and is judicially
11 enforceable. An agreement reached pursuant to the procedure, that is not in
12 conflict with the law or the governing documents, binds the parties and is
13 judicially enforceable.

14 (f) The procedure shall provide a means by which the member and the
15 association may explain their positions.

16 (g) A member of the association shall not be charged a fee to participate in the
17 process.

18 **Comment.** Section 5060 continues former Section 1363.830 without substantive change.

19 **§ 5065. Default meet and confer procedure**

20 5065. (a) This section applies in an association that does not otherwise provide a
21 fair, reasonable, and expeditious dispute resolution procedure. The procedure
22 provided in this section is fair, reasonable, and expeditious, within the meaning of
23 this article.

24 (b) Either party to a dispute within the scope of this article may invoke the
25 following procedure:

26 (1) The party may request the other party to meet and confer in an effort to
27 resolve the dispute. The request shall be in writing.

28 (2) A member of an association may refuse a request to meet and confer. The
29 association may not refuse a request to meet and confer.

30 (3) The association's board of directors shall designate a member of the board to
31 meet and confer.

32 (4) The parties shall meet promptly at a mutually convenient time and place,
33 explain their positions to each other, and confer in good faith in an effort to
34 resolve the dispute.

35 (5) A resolution of the dispute agreed to by the parties shall be memorialized in
36 writing and signed by the parties, including the board designee on behalf of the
37 association.

38 (c) An agreement reached under this section binds the parties and is judicially
39 enforceable if both of the following conditions are satisfied:

40 (1) The agreement is not in conflict with law or the governing documents of the
41 common interest development or association.

1 (2) The agreement is either consistent with the authority granted by the board of
2 directors to its designee or the agreement is ratified by the board of directors.

3 (d) A member of the association may not be charged a fee to participate in the
4 process.

5 **Comment.** Section 5065 continues former Section 1363.840 without substantive change.

6 **§ 5070. Notice in member handbook**

7 5070. The member handbook (Section 4810) shall include a description of the
8 internal dispute resolution process provided pursuant to this article.

9 **Comment.** Section 5070 continues former Section 1363.850 without substantive change.

10 **Article 3. Alternative Dispute Resolution**
11 **Prerequisite to Civil Action**

12 **§ 5075. Definitions**

13 5075. As used in this article:

14 (a) “Alternative dispute resolution” means mediation, arbitration, conciliation,
15 or other nonjudicial procedure that involves a neutral party in the dispute
16 resolution process. The form of alternative dispute resolution chosen pursuant to
17 this article may be binding or nonbinding, with the voluntary consent of the
18 parties.

19 (b) “Enforcement action” means a civil action or proceeding, other than a cross-
20 complaint, for any of the following purposes:

21 (1) Enforcement of this part.

22 (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3
23 commencing with Section 7110) of Division 2 of Title 1 of the Corporations
24 Code).

25 (3) Enforcement of the governing documents of a common interest
26 development.

27 **Comment.** Section 5075 continues former Section 1369.510 without substantive change. The
28 term “decisionmaking process” has been replaced with the more technically accurate term
29 “dispute resolution process.” This is a nonsubstantive change.

30 **§ 5080. ADR prerequisite to enforcement action**

31 5080. (a) An association or an owner or a member of a common interest
32 development may not file an enforcement action in the superior court unless the
33 parties have endeavored to submit their dispute to alternative dispute resolution
34 pursuant to this article.

35 (b) This section applies only to an enforcement action that is solely for
36 declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim
37 for monetary damages not in excess of five thousand dollars (\$5,000).

38 (c) This section does not apply to a small claims action.

1 (d) Except as otherwise provided by law, this section does not apply to an
2 assessment dispute.

3 **Comment.** Section 5080 continues former Section 1369.520 without substantive change,
4 except that subdivision (d) is obsolete and is not continued. That subdivision provided that the
5 alternative dispute resolution requirements do not apply to an assessment dispute, except as
6 otherwise provided by law. The application of this article to an assessment dispute is now
7 governed by Article 3 (commencing with Section 5600) of Chapter 5.

8 **§ 5085. Request for resolution**

9 5085. (a) Any party to a dispute may initiate the process required by Section
10 5080 by serving on all other parties to the dispute a request for resolution. The
11 request for resolution shall include all of the following:

12 (1) A brief description of the dispute between the parties.

13 (2) A request for alternative dispute resolution.

14 (3) A notice that the party receiving the request for resolution is required to
15 respond within 30 days of service or the request will be deemed rejected.

16 (4) If the party on whom the request is served is the owner of a separate interest,
17 a copy of this article.

18 (b) Service of the request for resolution shall be by personal delivery, first-class
19 mail, express mail, facsimile transmission, or other means reasonably calculated to
20 provide the party on whom the request is served actual notice of the request.

21 (c) A party on whom a request for resolution is served has 30 days following
22 service to accept or reject the request. If a party does not accept the request within
23 that period, the request is deemed rejected by the party.

24 **Comment.** Section 5085 continues former Section 1369.530 without substantive change.

25 **§ 5090. ADR process**

26 5090. (a) A party on whom a request for resolution is served may agree to
27 participate in alternative dispute resolution by delivering a written acceptance to
28 the party that served the request for resolution. The written acceptance shall be
29 delivered as an individual notice (Section 4040).

30 (b) The parties shall complete the alternative dispute resolution within 90 days
31 after delivery of the written acceptance, unless this period is extended by written
32 stipulation signed by both parties.

33 (c) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence
34 Code applies to any form of alternative dispute resolution initiated by a Request
35 for Resolution under this article, other than arbitration.

36 (d) The costs of the alternative dispute resolution shall be borne by the parties.

37 **Comment.** Section 5090 continues former Section 1369.540 without substantive change,
38 except that a procedure is added in subdivision (a) for written acceptance of a request for
39 resolution.

1 **§ 5095. Tolling of statute of limitations**

2 5095. If a request for resolution is served before the end of the applicable time
3 limitation for commencing an enforcement action, the time limitation is tolled
4 during the following periods:

5 (a) The period provided in Section 5085 for response to a request for resolution.

6 (b) If the request for resolution is accepted, the period provided by Section 5090
7 for completion of alternative dispute resolution, including any extension of time
8 stipulated to by the parties pursuant to Section 5090.

9 **Comment.** Section 5095 continues former Section 1369.550 without substantive change.

10 **§ 5100. Certification of efforts to resolve dispute**

11 5100. (a) At the time of commencement of an enforcement action, the party
12 commencing the action shall file with the initial pleading a certificate stating that
13 one or more of the following conditions is satisfied:

14 (1) Alternative dispute resolution has been completed in compliance with this
15 article.

16 (2) One of the other parties to the dispute did not accept the terms offered for
17 alternative dispute resolution.

18 (3) Preliminary or temporary injunctive relief is necessary.

19 (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a
20 demurrer or a motion to strike unless the court finds that dismissal of the action for
21 failure to comply with this article would result in substantial prejudice to one of
22 the parties.

23 **Comment.** Section 5100 continues former Section 1369.560 without substantive change.

24 **§ 5105. Stay of litigation for dispute resolution**

25 5105 (a) After an enforcement action is commenced, on written stipulation of
26 the parties, the matter may be referred to alternative dispute resolution. The
27 referred action is stayed. During the stay, the action is not subject to the rules
28 implementing subdivision (c) of Section 68603 of the Government Code.

29 (b) The costs of the alternative dispute resolution shall be borne by the parties.

30 **Comment.** Section 5105 continues former Section 1369.570 without substantive change.

31 **§ 5110. Attorney's fees**

32 5110. In an enforcement action in which fees and costs may be awarded, the
33 court, in determining the amount of the award, may consider whether a party's
34 refusal to participate in alternative dispute resolution before commencement of the
35 action was reasonable.

36 **Comment.** Section 5110 generalizes former Section 1369.580 so that it applies to any
37 enforcement action and not just to an action to enforce the governing documents.

1 (b) The board shall maintain current income and expense records for each
2 account, on an accrual basis.

3 (c) If the reserve account includes funds received by the association as a
4 compensatory damage award or settlement in litigation involving a construction or
5 design defect, the deposit or withdrawal of those funds shall be itemized
6 separately.

7 (d) On at least a quarterly basis, the board shall reconcile the income and
8 expense record for each account against the most recent statement provided by the
9 financial institution for that account.

10 **Comment.** Subdivisions (a)-(b) of Section 5500 are new.

11 Subdivision (c) restates the substance of former Section 1365(a)(2)(B)(iii).

12 Subdivision (d) restates and simplifies the substance of former Section 1365.5(a).

13 **Staff Note.** Proposed Section 5500 significantly simplifies existing Section 1365.5(a) and
14 states explicitly the implicit requirement that an association maintain separate operating and
15 reserve accounts and detailed records for both. The Commission invites comment on whether
16 those changes would cause any problems.

17 Note that the requirement of accrual accounting in proposed subdivision (b) is consistent with
18 existing law. See Section 1365(a)(1).

