

Memorandum 2007-24

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

In this study, the Commission is working to reorganize and simplify common interest development (“CID”) 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 are technical, but some noncontroversial substantive improvements are also included.

A staff draft of the proposed law is attached. The draft is cumulative and reflects decisions made regarding 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.

This memorandum presents the final parts of the proposed law, adding material on the following topics:

- Government assistance to CIDs (proposed Sections 4950-4960)
- Insurance and liability (proposed Sections 5680-5690)
- Property maintenance and use (proposed Sections 5700-5775)
- Property ownership and transfer (proposed Sections 5800-5945)
- Construction defect litigation (proposed Sections 6200-6215)

Once that material has been reviewed, and any necessary changes made, the Commission will need to decide whether the proposed law is ready to be circulated for public comment.

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

GOVERNMENT ASSISTANCE TO CIDS

The proposed law continues three sections that relate to government involvement in the governance of CIDs. Two of those are noncontroversial and

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are continued without substantive change. See existing Sections 1363.001 (online director training course) and 1363.6 (Secretary of State registry of CIDs). Those sections would be continued as proposed Sections 4950 and 4960, respectively.

There is one potentially controversial provision in this part of the proposed law: proposed Section 4955, which relates to oversight by the Attorney General.

Existing Corporations Code Section 8216 authorizes the Attorney General to act on a complaint that a nonprofit mutual benefit corporation is not complying with the Corporations Code provisions governing member meetings, voting, and record inspection. *Increasingly, the law governing those matters in a CID is found in the Davis-Stirling Act, rather than in the Corporations Code.* That trend has been extended in the proposed law, in order to minimize overlap between the Davis-Stirling Act and the Corporations Code.

As a result, the authority of the Attorney General to act on such complaints regarding a CID has been diminished and would be further diminished by the proposed law.

Proposed Section 4955 would restore that authority to its original scope, by adding language similar to that in Corporations Code Section 8216, but with references to the relevant provisions of the proposed law rather than to the original Corporations Code provisions. As under existing law, the Attorney General's authority would be largely discretionary.

The utility of Attorney General oversight depends on the resources that the Attorney General can allocate to the function. Those resources may be minimal. However, **the staff believes that it would be better to preserve the oversight authority, for whatever value it might have, than to deprive homeowners of the opportunity for assistance.** When the proposed law is circulated for comment, we will be sure to send a copy to the Attorney General, with a note directing his attention to this provision.

INSURANCE AND LIABILITY

The proposed law includes a handful of provisions that relate to insurance (and the ability to avoid director, officer, or member liability by maintaining certain specified levels of insurance). See proposed Sections 4800(b)(3) (annual statement of insurance coverage), 5680 (director liability), 5685 (member liability), 5690 (notice of change in coverage).

The proposed law would not make any substantive change to those provisions.

PROPERTY MAINTENANCE AND USE

Maintenance

The proposed law would continue a small number of sections that relate to maintenance and repair obligations within a CID. See proposed Sections 5700 (default maintenance obligations), 5705 (maintenance and repair relating to wood destroying organisms), 5710 (maintenance of communication wiring).

The proposed law would not make any significant change to those provisions. Notes following proposed Sections 5700 and 5705 ask for public comment on certain drafting oddities in existing law.

Limitation of Association Authority to Regulate Property Use

Relocated Provisions

Proposed Sections 5725 to 5750 restrict an association's authority to limit certain types of property use. For example, an association's authority to regulate the display of the flag is sharply restricted. See proposed Section 5730.

In a prior draft of the proposed law, these sections were located in proposed Chapter 2, which was then entitled "Member Rights."

The staff has since concluded that it makes better sense to locate all property use provisions together. That is the approach taken in the latest draft of the proposed law. The provisions limiting association authority to regulate property use are now located in "Chapter 6. Property Maintenance and Use."

New Provision

A newly enacted provision, Section 1353.8, protects the right to use low water-using plants in landscaping. The section would be continued in proposed Section 5755.

Modification of Separate Interest

Existing Section 1360 guarantees an owner's right to make certain types of modifications to a separate interest (especially modifications that are required to accommodate a resident's disability).

In a prior version of the proposed law, the staff had recommended that Section 1360 not be continued, for two reasons:

(1) The section's scope is oddly limited. It only applies to a separate interest that is wholly contained within the boundaries of a building (e.g., a condominium unit). That limitation implies that an owner of a detached separate interest could not make similar accommodating modifications. That would be bad policy and, as discussed immediately below, would seem to contradict general fair housing law.

(2) Existing fair housing law is broader than Section 1360 in protecting the right to modify one's home to accommodate a disability. Government Code Section 12927 defines unlawful housing discrimination as including the following conduct:

refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled person, if the modifications may be necessary to afford the disabled person full enjoyment of the premises ... and includes refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

For those reasons, Section 1360 was not continued in the proposed law, but a note was added to solicit public comment on the omission.

On further reflection, the staff recommends a different approach. It would probably be better for the Davis-Stirling Act, which is the body of law that CID homeowners are most likely to know, to include a provision making clear that an association must allow modification of a separate interest to accommodate a disability.

However, the staff sees no reason for the modification rules to be limited to a unit that is contained entirely within a building. It may be necessary for the owner of a detached home to be able to build an access ramp or other disability accommodation. The right to do so should also be expressly stated. **That is the approach taken in proposed Section 5760.** It generalizes the substance of existing Section 1360 so that it would apply to all separate interests. A note following the proposed section asks for public comment on the change.

Architectural Review

Existing Section 1378, which was enacted on Commission recommendation, provides basic procedural guidance for a CID that requires association approval

of changes to a separate interest. The provision would be continued in proposed Section 5775 without substantive change.

PROPERTY OWNERSHIP AND TRANSFER

The proposed law would continue provisions that relate to ownership rights and interests (proposed Sections 5800-5810), required disclosure to a transferee (proposed Sections 5825-5850), limitations on the imposition of a transfer fee (proposed Sections 5875-5880), restrictions on certain types of transfers (proposed Sections 5900-5910), and provisions on the incidents of a transfer of a separate interest (proposed Sections 5925-5945).

Those provisions would not change the substance of existing law.

There are also a few provisions relating to the form of title in which the common area or a separate interest is held. For example, existing Section 1351(b) provides in part: “The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing.”

The staff had considered locating those provisions with the other property ownership provisions. However, they are currently included within definitions, and it is possible that they add some interpretive context to those definitions that would be lost if the language were moved to another location. Out of caution, the staff has restored the provisions to their original context. See proposed Sections 4095 (“common area”), 4185 (“separate interest”), 4190 (“stock cooperative”).

CONSTRUCTION DEFECT LITIGATION

Existing law includes fairly lengthy provisions setting out procedural prerequisites to an association filing a construction defect lawsuit against a developer or builder (commonly known as the “Calderon Act” procedures). Notice of the pending suit must be given to the respondent. The parties must then participate in mandatory alternative dispute resolution, pursuant to a specified procedure. See Section 1375.

If the matter is not settled through ADR, the association may file suit, subject to the rules stated in existing Section 1375.05. However, prior to filing suit, the association must give notice to the members and hold a meeting to discuss the matter. See Section 1368.5.

If the matter is settled, the association must give notice of resolution to the members. See Section 1375.1.

The staff understands that the Calderon Act provisions are the result of a legislative compromise and that the whole topic is politically very sensitive. Accordingly, the proposed law would leave those provisions unchanged to the maximum extent possible. The section numbers would change and cross-references would be updated, but no other changes would be made. See proposed Sections 6200-6215. A note preceding Section 6200 emphasizes that minimalist approach.

LEGISLATIVE UPDATES

A number of provisions of the Davis-Stirling Act were amended in 2006. Some of those changes were already incorporated into prior drafts of the proposed law. However, there are a few additional changes that are made in the attached draft, in order to reflect 2006 legislation. See proposed Sections 4635 (assistant election inspector), 5080 (reference to small claims jurisdiction), 5600-5605 (right of redemption after nonjudicial foreclosure).

COMMENT ON PREVIOUSLY REVIEWED MATERIAL

We have received comments on some parts of the proposed law that have already been reviewed by the Commission. There are two ways in which the Commission could address those new comments.

We could circle back for another pass through the proposed law, addressing each of the comments prior to circulation of a tentative recommendation.

Alternatively, we could complete the tentative recommendation and send it out for public comment. The comments we've received to date would be considered later, when we review comments on the tentative recommendation.

The latter approach has two significant advantages. It would allow us to circulate a tentative recommendation sooner, keeping open the possibility of completing work before the end of this year and introducing a bill next year. It would also allow us to consider the comments in connection with other public comments that we might receive on the same topics.

The staff recommends the latter approach.

TENTATIVE RECOMMENDATION

The Commission needs to decide whether to circulate the staff draft of the proposed law as a tentative recommendation, with or without changes. If the

Commission is ready to do so, the staff will need to add a set of conforming revisions (to correct cross-references to the reorganized Davis-Stirling Act) and a narrative “preliminary part” describing the proposed law.

We are currently preparing the conforming revisions and they should be ready to present in a supplement to this memorandum, for consideration at the June meeting.

If time permits, the staff will also prepare the preliminary part for review at the June meeting. If the preliminary part cannot be completed prior to the June meeting, the Commission will need to decide whether to delegate drafting of the preliminary part to the staff (perhaps with review by the Chair), or hold the tentative recommendation until the preliminary part has been presented to the whole Commission for review and approval.

Respectfully submitted,

Brian Hebert
Executive Secretary

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PROPOSED LEGISLATION

1 **Note.** This is a work in progress. The proposed organizational structure and section
2 numbering may change. Additional material may be added.

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

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

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

8 **PART 5. COMMON INTEREST DEVELOPMENTS**

9 **CHAPTER 1. PRELIMINARY PROVISIONS**

10 **Article 1. General Provisions**

11 **§ 4000. Short title**

12 4000. This part shall be known and may be cited as the Davis-Stirling Common
13 Interest Development Act.

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

15 **§ 4005. Effect of headings**

16 4005. Division, part, title, chapter, and article headings do not in any manner
17 affect the scope, meaning, or intent of this part.

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

21 **§ 4010. Continuation of prior law**

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

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

34 A number of terms and phrases are used in the Comments to the sections of this part to indicate
35 the sources of the sections and to describe how they compare with prior law. The following

1 discussion is intended to provide guidance in interpreting the terminology most commonly used
2 in the Comments.

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

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

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

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

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

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

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

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

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

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

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

41 § 4015. Application of part

42 4015. (a) This part applies to a common interest development.

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

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

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

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

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

1 **§ 4020. Nonresidential development**

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

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

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

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

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

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

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

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

- 32 (1) Section 7211.
- 33 (2) Chapter 5 (commencing with Section 7510) of Part 3 of Division 2.
- 34 (3) Sections 7610, 7611, 7612, 7614, and 7616.
- 35 (4) Chapter 13 (commencing with Section 8310) of Part 3 of Division 2.

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

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

40 **Comment.** Section 4025 is new.

41 The provisions referenced in subdivision (a)(1) are superseded by Sections 4505-4515,
42 4520(d)-(e).

1 Subdivision (a)(2) continues former Section 1356.2(m) without substantive change, except that
2 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., Section 4405(a)(2).

6 See also Section 4080 (“association”).

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

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

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

13 See also Sections 4100 (“common interest development”), 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 former Sections 1365.1(c) and 1367.1(k) without substantive
42 change.

1 **Note.** Existing Section 1350.7(d) provides that an agreement to a particular method of notice
2 delivery cannot be inferred from an unrecorded provision of the governing documents. That
3 provision has been recast in Section 4040(b) to eliminate the reference to recordation. Instead, the
4 restated provision makes clear that agreement to a particular method of notice shall not be
5 inferred from a provision of the governing documents other than the declaration. This eliminates
6 any implication that a less formal governing document (e.g., an operating rule) could be used to
7 mandate use of a particular method of notice if the document is subsequently recorded. The
8 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 former Section 1350.7 without substantive change.

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, which 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 former Section
2 1350.7(b)(2) without substantive change.

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 former Section 1350.7(b)(3) without substantive change.

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 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 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 majority of quorum of 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 former Section 1351(a) without substantive change.

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 former Section 1363.05(f) without substantive change, except
27 for the 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 **Note.** The requirement that a meeting be a gathering of directors “at the same time and place”
36 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) The estate in the common area may be a fee, a life estate, an estate for years,
16 or any combination of the foregoing.

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

19 **Comment.** Section 4095 continues former Section 1351(b) without substantive change.
20 See also Sections 4100 (“common interest development”), 4185 (“separate interest”).

21 **§ 4100. “Common interest development”**

22 4100. (a) “Common Interest development” means a real property development
23 in which a separate interest is coupled with either of the following:

24 (1) An undivided interest in all or part of the common area.

25 (2) Membership in an association that owns all or part of the common area.

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

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

35 (1) A community apartment project.

36 (2) A condominium project.

37 (3) A planned development.

38 (4) A stock cooperative.

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

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

1 **§ 4105. “Community apartment project”**

2 4105. “Community apartment project” means a real property development in
3 which a right of exclusive occupancy of a specified part of the development is
4 coupled with an undivided interest in the development as a whole.

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

6 **§ 4110. “Community service organization”**

7 4110. (a) “Community service organization” means a nonprofit entity, other than
8 the association, that is organized to provide services to residents of a common
9 interest development or to the public in addition to the residents, to the extent that
10 the common area is available to the public.

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

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

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

21 **§ 4115. “Condominium”**

22 4115. “Condominium” means a separate interest in a condominium project,
23 coupled with an undivided interest in all or part of the common area of the
24 condominium project.

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

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

29 **§ 4120. “Condominium plan”**

30 4120. “Condominium plan” means a plan of the type described in Section 6075.

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

32 **§ 4125. “Condominium project”**

33 4125. (a) “Condominium project” means a real property development in which
34 separate ownership of a specified part of the development is coupled with an
35 undivided interest in all or part of the common area.

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

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

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

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

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

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

16 **Notes.** (1) Proposed Section 4125 restates existing Section 1351(f) in order to parallel the
17 language and construction used in proposed Sections 4105 (“community apartment project”),
18 4175 (“planned development”), and 4190 (“stock cooperative”). The section also eliminates
19 duplicative language and makes fuller use of defined terms. These changes are intended to
20 improve clarity and are not intended to affect the substance of the existing definition of
21 “condominium project.” The Commission requests public input on whether any of the drafting
22 changes would have a substantive effect.

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

27 **§ 4130. “Declarant”**

28 4130. “Declarant” means the person or group of persons designated in the
29 declaration as declarant, or if no declarant is designated, the person or group of
30 persons who sign the original declaration or who succeed to special rights,
31 preferences, or privileges designated in the declaration as belonging to the person
32 who signed the original declaration.

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

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

35 **§ 4135. “Declaration”**

36 4135. “Declaration” means the document, however denominated, that contains
37 information that is substantially equivalent to the information required by Section
38 6025.

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

42 **Note.** The Commission invites comment on whether the proposed change to Section 1351(h)
43 would cause any problems.

1 **§ 4140. “Director”**

2 4140. “Director” means a natural person elected, designated, or selected to serve
3 on the board.