19 Article 2. Use of Reserve Funds

20 § 5510. Use of reserve funds

21 5510. (a) Funds on deposit in the reserve account may only be used for the
22 following purposes:

23 (1) The maintenance, repair, or replacement of a major component that the
24 association is required to maintain.

25 (2) Litigation that relates to the maintenance, repair, or replacement of a major
26 component that the association is required to maintain.

27 (3) A temporary transfer of funds to the operating account pursuant to Section
28 5515.

29 (b) The withdrawal of funds from the reserve account requires either the
30 signature of two directors or the signature of one director and an officer who is not
31 a director.

32 **Comment.** Subdivision (a) of Section 5510 restates the substance of former Section
33 1365(c)(1).

34 Subdivision (b) restates the substance of former Section 1365(b).

35 § 5515. Temporary transfer of reserve funds

36 5515. (a) The board may authorize, at a board meeting, a temporary transfer of
37 funds from the reserve account to the operating account in order to address a short
38 term cash flow requirement or other expense.

39 (b) Notice of the meeting at which the transfer is to be authorized must include
40 the following information:

1 (1) A statement that the board will consider a transfer of funds from the reserve
2 account to the operating account.

3 (2) The reason for the proposed transfer.

4 (3) Options for repayment of the transferred amount.

5 (4) Whether a special assessment may be necessary for repayment of the
6 transferred amount.

7 (c) If the board authorizes the transfer, the minutes of the meeting shall include a
8 written description of the amount to be transferred, the reasons for the transfer,
9 and when and how the transferred amount will be repaid to the reserve account.

10 (d) Funds transferred under this section shall be repaid to the reserve account
11 within one year of the date of the initial transfer, except that the board may delay
12 repayment in the same manner that it would authorize a new transfer. A board may
13 only delay repayment if it makes a written finding, supported by documentation,
14 that the delay would be in the best interest of the common interest development.

15 (e) The board shall exercise prudent fiscal management in maintaining the
16 integrity of the reserve account, and shall, if necessary, levy a special assessment
17 to recover the full amount of the transferred funds within the time limits required
18 by this section. This special assessment is subject to the limitation imposed by
19 Section 5580. The board may, in its discretion, extend the date the payment on the
20 special assessment is due. An extension of the due date does not prevent the board
21 from pursuing any legal remedy to enforce the collection of an unpaid special
22 assessment.

23 **Comment.** Section 5515 restates the substance of former Section 1365.5(c)(2).

24 **§ 5520. Use of reserve funds for litigation**

25 5520. (a) If funds in the reserve account are expended or transferred for the
26 purpose of litigation, the board shall provide general notice to the members
27 (Section 4045) of the expenditure or transfer. The notice shall inform the members
28 of their rights under subdivision (b).

29 (b) The board shall make an accounting, at least quarterly of any funds in the
30 reserve account that are expended or transferred for the purpose of litigation. A
31 member may inspect the accounting at the office of the association.

32 **Comment.** Section 5520 restates the substance of former Section 1365.5(d).

33 **Article 3. Reserve Funding**

34 **§ 5550. Inspection of major components**

35 5550. At least once every three years, the board shall conduct a reasonably
36 competent and diligent visual inspection of the accessible areas of the major
37 components that the association is obligated to maintain.

38 **Comment.** Section 5550 restates part of the substance of former Section 1365.5(e), except that
39 an exception from the inspection requirement, for major components with a replacement value of
40 less than half of the association's operating budget, is not continued.

1 § 5555. Reserve funding study

2 5555. (a) At least once every three years, the board shall prepare a reserve
3 funding study. The board shall review the study annually and make any necessary
4 adjustments to the study.

5 (b) The study shall describe each major component that the association is
6 obligated to maintain and that has a remaining useful life of less than 30 years.
7 The study shall provide at least the following information for each included
8 component, as of the end of the fiscal year for which the study is prepared or
9 updated:

10 (1) An identifying description of the component.

11 (2) The total useful life of the component, in years.

12 (3) The estimated repair and replacement cost of the component over its useful
13 life.

14 (4) The average annual repair and replacement cost for the component. This is
15 calculated by dividing the lifetime repair and replacement cost by the total useful
16 life of the component.

17 (5) The number of years the component has been in service.

18 (6) The desired balance for the component. This is calculated by one of the two
19 following methods: (i) by multiplying the average annual repair and replacement
20 cost and the number of years that the component has been in service, or (ii) by a
21 generally accepted alternative method that is described in the study.

22 (c) The study shall include a summary page in the following form, with the
23 indicated attachments:

24 **Summary of Reserve Funding Study**

25 (1) The information provided in this summary is current as of the end of fiscal
26 year _____. It is based on a reserve study prepared by _____ on
27 _____. A copy of the complete study is available from the association on
28 request, at no charge.

29 (2) **Current Fiscal Year Projection:** At the end of this fiscal year, the balance
30 in the reserve account is projected to be \$_____. This figure includes only
31 assets held in cash or cash equivalents and projected income.

32 The desired balance in the reserve account for all components included in
33 the reserve funding study is \$_____. A description of the method used to
34 calculate the desired balance is attached.

35 The balance of the reserve account is _____% of the desired amount.

36 If the balance of the reserve account is less than the desired amount, the
37 difference is \$_____. The difference per separate interest is \$_____.

38 Note: If the units in this development do not pay equal assessments, then the
39 proportional share of the difference, for each class of unit, is attached.

1 (3) **Five Year Projection:** The tables below provide projections for each of the
 2 five fiscal years following the current fiscal year. Table 1 shows the
 3 projected balance in the reserve account if the most recently approved
 4 reserve funding plan is implemented. Table 2 shows the projected balance in
 5 the reserve account if the most recently approved reserve funding plan is not
 6 implemented.

7 Table 1. Five Year Projection with Implementation of Funding Plan

Fiscal Year	Projected Balance	Desired Balance	Ratio of Projected Balance to Desired Balance (as percentage)

8 Table 2. Five Year Projection without Implementation of Funding Plan

Fiscal year	Projected Balance	Desired Balance	Ratio of Projected Balance to Desired Balance (as percentage)

9 (4) The current regular assessment per unit is \$_____ per _____.

1 Note: If the units in this development do not pay equal assessments, then a
 2 schedule showing the current regular assessment for each class of unit is
 3 attached.

4 (5) Additional regular assessments that have already been approved for any
 5 purpose are listed in the schedule below:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

6 Note: If the units in this development do not pay equal assessments, then a
 7 schedule showing the approved regular assessments for each class of unit is
 8 attached.

9 (6) Special assessments that have been approved for any purpose are listed in
 10 the schedule below:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

11 Note: If the units in this development do not pay equal assessments, then a
 12 schedule showing the approved special assessments for each class of unit is
 13 attached.

14 (7) If the association has any outstanding loans with an original term of more
 15 than one year, information about those loans is included in the schedule
 16 below:

Lender	Amount owed	Interest rate	Annual payment	Date when loan to be retired

17 (8) Based on the most recent reserve study and other information available to
 18 the board of directors, will the current regular assessment, approved
 19 increases in the regular assessment, and approved special assessments
 20 provide sufficient reserve funds at the end of each year to meet the

1 association's obligation for repair and replacement of major components
2 over the next 30 years?

3 Yes _____ No _____

4 (9) If the answer to question (8) is no, please refer to the most recently
5 approved reserve funding plan for a description of any additional assessment
6 increases or special assessments that may be proposed in order to provide
7 sufficient reserve funds at the end of each year to meet the association's
8 obligation for repair and replacement of major components over the next 30
9 years.

10 (10) The financial representations set forth in this summary are based on the best
11 estimates of the preparer at that time. The estimates are subject to change. A
12 statement describing the procedures used to make the calculations used in
13 this summary is attached.

14 (d) The summary prepared pursuant to subdivision (c) shall be included with the
15 notice of availability of the annual budget report that is delivered to members
16 pursuant to Section 4820. The form may be supplemented or modified in order to
17 make the information provided clearer or more complete, so long as the minimum
18 information required by subdivision (c) is provided.

19 (e) The summary prepared pursuant to subdivision (c) shall not be admissible in
20 evidence to show improper financial management of an association. Other relevant
21 and competent evidence of the financial condition of the association is not made
22 inadmissible by this subdivision.

23 (f) A component with an estimated remaining useful life of more than 30 years
24 may be included in a study as a capital asset or disregarded from the reserve
25 calculation, so long as the decision is revealed in the reserve study report and
26 reported in the summary prepared pursuant to subdivision (c).

27 **Comment.** Subdivision (a) of Section 5555 is drawn from former Section 1365.5(e).

28 Subdivision (b)(1) restates the substance of former Sections 1365.2.5(a)(5) and 1365.5(e)(1).

29 Subdivision (b)(2) is consistent with former Section 1365(a)(2)(A) and is required in order to
30 perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

31 Subdivision (b)(3) is consistent with former Sections 1365(a)(2)(A) and 1365.5(e)(3) and is
32 required in order to perform the calculation required by former Sections 1365(a)(2)(B)(i) and
33 1365.2.5(a)(6).