4 **Comment.** Section 4140 is new. It is added for drafting convenience. See Corp. Code §§ 7220,
5 7224-7225, 7520-7527 (election or selection of director).

6 See also Section 4085 (“board”).

7 **§ 4145. “Exclusive use common area”**

8 4145. (a) “Exclusive use common area” means a part of the common area
9 designated by the declaration to be used exclusively by one or more, but fewer
10 than all, of the members. The right of exclusive use is appurtenant to the separate
11 interests of those members.

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

18 (c) Notwithstanding the provisions of the declaration, internal and external
19 communication wiring designed to serve a single separate interest, but located
20 outside the boundaries of the separate interest, are exclusive use common areas
21 allocated exclusively to that separate interest.

22 **Comment.** Section 4145 restates former Section 1351(i) without substantive change, except
23 that the reference in subdivision (c) to “telephone wiring” is generalized to accommodate non-
24 telephonic communication technology. See also Section 5760 (maintenance of communication
25 wiring).

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

28 **§ 4150. “Governing documents”**

29 4150. “Governing documents” means the declaration, bylaws, articles of
30 incorporation or association, and operating rules.

31 **Comment.** Section 4150 continues former Section 1351(j) without substantive change, except
32 that the phrase “any other documents ... which govern the operation of the common interest
33 development or association” has been replaced with a reference to the association’s operating
34 rules.

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

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

1 **§ 4155. “Managing agent”**

2 4155. (a) “Managing agent” means a person who, for compensation or in
3 expectation of compensation, exercises control over the assets of a common
4 interest development.

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

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

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

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

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

12 **§ 4160. “Member”**

13 4160. “Member” means an owner of a separate interest in a common interest
14 development.

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

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

17 **§ 4163. “Member election”**

18 4163. “Member election” means a vote of the members on a matter that requires
19 the approval of the members. “Member election” does not include a vote of the
20 board or other appointed or elected body.

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

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

23 **§ 4165. “Operating rule**

24 4165. “Operating rule” means a regulation adopted by the board that applies
25 generally to the management and operation of the common interest development
26 or the conduct of the business and affairs of the association.

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

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

30 **§ 4170. “Person”**

31 4170. “Person” means an individual, corporation, government or governmental
32 subdivision or agency, business trust, estate, trust, partnership, limited liability
33 company, association, or other entity.

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

35 **§ 4175. “Planned development”**

36 4175. “Planned development” means a real property development of any of the
37 following types:

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

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

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

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

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

19 **§ 4180. “Rule change”**

20 4180. “Rule change” means the adoption, amendment, or repeal of an operating
21 rule by the board.

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

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

24 **§ 4185. “Separate interest”**

25 4185. (a) In a community apartment project or stock cooperative, “separate
26 interest” means the exclusive right to occupy an apartment or unit.

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

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

34 (d) The estate in a separate interest may be a fee, a life estate, an estate for years,
35 or any combination of the foregoing.

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

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

39 **§ 4190. “Stock cooperative”**

40 4190. (a) “Stock cooperative” means a real property development in which a
41 right of exclusive occupancy of a specified part of the development is coupled

1 with an ownership interest in a corporation that is formed or availed of primarily
2 for the purpose of holding title to the development as a whole, either in fee simple
3 or for a term of years.

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

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

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

12 **Comment.** Section 4190 continues former Section 1351(m) without substantive change.
13 See also Section 4100 (“common interest development”).

14 CHAPTER 2. MEMBER BILL OF RIGHTS [RESERVED]

15 CHAPTER 3. COMMUNITY ASSOCIATION GOVERNANCE

16 Article 1. Association Existence and Powers

17 § 4400. Association

18 4400. A common interest development shall be governed by an association,
19 which may be incorporated or unincorporated.

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

21 § 4405. Association powers

22 4405. (a) Whether incorporated or unincorporated, an association may exercise
23 the following powers:

24 (1) The powers granted in this part.

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

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

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

32 § 4410. Standing

33 4410. An association has standing to institute, defend, settle, or intervene in
34 litigation, arbitration, mediation, or administrative proceedings in its own name as
35 the real party in interest and without joining with it the individual owners of the
36 common interest development, in matters pertaining to the following:

- 1 (a) Enforcement of the governing documents.
- 2 (b) Damage to the common area.
- 3 (c) Damage to a separate interest that the association is obligated to maintain or
- 4 repair.
- 5 (d) Damage to a separate interest that arises out of, or is integrally related to,
- 6 damage to the common area or a separate interest that the association is obligated
- 7 to maintain or repair.
- 8 **Comment.** Section 4410 continues former Section 1368.3 without substantive change.

9 **§ 4415. Comparative fault**

10 4415. (a) In an action maintained by an association pursuant to subdivision (b),
11 (c), or (d) of Section 4410, the amount of damages recovered by the association
12 shall be reduced by the amount of damages allocated to the association or its
13 managing agents in direct proportion to their percentage of fault based upon
14 principles of comparative fault.

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

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

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

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

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

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

35 **§ 4420. No limitation of rights**

36 4420. Except as expressly provided by statute, the rights of members provided in
37 this chapter may not be limited by contract or by the governing documents.

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

39 **Note.** Proposed Section 4420 is drawn from existing Corporations Code Section 8313. The
40 existing section only applies to provisions that govern reports and records. Proposed Section 4420
41 would expand the scope of application to include the provisions that govern board and member

1 meetings, elections, director conduct, and managing agents. The Commission invites comment on
2 whether that expansion would create problems. The Commission also invites comment on
3 whether proposed Section 4420 should be expanded further, to encompass the entire Davis-
4 Stirling Common Interest Development Act.

5 Article 2. Board Meeting

6 § 4500. Short title

7 4500. This article shall be known and may be cited as the Common Interest
8 Development Open Meeting Act.

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

10 § 4505. Convening or adjourning meeting

11 4505. (a) A board meeting may be called by the board chair, the president, the
12 vice president, the secretary, or any two directors.

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

15 **Comment.** Subdivision (a) of Section 4505 is comparable to Corporations Code Section
16 7211(a)(1).

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

19 § 4510. Quorum

20 4510. Unless the governing documents provide otherwise, a majority of the total
21 number of directors authorized by the governing documents constitutes a quorum.
22 The governing documents may not provide for a quorum that is less than one-fifth
23 of the number of directors authorized, or less than two, whichever is larger.

24 **Comment.** Section 4510 is comparable to Corporations Code Section 7211(a)(7). See Section
25 4025. Note that in an association with only one director, one director is a majority of the total
26 number of directors and would therefore constitute a quorum.

27 § 4515. Board action

28 4515. (a) Except as otherwise provided by law, an action approved by a majority
29 of directors present at a meeting at which a quorum is present is the action of the
30 board. The governing documents may not provide a lower threshold for approval
31 of a board action.

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

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

1 § 4520. Notice of board meeting

2 4520 (a) Unless the time and place of a meeting is fixed by the governing
3 documents, the association shall provide general notice (Section 4045) of a board
4 meeting, and shall provide individual notice (Section 4040) of the board meeting
5 to directors and to any association member who has requested notice of meetings.
6 The notice shall state the time and place of the board meeting and shall include an
7 agenda for the board meeting.

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

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

16 (d) If a meeting is adjourned to another time and place for more than 24 hours,
17 the association shall provide notice of the time and place at which the meeting will
18 reconvene, by general notice (Section 4045), and by individual notice (Section
19 4040) to a director who was not present at the meeting and to any member who
20 has requested notice of board meetings. The notice shall be delivered before the
21 meeting reconvenes.

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

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

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

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

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

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

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

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

38 Subdivision (c) restates former Section 1363.05(h) without substantive change.

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

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

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

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

7 **§ 4525. Board meeting open**

8 4525. (a) Any member may attend a board meeting, except for any part of the
9 meeting held in executive session.

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

13 **Comment.** Subdivision (a) of Section 4525 continues part of former Section 1363.05(b)
14 without substantive change. The part of former Section 1363.05(b) that described the basis for
15 meeting in executive session is continued in Section 4540(a)-(b).

16 Subdivision (b) continues former Section 1363.05(i) without substantive change, except that
17 the establishment of a time limit on member testimony is now optional.

18 **§ 4530. Board meeting location**

19 4530. A board meeting shall be held within the common interest development
20 unless the board determines that a larger meeting room is required than is
21 available within the common interest development. A board meeting held outside
22 of the common interest development shall be held as close as is practicable to the
23 common interest development.

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

26 **§ 4535. Teleconference**

27 4535. (a) If all of the following conditions are satisfied, a director who is not
28 physically present at the noticed location of a board meeting may participate in the
29 meeting by teleconference:

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

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

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

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

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

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

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

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

7 **§ 4540. Executive session**

8 4540. (a) The board may adjourn to executive session to consider litigation,
9 matters relating to the formation of contracts with third parties, member discipline,
10 an assessment dispute, or personnel matters.

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

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

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

21 **Comment.** Subdivisions (a)-(c) of Section 4540 continue part of former Section 1363.05(b)
22 without substantive change. The remainder of former Section 1363.05(b) is continued in Section
23 4525(a).

24 Subdivision (d) generalizes part of the substance of former Section 1363.05(b) that allowed a
25 subject of disciplinary action to attend an executive session at which the disciplinary action is
26 considered.

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

35 **§ 4545. Action without meeting**

36 4545. (a) An action required or permitted to be taken by the board may be taken
37 without a meeting, if all directors individually or collectively consent in writing to
38 that action. The written consent shall be filed with the minutes of the proceedings
39 of the board.

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

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

1 § 4550. Minutes

2 4550. (a) Within 30 days after a board meeting, including a meeting held in
3 executive session, the board shall prepare minutes of the board meeting.

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

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

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

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

14 Subdivision (b) restates former Section 1363.05(c) without substantive change. Language
15 addressing the timing of the preparation of the minutes for a meeting held in executive session is
16 not continued. Subdivision (a) provides a general timing rule.

17 Subdivision (c) continues the second sentence of former Section 1363.05(d) without
18 substantive change. The second sentence of subdivision (c) makes express what is implicit in
19 former Section 1363.05(d), that a member has an absolute right to inspect meeting minutes and is
20 not required to state a permissible purpose in order to obtain a copy.

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

22 § 4555. Civil action to enforce article

23 4555. (a) A member may bring a civil action for declaratory or equitable relief
24 for a violation of this article by the member's association, including injunctive
25 relief, restitution, or a combination thereof, within one year of the date the cause
26 of action accrues.

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

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

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

36 **Note.** Section 1363.09 provides for an award of costs and expenses to the association if the
37 court finds that the requesting member's action is "frivolous, unreasonable, or without
38 foundation." That seems to be aimed at limiting an award of association fees to a case involving a
39 frivolous claim. However, the language may be too broad for that purpose. It allows for an award
40 of fees where the action was "without foundation." The meaning of that phrase is unclear, but it
41 could be read to encompass any case in which the court finds against the plaintiff. The
42 Commission requests comment on whether it might be better to use language drawn from Code of
43 Civil Procedure Section 1038, which governs an award of fees in a frivolous case brought under
44 the Tort Claims Act. For example: "The court may award reasonable costs and expenses,
45 including reasonable attorney's fees, to the association if it finds that the action was not brought

1 in good faith and with reasonable cause.” The same issue arises under proposed Sections 4685(e)
2 and 4735(g).

3 **§ 4560. Application of article**

4 4560. (a) This article applies to a board meeting or a meeting of a committee
5 that exercises a power of the board.

6 (b) If two or more associations have consolidated any of their functions under a
7 joint neighborhood association or other joint organization, the meetings of the
8 joint organization are governed by this article.

9 **Comment.** Subdivision (a) of Section 4560 is drawn from Corporations Code Section 7211(c).
10 Subdivision (b) continues part of former Section 1363(i) without substantive change.

11 **Article 3. Member Meeting**

12 **§ 4575. General rules for conduct of meeting**

13 4575. (a) An association shall hold a regular member meeting to transact
14 business that requires action by the members, with the frequency stated in the
15 governing documents. Notwithstanding the governing documents, an association
16 shall hold a regular member meeting in any year in which a director is to be
17 elected, in order to conduct the election and to transact any other business that
18 requires action by the members.

19 (b) An association may hold a special member meeting, pursuant to Section
20 4600.

21 (c) A member meeting shall be held within the common interest development
22 unless the board determines that a larger meeting room is required than is
23 available within the common interest development. A member meeting held
24 outside of the common interest development shall be held as close as is practicable
25 to the common interest development.

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

29 **Comment.** Subdivision (a) of Section 4575 is comparable to Corporations Code Section
30 7510(b).

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

32 Subdivision (c) is new.

33 Subdivision (d) restates former Section 1363(d) without substantive change.

34 **§ 4580. Quorum**

35 4580. (a) Unless the bylaws provide otherwise, the quorum for a member
36 meeting is one-third of the voting power of the association, represented in person
37 or by proxy.

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

1 **Comment.** Section 4580 is comparable to the first two sentences of Corporations Code Section
2 7512(a).

3 ☞ **Note.** Corporations Code Section 7512 provides that the bylaws may set a different quorum.
4 Should that provision be broadened to allow a quorum requirement to be stated in the declaration
5 or articles?

6 **§ 4585. Member action**

7 4585. (a) Unless this part or the governing documents require a greater number
8 of votes, an action approved by a majority of a quorum of the members (Section
9 4070) is the action of the members.

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

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

18 **Comment.** Section 4585 is comparable to the third sentence of Corporations Code Section
19 7512(a) and subdivisions (c)-(d) of that section.

20 **§ 4590. Teleconference**

21 4590. (a) If all of the following conditions are satisfied, a member who is not
22 physically present at the noticed location of a member meeting may participate in
23 the meeting by teleconference:

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

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

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

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

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

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

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

1 **§ 4595. Notice of regular meeting**

2 4595. (a) The board shall deliver individual notice (Section 4040) of a regular
3 meeting to each member who, on the date of the notice, is entitled to vote at the
4 meeting. The notice shall be delivered at least 10 days, but not more than 90 days,
5 before the date of the meeting.

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

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

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

17 (2) The members shall not act on any matter that is not described in the notice
18 and that requires the approval of the members under Section 7222, 7224, 7233,
19 7812, 8610, or 8719 of the Corporations Code, unless the matter is required to be
20 approved by the unanimous vote of those entitled to vote on the matter, or the
21 general nature of the matter is described in each of the documents waiving notice
22 under Section 4610.

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

25 **Comment.** Section 4595 is comparable to Corporations Code Sections 7511(a) & (f), 7512(b),
26 7611(a). The introductory clause of subdivision (c) of Section 4595 continues former Section
27 1363(e) without substantive change.

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

31 **§ 4600. Special meeting of members**

32 4600. (a) The following persons may call a special meeting of the members at
33 any time, for any lawful purpose, by adoption of a board resolution or by delivery
34 of a written request to the board (Section 4035) that states the business to be
35 transacted at the special meeting:

36 (1) The board.

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

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

39 (4) Members representing five percent or more of the voting power of the
40 association.

41 (b) Within 20 days after a special meeting is called, the board shall deliver
42 individual notice (Section 4040) of the special meeting to each member who, on

1 the date of the notice, is entitled to vote at the special meeting. The notice shall
2 include all of the following information:

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

5 (2) The location of the special meeting.

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

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

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

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

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

20 **§ 4605. Meeting adjournment**

21 4605. (a) Unless the governing documents provide otherwise, a member meeting
22 may be adjourned to another time or place without giving written notice of the
23 reconvened meeting, if both of the following conditions are satisfied:

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

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

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

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

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

33 **§ 4610. Waiver of requirements**

34 4610. (a) Notwithstanding the requirements of this article, a court may find that
35 a notice is valid if it was given in a fair and reasonable manner.

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

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

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

4 (3) The member provides a waiver of notice, consent to hold the meeting, or
5 approval of the minutes of the meeting. The waiver, consent, or approval shall be
6 written and shall be filed with the association's records and made part of the
7 minutes of the meeting. Unless expressly required by law or the governing
8 documents, the waiver, consent, or approval need not include a description of the
9 business to be transacted at the meeting.

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

14 **Comment.** Subdivision (a) of Section 4610 is comparable to Corporations Code Section
15 7511(g).

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

17 **§ 4615. Court-ordered meeting**

18 4615. (a) If an association is required to hold a member meeting or conduct a
19 written ballot and does not do so, a member or the Attorney General may apply to
20 the superior court for a summary order compelling the association to hold the
21 member meeting or conduct the written ballot.

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

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

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

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

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

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

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

41 **Comment.** Section 4615 is comparable to Corporations Code Sections 7510(c)-(d) and
42 7511(c).

1 **Notes.** (1) Proposed Section 4615(e) restates the first sentence of Corporations Code Section
2 7510(d). The Commission would like to receive comment on whether the restated provision
3 would cause any substantive change in the law.

4 (2) The Commission also requests comment on the policy reflected in proposed subdivision (e).
5 Why should the quorum requirement be waived when a court orders that a regular meeting be
6 held? Should the same result apply when the court orders that a special meeting be held? Would it
7 be better to recast the provision so that it does not apply in every case, but is available to the court
8 as one possible “appropriate order” that it can issue in granting relief?

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

10 4620. (a) A director, officer, or member may petition the superior court for an
11 order modifying any requirement of this part or the governing documents that
12 governs the conduct of a member meeting or a written ballot.

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

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

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

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

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

31 (3) A reasonable amendment of the declaration.

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

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

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

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

Article 4. Member Election

§ 4625. Application of article

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

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

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

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

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

§ 4630. Election provisions in governing documents

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

(a) Any rule required to implement this article.

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

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

(d) The calculation of voting power.

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

(f) The selection of an election inspector.

Comment. Section 4630 restates part of former Section 1363.03(a)(3)-(5) without substantive change, except that the required provisions may be included in any governing documents and not just in the operating rules. The provision of former Section 1363.03(a)(3) that relates to procedures for nomination of candidates is continued in Section 4665.

Note. The Commission invites comment on the advantages and disadvantages of allowing the election rules to be promulgated in any form of governing document, and not just in an operating rule.

§ 4635. Selection of election inspector

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

(b) An election inspector shall be an independent third party, and may include a person with experience administering elections or with special evidence of integrity, such as a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. Except as provided in subdivision (c), a member of the association may serve as election inspector.

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

(1) A director.

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

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

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

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

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

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

5 (3) Receive ballots.

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

8 (5) Count and tabulate all votes.

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

10 (7) Determine the results of the election.

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

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

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

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

22 Subdivisions (b)-(c) restate former Section 1363.03(c)(2). The limitation on the selection of an
23 employee or contractor to serve as an election inspector has no effect on the ability of an
24 association to contract with and compensate a person who serves as election inspector.

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

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

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

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

35 **§ 4640. Secret ballots**

36 4640. (a) This section governs a member election on any of the following
37 matters:

38 (1) Assessment approval.

39 (2) Director election or removal.

40 (3) Amendment of the governing documents.

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

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

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

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

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

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

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

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

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

15 (3) Seal and sign the outside envelope.

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

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

20 (e) Except for the meeting required by Section 4650, a member election
21 conducted pursuant to this section can be conducted entirely by mail. For the
22 purposes of determining the existence of a quorum, a ballot received by the
23 election inspector by mail shall be treated in the same way as a vote cast by a
24 member present at a meeting.

25 (f) Notwithstanding Section 7615 of the Corporations Code, if the governing
26 documents of an association permit the use of cumulative voting, cumulative
27 voting shall be used by the association in any election of a director or other officer.

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

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

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

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

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

39 The first sentence of subdivision (e) restates former Section 1363.03(k). The second sentence
40 restates part of former Section 1363.03(b) without substantive change. See also Corp. Code §
41 7513(b).

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

43 **Notes.** (1) Proposed Section 4640(a) would broaden the application of the secret ballot
44 procedure provided in Civil Code Section 1363.03. It would apply to all matters in which a
45 member election is required by law. This would include a handful of elections required under the
46 Corporations Code that do not currently fall within the scope of Section 1363.03. See Corp. Code

1 §§ 7233 (approval of contract between association and director), 7235 (approval of loan to
2 director), 7237 (indemnification of corporate agent), 7911 (sale of assets), 8012 (merger), 8610
3 (dissolution), 8719 (distribution of assets on dissolution). Those types of member elections,
4 though relatively uncommon, are deserving of secrecy protections. The Commission invites
5 comment on this proposed change.

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

10 **§ 4645. Alternative in-person voting procedure**

11 4645. (a) Notwithstanding Section 4640, an association may opt to use the
12 procedure provided in this section for a ballot that is cast in person. This section
13 does not apply to a mailed ballot.

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

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

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

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

28 (f) The ballot shall be counted pursuant to subdivisions (c) and (d) of Section
29 4645 and is governed by Section 4650.

30 **Comment.** Section 4645 is new.

31 **§ 4650. Counting ballots**

32 4650. (a) A ballot cast pursuant to this article shall be counted pursuant to this
33 section.

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

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

42 (d) The election inspector shall certify the results of the election to the board, in
43 writing. The results shall be noted in the minutes of the meeting at which the

1 ballots were counted and delivered to all members by general notice (Section
2 4045) within 15 days after the votes are counted.

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

5 **Note.** Existing Section 1363.03(f) provides that votes will be opened and counted “in public”
6 at a meeting of the board or a member meeting. In general, an association meeting need not be
7 open to the general public. Proposed Section 4650(c) continues the existing provision, but the
8 Commission invites comment on whether the meeting should be open to the general public.

9 **§ 4655. Ballot custody and inspection**

10 4655. (a) A ballot cast pursuant to this article shall remain in the custody of the
11 election inspector until it is opened and counted.

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

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

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

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

24 **Comment.** Section 4655 restates former Section 1363.03(h)-(i).

25 **§ 4660. Proxies**

26 4660. (a) For the purposes of this article, “proxy” means a written authorization
27 signed by a member or the member’s agent that gives another member the power
28 to vote on behalf of the member who gave the proxy. For the purposes of this
29 section, “signed” means the placing of the member’s name on the proxy (whether
30 by manual signature, typewriting, telegraphic transmission, or otherwise) by the
31 member or authorized representative of the member.

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

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

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

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

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

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

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

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

6 **Comment.** Subdivisions (a)-(h) of Section 4660 restate former Section 1363.03(d).
7 Subdivision (i) is drawn from Corporations Code section 7613(g).

8 **§ 4665. Nomination of candidate for board**

9 4665. (a) The governing documents of an association shall include a reasonable
10 procedure for the nomination of candidates in the election of a director.

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

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

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

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

17 (f) The governing documents may authorize the board to declare that all
18 qualified nominees are elected without further action, if after the close of
19 nominations, the number of qualified nominees is equal to or less than the number
20 of directors to be elected.

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

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

25 Subdivisions (e)-(f) are drawn from Corporations Code Section 7522(d).

26 **§ 4670. Campaign related information**

27 4670. (a) An association may not use its funds to provide campaign related
28 information, except as otherwise provided in this section.

29 (b) An association may provide campaign related information in a newsletter,
30 Internet website, or other media if it provides equal access to all candidates or
31 advocates for or against a proposal in the pending election. The association shall
32 not edit or redact campaign related information provided by a candidate or
33 advocate pursuant to this subdivision, but may include a statement specifying that
34 the candidate or advocate, and not the association, is responsible for the
35 information provided. An association is not liable for campaign related
36 information provided by a candidate or advocate pursuant to this subdivision.

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

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

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

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

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

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

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

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

15 **Note.** The last sentence of proposed Section 4670(b) is new. It provides express immunity
16 from liability for information that must be provided under this section. That immunity is
17 consistent with Corporations Code Section 7525. Section 7525 also provides for indemnification
18 of the association by any person who submits campaign information. The Commission invites
19 comment on whether such a provision should be preserved in the proposed law.

20 § 4675. Voting rights

21 4675. (a) Unless the governing documents provide otherwise, a member who is
22 entitled to vote may cast one vote for each separate interest that the member owns.

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

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

30 **Comment.** Subdivision (a) of Section 4675 is drawn from 10 Cal. Code Regs. § 2792.18(a). It
31 states a default rule that can be overridden by the governing documents. See also Corp. Code §
32 7312(d).

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

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

40 § 4680. Action by unanimous written consent

41 4680. Any action required or permitted to be taken by the members may be
42 taken without a meeting, if all members individually or collectively consent in
43 writing to the action. The written consent shall be filed with the minutes of the
44 proceedings of the members. The action by written consent shall have the same

1 force and effect as the unanimous vote of the members. Action under this section
2 is not governed by Sections 4625 through 4675, inclusive.

3 **Comment.** Section 4680 is drawn from Corporations Code Section 7516.

4 **§ 4685. Judicial enforcement**

5 4685. (a) A member of an association may bring a civil action for a violation of
6 this part or the governing documents in conducting a member election.

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

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

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

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

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

24 **Comment.** Section 4685 restates former Section 1363.09, except that the second sentence of
25 subdivision (c) is drawn from Corporations Code Section 7527.

26 **Notes. (1)** The remedy provided in existing Civil Code Section 1363.09 is largely
27 inconsistent with the judicial remedy provided in Corporations Code Section 7616. Section
28 1363.09 was probably intended to control, even though there is no express provision stating the
29 supremacy of Section 1363.09 over the Corporations Code (as there is for Section 1363.03).
30 Proposed Section 4025 eliminates any ambiguity on the point, providing that Corporations Code
31 Section 7616 does not apply to a CID. The Commission invites comment on whether any part of
32 Section 7616 should be imported into proposed Section 4685.

33 **(2)** Section 1363.09 provides for an award of costs and expenses to the association if the court
34 finds that an action brought under that section is "frivolous, unreasonable, or without foundation."
35 That seems to be aimed at limiting an award of association fees to a case involving a frivolous
36 claim. However, the language may be too broad for that purpose. It allows for an award of fees
37 where the action was "without foundation." The meaning of that phrase is unclear, but it could be
38 read to encompass any case in which the court finds against the plaintiff. The Commission
39 requests comment on whether it might be better to use language drawn from Code of Civil
40 Procedure Section 1038, which governs an award of fees in a frivolous case brought under the
41 Tort Claims Act. For example: "The court may award reasonable costs and expenses, including
42 reasonable attorney's fees, to the association if it finds that the action was not brought in good
43 faith and with reasonable cause." The same issue arises under proposed Sections 4555(c) and
44 4735(g).

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Article 5. Inspection of Records

§ 4700. Scope of inspection right

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

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

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

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

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

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

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

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

(8) An executed contract.

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

(10) A state or federal tax return.

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

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

(13) Written correspondence of the association, other than correspondence that relates to personnel matters, member discipline, an assessment dispute or a request for a payment plan for overdue assessments.

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

(1) A record that was prepared three or more fiscal years before the fiscal year in which the inspection request is delivered. This paragraph does not apply to the governing documents or the minutes of a member meeting, a board meeting, or a meeting of a committee that exercises a power of the board. The governing

1 documents and meeting minutes must be made available for inspection
2 permanently.

3 (2) A record that is protected from disclosure by an evidentiary privilege.
4 Examples include documents subject to the attorney-client privilege or relating to
5 litigation in which the association is or may become involved.

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

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

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

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

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

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

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

18 Subdivision (a)(1) is new. Documents that are not “governing documents” within the meaning
19 of Section 4150, but that “govern the operation of the common interest development or its
20 association” include, without limitation, a board resolution, a roster of officers, written
21 instructions to an agent, or an informal policy statement or procedure manual.

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

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

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

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

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

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

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

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

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

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

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

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

46 Subdivision (c) restates former Section 1365.2(b)(2) without substantive change and is
47 comparable to Corporations Code Section 8311.

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

1 **Notes.** Proposed Section 4700 restates portions of Section 1365.2 that define the scope of the
2 record inspection right. The Commission requests comment on the following issues relating to
3 this section:

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

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

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

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

23 **§ 4705. Inspection procedure**

24 4705. (a) A member may deliver to the board (Section 4035) a written request to
25 inspect an association record. The request shall identify the record to be inspected
26 and shall state a purpose for the inspection that is reasonably related to the
27 member’s interest as a member. The request may designate an agent to inspect the
28 record on the member’s behalf.

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

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

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

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

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

39 (c) If the association has a business office in the common interest development,
40 the requested record shall be made available for inspection in that office. If the
41 association does not have a business office in the common interest development,
42 the record shall be made available for inspection at a location agreed to by the
43 association and the member who submitted the request.

44 (d) At the member’s request, a copy of a specifically identified record shall be
45 delivered to the member by individual delivery (Section 4040). If the record exists
46 in electronic form, the association shall comply with a member request that the

1 record be provided in electronic form. Notwithstanding the other provisions of this
2 subdivision, the association may not provide a record in electronic form if the
3 form of the record prevents a necessary redaction.

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

5 Subdivision (b) continues part of former Section 1365.2(j) without substantive change. Special
6 deadlines for inspection of specific types of records have been subsumed within the general
7 deadlines.

8 Subdivisions (c) and (d) continue former Section 1365.2(c), (h) without substantive change.

9 **Notes.** (1) Section 1365.2(c) does not specify where records are to be inspected if the
10 association has no business office in the development and the association and requesting member
11 cannot agree on a location. The only option offered is for the member to receive mailed copies of
12 specifically identified records. That may not be feasible when a member is reviewing the records
13 generally and does not wish to have copies of all of the records. The Commission invites
14 comment on whether some other alternative should be offered.

15 (2) Section 1365.2(h) seems to limit electronic delivery of an association record to a “format
16 that prevents the records from being altered.” The purpose of that limitation is unclear and it
17 could significantly interfere with beneficial use of the electronic transmission. Proposed Section
18 4705 does not continue the limitation. The Commission invites comment on whether that would
19 cause any problems.

20 § 4710. Redaction

21 4710. (a) Before making a record available for inspection, the association shall
22 redact all of the following information from the record:

23 (1) Any financial account number.

24 (2) Any password or personal identification number.

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

26 (4) Any driver’s license number.

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

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

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

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

37 Subdivision (c) restates former Section 1365.2(d)(4) without substantive change.

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

41 § 4715. Optional redaction from membership list

42 4715. (a) A member may elect, in writing, to have the member’s name and
43 address redacted from the membership list.

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

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

7 **§ 4720. Fees**

8 4720. (a) The association may charge a fee to recover the direct and actual cost
9 to copy or deliver a record. The association shall inform the member of the fee
10 amount, and the member shall agree to pay the fee, before a copy is made or a
11 record delivered.