34 Subdivision (b)(4) is required in order to perform the calculation required by former Sections
35 1365.2.5(a)(6) and 1365.5(e)(4).

36 Subdivision (b)(5) is consistent with former Section 1365(a)(2)(A) and is required in order to
37 perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

38 Subdivision (b)(6) is required in order to perform the calculation required by former Sections
39 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

40 Subdivision (c) restates the disclosure requirements of former Sections 1365(a)(2) and
41 1365.2.5, as follows:

42 Item (1) is drawn from Sections 1365(a)(2)(B) and 1365.2.5(a)(6).

43 Item (2) is drawn from former Sections 1365(a)(2)(B)(i)-(ii), (C)-(D) and 1365.2.5(a)(6).

44 Item (3) is drawn from former Sections 1365(a)(2)(B)(i)-(ii), (C) and 1365.2.5(a)(7).

45 Item (4) is drawn from Section 1365.2.5(a)(1).

- 1 Items (5) and (6) are drawn from former Section 1365.2.5(a)(2).
- 2 Item (7) is drawn from former Section 1365(a)(3)(D).
- 3 Item (8) is drawn from former Section 1365.2.5(a)(3).
- 4 Item (9) is drawn from former Section 1365.2.5(a)(4), except that the schedule of proposed
- 5 assessment increases will be set out in the reserve funding plan. See Section 5560.
- 6 Item (10) is drawn from former Section 1365.2.5(a)(7).
- 7 Subdivision (d) restates the substance of former Section 1365.2.5(b)(3).
- 8 Subdivision (e) restates the substance of the second paragraph of former Section 1365(a)(4).
- 9 Subdivision (f) restates the substance of former Section 1365.2.5(b)(2).

10 **☞ Staff Notes.** (1) Proposed Section 5555 would incorporate changes to Section 1365 and
 11 1365.2.5 that are proposed in AB 2100 (Laird). If that bill is amended or is not enacted, the
 12 Commission will revisit this provision.

13 (2) The Commission invites comment on the meaning and purpose of existing Section
 14 1365.2.5(b)(2) (proposed Section 5555(f)). When would it be appropriate to consider a
 15 component of the common area a capital asset in connection with the study of reserve funding
 16 needs? Why is it necessary to explain the exclusion of components that have a useful life of more
 17 than 30 years, when that would put them outside the stated scope of the study?

18 **§ 5560. Reserve funding plan**

19 5560. (a) At least once every three years, the board shall prepare a reserve
 20 funding plan that describes how the association will contribute sufficient funds to
 21 the reserve account to meet the association’s obligation to repair and replace the
 22 major components included in the most recent reserve funding study.

23 (b) The plan may provide for an increase in the general assessment, a special
 24 assessment, borrowing, use of other assets, deferral of selected replacement or
 25 repairs, or other mechanisms.

26 (c) If the plan proposes an increase in the general assessment, it shall describe
 27 the proposed increase in the following form:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

28 (d) If the plan proposes an increase one or more special assessments, it shall
 29 describe the proposed increase in the following form:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

30 (e) If the separate interests in the development do not pay equal assessments, the
 31 plan shall indicate the amount of any increase or special assessment for each class
 32 of separate interest.

1 (f) The plan shall be considered by the board at a board meeting.

2 (g) Board approval of the plan does not constitute approval of an assessment
3 increase described in the plan. Any assessment increase must be considered
4 separately by the board and is subject to the procedure provided in Section 5580.

5 (h) The plan may not assume a rate of return on cash reserves in excess of 2
6 percent above the discount rate published by the Federal Reserve Bank of San
7 Francisco at the time the plan is prepared.

8 **Comment.** Section 5560 restates the substance of former Sections 1365(a)(3)-(4);
9 1365.5(e)(5).

10 **Staff Note.** Proposed Section 5560 would incorporate changes to Section 1365.5(e) that are
11 proposed in AB 2100 (Laird). If that bill is amended or is not enacted, the Commission will
12 revisit this provision.

13 Article 2. Assessments

14 **§ 5575. Levy of assessment**

15 5575. (a) An association shall levy regular and special assessments sufficient to
16 perform its obligations under the governing documents and this title.

17 (b) An association shall not levy an assessment or fee that exceeds the amount
18 necessary to defray the costs for which it is levied.

19 **Comment.** Subdivision (a) of Section 5575 continues the substance of the first sentence of
20 former Section 1366(a).

21 Subdivision (b) continues the substance of former Section 1366.1.

22 **§ 5580. Assessment increase**

23 5580. (a) Subject to the limitations of Section 5575 and subdivision (b), the
24 board may increase the regular assessment by any amount that is required to fulfill
25 its obligations and may impose a special assessment of any amount that is required
26 to fulfill its obligations. This subdivision supersedes any contrary provision of the
27 governing documents.

28 (b) In the following circumstances, an assessment increase or special assessment
29 may only be adopted with the approval of an affirmative majority of the votes cast
30 at a meeting at which at least fifty percent of the voting power is represented:

31 (1) The association has not complied with Section 4800 for the fiscal year in
32 which the assessment increase or special assessment would take effect.

33 (2) The total increase in the regular assessment for the fiscal year would be more
34 than 20 percent of the regular assessment at the end of the preceding fiscal year.

35 (3) The total for all special assessments imposed in the fiscal year would be
36 more than 5 percent of the budgeted gross expenses of the association for the fiscal
37 year in which the special assessment would be imposed.

38 (c) Subdivision (b) does not apply to an assessment increase that is required to
39 address the following emergency expenses:

40 (1) An extraordinary expense required by an order of a court.

1 (2) An extraordinary expense necessary to repair or replace any part of the
2 development that the association is obligated to maintain, where a threat to
3 personal safety is discovered on the property.

4 (3) An extraordinary expense necessary to repair or replace any part of the
5 development that the association is obligated to maintain that could not have been
6 reasonably foreseen by the board in preparing and distributing the budget report
7 under Section 4800. Before imposing an assessment under this subdivision, the
8 board shall adopt a resolution containing written findings as to the necessity of the
9 extraordinary expense involved and why the expense was not or could not have
10 been reasonably foreseen in the budgeting process, and the resolution shall be
11 distributed to the members with the notice of assessment.

12 (d) The association shall provide the members with individual notice (Section
13 4040) of any increase in the regular or special assessments of the association at
14 least 30 days before the increased assessment takes effect.

15 **Comment.** Subdivisions (a)-(c), (e) of Section 5580 restate the substance of the last two
16 sentences of former Section 1366(a), and former Section 1366(b). Subdivision (a) makes clear
17 that a board’s authority to impose an assessment increase that is required to fulfill its legal
18 obligations may not be limited by the governing documents.

19 Subdivision (d) restates the substance of former Section 1366(d), except that the prohibition on
20 giving notice more than 60 days before the increase takes effect is not continued.

21 **Staff Note.** Existing Section 1366(b) requires member approval before the board may
22 “impose a regular assessment that is more than 20 percent greater than the regular assessment for
23 the association’s preceding fiscal year....” That language is somewhat ambiguous. Does it mean
24 that the **increase** may not exceed 20 percent of the **prior year’s assessment**? Or does it mean
25 that the **difference** between the increased assessment and the prior year’s assessment may not
26 exceed 20 percent **of the increased assessment**. For example, an association has a monthly
27 assessment of \$80. Would an increase of \$20 per month trigger the member approval
28 requirement? Twenty dollars would be 20 percent of the increased assessment amount, but would
29 be more than 20 percent of the prior year’s assessment amount.

30 Proposed Section 5580(b)(2) is intended to make clear that **the total increase may not exceed**
31 **20 percent of the prior assessment amount**. That would seem to be the more natural reading of
32 the existing language. The Commission invites comment on whether this would create any
33 problems.

34 **§ 5585. Exemption from execution**

35 5585. (a) A regular assessment imposed or collected to perform an obligation of
36 an association under the governing documents or this title is exempt from
37 execution by a judgment creditor of the association only to the extent necessary
38 for the association to perform essential services, such as paying for utilities and
39 insurance. In determining the appropriateness of an exemption, a court shall
40 ensure that only essential services are protected under this subdivision.

41 (b) This section does not apply to a consensual pledge, lien, or encumbrances
42 that is approved by a majority of a quorum of the members (Section 4070), or to
43 any state tax lien, or to any lien for labor or materials supplied to the common
44 area.

45 **Comment.** Section 5585 continues the substance of former Section 1366(c).

1 Article 3. Payment and Collection of Assessment

2 **§ 5600. Payment**

3 5600. (a) The association shall provide a mailing address for the overnight
4 payment of an assessment. The address shall be included in the member handbook
5 (Section 4810).

6 (b) On the request of a member, the association shall provide that member with
7 a receipt for a payment made to the association. The receipt shall indicate the date
8 and amount of the payment and the person who received the payment for the
9 association.