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

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

19 **§ 4725. Permissible purpose**

20 4725. (a) A member may only inspect and use an association record for a
21 purpose that is reasonably related to the requesting member's interest as a
22 member. A member may not inspect or use an association record for a commercial
23 purpose.

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

28 **Comment.** Subdivision (a) of Section 4725 continues former Section 1365.2(e) without
29 substantive change. See also Corp. Code § 8338 (use of membership list).

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

32 **§ 4730. Denial of request**

33 4730. (a) An association that denies a request for records under this article shall
34 provide the requesting member a notice of denial, by individual delivery (Section
35 4040), within 10 business days after delivery of the inspection request.

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

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

38 (2) An offer to attempt to resolve the matter through the association's internal
39 dispute resolution procedure provided pursuant to Article 2 (commencing with
40 Section 5050) of Chapter 4. The offer may include an alternative proposal for
41 achieving the member's purpose.

1 **Comment.** Section 4730 is new.

2 **§ 4735. Action to enforce**

3 4735. (a) If an association has not complied with a document inspection request
4 within the time provided, the requesting member may bring an action in the
5 superior court to enforce the record inspection request. The action may be filed in
6 the small claims division of the superior court if the amount of the demand does
7 not exceed the jurisdiction of that division.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 Subdivision (d)(1) continues part of former Section 1365.2(f) without substantive change.

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

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

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

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

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

16 Subdivisions (f)-(g) continue part of former Section 1365.2(f) without substantive change.

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

18 **Notes.** (1) Section 1365.2(f) provides for an award of costs and expenses to the requesting
19 member if the association acted "unreasonably" in withholding access to records. That is different
20 standard from the standard provided in Corporations Code Section 8337, which provides for an
21 award of costs to the member if the association acted "without justification." Proposed Section
22 4735(f) continues the standard provided in the Davis-Stirling Act on the grounds that, in general,
23 a specific standard is intended to control over a general one.

24 (2) Section 1365.2(f) provides for an award of costs and expenses to the association if the court
25 finds that the requesting member's action is "frivolous, unreasonable, or without foundation."
26 That seems to be aimed at limiting an award of association fees to a case involving a frivolous
27 claim. However, the language may be too broad for that purpose. It allows for an award of fees
28 where the action was "without foundation." The meaning of that phrase is unclear, but it could be
29 read to encompass any case in which the court finds against the plaintiff. The Commission
30 requests comment on whether it might be better to use language drawn from Code of Civil
31 Procedure Section 1038, which governs an award of fees in a frivolous case brought under the
32 Tort Claims Act. For example: "The court may award reasonable costs and expenses, including
33 reasonable attorney's fees, to the association if it finds that the action was not brought in good
34 faith and with reasonable cause." The same issue arises under proposed Sections 4555(c) and
35 4685(e).

36 **§ 4740. Action to enjoin improper use of records**

37 4740. An association may bring an action for injunctive relief and actual
38 damages against any person who misuses association records. In addition, a court
39 in its discretion may award exemplary damages for a fraudulent or malicious
40 misuse of association records. If the association prevails in an action brought
41 under this section, the court shall award the association reasonable costs and
42 expenses, including reasonable attorney's fees.

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

44 **§ 4745. Limited liability**

45 4745. An association, or an officer, director, employee, agent, or volunteer of an
46 association, is not liable for damages that result from a failure to withhold or

1 redact information pursuant to this article, unless the failure to withhold or redact
2 the information was intentional, willful, or negligent.

3 **Comment.** Section 4745 restates former Section 1365.2(d)(3) without substantive change.

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

11 **§ 4750. Application of article**

12 4750. (a) For the purposes of this article, a community service organization is
13 deemed to be an association, and a member of the community service organization
14 or similar entity is deemed to be a member of an association.

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

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

29 **Comment.** Subdivision (a) of Section 4750 continues former Section 1365.2(g) without
30 substantive change.

31 Subdivision (b) continues former Section 1365.2(n) without substantive change.

32 Subdivision (c) continues part of former Section 1363(i) without substantive change.

33 **Note.** Subdivision (b) exempts a CID from the application of this article if it is still in the
34 period of developer control. Presumably, such a development would be subject to the record
35 inspection provisions of the Corporations Code. It seems appropriate that some record inspection
36 right be preserved. A member's interest in the proper management of a CID is not reduced simply
37 because the association is within the control of the developer. The Commission requests comment
38 on whether this exemption serves a useful purpose and should be continued.

39 **Article 6. Record Keeping**

40 **§ 4775. Duty to maintain records**

41 4775. (a) An association shall maintain at least one copy of the following
42 association records, for the periods specified in Section 4780:

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

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

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

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

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

9 (6) Books and records of account.

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

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

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

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

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

19 (12) An employment or payroll record.

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

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

22 (15) A loan document.

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

24 (17) A reserve funding study.

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

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

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

33 **§ 4780. Record retention periods**

34 4780. (a) Unless a longer period is required by law or by the governing
35 documents, an association shall retain a record listed in Section 4775 for at least
36 four years after its date of execution or, in the case of a document that expires or
37 becomes superseded, four years after the document has expired or been
38 superseded.

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

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

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

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

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

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

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

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

13 Subdivision (c) provides that the requirements of this section only apply to a record held by an
14 association at the time that the section became operative. Note that other record retention
15 requirements may govern documents that were held by the association before that date. See, e.g.,
16 Section 4770(b) (period during which records must be made available for member inspection); 22
17 Cal. Code Regs. § 1085-2 (four year period for retention of employment records); 26 C.F.R. §
18 1.6001-1 (retention of federal tax records while material to assessment or collection of tax); 29
19 C.F.R. §§ 516.5 (three year period for retention of payroll records).

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

23 § 4785. Director inspection

24 4785. A director shall have the absolute right at any reasonable time to inspect
25 all association books, records, and documents of every kind and to inspect the
26 common area.

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

28 **Note.** Corporations Code Section 8334 confers on a director an "absolute" right to inspect
29 association records. In one case applying that section, the court concluded that the director's right
30 to inspect records must yield to the right of a member to cast a secret ballot. See *Chantiles v. Lake*
31 *Forest II Master Homeowners Ass'n*, 37 Cal. App. 4th 914, 45 Cal. Rptr 2d 1 (1995) (director did
32 not have right to review ballots and proxies; director's attorney permitted to prepare tallies
33 without revealing individual member votes).

34 The specific issue in *Chantiles* should not arise again. Section 1363.03(c)(3)(E), which
35 becomes operative on July 1, 2006, will require that an independent election inspector count all
36 votes in a CID election. Furthermore, the ballots will not identify the person who cast the ballot.
37 See Section 1363.03(e). In addition, Section 1363.03(f) provides that any member may witness
38 the process of counting the ballots.

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

Article 7. Annual Reports

§ 4800. Annual budget report

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

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

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

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

(3) A summary of the association's property, general liability, earthquake, flood, and fidelity insurance policies. For each policy, the summary shall include the name of the insurer, the type of insurance, the policy limit, and the amount of any deductible. To the extent that any of the required information is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it with the annual budget report.

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

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

Comment. Section 4800 continues part of former Sections 1365(a), (e) and 1365.2 without substantive change.

§ 4805. Annual financial statement

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

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

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

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

(2) If the financial statement is reviewed by an independent accountant, a copy of the accountant's report.

(3) If the financial statement is not reviewed by an independent accountant, the certificate of an authorized officer of the association that the financial statement was prepared without audit from the books and records of the association.

(4) If the association is incorporated, a statement of any transaction or indemnification of a type described in Section 8322 of the Corporations Code.

(d) The board shall promptly deliver a copy of the current annual financial 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 former Section 1365(c) without substantive change.

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 5775.

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 former Section 1365(e) without substantive change.

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 the disclosures and reserve reports required under Article 3 (commencing with
8 Section 5550) of Chapter 5.

9 (b) An association may rely upon information received from a community
10 service organization.

11 **Comment.** Section 4815 restates former Section 1365.3 without substantive change, except
12 that the report must be made annually.

13 **Note.** Existing Section 1365.3 requires that a report prepared by a community service
14 organization be consistent with the provisions of Section 1365.2 and “comply with the
15 standards.” The Commission is unsure of the meaning of that requirement and invites comment
16 on the issue. Is the requirement intended to incorporate the redaction provisions of Section
17 1365.2(d)?

18 **§ 4820. Notice of availability**

19 4820. (a) When a report is prepared pursuant to Section 4800, 4805, 4810, or
20 4815, the board shall deliver individual notice (Section 4040) to all members of
21 the availability of the report.

22 (b) Commencing January 1, 2009, the notice required by this section shall be
23 given when the association adopts a reserve funding plan pursuant to Section
24 5560.

25 (c) The notice of availability shall include a general description of the content of
26 the report and instructions on how to request, at no cost, a complete copy of the
27 report.

28 (d) A board may deliver, by individual notice (Section 4040) to all members, a
29 complete copy of a report instead of the notice of availability of the report.

30 **Comment.** Section 4820 is new. It is consistent with former Section 1365(b), (d).

31 **§ 4825. Financial statement**

32 4825. A financial statement required by this article shall be prepared in
33 conformity with generally accepted accounting principles or some other basis of
34 accounting that reasonably sets forth the assets and liabilities and the income and
35 expenses of the association or community service organization and discloses the
36 accounting basis used in its preparation.

37 **Comment.** Section 4825 is similar to Corporations Code Section 5012.

38 **§ 4830. Judicial enforcement**

39 4830. (a) Any member may bring an action in superior court to enforce the
40 requirements of this article. The court may, for good cause shown, extend the time
41 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 § 4855. Transaction involving incorporated association and director or officer

8 4855. Notwithstanding any other law, and regardless of whether an association
9 is incorporated or unincorporated, the provisions of Section 310 of the
10 Corporations Code shall apply to any contract or other transaction authorized,
11 approved, or ratified by the board or a committee of the board.

12 **Comment.** Section 4855 continues former Section 1365.6, without substantive change.

13 **Note.** Existing Section 1365.6 incorporates Corporations Code Section 310, which ordinarily
14 applies to for profit corporations. The Commission invites comment on whether it would be better
15 to apply Sections 7233-7234 (the interested director provisions of the Nonprofit Mutual Benefit
16 Corporation Law).

17 Article 9. Managing Agent

18 § 4900. Prospective managing agent disclosure

19 4900. (a) A prospective managing agent of a common interest development shall
20 provide a written disclosure to the board before entering into a management
21 agreement. The disclosure shall be provided as soon as is practicable after entering
22 into negotiations, but in no event more than 90 days before entering into an
23 agreement.

24 (b) The disclosure required under this section shall contain all of the following
25 information:

26 (1) The name and business address of each owner or general partner of the
27 managing agent. If the managing agent is a corporation, the disclosure shall
28 include the name and business address of each shareholder owning more than 10
29 percent of the shares of the corporation and each director or officer of the
30 corporation

31 (2) For each person named in paragraph (1), a list of any relevant license or
32 professional certification or designation held by that person. A license,
33 certification, or designation is relevant if it relates to a service to be provided by
34 the managing agent, including architectural design, construction, engineering, real
35 estate, accounting, real property management, or community association
36 management. The list shall indicate the type of license, certification, or
37 designation, the issuing authority, the issuance date, and any expiration date.

38 **Comment.** Section 4900 restates former Section 1363.1 without substantive change. See also
39 Section 4100 ("managing agent" defined).

1 **Notes.** (1) Proposed Section 4900 significantly revises Section 1363.1. The Commission
2 would like to receive comment on whether the revisions would make any change to the substance
3 of the existing section.

4 (2) Section 1363.1(a) requires that the disclosure be made no later than 90 days before entering
5 into an agreement. If that requirement is adhered to, the contracting process would take at least 90
6 days to complete. Is that time frame realistic in practice? Should the 90 day minimum be adjusted
7 or deleted?

8 **§ 4905. Trust fund account**

9 4905. (a) A managing agent who receives funds belonging to an association,
10 other than for deposit into an escrow account or account under the control of the
11 association, shall deposit the funds into a trust fund account.

12 (b) The trust fund account shall be maintained in California, in a federally
13 insured financial institution. The account shall be maintained in the name of the
14 managing agent as trustee for the association or in the name of the association.

15 (c) On the written request of the board, the trust fund account shall be created as
16 an interest bearing account. No interest earned on funds in the account shall inure
17 directly or indirectly to the benefit of the managing agent or to an employee of the
18 managing agent.

19 (d) The managing agent shall inform the board of the nature of the trust fund
20 account, including a statement of how any interest will be calculated and paid,
21 whether service charges will be paid to the depository and by whom, and whether
22 there are any notice requirements or penalties for withdrawal of funds from the
23 account.

24 (e) Funds in a trust fund account may only be disbursed in accordance with
25 written instructions from the association that is entitled to the funds.

26 (f) The managing agent shall maintain a separate record of the receipt and
27 disposition of all funds described in this section, including any interest earned on
28 the funds.

29 (g) The managing agent shall not commingle the funds of an association with
30 the funds of any other person, except as provided in subdivision (h).

31 (h) A managing agent who commingled the funds of two or more associations
32 on or before February 26, 1990 may continue to do so if all of the following
33 requirements are met:

34 (1) The board of each affected association has given its written assent to the
35 commingling.

36 (2) The managing agent maintains a fidelity and surety bond in an amount that is
37 adequate to protect each association and that provides each association at least 10
38 days' notice before cancellation. The managing agent shall provide each affected
39 board with the name and address of the bonding company, the amount of the bond,
40 and the expiration date of the bond. If there are any changes in the bond coverage
41 or the company that provides the coverage, the managing agent shall disclose that
42 fact to the board of each affected association as soon as practical, but in no event
43 more than 10 days after the change.

1 (3) The managing agent provides a written statement to each affected board
2 describing any benefit received by the managing agent from the commingled
3 account or the financial institution where the funds will be on deposit.

4 (4) A completed payment on behalf of an association is deposited within 24
5 hours or the next business day and does not remain commingled for more than 10
6 calendar days. As used in this subdivision, “completed payment” means funds
7 received that clearly identify the account to which the funds are to be credited.

8 (i) The prevailing party in an action to enforce this section shall be entitled to
9 recover reasonable legal fees and court costs.

10 (j) As used in this section, “financial institution” has the meaning provided in
11 Section 31041 of the Financial Code.

12 **Comment.** Section 4905 restates former Section 1363.2 without substantive change. See also
13 Section 4100 (“managing agent” defined).

14 **Notes.** (1) Proposed Section 4905 significantly revises Section 1363.2. The Commission
15 would like to receive comment on whether the revisions would make any change to the substance
16 of the existing section.

17 (2) The Commission invites comment on whether proposed Section 4905(h) continues to serve
18 a useful purpose. It would seem to be the better practice not to allow commingling at all. Should
19 subdivision (h) be deleted? A transitional period could be provided for the separation of accounts
20 that are currently commingled under that provision.

21 **Article 10. Government Assistance**

22 **§ 4950. Director training course**

23 4950. To the extent existing funds are available, the Department of Consumer
24 Affairs and the Department of Real Estate shall develop an on-line education
25 course for the board of directors of an association regarding the role, duties, laws,
26 and responsibilities of directors and prospective directors, and the nonjudicial
27 foreclosure process.

28 **Comment.** Section 4950 continues former Section 1363.001 without substantive change.

29 **§ 4955. Attorney general**

30 4955. (a) Upon receiving a complaint that an association has violated the
31 provisions of Article 3 (commencing with Section 4575), Article 4 (commencing
32 with Section 4625), Article 5 (commencing with Section 4700), Article 6
33 (commencing with Section 4775), or Article 7 (commencing with Section 4800),
34 the Attorney General may, in the name of the people of the State of California,
35 send a notice of the complaint to the principal office of the association, (or, if there
36 is no office, to the office or residence of the chief executive officer or secretary, of
37 the corporation, as set forth in the most recent statement filed pursuant to Section
38 8210 of the Corporations Code).

39 (b) If the answer to the notice of the complaint is not satisfactory, or if there is
40 no answer within 30 days, the Attorney General may institute, maintain, or
41 intervene in a suit, action, or proceeding of any type in any court or tribunal of

1 competent jurisdiction or before any administrative agency for relief by way of
2 injunction, the dissolution of entities, the appointment of receivers, or any other
3 temporary, preliminary, provisional or final remedy as may be appropriate to
4 protect the rights of members or to undo the consequences of the violation. In any
5 action, suit, or proceeding under this section, all persons and entities responsible
6 for or affected by the violation may be joined as parties.

7 (b) If the violation involves assets held in charitable trust, the Attorney General
8 may bring an action under this section without having received a complaint, and
9 without first giving notice of a complaint.

10 **Comment.** Section 4955 is drawn from Corporations Code Section 8216, which authorizes the
11 Attorney General to act on a complaint that a nonprofit mutual benefit corporation is not
12 complying with the law governing member meetings, voting, and record inspection. Section 4955
13 would continue that authority with respect to the provisions of this part that govern the same
14 matters.

15 **§ 4960. State registry**

16 4960. (a) To assist with the identification of common interest developments,
17 each association shall submit to the Secretary of State, on a form and for a fee not
18 to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the
19 following information concerning the association and the development that it
20 manages:

21 (1) A statement that the association is formed to manage a common interest
22 development under the Davis-Stirling Common Interest Development Act.

23 (2) The name of the association.

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

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

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

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

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

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

39 (9) The type of common interest development, as defined in subdivision (c) of
40 Section 4100.

41 (10) The number of separate interests in the development.

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

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

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

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

12 (d) On and after January 1, 2006, the penalty for an incorporated association's
13 noncompliance with the initial or biennial filing requirements of this section shall
14 be suspension of the association's rights, privileges, and powers as a corporation
15 and monetary penalties, to the same extent and in the same manner as suspension
16 and monetary penalties imposed pursuant to Section 8810 of the Corporations
17 Code.

18 (e) The Secretary of State shall make the information submitted pursuant to
19 paragraph (4) of subdivision (a) available only for governmental purposes and
20 only to Members of the Legislature and the Business, Transportation and Housing
21 Agency, on written request. All other information submitted pursuant to this
22 section shall be subject to public inspection pursuant to the California Public
23 Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title
24 1 of the Government Code.

25 **Comment.** Section 4960 continues former Section 1363.6 without substantive change.

26 CHAPTER 4. DISPUTE RESOLUTION AND ENFORCEMENT

27 Article 1. Disciplinary Action

28 **§ 5000. Authority to impose disciplinary fine**

29 5000. An association shall not fine a member for a violation of the governing
30 documents unless, at the time of the violation, the governing documents expressly
31 authorize the use of a fine and include a schedule of the amounts that can be
32 assessed for each type of violation.

33 **Comment.** Section 5000 restates former Section 1363(g) without substantive change, with two
34 exceptions:

35 (1) It does not continue language relating to the distribution of copies of the enforcement
36 policy. Distribution of the governing documents is governed by other law. See Sections
37 4700(a)(1) (record inspection), 5825 (seller's disclosure), 6115 (notice of proposed rule change).

38 (2) It provides that the authority to fine and the schedule of fine amounts must exist at the time
39 of the violation. This prevents ex post facto punishment.

1 **Note.** The authority to impose a fine is a significant power. Should a board that is not
2 authorized to impose fines by the declaration, articles, or bylaws be able to grant itself that power
3 by adopting an operating rule (which can be adopted by the board unilaterally)? Or should the
4 authority to impose fines derive only from the declaration, articles, or bylaws?

5 **§ 5005. Disciplinary hearing**

6 5005. (a) The board shall only impose discipline at a meeting of the board at
7 which the accused member shall have an opportunity to be heard.

8 (b) At least 10 days before meeting to hear a disciplinary matter, the board shall
9 deliver an individual notice to the accused member (Section 4040) that includes all
10 of the following information:

11 (1) The provision of the governing documents that the member is alleged to
12 have violated and a brief summary of the facts constituting the alleged violation.

13 (2) The penalty that may be imposed for the violation.

14 (3) The time, date, and location of the meeting at which the matter will be heard.

15 (4) A statement that the accused member has a right to attend the meeting,
16 address the board, and request that the matter be considered in closed executive
17 session.

18 (c) Within 15 days after hearing a disciplinary matter, the board shall deliver a
19 written decision to the accused member, by individual notice (Section 4040). If the
20 board imposes a penalty, the written decision shall state the provision of the
21 governing documents violated and the penalty for the violation.

22 **Comment.** Section 5005 restates former Section 1363(h) without substantive change, with the
23 following changes:

24 (1) Subdivision (a) is new. It states expressly what is clearly implied.

25 (2) Subdivision (b)(2) is new.

26 **Note.** The disciplinary hearing provision only applies to a violation of the governing
27 documents. However, a board can also impose a monetary charge to recover the cost to repair
28 damage to the common area that was caused by the member or the member's guest or tenant.
29 There is no provision for a hearing to consider whether the member actually caused the damage.
30 A charge to reimburse for repair of damages can lead to nonjudicial foreclosure. See Section
31 1367.1(d). Should there be some sort of hearing required before such a charge can be assessed
32 against a member?

33 **§ 5015. Responsibility for guest, invitee, or tenant**

34 5015. For the purposes of this article, a member is responsible for a violation of
35 the governing documents by the member's guest, invitee, or tenant.

36 **Comment.** Section 5015 is consistent with former Section 1363(g), except that the rule has
37 been broadened to provide that a member is responsible for a tenant's violation.

38 **Note.** Existing Section 1363(g) provides that a member is responsible for a violation of the
39 governing documents by the member's guest or invitee. By contrast, existing Sections 1367(b)
40 and 1367.1(d) provide that a member may be charged for damage to the common area caused by
41 the member or the member's guest or tenant.

42 Proposed Section 5015 would resolve that inconsistency by broadening the scope of
43 responsibility to include a violation by a member's tenant. The damage reimbursement provisions
44 of Sections 1367 and 1367.1 will be given the same scope (i.e., a member will be liable for

1 damage caused by the member's guest, invitee, and tenant). The Commission invites comment on
2 that approach.

3 **§ 5020. Removing vehicle from common interest development**

4 5020. The authority of an association to cause the removal of a vehicle from a
5 common interest development is governed by Section 22658.2 of the Vehicle
6 Code.

7 **Comment.** Section 5020 is new. See also Veh. Code §§ 22658 (removal of vehicle from
8 private property), 22853 (notice of removed vehicle).

9 **Article 2. Internal Dispute Resolution**

10 **§ 5050. Application of article**

11 5050. (a) This article applies to a dispute between an association and a member
12 involving their rights, duties, or liabilities under this part, under the Nonprofit
13 Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of
14 Division 2 of Title 1 of the Corporations Code), or under the governing
15 documents.

16 (b) This article supplements, and does not replace, Article 3 (commencing with
17 Section 5075), relating to alternative dispute resolution as a prerequisite to an
18 enforcement action.

19 (c) This article does not apply to a decision to discipline a member that is made
20 pursuant to Section 5005.

21 **Comment.** Subdivisions (a) and (b) of Section 5050 continue former Section 1363.810 without
22 substantive change.

23 Subdivision (c) is new. It makes clear that this article does not apply to member discipline that
24 is imposed pursuant to Section 5005. It would not preclude the application of this article to a
25 dispute that involves a failure of the association to comply with Section 5005. Nor would it
26 preclude the use of this article before a final discipline decision is made under Section 5005. Prior
27 to issuing a final decision, an association may defer or suspend action under Section 5005 and
28 proceed under this article.

29 **§ 5055. Fair, reasonable, and expeditious dispute resolution procedure required**

30 5055. (a) An association shall provide a fair, reasonable, and expeditious
31 procedure for resolving a dispute within the scope of this article.

32 (b) In developing a procedure pursuant to this article, an association shall make
33 maximum, reasonable use of available local dispute resolution programs involving
34 a neutral third party, including low-cost mediation programs such as those listed
35 on the Internet Web sites of the Department of Consumer Affairs and the United
36 States Department of Housing and Urban Development.

37 (c) If an association does not provide a fair, reasonable, and expeditious
38 procedure for resolving a dispute within the scope of this article, the procedure
39 provided in Section 5065 applies and satisfies the requirement of subdivision (a).

40 **Comment.** Section 5055 continues former Section 1363.820 without substantive change.

1 **§ 5060. Minimum requirements of association procedure**

2 5060. A fair, reasonable, and expeditious dispute resolution procedure shall at a
3 minimum satisfy all of the following requirements:

4 (a) The procedure may be invoked by either party to the dispute. A request
5 invoking the procedure shall be in writing.

6 (b) The procedure shall provide for prompt deadlines. The procedure shall state
7 the maximum time for the association to act on a request invoking the procedure.

8 (c) If the procedure is invoked by a member, the association shall participate in
9 the procedure.

10 (d) If the procedure is invoked by the association, the member may elect not to
11 participate in the procedure. If the member participates but the dispute is resolved
12 other than by agreement of the member, the member shall have a right of appeal to
13 the association's board of directors.

14 (e) A resolution of a dispute pursuant to the procedure, that is not in conflict
15 with the law or the governing documents, binds the association and is judicially
16 enforceable. An agreement reached pursuant to the procedure, that is not in
17 conflict with the law or the governing documents, binds the parties and is
18 judicially enforceable.

19 (f) The procedure shall provide a means by which the member and the
20 association may explain their positions.

21 (g) A member of the association shall not be charged a fee to participate in the
22 process.

23 **Comment.** Section 5060 continues former Section 1363.830 without substantive change.

24 **§ 5065. Default meet and confer procedure**

25 5065. (a) This section applies in an association that does not otherwise provide a
26 fair, reasonable, and expeditious dispute resolution procedure. The procedure
27 provided in this section is fair, reasonable, and expeditious, within the meaning of
28 this article.

29 (b) Either party to a dispute within the scope of this article may invoke the
30 following procedure:

31 (1) The party may request the other party to meet and confer in an effort to
32 resolve the dispute. The request shall be in writing.

33 (2) A member of an association may refuse a request to meet and confer. The
34 association may not refuse a request to meet and confer.

35 (3) The association's board of directors shall designate a member of the board to
36 meet and confer.

37 (4) The parties shall meet promptly at a mutually convenient time and place,
38 explain their positions to each other, and confer in good faith in an effort to
39 resolve the dispute.

40 (5) A resolution of the dispute agreed to by the parties shall be memorialized in
41 writing and signed by the parties, including the board designee on behalf of the
42 association.

1 (c) An agreement reached under this section binds the parties and is judicially
2 enforceable if both of the following conditions are satisfied:

3 (1) The agreement is not in conflict with law or the governing documents of the
4 common interest development or association.

5 (2) The agreement is either consistent with the authority granted by the board of
6 directors to its designee or the agreement is ratified by the board of directors.

7 (d) A member of the association may not be charged a fee to participate in the
8 process.

9 **Comment.** Section 5065 continues former Section 1363.840 without substantive change.

10 **§ 5070. Notice in member handbook**

11 5070. The member handbook (Section 4810) shall include a description of the
12 internal dispute resolution process provided pursuant to this article.

13 **Comment.** Section 5070 continues former Section 1363.850 without substantive change.

14 **Article 3. Alternative Dispute Resolution**
15 **Prerequisite to Civil Action**

16 **§ 5075. Definitions**

17 5075. As used in this article:

18 (a) “Alternative dispute resolution” means mediation, arbitration, conciliation,
19 or other nonjudicial procedure that involves a neutral party in the dispute
20 resolution process. The form of alternative dispute resolution chosen pursuant to
21 this article may be binding or nonbinding, with the voluntary consent of the
22 parties.

23 (b) “Enforcement action” means a civil action or proceeding, other than a cross-
24 complaint, for any of the following purposes:

25 (1) Enforcement of this part.

26 (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3
27 commencing with Section 7110) of Division 2 of Title 1 of the Corporations
28 Code).

29 (3) Enforcement of the governing documents of a common interest
30 development.

31 **Comment.** Section 5075 continues former Section 1369.510 without substantive change. The
32 term “decisionmaking process” has been replaced with the more technically accurate term
33 “dispute resolution process.” This is a nonsubstantive change.

34 **§ 5080. ADR prerequisite to enforcement action**

35 5080. (a) An association or an owner or a member of a common interest
36 development may not file an enforcement action in the superior court unless the
37 parties have endeavored to submit their dispute to alternative dispute resolution
38 pursuant to this article.

1 (b) This section applies only to an enforcement action that is solely for
2 declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim
3 for monetary damages not in excess of the jurisdictional limits stated in Sections
4 116.220 and 116.221 of the Code of Civil Procedure.

5 (c) This section does not apply to a small claims action.

6 (d) Except as otherwise provided by law, this section does not apply to an
7 assessment dispute.

8 **Comment.** Section 5080 continues former Section 1369.520 without substantive change,
9 except that subdivision (d) is obsolete and is not continued. That subdivision provided that the
10 alternative dispute resolution requirements do not apply to an assessment dispute, except as
11 otherwise provided by law. The application of this article to an assessment dispute is now
12 governed by Article 3 (commencing with Section 5600) of Chapter 5.

13 **§ 5085. Request for resolution**

14 5085. (a) Any party to a dispute may initiate the process required by Section
15 5080 by serving on all other parties to the dispute a request for resolution. The
16 request for resolution shall include all of the following:

17 (1) A brief description of the dispute between the parties.

18 (2) A request for alternative dispute resolution.

19 (3) A notice that the party receiving the request for resolution is required to
20 respond within 30 days of service or the request will be deemed rejected.

21 (4) If the party on whom the request is served is the owner of a separate interest,
22 a copy of this article.

23 (b) Service of the request for resolution shall be by personal delivery, first-class
24 mail, express mail, facsimile transmission, or other means reasonably calculated to
25 provide the party on whom the request is served actual notice of the request.

26 (c) A party on whom a request for resolution is served has 30 days following
27 service to accept or reject the request. If a party does not accept the request within
28 that period, the request is deemed rejected by the party.

29 **Comment.** Section 5085 continues former Section 1369.530 without substantive change.

30 **§ 5090. ADR process**

31 5090. (a) A party on whom a request for resolution is served may agree to
32 participate in alternative dispute resolution by delivering a written acceptance to
33 the party that served the request for resolution. The written acceptance shall be
34 delivered as an individual notice (Section 4040).