10 (c) A payment made for a delinquent assessment shall first be applied to the
11 assessment owed. Only after the assessment owed is paid in full shall the payment
12 be applied to collection costs, a late fee, or interest.

13 **Comment.** Section 5600 continues the substance of former Section 1367.1(b).

14 **Staff Note.** Proposed Section 5600(a) requires that the association provide a mailing address
15 for “overnight payment” of assessments. Does this mean for receipt of payments sent by
16 overnight delivery? If not, what does it mean?

17 **§ 5605. Delinquency**

18 5605 (a) An assessment becomes delinquent 15 days after it is due, unless the
19 declaration provides a longer time period, in which case the longer time period
20 applies.

21 (b) If an assessment is delinquent, the association may recover all of the
22 following amounts:

23 (1) The unpaid amount of the assessment.

24 (2) The reasonable cost incurred in collecting the delinquent assessment,
25 including a reasonable attorney’s fee.

26 (3) A late charge not exceeding ten dollars (\$10).

27 (4) Interest on the delinquent assessment, the reasonable cost of collection, and
28 the late charge. The annual interest rate shall not exceed 12 percent, commencing
29 30 days after the assessment becomes due, unless the declaration specifies a lower
30 rate of interest, in which case the lower rate of interest applies.

31 (c) An association is exempt from interest-rate limitations imposed by Article
32 XV of the California Constitution, subject to the limitations of this section.

33 (d) The amount described in subdivision (b) becomes a debt of the member at
34 the time the assessment or other sum is levied.

35 **Comment.** Subdivisions (a)-(c) of Section 5605 restate the substance of former Section
36 1366(e)-(f).

37 Subdivision (d) continues the first sentence of former Sections 1367(a) and 1367.1(a).

1 § 5610. Assignment or pledge

2 5610. (a) Except as otherwise provided in this section, an association may not
3 voluntarily assign or pledge to a third party the association's right to collect a
4 payment or assessment, or to enforce or foreclose a lien.

5 (b) An association may assign or pledge the association's right to collect a
6 payment or assessment, or to enforce or foreclose a lien, to a financial institution
7 or lender chartered or licensed under federal or state law, when acting within the
8 scope of that charter or license, as security for a loan obtained by the association.

9 (c) Nothing in this section affects the right or ability of an association to assign
10 an unpaid obligation of a former member to a third party for purposes of
11 collection.

12 **Comment.** Section 5610 restates the substance of the first sentence of former Section
13 1367.1(g).

14 § 5615. Pre-lien notice

15 5615. (a) At least 30 days before recording a lien on the separate interest of the
16 owner of record to collect a debt that is past due under this article, the association
17 shall deliver to the owner of record, by certified mail, a written notice of
18 delinquency.

19 (b) The notice of delinquency shall include the following information.

20 (1) An itemized statement of the charges owed, including any collection costs,
21 late fee, and interest.

22 (2) A general description of the collection and lien enforcement procedures of
23 the association and the method by which the amount due was calculated.

24 (c) The notice of delinquency shall include the following statement, in bold 14
25 point type:

26 **IMPORTANT NOTICE**

27 **IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE**
28 **BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE**
29 **SOLD WITHOUT COURT ACTION.** However, before the association can
30 initiate foreclosure, you have the right to request alternative dispute resolution
31 with a neutral third party under Civil Code Section 5655(a)(2).

32 You have the right to inspect association records under Civil Code Section
33 4700.

34 You have the right to request a meeting with a representative of the board under
35 Civil Code Section 5625.

36 If you wish to request a payment plan, you have the right to request a meeting
37 with the board under Civil Code Section 5620.

38 If the association determines that the assessment is not delinquent, you will not
39 be liable for any collection costs, late fee, or interest.

40 **Comment.** Section 5615 continues part of the substance of former Section 1367.1(a).
41 Subdivision (c) provides a standardized form for the disclosure of required statements.

1 **§ 5620. Payment plan**

2 5620. (a) A member that owes a delinquent assessment may deliver a written
3 request (Section 4035) to meet with the board to discuss a payment plan for the
4 debt. If the association has adopted standards for payment plans, the association
5 shall provide a copy of the standards to the member.

6 (b) The association shall meet with the member and consider the request within
7 45 days after receipt of the request, either at a regularly scheduled board meeting
8 or at a specially scheduled meeting between the member and a committee
9 appointed by the board for that purpose. The board shall deliver individual notice
10 (Section 4040) to the member stating the date, time, and location of the meeting at
11 which the request will be considered.

12 (c) A payment plan may incorporate an assessment that will accrue during the
13 payment plan period. Additional late fees shall not accrue during the payment plan
14 period if the owner is in compliance with the terms of the payment plan.

15 (d) A payment plan does not affect an association's ability to record a lien on the
16 owner's separate interest to secure payment of a delinquent assessment. In the
17 event of a default on any payment plan, the association may resume its efforts to
18 collect all delinquent assessments.

19 **Comment.** Section 5620 continues the substance of former Section 1367.1(c)(3), except that a
20 special rule that applies to an interest in a time share is not continued. Such an interest is
21 expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212.

22 Subdivision (b) simplifies the former provision on the timing of a meeting to request a payment
23 plan.

24 **Staff Note.** Proposed Section 5620(c) continues the existing rule that a late fee may not be
25 imposed while a payment plan is in effect. Should that rule also apply to interest on the amount
26 owed?

27 **§ 5625. Pre-lien meeting**

28 5625. Before recording a lien for delinquent assessments, an association shall
29 offer the owner and, if so requested by the owner, participate in internal dispute
30 resolution pursuant to Article 2 (commencing with Section 5050) of Chapter 4.

31 **Comment.** Section 5625 restates the substance of former Section 1367.1(c)(1)(A) and the
32 second sentence of former Section 1367.4(b)(2).

33 **§ 5630. Lien creation and priority**

34 5630. (a) An association that has complied with Sections 5615 and 5625 may
35 record a notice of delinquent assessment in the county in which the common
36 interest development is located. Recording of the notice of delinquent assessment
37 creates a lien against the property for which the delinquent assessment is owed.

38 (b) The recorded notice of delinquent assessment shall state the following
39 information:

40 (1) The amount owed, including an itemized statement of any delinquent
41 assessment amount, reasonable cost of collection, late fees, or interest.

42 (2) A legal description of the separate interest against which the lien is imposed.

1 (3) The name of the record owner of the separate interest against which the lien
2 is imposed.

3 (c) A lien may not be enforced by nonjudicial foreclosure unless the recorded
4 notice of delinquent assessment states the name and address of the trustee that is
5 authorized by the association to enforce the lien by sale.

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

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

13 (f) Unless the governing documents provide otherwise, a lien created pursuant to
14 this section has priority over a subsequently recorded lien.

15 (g) The decision to record a lien for a delinquent assessment shall be made only
16 by the board, at a meeting of the board, and may not be delegated to an agent of
17 the association.

18 (h) Nothing in this article or in subdivision (a) of Section 726 of the Code of
19 Civil Procedure prohibits an action against the owner of a separate interest to
20 recover sums for which a lien is created pursuant to this section or prohibits an
21 association from taking a deed in lieu of foreclosure.

22 (i) An association that fails to comply with Section 5615 or 5625 before
23 recording a lien shall provide a new notice under Section 5615. Any additional
24 costs that accrue from the failure to comply with Section 5615 or 5625 shall be
25 borne by the association and not by the owner of the separate interest.

26 **Comment.** Subdivisions (a)-(e) of Section 5630 restate the substance of the first six sentences
27 of former Section 1367.1(d). Subdivision (a) is consistent with the substance of former Section
28 1367.1(l)(1).

29 Subdivision (f) restates the substance of former Section 1367.1(f).

30 Subdivision (g) restates the substance of former Section 1367.1(c)(2), except that the provision
31 limiting the provision to liens recorded on or after January 1, 2006 is not continued. See Section
32 5675 (application of article).

33 Subdivision (h) restates the substance of former Section 1367.1(h).

34 Subdivision (i) restates the substance of former Section 1367.1(l).

35 **§ 5635. Lien release**

36 5635. (a) Within 21 days after the payment of the sums stated in a recorded
37 notice of delinquent assessment, the association shall record a lien release or
38 notice of rescission in the county in which the notice of delinquent assessment is
39 recorded. The association shall deliver to the record owner of the separate interest,
40 by individual notice (Section 4040), a copy of the lien release or notice of
41 rescission.

42 (b) Within 21 days after a determination that a notice of delinquent assessment
43 was recorded in error, the association shall record a lien release or notice of

1 rescission in the county in which the notice of delinquent assessment is recorded.
2 The association shall deliver to the record owner of the separate interest, by
3 individual notice (Section 4040), a copy of the lien release or notice of rescission
4 and a declaration that the notice of delinquent assessment was recorded in error.

5 (c) If a notice of delinquent assessment is recorded in error, the association shall
6 reverse any collection cost, late fee, or interest that results from the error. The
7 association shall bear any cost of alternative dispute resolution that relates to the
8 error.