35 (b) The parties shall complete the alternative dispute resolution within 90 days
36 after delivery of the written acceptance, unless this period is extended by written
37 stipulation signed by both parties.

38 (c) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence
39 Code applies to any form of alternative dispute resolution initiated by a Request
40 for Resolution under this article, other than arbitration.

41 (d) The costs of the alternative dispute resolution shall be borne by the parties.

1 **Comment.** Section 5090 continues former Section 1369.540 without substantive change,
2 except that a procedure is added in subdivision (a) for written acceptance of a request for
3 resolution.

4 **§ 5095. Tolling of statute of limitations**

5 5095. If a request for resolution is served before the end of the applicable time
6 limitation for commencing an enforcement action, the time limitation is tolled
7 during the following periods:

8 (a) The period provided in Section 5085 for response to a request for resolution.

9 (b) If the request for resolution is accepted, the period provided by Section 5090
10 for completion of alternative dispute resolution, including any extension of time
11 stipulated to by the parties pursuant to Section 5090.

12 **Comment.** Section 5095 continues former Section 1369.550 without substantive change.

13 **§ 5100. Certification of efforts to resolve dispute**

14 5100. (a) At the time of commencement of an enforcement action, the party
15 commencing the action shall file with the initial pleading a certificate stating that
16 one or more of the following conditions is satisfied:

17 (1) Alternative dispute resolution has been completed in compliance with this
18 article.

19 (2) One of the other parties to the dispute did not accept the terms offered for
20 alternative dispute resolution.

21 (3) Preliminary or temporary injunctive relief is necessary.

22 (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a
23 demurrer or a motion to strike unless the court finds that dismissal of the action for
24 failure to comply with this article would result in substantial prejudice to one of
25 the parties.

26 **Comment.** Section 5100 continues former Section 1369.560 without substantive change.

27 **§ 5105. Stay of litigation for dispute resolution**

28 5105 (a) After an enforcement action is commenced, on written stipulation of
29 the parties, the matter may be referred to alternative dispute resolution. The
30 referred action is stayed. During the stay, the action is not subject to the rules
31 implementing subdivision (c) of Section 68603 of the Government Code.

32 (b) The costs of the alternative dispute resolution shall be borne by the parties.

33 **Comment.** Section 5105 continues former Section 1369.570 without substantive change.

34 **§ 5110. Attorney's fees**

35 5110. In an enforcement action in which fees and costs may be awarded, the
36 court, in determining the amount of the award, may consider whether a party's
37 refusal to participate in alternative dispute resolution before commencement of the
38 action was reasonable.

39 **Comment.** Section 5110 generalizes former Section 1369.580 so that it applies to any
40 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 former Section 1365(a)(2)(B)(iii) without substantive change.

12 Subdivision (d) restates and simplifies former Section 1365.5(a) without substantive change.

13 **Note.** Proposed Section 5500 significantly simplifies existing Section 1365.5(a) and states
14 explicitly the implicit requirement that an association maintain separate operating and reserve
15 accounts and detailed records for both. The Commission invites comment on whether those
16 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 former Section 1365(c)(1) without
33 substantive change.

34 Subdivision (b) restates former Section 1365.5(b) without substantive change.

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 former Section 1365.5(c)(2) without substantive change.

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 former Section 1365.5(d) without substantive change.

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 former Section 1365.5(e) without substantive change,
39 except that an exception from the inspection requirement, for major components with a
40 replacement value of 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 _____.

10 Note: If the units in this development do not pay equal assessments, then a
 11 schedule showing the current regular assessment for each class of unit is
 12 attached.

- 1 (5) Additional regular assessments that have already been approved for any
 2 purpose are listed in the schedule below:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

- 3 Note: If the units in this development do not pay equal assessments, then a
 4 schedule showing the approved regular assessments for each class of unit is
 5 attached.

- 6 (6) Special assessments that have been approved for any purpose are listed in
 7 the schedule below:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

- 8 Note: If the units in this development do not pay equal assessments, then a
 9 schedule showing the approved special assessments for each class of unit is
 10 attached.

- 11 (7) If the association has any outstanding loans with an original term of more
 12 than one year, information about those loans is included in the schedule
 13 below:

Lender	Amount owed	Interest rate	Annual payment	Date when loan to be retired

- 14 (8) Based on the most recent reserve study and other information available to
 15 the board of directors, will the current regular assessment, approved
 16 increases in the regular assessment, and approved special assessments
 17 provide sufficient reserve funds at the end of each year to meet the
 18 association's obligation for repair and replacement of major components
 19 over the next 30 years?

20 Yes _____ No _____

1 (9) If the answer to question (8) is no, please refer to the most recently
2 approved reserve funding plan for a description of any additional assessment
3 increases or special assessments that may be proposed in order to provide
4 sufficient reserve funds at the end of each year to meet the association's
5 obligation for repair and replacement of major components over the next 30
6 years.

7 (10) The financial representations set forth in this summary are based on the best
8 estimates of the preparer at that time. The estimates are subject to change. A
9 statement describing the procedures used to make the calculations used in
10 this summary is attached.

11 (d) The summary prepared pursuant to subdivision (c) shall be included with the
12 notice of availability of the annual budget report that is delivered to members
13 pursuant to Section 4820. The form may be supplemented or modified in order to
14 make the information provided clearer or more complete, so long as the minimum
15 information required by subdivision (c) is provided.

16 (e) The summary prepared pursuant to subdivision (c) shall not be admissible in
17 evidence to show improper financial management of an association. Other relevant
18 and competent evidence of the financial condition of the association is not made
19 inadmissible by this subdivision.

20 (f) A component with an estimated remaining useful life of more than 30 years
21 may be included in a study as a capital asset or disregarded from the reserve
22 calculation, so long as the decision is revealed in the reserve study report and
23 reported in the summary prepared pursuant to subdivision (c).

24 **Comment.** Subdivision (a) of Section 5555 is drawn from former Section 1365.5(e).

25 Subdivision (b)(1) restates former Sections 1365.2.5(a)(5) and 1365.5(e)(1) without substantive
26 change.

27 Subdivision (b)(2) is consistent with former Section 1365(a)(2)(A) and is required in order to
28 perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

29 Subdivision (b)(3) is consistent with former Sections 1365(a)(2)(A) and 1365.5(e)(3) and is
30 required in order to perform the calculation required by former Sections 1365(a)(2)(B)(i) and
31 1365.2.5(a)(6).

32 Subdivision (b)(4) is required in order to perform the calculation required by former Sections
33 1365.2.5(a)(6) and 1365.5(e)(4).

34 Subdivision (b)(5) is consistent with former Section 1365(a)(2)(A) and is required in order to
35 perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

36 Subdivision (b)(6) is required in order to perform the calculation required by former Sections
37 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

38 Subdivision (c) restates the disclosure requirements of former Sections 1365(a)(2) and
39 1365.2.5, as follows:

40 Item (1) is drawn from Sections 1365(a)(2)(B) and 1365.2.5(a)(6).

41 Item (2) is drawn from former Sections 1365(a)(2)(B)(i)-(ii), (C)-(D) and 1365.2.5(a) (6).

42 Item (3) is drawn from former Sections 1365(a)(2)(B)(i)-(ii), (C) and 1365.2.5(a)(7).

43 Item (4) is drawn from Section 1365.2.5(a)(1).

44 Items (5) and (6) are drawn from former Section 1365.2.5(a)(2).

45 Item (7) is drawn from former Section 1365(a)(3)(D).

46 Item (8) is drawn from former Section 1365.2.5(a)(3).

47 Item (9) is drawn from former Section 1365.2.5(a)(4), except that the schedule of proposed
48 assessment increases will be set out in the reserve funding plan. See Section 5560.

- 1 Item (10) is drawn from former Section 1365.2.5(a)(7).
 2 Subdivision (d) restates former Section 1365.2.5(b)(3) without substantive change.
 3 Subdivision (e) restates the second paragraph of former Section 1365(a)(4) without substantive
 4 change.
 5 Subdivision (f) restates former Section 1365.2.5(b)(2) without substantive change.

6 **Note.** The Commission invites comment on the meaning and purpose of existing Section
 7 1365.2.5(b)(2) (proposed Section 5555(f)). When would it be appropriate to consider a
 8 component of the common area a capital asset in connection with the study of reserve funding
 9 needs? Why is it necessary to explain the exclusion of components that have a useful life of more
 10 than 30 years, when that would put them outside the stated scope of the study?

11 **§ 5560. Reserve funding plan**

12 5560. (a) At least once every three years, the board shall prepare a reserve
 13 funding plan that describes how the association will contribute sufficient funds to
 14 the reserve account to meet the association’s obligation to repair and replace the
 15 major components included in the most recent reserve funding study.

16 (b) The plan may provide for an increase in the general assessment, a special
 17 assessment, borrowing, use of other assets, deferral of selected replacement or
 18 repairs, or other mechanisms.

19 (c) If the plan proposes an increase in the general assessment, it shall describe
 20 the proposed increase in the following form:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

21 (d) If the plan proposes an increase in one or more special assessments, it shall
 22 describe the proposed increase in the following form:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

23 (e) If the separate interests in the development do not pay equal assessments, the
 24 plan shall indicate the amount of any increase or special assessment for each class
 25 of separate interest.

26 (f) The plan shall be considered by the board at a board meeting.

27 (g) Board approval of the plan does not constitute approval of an assessment
 28 increase described in the plan. Any assessment increase must be considered
 29 separately by the board and is subject to the procedure provided in Section 5580.

1 (h) The plan may not assume a rate of return on cash reserves in excess of 2
2 percent above the discount rate published by the Federal Reserve Bank of San
3 Francisco at the time the plan is prepared.

4 **Comment.** Section 5560 restates former Sections 1365(a)(3)-(4) and 1365.5(e)(5) without
5 substantive change.

6 Article 2. Assessments

7 § 5575. Levy of assessment

8 5575. (a) An association shall levy regular and special assessments sufficient to
9 perform its obligations under the governing documents and this title.

10 (b) An association shall not levy an assessment or fee that exceeds the amount
11 necessary to defray the costs for which it is levied.

12 **Comment.** Subdivision (a) of Section 5575 continues the first sentence of former Section
13 1366(a) without substantive change.

14 Subdivision (b) continues former Section 1366.1 without substantive change.

15 § 5580. Assessment increase

16 5580. (a) Subject to the limitations of Section 5575 and subdivision (b), the
17 board may increase the regular assessment by any amount that is required to fulfill
18 its obligations and may impose a special assessment of any amount that is required
19 to fulfill its obligations. This subdivision supersedes any contrary provision of the
20 governing documents.

21 (b) In the following circumstances, an assessment increase or special assessment
22 may only be adopted with the approval of an affirmative majority of the votes cast
23 at a meeting at which at least fifty percent of the voting power is represented:

24 (1) The association has not complied with Section 4800 for the fiscal year in
25 which the assessment increase or special assessment would take effect.

26 (2) The total increase in the regular assessment for the fiscal year would be more
27 than 20 percent of the regular assessment at the end of the preceding fiscal year.

28 (3) The total for all special assessments imposed in the fiscal year would be
29 more than 5 percent of the budgeted gross expenses of the association for the fiscal
30 year in which the special assessment would be imposed.

31 (c) Subdivision (b) does not apply to an assessment increase that is required to
32 address the following emergency expenses:

33 (1) An extraordinary expense required by an order of a court.

34 (2) An extraordinary expense necessary to repair or replace any part of the
35 development that the association is obligated to maintain, where a threat to
36 personal safety is discovered on the property.

37 (3) An extraordinary expense necessary to repair or replace any part of the
38 development that the association is obligated to maintain that could not have been
39 reasonably foreseen by the board in preparing and distributing the budget report
40 under Section 4800. Before imposing an assessment under this subdivision, the

1 board shall adopt a resolution containing written findings as to the necessity of the
2 extraordinary expense involved and why the expense was not or could not have
3 been reasonably foreseen in the budgeting process, and the resolution shall be
4 distributed to the members with the notice of assessment.

5 (d) The association shall provide the members with individual notice (Section
6 4040) of any increase in the regular or special assessments of the association at
7 least 30 days before the increased assessment takes effect.

8 **Comment.** Subdivisions (a)-(c), (e) of Section 5580 restate the last two sentences of former
9 Section 1366(a), and former Section 1366(b), without substantive change. Subdivision (a) makes
10 clear that a board’s authority to impose an assessment increase that is required to fulfill its legal
11 obligations may not be limited by the governing documents.

12 Subdivision (d) restates former Section 1366(d) without substantive change, except that the
13 prohibition on giving notice more than 60 days before the increase takes effect is not continued.

14 **Note.** Existing Section 1366(b) requires member approval before the board may “impose a
15 regular assessment that is more than 20 percent greater than the regular assessment for the
16 association’s preceding fiscal year...” That language is somewhat ambiguous. Does it mean that
17 the **increase** may not exceed 20 percent of the **prior year’s assessment**? Or does it mean that the
18 **difference** between the increased assessment and the prior year’s assessment may not exceed 20
19 percent **of the increased assessment**. For example, an association has a monthly assessment of
20 \$80. Would an increase of \$20 per month trigger the member approval requirement? Twenty
21 dollars would be 20 percent of the increased assessment amount, but would be more than 20
22 percent of the prior year’s assessment amount.

23 Proposed Section 5580(b)(2) is intended to make clear that **the total increase may not exceed**
24 **20 percent of the prior assessment amount**. That would seem to be the more natural reading of
25 the existing language. The Commission invites comment on whether this would create any
26 problems.

27 **§ 5585. Exemption from execution**

28 5585. (a) A regular assessment imposed or collected to perform an obligation of
29 an association under the governing documents or this title is exempt from
30 execution by a judgment creditor of the association only to the extent necessary
31 for the association to perform essential services, such as paying for utilities and
32 insurance. In determining the appropriateness of an exemption, a court shall
33 ensure that only essential services are protected under this subdivision.

34 (b) This section does not apply to a consensual pledge, lien, or encumbrances
35 that is approved by a majority of a quorum of the members (Section 4070), or to
36 any state tax lien, or to any lien for labor or materials supplied to the common
37 area.

38 **Comment.** Section 5585 continues former Section 1366(c) without substantive change.

39 **Article 3. Payment and Collection of Assessment**

40 **§ 5600. Payment**

41 5600. (a) The association shall provide a mailing address for the overnight
42 payment of an assessment. The address shall be included in the member handbook
43 (Section 4810).

1 (b) On the request of a member, the association shall provide that member with
2 a receipt for a payment made to the association. The receipt shall indicate the date
3 and amount of the payment and the person who received the payment for the
4 association.

5 (c) A payment made for a delinquent assessment shall first be applied to the
6 assessment owed. Only after the assessment owed is paid in full shall the payment
7 be applied to collection costs, a late fee, or interest.

8 **Comment.** Section 5600 continues former Section 1367.1(b) without substantive change.

9 **Note.** Proposed Section 5600(a) requires that the association provide a mailing address for
10 “overnight payment” of assessments. Does this mean for receipt of payments sent by overnight
11 delivery? If not, what does it mean?

12 § 5605. Delinquency

13 5605 (a) An assessment becomes delinquent 15 days after it is due, unless the
14 declaration provides a longer time period, in which case the longer time period
15 applies.

16 (b) If an assessment is delinquent, the association may recover all of the
17 following amounts:

18 (1) The unpaid amount of the assessment.

19 (2) The reasonable cost incurred in collecting the delinquent assessment,
20 including a reasonable attorney’s fee.

21 (3) A late charge not exceeding ten dollars (\$10).

22 (4) Interest on the delinquent assessment, the reasonable cost of collection, and
23 the late charge. The annual interest rate shall not exceed 12 percent, commencing
24 30 days after the assessment becomes due, unless the declaration specifies a lower
25 rate of interest, in which case the lower rate of interest applies.

26 (c) An association is exempt from interest-rate limitations imposed by Article
27 XV of the California Constitution, subject to the limitations of this section.

28 (d) The amount described in subdivision (b) becomes a debt of the member at
29 the time the assessment or other sum is levied.

30 **Comment.** Subdivisions (a)-(c) of Section 5605 restate former Section 1366(e)-(f) without
31 substantive change.

32 Subdivision (d) continues the first sentence of former Sections 1367(a) and 1367.1(a) without
33 substantive change.

34 § 5610. Assignment or pledge

35 5610. (a) Except as otherwise provided in this section, an association may not
36 voluntarily assign or pledge to a third party the association’s right to collect a
37 payment or assessment, or to enforce or foreclose a lien.

38 (b) An association may assign or pledge the association’s right to collect a
39 payment or assessment, or to enforce or foreclose a lien, to a financial institution
40 or lender chartered or licensed under federal or state law, when acting within the
41 scope of that charter or license, as security for a loan obtained by the association.

1 (c) Nothing in this section affects the right or ability of an association to assign
2 an unpaid obligation of a former member to a third party for purposes of
3 collection.

4 **Comment.** Section 5610 restates the first sentence of former Section 1367.1(g) without
5 substantive change.

6 **§ 5615. Pre-lien notice**

7 5615. (a) At least 30 days before recording a lien on the separate interest of the
8 owner of record to collect a debt that is past due under this article, the association
9 shall deliver to the owner of record, by certified mail, a written notice of
10 delinquency.

11 (b) The notice of delinquency shall include the following information.

12 (1) An itemized statement of the charges owed, including any collection costs,
13 late fee, and interest.

14 (2) A general description of the collection and lien enforcement procedures of
15 the association and the method by which the amount due was calculated.

16 (c) The notice of delinquency shall include the following statement, in bold 14
17 point type:

18 **IMPORTANT NOTICE**

19 IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE
20 BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE
21 SOLD WITHOUT COURT ACTION. However, before the association can
22 initiate foreclosure, you have the right to request alternative dispute resolution
23 with a neutral third party under Civil Code Section 5655(a)(2).

24 You have the right to inspect association records under Civil Code Section
25 4700.

26 You have the right to request a meeting with a representative of the board under
27 Civil Code Section 5625.

28 If you wish to request a payment plan, you have the right to request a meeting
29 with the board under Civil Code Section 5620.

30 If the association determines that the assessment is not delinquent, you will not
31 be liable for any collection costs, late fee, or interest.

32 **Comment.** Section 5615 continues part of former Section 1367.1(a) without substantive
33 change.

34 Subdivision (c) provides a standardized form for the disclosure of required statements.

35 **§ 5620. Payment plan**

36 5620. (a) A member that owes a delinquent assessment may deliver a written
37 request (Section 4035) to meet with the board to discuss a payment plan for the
38 debt. If the association has adopted standards for payment plans, the association
39 shall provide a copy of the standards to the member.

40 (b) The association shall meet with the member and consider the request within
41 45 days after receipt of the request, either at a regularly scheduled board meeting
42 or at a specially scheduled meeting between the member and a committee

1 appointed by the board for that purpose. The board shall deliver individual notice
2 (Section 4040) to the member stating the date, time, and location of the meeting at
3 which the request will be considered.

4 (c) A payment plan may incorporate an assessment that will accrue during the
5 payment plan period. Additional late fees shall not accrue during the payment plan
6 period if the owner is in compliance with the terms of the payment plan.

7 (d) A payment plan does not affect an association's ability to record a lien on the
8 owner's separate interest to secure payment of a delinquent assessment. In the
9 event of a default on any payment plan, the association may resume its efforts to
10 collect all delinquent assessments.

11 **Comment.** Section 5620 continues former Section 1367.1(c)(3) without substantive change,
12 except that a special rule that applies to an interest in a time share is not continued. Such an
13 interest is expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212.

14 Subdivision (b) simplifies the former provision on the timing of a meeting to request a payment
15 plan.

16 **Note.** Proposed Section 5620(c) continues the existing rule that a late fee may not be imposed
17 while a payment plan is in effect. Should that rule also apply to interest on the amount owed?

18 **§ 5625. Pre-lien meeting**

19 5625. Before recording a lien for delinquent assessments, an association shall
20 offer the owner and, if so requested by the owner, participate in internal dispute
21 resolution pursuant to Article 2 (commencing with Section 5050) of Chapter 4.

22 **Comment.** Section 5625 restates former Section 1367.1(c)(1)(A) and the second sentence of
23 former Section 1367.4(b)(2) without substantive change.

24 **§ 5630. Lien creation and priority**

25 5630. (a) An association that has complied with Sections 5615 and 5625 may
26 record a notice of delinquent assessment in the county in which the common
27 interest development is located. Recording of the notice of delinquent assessment
28 creates a lien against the property for which the delinquent assessment is owed.

29 (b) The recorded notice of delinquent assessment shall state the following
30 information:

31 (1) The amount owed, including an itemized statement of any delinquent
32 assessment amount, reasonable cost of collection, late fees, or interest.

33 (2) A legal description of the separate interest against which the lien is imposed.

34 (3) The name of the record owner of the separate interest against which the lien
35 is imposed.

36 (c) A lien may not be enforced by nonjudicial foreclosure unless the recorded
37 notice of delinquent assessment states the name and address of the trustee that is
38 authorized by the association to enforce the lien by sale.

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

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

5 (f) Unless the governing documents provide otherwise, a lien created pursuant to
6 this section has priority over a subsequently recorded lien.

7 (g) The decision to record a lien for a delinquent assessment shall be made only
8 by the board, at a meeting of the board, and may not be delegated to an agent of
9 the association.

10 (h) Nothing in this article or in subdivision (a) of Section 726 of the Code of
11 Civil Procedure prohibits an action against the owner of a separate interest to
12 recover sums for which a lien is created pursuant to this section or prohibits an
13 association from taking a deed in lieu of foreclosure.

14 (i) An association that fails to comply with Section 5615 or 5625 before
15 recording a lien shall provide a new notice under Section 5615. Any additional
16 costs that accrue from the failure to comply with Section 5615 or 5625 shall be
17 borne by the association and not by the owner of the separate interest.

18 **Comment.** Subdivisions (a)-(e) of Section 5630 restate the first six sentences of former Section
19 1367.1(d) without substantive change. Subdivision (a) is consistent with the substance of former
20 Section 1367.1(l)(1).

21 Subdivision (f) restates former Section 1367.1(f) without substantive change.

22 Subdivision (g) restates former Section 1367.1(c)(2) without substantive change, except that
23 the provision limiting the provision to liens recorded on or after January 1, 2006 is not continued.
24 See Section 5675 (application of article).

25 Subdivision (h) restates former Section 1367.1(h) without substantive change.

26 Subdivision (i) restates former Section 1367.1(l) without substantive change.

27 **§ 5635. Lien release**

28 5635. (a) Within 21 days after the payment of the sums stated in a recorded
29 notice of delinquent assessment, the association shall record a lien release or
30 notice of rescission in the county in which the notice of delinquent assessment is
31 recorded. The association shall deliver to the record owner of the separate interest,
32 by individual notice (Section 4040), a copy of the lien release or notice of
33 rescission.

34 (b) Within 21 days after a determination that a notice of delinquent assessment
35 was recorded in error, the association shall record a lien release or notice of
36 rescission in the county in which the notice of delinquent assessment is recorded.
37 The association shall deliver to the record owner of the separate interest, by
38 individual notice (Section 4040), a copy of the lien release or notice of rescission
39 and a declaration that the notice of delinquent assessment was recorded in error.

40 (c) If a notice of delinquent assessment is recorded in error, the association shall
41 reverse any collection cost, late fee, or interest that results from the error. The
42 association shall bear any cost of alternative dispute resolution that relates to the
43 error.

1 **Comment.** Subdivision (a) of Section 5635 restates the seventh sentence of former Section
2 1367.1(d) without substantive change.

3 Subdivision (b) restates former Section 1367.1(i) without substantive change.

4 Subdivision (c) restates former Section 1367.5 without substantive change. The requirement
5 that the error be discovered as a result of alternative dispute resolution is not continued.

6 **Note.** Existing Section 1367.1(i) provides for the release of a lien after it is determined that
7 the lien was recorded in error. For the purposes of that provision, who makes the determination?

8 **§ 5640. Lien for damage or fine**

9 5640. (a) Unless the governing documents provide otherwise, a monetary charge
10 imposed by the association as a means of reimbursing the association for costs
11 incurred by the association in the repair of damage to common areas and facilities
12 for which the member or the member's guests or tenants are responsible may
13 become a lien against the member's separate interest that is enforceable by the sale
14 of the interest under Sections 2924, 2924b, and 2924c.

15 (b) A fine imposed by the association for a violation of the governing
16 documents, however described, shall not become a lien against the member's
17 separate interest that is enforceable by the sale of the interest under Sections 2924,
18 2924b, and 2924c. This subdivision does not apply to a penalty for late payment of
19 a regular or special assessment.

20 **Comment.** Subdivision (a) of Section 5640 restates the eight and ninth sentences of former
21 Section 1367.1(d) without substantive change.

22 Subdivision (b) restates former Section 1367.1(e) without substantive change.

23 **Notes.** (1) Existing Section 1367.1(d) provides that foreclosure may be used to collect a
24 charge imposed for damage to the common area, but expressly provides that there is no intent to
25 "contravene" a Department of Real Estate regulation that limits the use of foreclosure to collect
26 such a charge. See 10 Cal. Code Regs. § 2792.26.

27 The DRE regulations set standards for an association's initial governing documents. Once the
28 period of developer control ends, an association can amend its governing documents to avoid the
29 DRE imposed rules.

30 Section 1367.1(d) seems to provide that foreclosure may be used to collect a damage charge,
31 except in those associations where foreclosure is prohibited pursuant to the DRE regulation.
32 Proposed Section 5640 is intended to achieve the same result, but in a more readily
33 understandable way. The Commission invites comment on whether this restatement would cause
34 any problems.

35 (2) Proposed Section 5640(b) is added in place of proposed Section 5010, which has been
36 deleted from this draft.

37 (3) The words "however described" are used in proposed Section 5640(b) to make clear that
38 the rule's application does not depend on the terminology used to describe a fine.

39 **§ 5645. Collection generally**

40 5645. (a) Except as otherwise provided in this article, 30 days after recording a
41 notice of delinquent assessment, an association may enforce the resulting lien in
42 any manner permitted by law, including sale by the court, sale by the trustee
43 designated in the recorded notice of delinquent assessment, or sale by a trustee
44 substituted pursuant to Section 2934a.

1 (b) If the amount of the lien is within the jurisdictional limit of the small claims
2 division of the superior court, the association may bring an action to collect the
3 debt in the small claims division pursuant to Chapter 5.5 (commencing with
4 Section 116.110) of Title 1 of the Code of Civil Procedure. An association may
5 enforce a judgment of the small claims division as provided in Article 8
6 (commencing with Section 116.810) of Chapter 5.5 of Title 1 of the Code of Civil
7 Procedure. The amount recovered in an action in the small claims division, which
8 may not exceed the jurisdictional limit of the small claims division, is the sum of
9 the following:

10 (1) The amount owed as of the date of filing the complaint.

11 (2) In the discretion of the court, an additional amount equal to the amount owed
12 for the period from the date the complaint is filed until satisfaction of the
13 judgment, which may include accruing unpaid assessments and any reasonable
14 late charges, fees and costs of collection, attorney's fees, and interest.

15 **Comment.** Subdivision (a) of Section 5645 restates the second sentence of former Section
16 1367.1(g) without substantive change.

17 Subdivision (b) restates former Section 1367.4(b)(1) without substantive change.

18 **§ 5650. Prohibition on foreclosure for small amount**

19 5650. (a) An association may not foreclose on a lien, judicially or nonjudicially,
20 if the debt is less than twelve months overdue and the amount owed, excluding
21 any accelerated assessment, collection cost, late charge, or interest, is less than one
22 thousand eight hundred dollars (\$1,800).

23 (b) Subdivision (a) does not apply to a separate interest owned by the declarant.

24 (c) This section applies to a lien recorded on or after January 1, 2006.

25 **Comment.** Subdivision (a) of Section 5650 restates the introduction of former Section
26 1367.4(b) without substantive change.

27 Subdivision (b) restates former Section 1367.4(d) without substantive change, except that the
28 exemption of time share units is superfluous and has not been continued. A time share unit is not
29 subject to this section. See Bus. & Prof. Code § 11211.7. The reference to "developers" has been
30 replaced with a reference to the declarant. See Section 4130 ("declarant" defined).

31 **Notes.** (1) Existing Section 1367.4(d) provides that the limitation on foreclosure for amounts
32 under \$1,800 does not apply to a time share unit or to "assessments owed by developers." The
33 first exemption is unnecessary and has not been continued. A time share unit is already expressly
34 exempted from Section 1367.4. The second exemption has been narrowed. As currently drafted it
35 would exempt any person who happens to be a developer, and not just the developer of the
36 association that is owed assessments.

37 (2) By its own terms, Section 1367.4 applies to a lien recorded on or after January 1, 2006.
38 However, Section 1367.1, which applies to a lien recorded on or after January 1, 2003, is
39 expressly subordinate to Section 1367.4. The Commission invites comment on whether the
40 limitations on foreclosure that are established in Section 1367.4 would also apply to a lien that is
41 governed by Section 1367.1.

42 **§ 5655. Foreclosure**

43 5655. (a) Before commencing foreclosure to enforce a lien created under this
44 article, the association shall satisfy all of the following requirements:

1 (1) The decision to foreclose shall be made by the board at least 30 days before
2 any public sale. The decision may not be delegated to a committee or agent. The
3 vote approving foreclosure shall be recorded in the minutes. The board shall
4 maintain the confidentiality of the owner of the separate interest by identifying the
5 matter in the minutes by the parcel number of the property only.

6 (2) The association shall offer to participate in either internal dispute resolution
7 pursuant to Article 2 (commencing with Section 5050), or alternative dispute
8 resolution pursuant to Article 3 (commencing with Section 5075), of Chapter 4.
9 The decision of whether to participate and the type of alternative dispute
10 resolution to use shall be made by the owner of the separate interest, except that
11 binding arbitration may not be used if the association intends to commence a
12 judicial foreclosure.

13 (3) The association shall serve notice of its decision to foreclose on the owner's
14 legal representative, in accordance with the manner of service of summons in
15 Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of
16 the Code of Civil Procedure. If the owner of the separate interest does not occupy
17 the separate interest, the notice may be delivered by first class mail to the mailing
18 address shown in the association's records. If the owner has not provided the
19 association with a mailing address, the address of the separate interest is deemed
20 to be the owner's mailing address.