9 **Comment.** Subdivision (a) of Section 5635 restates the substance of the seventh sentence of
10 former Section 1367.1(d).

11 Subdivision (b) restates the substance of former Section 1367.1(i).

12 Subdivision (c) restates the substance of former Section 1367.5. The requirement that the error
13 be discovered as a result of alternative dispute resolution is not continued.

14 **Staff Note.** Existing Section 1367.1(i) provides for the release of a lien after it is determined
15 that the lien was recorded in error. For the purposes of that provision, who makes the
16 determination?

17 **§ 5640. Lien for damage or fine**

18 5640. (a) Unless the governing documents provide otherwise, a monetary charge
19 imposed by the association as a means of reimbursing the association for costs
20 incurred by the association in the repair of damage to common areas and facilities
21 for which the member or the member's guests or tenants are responsible may
22 become a lien against the member's separate interest that is enforceable by the sale
23 of the interest under Sections 2924, 2924b, and 2924c.

24 (b) A fine imposed by the association for a violation of the governing
25 documents, however described, shall not become a lien against the member's
26 separate interest that is enforceable by the sale of the interest under Sections 2924,
27 2924b, and 2924c. This subdivision does not apply to a penalty for late payment of
28 a regular or special assessment.

29 **Comment.** Subdivision (a) of Section 5640 restates the substance of the eight and ninth
30 sentences of former Section 1367.1(d).

31 Subdivision (b) restates the substance of former Section 1367.1(e)

32 **Staff Notes.** (1) Existing Section 1367.1(d) provides that foreclosure may be used to collect a
33 charge imposed for damage to the common area, but expressly provides that there is no intent to
34 "contravene" a Department of Real Estate regulation that limits the use of foreclosure to collect
35 such a charge. See 10 Cal. Code Regs. § 2792.26.

36 The DRE regulations set standards for an association's initial governing documents. Once the
37 period of developer control ends, an association can amend its governing documents to avoid the
38 DRE imposed rules.

39 Section 1367.1(d) seems to provide that foreclosure may be used to collect a damage charge,
40 except in those associations where foreclosure is prohibited pursuant to the DRE regulation.
41 Proposed Section 5640 is intended to achieve the same result, but in a more readily
42 understandable way. The Commission invites comment on whether this restatement would cause
43 any problems.

44 (2) Proposed Section 5640(b) is added in place of proposed Section 5010, which has been
45 deleted from this draft.

1 (3) The words “however described” are used in proposed Section 5640(b) to make clear that
2 the rule’s application does not depend on the terminology used to describe a fine.

3 **§ 5645. Collection generally**

4 5645. (a) Except as otherwise provided in this article, 30 days after recording a
5 notice of delinquent assessment, an association may enforce the resulting lien in
6 any manner permitted by law, including sale by the court, sale by the trustee
7 designated in the recorded notice of delinquent assessment, or sale by a trustee
8 substituted pursuant to Section 2934a.

9 (b) If the amount of the lien is within the jurisdictional limit of the small claims
10 division of the superior court, the association may bring an action to collect the
11 debt in the small claims division pursuant to Chapter 5.5 (commencing with
12 Section 116.110) of Title 1 of the Code of Civil Procedure. An association may
13 enforce a judgment of the small claims division as provided in Article 8
14 (commencing with Section 116.810) of Chapter 5.5 of Title 1 of the Code of Civil
15 Procedure. The amount recovered in an action in the small claims division, which
16 may not exceed the jurisdictional limit of the small claims division, is the sum of
17 the following:

18 (1) The amount owed as of the date of filing the complaint.

19 (2) In the discretion of the court, an additional amount equal to the amount owed
20 for the period from the date the complaint is filed until satisfaction of the
21 judgment, which may include accruing unpaid assessments and any reasonable
22 late charges, fees and costs of collection, attorney’s fees, and interest.

23 **Comment.** Subdivision (a) of Section 5645 restates the substance of the second sentence of
24 former Section 1367.1(g).

25 Subdivision (b) restates the substance of former Section 1367.4(b)(1).

26 **§ 5650. Prohibition on foreclosure for small amount**

27 5650. (a) An association may not foreclose on a lien, judicially or nonjudicially,
28 if the debt is less than twelve months overdue and the amount owed, excluding
29 any accelerated assessment, collection cost, late charge, or interest, is less than one
30 thousand eight hundred dollars (\$1,800).

31 (b) Subdivision (a) does not apply to a separate interest owned by the declarant.

32 (c) This section applies to a lien recorded on or after January 1, 2006.

33 **Comment.** Subdivision (a) of Section 5650 restates the substance of the introduction of former
34 Section 1367.4(b).

35 Subdivision (b) restates the substance of former Section 1367.4(d), except that the exemption
36 of time share units is superfluous and has not been continued. A time share unit is not subject to
37 this section. See Bus. & Prof. Code § 11211.7. The reference to “developers” has been replaced
38 with a reference to the declarant. See Section 4130 (“declarant” defined).

39 **Staff Notes.** (1) Existing Section 1367.4(d) provides that the limitation on foreclosure for
40 amounts under \$1,800 does not apply to a time share unit or to “assessments owed by
41 developers.” The first exemption is unnecessary and has not been continued. A time share unit is
42 already expressly exempted from Section 1367.4. The second exemption has been narrowed. As

1 currently drafted it would exempt any person who happens to be a developer, and not just the
2 developer of the association that is owed assessments.

3 (2) By its own terms, Section 1367.4 applies to a lien recorded on or after January 1, 2006.
4 However, Section 1367.1, which applies to a lien recorded on or after January 1, 2003, is
5 expressly subordinate to Section 1367.4. The Commission invites comment on whether the
6 limitations on foreclosure that are established in Section 1367.4 would also apply to a lien that is
7 governed by Section 1367.1.

8 **§ 5655. Foreclosure**

9 5655. (a) Before commencing foreclosure to enforce a lien created under this
10 article, the association shall satisfy all of the following requirements:

11 (1) The decision to foreclose shall be made by the board at least 30 days before
12 any public sale. The decision may not be delegated to a committee or agent. The
13 vote approving foreclosure shall be recorded in the minutes. The board shall
14 maintain the confidentiality of the owner of the separate interest by identifying the
15 matter in the minutes by the parcel number of the property only.

16 (2) The association shall offer to participate in either internal dispute resolution
17 pursuant to Article 2 (commencing with Section 5050), or alternative dispute
18 resolution pursuant to Article 3 (commencing with Section 5075), of Chapter 4.
19 The decision of whether to participate and the type of alternative dispute
20 resolution to use shall be made by the owner of the separate interest, except that
21 binding arbitration may not be used if the association intends to commence a
22 judicial foreclosure.

23 (3) The association shall provide notice of its decision to foreclose by personal
24 service on the owner or the owner's legal representative. If the owner of the
25 separate interest does not occupy the separate interest, the notice may be delivered
26 by first class mail to the mailing address shown in the association's records. If the
27 owner has not provided the association with a mailing address, the address of the
28 separate interest is deemed to be the owner's mailing address.

29 (b) Any sale by a trustee shall be conducted in accordance with Sections 2924,
30 2924b, and 2924c. The fees of a trustee may not exceed the amounts prescribed in
31 Sections 2924c and 2924d.

32 (c) If the association records a notice of default pursuant to Section 2924, the
33 association shall serve a copy of the notice of default on the owner or the owner's
34 legal representative in the same manner as service of a summons under Article 3
35 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of
36 Civil Procedure.

37 **Comment.** Subdivision (a)(1) of Section 5655 restates the substance of former Sections
38 1367.1(c)(2) and 1367.4(c)(2).

39 Subdivision (a)(2) restates the substance of former Sections 1367.1(c)(1)(B) and 1367.4(c)(1).

40 Subdivision (a)(3) restates the substance of former Section 1367.4(c)(3).

41 Subdivision (b) restates the substance of the third and fourth sentences of former Section
42 1367.1(g).

43 Subdivision (c) restates the substance of former Section 1367.1(j), except that the notice of
44 default may also be served on the owner.

1 **☞ Staff Note.** Existing Section 1367.4(c)(3) requires that notice of a board decision to foreclose
2 be served on the owner (or the owner’s legal representative) but does not specify the manner of
3 service. By contrast, existing Section 1367.1(j) requires that the board serve a copy of a recorded
4 notice of default on the owner’s legal representative and specifies the manner of service. Should
5 proposed Section 5655(a)(3) specify the same manner of service (i.e., the manner of service
6 specified in proposed Section 5655(c))?

7 **§ 5660. Right of redemption after trustee sale**

8 5660. A separate interest sold by a trustee under this article is subject to a right
9 of redemption for 90 days after the sale.

10 **Comment.** Section 5660 restates the substance of former Section 1367.4(c)(4).

11 **☞ Staff Note.** Pending Assembly Bill 2624 (Houston) would specify a procedure for
12 administering the right of redemption. If the bill is enacted, the Commission will conform this
13 section to the changes made by the bill.

14 **§ 5665. Recorded association information**

15 5665. (a) In order to facilitate the collection of a regular assessment, special
16 assessment, transfer fee, or similar charge, the board is authorized to record a
17 statement or amended statement identifying relevant information for the
18 association. This statement may include any or all of the following information:

19 (1) The name of the association as shown in the conditions, covenants, and
20 restrictions or the current name of the association, if different.

21 (2) The name and address of a managing agent or treasurer of the association or
22 other individual or entity authorized to receive payment for assessments and fees
23 imposed by the association.

24 (3) A daytime telephone number of the person identified in paragraph (2).

25 (4) A list of separate interests subject to assessment by the association, showing
26 the assessor’s parcel number or legal description, or both, of the separate interests.

27 (5) The recording information identifying the declaration or declarations of
28 covenants, conditions, and restrictions governing the association.

29 (6) If an amended statement is being recorded, the recording information
30 identifying the prior statement or statements that the amendment is superseding.

31 (b) The county recorder is authorized to charge a fee for recording the document
32 described in subdivision (a), based on the number of pages in the document and
33 the recorder’s per-page recording fee.

34 **Comment.** Section 5665 restates the substance of former Section 1366.2.

35 **§ 5670. Statement of collection procedure**

36 5670. The member handbook (Section 4810) shall include the following
37 statement:

38 **NOTICE REGARDING ASSESSMENTS AND FORECLOSURE**

39 This notice outlines some of the rights and responsibilities of owners of
40 property in common interest developments and the associations that manage

1 them. Please refer to the sections of the Civil Code indicated for further
2 information. A portion of the information in this notice applies only to liens
3 recorded on or after January 1, 2003. You may wish to consult a lawyer if you
4 dispute an assessment.

5 **ASSESSMENTS AND FORECLOSURE**

6 An assessment becomes delinquent 15 days after it is due, unless the governing
7 documents provide for a longer time. The failure to pay an association assessment
8 may result in the loss of an owner's property through foreclosure. Foreclosure
9 may occur either as a result of a court action, known as judicial foreclosure or
10 without court action, often referred to as nonjudicial foreclosure.

11 An association may not use judicial or nonjudicial foreclosure to enforce a lien
12 that is recorded on or after January 1, 2006 if the debt is less than twelve months
13 overdue and the amount of the delinquent assessments or dues, exclusive of any
14 accelerated assessment, late charge, fee, attorney's fee, interest, or cost of
15 collection, is less than one thousand eight hundred dollars (\$1,800).

16 An association may use judicial or nonjudicial foreclosure to collect a debt if it
17 is more than twelve months overdue or if the amount owed for assessments or
18 dues is more than one thousand eight hundred dollars (\$1,800). Foreclosure is
19 subject to the conditions set forth in Civil Code Sections 5650 and 5655.

20 When using judicial or nonjudicial foreclosure, the association records a lien on
21 the owner's property. The owner's property may be sold to satisfy the lien if the
22 amounts secured by the lien are not paid. (Civil Code Sections 5645, 5650, and
23 5655)

24 In a judicial or nonjudicial foreclosure, the association may recover the
25 delinquent assessment, the reasonable cost of collection including a reasonable
26 attorney's fee, a late charge, and interest. The association may not use nonjudicial
27 foreclosure to collect a fine or penalty. Unless the governing documents provide
28 otherwise, an association may use nonjudicial foreclosure to collect the cost to
29 repair damage to the common area that is caused by a member or the member's
30 guests. (Civil Code Section 5640)

31 The association must comply with the requirements of Civil Code Sections
32 5615, 5620, and 5625 when collecting a delinquent assessment. If the association
33 fails to follow these requirements, it may not record a lien on the owner's
34 property until it has satisfied the requirements. Any additional cost that results
35 from satisfying the requirements is the responsibility of the association. (Civil
36 Code Section 5630)

37 At least 30 days before recording a lien on an owner's separate interest, the
38 association must provide the owner of record with certain documents by certified
39 mail, including a description of its collection and lien enforcement procedure and
40 the method used to calculate the amount owed. It must also provide an itemized
41 statement of the charges owed by the owner. An owner has a right to review the
42 association's records to verify the debt. (Civil Code Section 5615)

43 If a lien is recorded against an owner's property in error, the person who
44 recorded the lien is required to record a lien release within 21 days, and to provide
45 an owner certain documents in this regard. (Civil Code Section 5635)

46 The collection practices of the association may be governed by state and federal
47 laws regarding fair debt collection. Penalties can be imposed for debt collection
48 practices that violate these laws.

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PAYMENTS

An owner that makes a payment may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Civil Code Section 5600)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association under Civil Code Section 5625. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party under Civil Code Section 5655, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for a late charge, interest, or the cost of collection, if it is established that the assessment was paid properly on time. (Civil Code Section 5635)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform the owner of the standards for payment plans, if any exist. (Civil Code Section 5620)

The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. A payment plan must conform with the payment plan standards of the association, if they exist. (Civil Code Section 5620)

Comment. Section 5670 restates the substance of former Section 1365.1, except for the following changes:

(1) A special rule that applies to an interest in a time share is not continued. Such an interest is expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212. Related references to time share interests are not continued.

(2) The substance of former Section 1365.1(c) is generalized in Section 4040.

§ 5675. Application of article

5675. (a) Except as otherwise provided, this article applies to a lien created on or after January 1, 2003.

(b) A lien created before January 1, 2003, is governed by the law in existence at the time the lien was created.

Comment. Section 5675 is new. A lien created between January 1, 1986 and January 1, 2003 is governed by former Section 1367. Note that Section 5650 only applies to a lien created on or after January 1, 2006.

Staff Note. The Commission invites comment on whether the simplified application rules provided in proposed Section 5675 would cause any problems.

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Article 4. Insurance and Liability [Reserved]

CHAPTER 6. PROPERTY OWNERSHIP, USE, AND
MAINTENANCE [RESERVED]

CHAPTER 7. GOVERNING DOCUMENTS

Article 1. General Provisions

§ 6000. Creation of common interest development

6000. For the purposes of this part, a common interest development is created when a separate interest coupled with an interest in the common area or membership in the association is, or has been, conveyed, provided that all of the following are recorded:

- (a) A declaration.
- (b) A condominium plan, if any exists.
- (c) A final map or parcel map, if Division 2 (commencing with Section 66410) of Title 7 of the Government Code requires the recording of either a final map or parcel map for the common interest development.

Comment. Section 6000 continues part of the substance of former Section 1352. It governs the application of this part and is not intended to govern the date of creation of a common interest development for other purposes. See *City of West Hollywood v. Beverly Towers, Inc.* 52 Cal. 3d 1184, 278 Cal. Rptr. 375, 805 P.2d 329 (1991) (failure to convey a unit not determinative of whether condominium project exists for purposes of local planning law).

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

§ 6005. Document authority

6005. (a) The articles of incorporation may not include a provision that is inconsistent with the declaration. To the extent of any inconsistency between the articles of incorporation and the declaration, the declaration controls.

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

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

Comment. Section 6005 is new. Subdivision (b) is consistent with Corporations Code Section 7151(c) providing that the bylaws shall be consistent with the articles of incorporation. Subdivision (c) is consistent with Section 6100(c) providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

1 See also Sections 4080 (“association”), 4135 (“declaration”), 4165 (“operating rule”).

2 Article 2. Declaration

3 **§ 6025. Content of declaration**

4 6025. A declaration, recorded on or after January 1, 1986, shall contain all of the
5 following:

6 (a) A legal description of the common interest development.

7 (b) A statement that the common interest development is a community
8 apartment project, condominium project, planned development, stock cooperative,
9 or combination thereof.

10 (c) The name of the association.

11 (d) Any restriction on the use or enjoyment of any portion of the common
12 interest development that is intended to be an enforceable equitable servitude.

13 (e) Any other matter that the declarant or the members consider appropriate.

14 **Comment.** Section 6025 continues part of former Sections 1353(a)(1) and (b) without
15 substantive change. The remainder of former Section 1353(a)(1) is continued without substantive
16 change in Section 6030.

17 See also Sections 4080 (“association”), 4100 (“common interest development”), 4125
18 (“condominium project”), 4130 (“declarant”), 4135 (“declaration”), 4160 (“member”), 4175
19 (“planned development”), 4190 (“stock cooperative”).

20 **Staff Note.** The defined term “declarant” is substituted for the existing phrase “original
21 signator of the declaration” in proposed 6025(e). The Commission invites comment on whether
22 this would cause any problem.

23 **§ 6030. Disclosure of airport in vicinity**

24 6030. (a) If a common interest development is located within an airport
25 influence area and its declaration is recorded after January 1, 2004, the declaration
26 shall contain the following statement:

27 “NOTICE OF AIRPORT IN VICINITY

28 This property is presently located in the vicinity of an airport, within what
29 is known as an airport influence area. For that reason, the property may be
30 subject to some of the annoyances or inconveniences associated with
31 proximity to airport operations (for example: noise, vibration, or odors).

32 Individual sensitivities to those annoyances can vary from person to person.

33 You may wish to consider what airport annoyances, if any, are associated
34 with the property before you complete your purchase and determine whether
35 they are acceptable to you.”

36 (b) For purposes of this section, an “airport influence area,” also known as an
37 “airport referral area,” is the area in which current or future airport-related noise,
38 overflight, safety, or airspace protection factors may significantly affect land uses
39 or necessitate restrictions on those uses as determined by an airport land use
40 commission.

1 (c) A statement in a declaration acknowledging that a property is located in an
2 airport influence area is not a title defect, lien, or encumbrance.

3 **Comment.** Section 6030 continues part of former Sections 1353(a)(1)-(2), (4) without
4 substantive change. The remainder of former Section 1351(a)(1) is continued without substantive
5 change in Section 6025. See Bus. & Prof. Code § 11010 (disclosure of property within airport
6 influence area); Pub. Util. Code § 21675 (designation of “airport influence area” by county
7 airport land use commission).

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

9 **§ 6035. Disclosure of BCDC jurisdiction**

10 6035. (a) If a common interest development is within the jurisdiction of the San
11 Francisco Bay Conservation and Development Commission, as described in
12 Section 66610 of the Government Code, and its declaration is recorded on or after
13 January 1, 2006, the declaration shall contain the following notice:

14 “NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
15 DEVELOPMENT COMMISSION JURISDICTION

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

22 (b) A statement in a declaration acknowledging that a property is located within
23 the jurisdiction of the San Francisco Bay Conservation and Development
24 Commission is not a title defect, lien, or encumbrance.

25 **Comment.** Section 6035 continues former Section 1353(a)(3)-(4) without substantive change.

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

27 **§ 6040. Amendment authorized**

28 6040. (a) Unless a declaration expressly provides otherwise, any provision of the
29 declaration can be amended.

30 (b) If a provision of a declaration can be amended, it can be amended at any
31 time.

32 (c) The Legislature finds that there are common interest developments that have
33 been created with deed restrictions that do not provide a means for the property
34 owners to extend the term of the declaration. The Legislature further finds that
35 covenants and restrictions, contained in the declaration, are an appropriate method
36 for protecting the common plan of developments and to provide for a mechanism
37 for financial support for the upkeep of common areas including, but not limited to,
38 roofs, roads, heating systems, and recreational facilities. If declarations terminate
39 prematurely, common interest developments may deteriorate and the supply of
40 affordable housing units could be impacted adversely. The Legislature further
41 finds and declares that it is in the public interest to provide a vehicle for extending

1 the term of the declaration if owners having more than 50 percent of the votes in
2 the association choose to do so.

3 (d) A declaration may be amended to extend the termination date of the
4 declaration, notwithstanding any contrary provision of the declaration. No single
5 extension of the term of the declaration made pursuant to this subdivision shall
6 exceed the initial term of the declaration or 20 years, whichever is less. However,
7 more than one extension may be made pursuant to this subdivision.

8 **Comment.** Subdivisions (a)-(b) of Section 6040 restate the first sentence of former Section
9 1355(b) without substantive change.

10 Subdivisions (c)-(d) restate Section 1357 without substantive change except that the procedure
11 for approving an amendment of a declaration to extend its termination date is not continued. An
12 amendment under this subdivision would be approved pursuant to Section 6045.

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

15 **Staff Notes.** (1) The Commission invites comment on whether the proposed restatement of
16 the first sentence of Section 1355(b) would cause any substantive change in the law.

17 (2) Existing law acknowledges that a declaration may be drafted so as to limit or prohibit its
18 amendment. That could result in permanent restrictions that become inappropriate over time, due
19 to changed circumstances or the changed desires of the property owners. The common law
20 recognizes a defense to the enforcement of an equitable servitude where “the original purpose for
21 the restrictions has become obsolete and continued enforcement of the restrictions would be
22 oppressive and inequitable.” H. Miller & M. Starr, California Real Estate § 24:20 (3d ed. 2004).
23 As a matter of policy, should there be a procedure for amendment of a declaration by the
24 members of a homeowner association, even if the declaration prohibits its own amendment?

25 **§ 6045. Approval of amendment**

26 6045. (a) If the governing documents provide a procedure for approval of an
27 amendment of the declaration, an amendment may be approved by that procedure.

28 (b) If the governing documents do not provide a procedure for approval of an
29 amendment of the declaration, an amendment may be approved by a majority of
30 all members (Section 4065).

31 (c) The board shall provide individual notice (Section 4040) to all members of
32 an amendment approved under this section.

33 **Comment.** Section 6045 is comparable to the provisions of former Section 1355 that relate to
34 approval of an amendment of the declaration. See Sections 4040 (individual notice), 4065
35 (approved by all members).

36 See also Sections 4085 (“board”), 4135 (“declaration”), 4150 (“governing documents”), 4160
37 (“member”).

38 **Staff Notes.** (1) The Corporations Code provisions governing the amendment of the articles
39 of incorporation and bylaws address the possibility that the governing documents may require the
40 approval of a specific class of voters or of a specified third party in order to amend the governing
41 documents. See, e.g. Corp. Code § 7150(b), (d). Should similar provisions be applied to
42 amendment of the declaration? For example, suppose that the declaration provides that a minority
43 class of voters must approve any action that changes the proportional share of assessments
44 collected from each class. Should the majority class be able to delete that provision from the
45 declaration without the approval of a majority of the other class?

46 (2) Civil Code Section 1356 authorizes a director or member to petition the superior court for
47 an order lowering the number or percentage of affirmative votes required to approve an

1 amendment of the declaration. A comparable order may be obtained under Corporations Code
2 Section 7515, which is continued in proposed Section 4620. The Commission does not see the
3 benefit in providing two separate and slightly different provisions to achieve the same result. For
4 that reason, Section 1356 is not continued in the proposed law.

5 **§ 6050. Approval of amendment to delete obsolete construction or marketing provision**

6 6050. Notwithstanding Section 6045, the deletion of a provision of the
7 declaration may be approved by the board (Section 4060) and by a majority of a
8 quorum of the members (Section 4070) if all of the following conditions are
9 satisfied:

10 (a) The provision to be deleted is unequivocally designed and intended, or by its
11 nature can only have been designed or intended, to facilitate the developer in
12 completing the construction or marketing of the development or of a particular
13 phase of the development.

14 (b) The provision to be deleted authorizes access by the developer over or across
15 the common area for the purposes of (1) completion of construction of the
16 development, and (2) the erection, construction, or maintenance of structures or
17 other facilities designed to facilitate the completion of construction or marketing
18 of separate interests.

19 (c) The construction or marketing activities governed by the provision to be
20 deleted have been completed or terminated.

21 **Comment.** Section 6050 is comparable to former Section 1355.5 but applies only to the
22 amendment of a declaration. The requirement of former Section 1355.5(c), that members be given
23 notice before the board approves the amendment is not continued. Member notice is required
24 before board meetings and before a member vote is held. See Sections 4520 (board meeting),
25 4595 (member meeting).

26 See Sections 4060 (approved by the board), 4070 (approved by majority of quorum of all
27 members). See also Sections 4085 (“board”), 4095 (“common area”), 4135 (“declaration”), 4160
28 (“member”), 4185 (“separate interest”).

29 **Staff Notes.** (1) Existing Section 1355.5 provides an optional procedure for deletion of
30 obsolete developer provisions from any type of governing document, including the articles of
31 incorporation and bylaws. However, it doesn’t appear that this section serves a useful purpose
32 when applied to the articles or bylaws. The existing procedures for amendment of those
33 documents is as expeditious or more expeditious than the procedure provided in Section 1355.5.
34 See Corp. Code §§ 7151 (amendment of bylaws), 7810-7820 (amendment of articles).

35 (2) Existing Section 1355.5 limits the optional procedure to deletion of provisions that
36 “[provide] for access by the developer over or across the common area for the purposes of (a)
37 completion of construction of the development, and (b) the erection, construction, or maintenance
38 of structures or other facilities designed to facilitate the completion of construction or marketing
39 of separate interests. Does the use of “and” imply that the provision must satisfy both of the
40 enumerated criteria? Should “and” be changed to “or”?

41 (3) Is it necessary to continue the requirement that the board approve an amendment under this
42 section? It seems unlikely that a board would ever oppose such an amendment if it were approved
43 by the members.

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Article 4. Condominium Plan

§ 6075. Content of condominium plan

6075. A condominium plan shall include all of the following:

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

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

(c) A certificate consenting to the recordation of the condominium plan pursuant to this part 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.

(5) In a conversion of a community apartment project or stock cooperative to a condominium project that has been approved by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government Code, by those owners, trustees, beneficiaries, and mortgagees who approved the conversion.

(d) A person who owns only a mineral right, easement, right-of-way, or other nonpossessory interest in the property that is included in the condominium project does not need to sign the condominium plan.

Comment. Section 6075 continues former Section 1351(e) without substantive change, except that last paragraph is not continued. That paragraph is continued without substantive change in Section 5060.

See also Sections 4095 (“common area”), 4120 (“condominium plan”), 4125 (“condominium project”), 4170 (“person”), 4185 (“separate interest”), 4190 (“stock cooperative”).

§ 6080. Amendment of condominium plan

6080. A condominium plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the persons whose signatures are required pursuant to subdivision (c) of Section 6075.

Comment. Section 6080 continues the last paragraph of former Section 1351(e) without substantive change.

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

1 Article 5. Operating Rules

2 **§ 6100. Requirements for validity and enforceability**

3 6100. An operating rule is valid and enforceable only if all of the following
4 requirements are satisfied:

5 (a) The rule is in writing.

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

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

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

12 (e) The rule is reasonable.

13 **Comment.** Section 6100 continues former Section 1357.110 without substantive change.

14 See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4165 (“operating
15 rule”).

16 **§ 6110. Application of rulemaking procedures**

17 6110. (a) Sections 6115 and 6120 only apply to an operating rule that relates to
18 one or more of the following subjects:

19 (1) Use of the common area or of an exclusive use common area.

20 (2) Use of a separate interest, including any aesthetic or architectural standards
21 that govern alteration of a separate interest.

22 (3) Member discipline, including any schedule of monetary penalties for
23 violation of the governing documents and any procedure for the imposition of
24 penalties.

25 (4) Any standards for delinquent assessment payment plans.

26 (5) Any procedures adopted by the association for resolution of disputes.

27 (6) Any procedures for reviewing and approving or disapproving a proposed
28 physical change to a member’s separate interest or to the common area.

29 (7) Any procedure for the conduct of an election.

30 (b) Sections 6115 and 6120 do not apply to the following actions by the board:

31 (1) A decision regarding maintenance of the common area.

32 (2) A decision on a specific matter that is not intended to apply generally.

33 (3) A decision setting the amount of a regular or special assessment.

34 (4) A rule change that is required by law, if the board has no discretion as to the
35 substantive effect of the rule change.

36 (5) Issuance of a document that merely repeats existing law or the governing
37 documents.

38 **Comment.** Section 6110 continues former Section 1357.120 without substantive change,
39 except that subdivision (a)(7) is new. That provision is added to conform to Section 4625.

40 See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4145
41 (“exclusive use common area”), 4150 (“governing documents”), 4160 (“member”), 4165
42 (“operating rule”), 4180 (“rule change”), 4185 (“separate interest”).

1 **§ 6115. Approval of rule change by board**

2 6115. (a) The board shall provide general notice (Section 4045) of a proposed
3 rule change at least 30 calendar days before making the rule change. The notice
4 shall include the text of the proposed rule change and a description of the purpose
5 and effect of the proposed rule change. Notice is not required under this
6 subdivision if the board determines that an immediate rule change is necessary to
7 address an imminent threat to public health or safety or imminent risk of
8 substantial economic loss to the association.

9 (b) A proposed rule change may be approved by the board (Section 4060).

10 (c) As soon as possible after approving a rule change, but not more than 15
11 calendar days after approving the rule change, the board shall provide general
12 notice (Section 4045) of the rule change. If the rule change was an emergency rule
13 change made under subdivision (d), the notice shall include the text of the rule
14 change, a description of the purpose and effect of the rule change, and the date that
15 the rule change expires.

16 (d) If the board determines that an immediate rule change is required to address
17 an imminent threat to public health or safety, or an imminent risk of substantial
18 economic loss to the association, the board may approve an emergency rule
19 change (Section 4060) without providing general notice (Section 4045) of the
20 proposed rule change. An emergency rule change is effective for 120 calendar
21 days, unless the board provides for a shorter effective period. A rule change made
22 under this subdivision may not be readopted under this subdivision.

23 **Comment.** Section 6115 restates former Section 1357.130 without substantive change. See
24 Sections 4045 (general notice), 4060 (approved by the board).

25 See also Sections 4080 (“association”), 4085 (“board”), 4180 (“rule change”).

26 **§ 6120. Reversal of rule change by members**

27 6120. (a) Members of an association owning five percent or more of the separate
28 interests may call a special member meeting to reverse a rule change that was
29 approved by the board.

30 (b) A special member meeting may be called by delivering a request to the board
31 (Section 4035) that includes the requisite number of member signatures, after
32 which the board shall provide general notice (Section 4045) of the meeting and
33 hold the meeting in conformity with Article 2 (commencing with Section 4500) of
34 Chapter 3. A written request may only be delivered within 30 calendar days after
35 general notice (Section 4045) of the rule change or enforcement of the resulting
36 rule, whichever occurs first.

37 (c) For the purposes of Article 3 (commencing with Section 4700) of Chapter 3,
38 collection of signatures to call a special meeting under this section is a purpose
39 reasonably related to the interests of the members of the association. A member
40 request to copy or inspect the membership list solely for that purpose may not be
41 denied on the grounds that the purpose is not reasonably related to the member’s
42 interests as a member.

1 (d) A decision to reverse a rule change may be approved by a majority of a
2 quorum of the members (Section 4070), or if the declaration or bylaws require a
3 greater proportion, by the affirmative vote or written ballot of the proportion
4 required. In lieu of calling the meeting described in this section, the board may
5 distribute a written ballot to every member of the association in conformity with
6 the requirements of [Section 7513 of the Corporations Code].

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

10 (f) A meeting called under this section is governed by Article 3 (commencing
11 with Section 4575) of Chapter 3 and [Sections 7612 and 7613 of the Corporations
12 Code].

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

17 (h) As soon as possible after the close of voting, but not more than 15 calendar
18 days after the close of voting, the board shall provide general notice (Section
19 4045) of the results of the member vote.

20 (i) This section does not apply to an emergency rule change made under
21 subdivision (d) of Section 6115.

22 **Comment.** Section 6120 continues former Section 1357.140 without substantive change. See
23 Sections 4035 (delivered to board) 4045 (general notice), 4070 (approved by majority of quorum
24 of the members).

25 See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4160
26 (“member”), 4180 (“rule change”), 4185 (“separate interest”).

27 **Staff Note.** A future installment of the proposed law will address general procedures for
28 meetings. That installment will reconcile the differences the notice requirements provided in the
29 proposed law and those provided in the Corporations Code.

30 **§ 6125. Applicability of article to changes commenced before and after January 1, 2004**

31 6125. (a) This article applies to a rule change commenced on or after January 1,
32 2004.

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

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

37 **Comment.** Section 6125 continues former Section 1357.150 without substantive change.

38 See also Sections 4085 (“board”), 4180 (“rule change”).

1

Article 6. Unlawful Restrictions

2 **§ 6150. Discriminatory restriction**

3 6150. (a) No governing document shall include a restrictive covenant in
4 violation of Section 12955 of the Government Code.

5 (b) Notwithstanding any other provision of law or provision of the governing
6 documents, the board shall amend the governing documents to delete the unlawful
7 restrictive covenant and to restate the governing document without the deleted
8 restrictive covenant. No other person is required to approve the amendment.

9 (c) If the declaration is amended under this section, the board shall record the
10 restated declaration in each county in which the common interest development is
11 located. If the articles of incorporation are amended under this section, the board
12 shall file a certificate of amendment pursuant to Section 7814 of the Corporations
13 Code.

14 (d) The Department of Fair Employment and Housing, a city or county in which
15 a common interest development is located, or any other person may provide
16 written notice to a board (Section 6030) requesting that it comply with this section.
17 If the board fails to comply with this section within 30 calendar days after delivery
18 of the notice under this subdivision, the person who sent the notice may bring an
19 action against the association for injunctive relief to enforce this section. The court
20 may award attorney's fees to the prevailing party.

21 **Comment.** Section 6150 restates former Section 1352.5 without substantive change, except
22 that subdivision (c) is added. See Section 4030 (delivery to board).

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

25 **Staff Note.** The use of the term "restrictive covenant" in existing Section 1352.5 would
26 seem to limit its scope to a discriminatory provision in the recorded declaration (see Civ. Code §
27 1468(d) (covenant must be recorded to bind successive owners)). That is contrary to the express
28 terms of the section, which provide that it applies to a "declaration *or other governing*
29 *documents.*" Would it be appropriate to replace the term "restrictive covenant" with the broader
30 term "rule or restriction"?

31

Article 7. Construction of Documents

32 **§ 6175. Liberal construction of instruments**

33 6175. (a) Any deed, declaration, or condominium plan for a common interest
34 development shall be liberally construed to facilitate the operation of the common
35 interest development, and its provisions shall be presumed to be independent and
36 severable.

37 (b) Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2
38 of Part 1 of Division 2 shall operate to invalidate any provisions of the governing
39 documents of a common interest development.

40 **Comment.** Section 6175 continues former Section 1370 without substantive change.

41 See also Sections 4100 ("common interest development"), 4120 ("condominium plan"), 4135
42 ("declaration"), 4150 ("governing documents").