21 (b) Any sale by a trustee shall be conducted in accordance with Sections 2924,
22 2924b, and 2924c. The fees of a trustee may not exceed the amounts prescribed in
23 Sections 2924c and 2924d, plus the cost of service for either of the following
24 documents:

25 (1) The notice of default recorded pursuant to subdivision (c).

26 (2) The decision of the board to foreclose on the separate interest provided
27 pursuant to paragraph (3) of subdivision (a).

28 (c) If the association records a notice of default pursuant to Section 2924, the
29 association shall serve a copy of the notice of default on the owner's legal
30 representative in the same manner as service of a summons under Article 3
31 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of
32 Civil Procedure.

33 (d) For the purposes of this section, the owner's legal representative shall be the
34 person whose name is shown as the owner of a separate interest in the
35 association's records, unless the owner has previously delivered written notice to
36 the board (Section 4035) designating another person as the owner's legal
37 representative.

38 **Comment.** Subdivision (a)(1) of Section 5655 restates former Sections 1367.1(c)(2) and
39 1367.4(c)(2) without substantive change.

40 Subdivision (a)(2) restates former Sections 1367.1(c)(1)(B) and 1367.4(c)(1) without
41 substantive change.

42 Subdivision (a)(3) restates former Section 1367.4(c)(3) without substantive change.

43 Subdivision (b) restates the third and fourth sentences of former Section 1367.1(g) without
44 substantive change.

1 Subdivisions (c)-(d) restate former Section 1367.1(j) without substantive change, except that
2 the provision defining “the owner’s legal representative” has been generalized.

3 **§ 5660. Right of redemption after trustee sale**

4 5660. A separate interest sold by a trustee under this article is subject to a right
5 of redemption for 90 days after the sale. In addition to the requirements of Section
6 2924f, notice of sale in connection with an association’s foreclosure of a separate
7 interest shall include a statement that the property is being sold subject to the right
8 of redemption created in this section.

9 **Comment.** Section 5660 restates former Section 1367.4(c)(4) without substantive change.

10 **§ 5665. Recorded association information**

11 5665. (a) In order to facilitate the collection of a regular assessment, special
12 assessment, transfer fee, or similar charge, the board is authorized to record a
13 statement or amended statement identifying relevant information for the
14 association. This statement may include any or all of the following information:

15 (1) The name of the association as shown in the conditions, covenants, and
16 restrictions or the current name of the association, if different.

17 (2) The name and address of a managing agent or treasurer of the association or
18 other individual or entity authorized to receive payment for assessments and fees
19 imposed by the association.

20 (3) A daytime telephone number of the person identified in paragraph (2).

21 (4) A list of separate interests subject to assessment by the association, showing
22 the assessor’s parcel number or legal description, or both, of the separate interests.

23 (5) The recording information identifying the declaration or declarations of
24 covenants, conditions, and restrictions governing the association.

25 (6) If an amended statement is being recorded, the recording information
26 identifying the prior statement or statements that the amendment is superseding.

27 (b) The county recorder is authorized to charge a fee for recording the document
28 described in subdivision (a), based on the number of pages in the document and
29 the recorder’s per-page recording fee.

30 **Comment.** Section 5665 restates former Section 1366.2 without substantive change.

31 **§ 5670. Statement of collection procedure**

32 5670. The member handbook (Section 4810) shall include the following
33 statement:

34 **NOTICE REGARDING ASSESSMENTS AND FORECLOSURE**

35 This notice outlines some of the rights and responsibilities of owners of
36 property in common interest developments and the associations that manage
37 them. Please refer to the sections of the Civil Code indicated for further
38 information. A portion of the information in this notice applies only to liens
39 recorded on or after January 1, 2003. You may wish to consult a lawyer if you
40 dispute an assessment.

1 **ASSESSMENTS AND FORECLOSURE**

2 An assessment becomes delinquent 15 days after it is due, unless the governing
3 documents provide for a longer time. The failure to pay an association assessment
4 may result in the loss of an owner’s property through foreclosure. Foreclosure
5 may occur either as a result of a court action, known as judicial foreclosure or
6 without court action, often referred to as nonjudicial foreclosure.

7 An association may not use judicial or nonjudicial foreclosure to enforce a lien
8 that is recorded on or after January 1, 2006, if the debt is less than twelve months
9 overdue and the amount of the delinquent assessments or dues, exclusive of any
10 accelerated assessment, late charge, fee, attorney’s fee, interest, or cost of
11 collection, is less than one thousand eight hundred dollars (\$1,800).

12 An association may use judicial or nonjudicial foreclosure to collect a debt if it
13 is more than twelve months overdue or if the amount owed for assessments or
14 dues is more than one thousand eight hundred dollars (\$1,800). Foreclosure is
15 subject to the conditions set forth in Civil Code Sections 5650 and 5655.

16 When using judicial or nonjudicial foreclosure, the association records a lien on
17 the owner’s property. The owner’s property may be sold to satisfy the lien if the
18 amounts secured by the lien are not paid. (Civil Code Sections 5645, 5650, and
19 5655)

20 In a judicial or nonjudicial foreclosure, the association may recover the
21 delinquent assessment, the reasonable cost of collection including a reasonable
22 attorney’s fee, a late charge, and interest. The association may not use nonjudicial
23 foreclosure to collect a fine or penalty. Unless the governing documents provide
24 otherwise, an association may use nonjudicial foreclosure to collect the cost to
25 repair damage to the common area that is caused by a member or the member’s
26 guests. (Civil Code Section 5640)

27 The association must comply with the requirements of Civil Code Sections
28 5615, 5620, and 5625 when collecting a delinquent assessment. If the association
29 fails to follow these requirements, it may not record a lien on the owner’s
30 property until it has satisfied the requirements. Any additional cost that results
31 from satisfying the requirements is the responsibility of the association. (Civil
32 Code Section 5630)

33 At least 30 days before recording a lien on an owner’s separate interest, the
34 association must provide the owner of record with certain documents by certified
35 mail, including a description of its collection and lien enforcement procedure and
36 the method used to calculate the amount owed. It must also provide an itemized
37 statement of the charges owed by the owner. An owner has a right to review the
38 association’s records to verify the debt. (Civil Code Section 5615)

39 If a lien is recorded against an owner’s property in error, the person who
40 recorded the lien is required to record a lien release within 21 days, and to provide
41 an owner certain documents in this regard. (Civil Code Section 5635)

42 The collection practices of the association may be governed by state and federal
43 laws regarding fair debt collection. Penalties can be imposed for debt collection
44 practices that violate these laws.

45 **PAYMENTS**

46 An owner that makes a payment may request a receipt, and the association is
47 required to provide it. On the receipt, the association must indicate the date of

1 payment and the person who received it. The association must inform owners of a
2 mailing address for overnight payments. (Civil Code Section 5600)

3 An owner may dispute an assessment debt by submitting a written request for
4 dispute resolution to the association under Civil Code Section 5625. In addition,
5 an association may not initiate a foreclosure without participating in alternative
6 dispute resolution with a neutral third party under Civil Code Section 5655, if so
7 requested by the owner. Binding arbitration shall not be available if the
8 association intends to initiate a judicial foreclosure.

9 An owner is not liable for a late charge, interest, or the cost of collection, if it is
10 established that the assessment was paid properly on time. (Civil Code Section
11 5635)

12 MEETINGS AND PAYMENT PLANS

13 An owner of a separate interest may request the association to consider a
14 payment plan to satisfy a delinquent assessment. The association must inform the
15 owner of the standards for payment plans, if any exist. (Civil Code Section 5620)

16 The board of directors must meet with an owner who makes a proper written
17 request for a meeting to discuss a payment plan when the owner has received a
18 notice of a delinquent assessment. A payment plan must conform with the
19 payment plan standards of the association, if they exist. (Civil Code Section 5620)

20 **Comment.** Section 5670 restates former Section 1365.1 without substantive change, except for
21 the following changes:

22 (1) A special rule that applies to an interest in a time share is not continued. Such an interest is
23 expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212. Related
24 references to time share interests are not continued.

25 (2) The substance of former Section 1365.1(c) is generalized in Section 4040.

26 § 5675. Application of article

27 5675. (a) Except as otherwise provided, this article applies to a lien created on or
28 after January 1, 2003.

29 (b) A lien created before January 1, 2003, is governed by the law in existence at
30 the time the lien was created.

31 **Comment.** Section 5675 is new. A lien created between January 1, 1986, and January 1, 2003,
32 is governed by former Section 1367. Note that Section 5650 only applies to a lien created on or
33 after January 1, 2006.

34 **Note.** The Commission invites comment on whether the simplified application rules provided
35 in proposed Section 5675 would cause any problems.

36 Article 4. Insurance and Liability

37 § 5680. Limitation of director and officer liability

38 5680. (a) An association officer or director is not personally liable for a tortious
39 act or omission of the officer or director, in excess of the amount of insurance
40 coverage specified in paragraph (6), if all of the following requirements are met:

41 (1) The officer or director is a volunteer.

1 (2) The officer or director is a tenant of a separate interest or an owner of no
2 more than two separate interests.

3 (3) The association is exclusively residential.

4 (4) The act or omission was performed within the scope of the officer's or
5 director's association duties.

6 (4) The act or omission was performed in good faith.

7 (5) The act or omission was not willful, wanton, or grossly negligent.

8 (6) The association maintained and had in effect, at the time of the act or
9 omission and at the time that a claim is made, insurance coverage for the general
10 liability of the association and for the individual liability of an officer or director
11 of the association for negligent acts or omissions in that capacity. In an association
12 with 100 or fewer separate interests, the coverage for each type of liability shall be
13 at least five hundred thousand dollars (\$500,000). In an association of more than
14 100 separate interests, the coverage for each type of liability shall be at least one
15 million dollars (\$1,000,000).

16 (b) For the purposes of this section, "volunteer" does not include the declarant or
17 a person who receives direct or indirect compensation as an employee of the
18 declarant, or as an employee of a financial institution that purchased a separate
19 interest at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on
20 real property. Payment of actual expenses incurred by a director or officer in the
21 execution of the duties of that position does not affect the director's or officer's
22 status as a volunteer.

23 (c) Nothing in this section limits the liability of the association for its negligent
24 act or omission or for any negligent act or omission of an officer or director of the
25 association.

26 (d) For the purposes of this section, an officer's or director's association duties
27 include making a decision on whether to conduct an investigation of the common
28 interest development for latent deficiencies before the expiration of the applicable
29 statute of limitations and whether to commence a civil action against the builder
30 for defects in design or construction. This subdivision is intended to clarify the
31 application of this section. It is not intended to expand or limit the fiduciary duties
32 owed by a director or officer.

33 **Comment.** Section 5680 restates former Section 1365.7 without substantive change. See also
34 Corp. Code § 7231 (standard of care and liability of director of nonprofit mutual benefit
35 corporation).

36 **§ 5685. Limitation of member liability**

37 5685. (a) It is the intent of the Legislature to offer civil liability protection to
38 owners of separate interests in a common interest development that has common
39 area that is owned as tenancy-in-common if the association carries a certain level
40 of prescribed insurance that covers a cause of action in tort.

41 (b) A cause of action in tort against a member arising solely by reason of an
42 ownership interest as a tenant in common in the common area shall be brought

1 only against the association and not against the individual members, if both of the
2 insurance requirements are met:

3 (1) The association maintained and has in effect for this cause of action, one or
4 more policies of insurance which include coverage for general liability of the
5 association.

6 (2) The coverage described in paragraph (1) is in the following minimum
7 amounts:

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

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

12 **Comment.** Section 5685 continues former Section 1365.9 without substantive change.

13 **§ 5690. Notice of change in coverage**

14 5690. (a) If an insurance policy described in the annual budget report pursuant to
15 Section 4800 lapses or is canceled, and is not immediately renewed, restored, or
16 replaced, or if there is a significant change to the policy, such as a reduction in
17 coverage or limits or an increase in the deductible, the association shall give
18 individual notice (Section 4040) of the change to the members as soon as
19 reasonably practicable.

20 (b) If the association receives notice of nonrenewal of a policy described in the
21 annual budget report pursuant to Section 4800 and a replacement policy will not
22 be in effect by the date that the existing policy will lapse, the association shall
23 immediately give individual notice (Section 4040) of that fact to the members.

24 **Comment.** Section 5690 restates part of former Section 1365(f) without substantive change.

25 **CHAPTER 6. PROPERTY MAINTENANCE AND USE**

26 **Article 1. Maintenance**

27 **§ 5700. Maintenance responsibility generally**

28 5700. Unless the declaration provides otherwise, the responsibility for repair,
29 replacement, and maintenance is as follows:

30 (a) The association is responsible for the repair, replacement, and maintenance
31 of the common area, other than exclusive use common area.

32 (b) The owner of a separate interest is responsible for the maintenance of the
33 separate interest and any exclusive use common area appurtenant to the separate
34 interest.

35 **Comment.** Section 5700 continues former Section 1364(a) without substantive change.

36 **Note.** The duty imposed on an individual owner is to maintain the separate interest and any
37 appurtenant exclusive use common area. By contrast, the association is required to *repair*,
38 *replace*, and maintain the common area (not including exclusive use common area). Does that

1 difference in phrasing create two different standards of responsibility? Is there an ambiguity here
2 that is causing problems?

3 **§ 5705. Wood destroying organisms**

4 5705. (a) Unless the declaration provides otherwise, the responsibility for repair,
5 replacement, and maintenance occasioned by the presence of wood-destroying
6 pests or organisms is as follows:

7 (1) In a community apartment project, condominium, or stock cooperative, the
8 association is responsible for the repair and maintenance of the common area
9 occasioned by the presence of wood-destroying pests or organisms.

10 (2) In a planned development, the owner of a separate interest is responsible for
11 the repair and maintenance of the separate interest occasioned by the presence of
12 wood-destroying pests or organisms. Upon approval of the majority of all
13 members (Section 4065), this responsibility may be delegated to the association,
14 which may recover its costs through a special assessment.

15 (b) The association may cause the temporary, summary removal of any occupant
16 of a common interest development as may be necessary for prompt, effective
17 treatment of wood-destroying pests or organisms.

18 (c) The association shall give individual notice (Section 4040) of the need to
19 temporarily vacate a separate interest to the occupant and, if the owner is different
20 from the occupant, to the owner. Notice shall be given not less than 15 days nor
21 more than 30 days prior to the date of the temporary relocation. The notice shall
22 state the reason for the temporary relocation, the date and time of the beginning of
23 treatment, the anticipated date and time of termination of treatment, and that the
24 occupants will be responsible for their own accommodations during the temporary
25 relocation.

26 (d) For purposes of this section, “occupant” means an owner, resident, guest,
27 invitee, tenant, lessee, sublessee, or other person in possession on the separate
28 interest.

29 (e) The costs of temporary relocation of an occupant pursuant to this section
30 shall be borne by the owner of the separate interest affected.

31 **Comment.** Section 5705 continues former Section 1364(b)-(e) without substantive change,
32 except for the following changes:

33 (1) The specific notice delivery provisions of former Section 1364(d)(3) have not been
34 continued. Rules for delivery of notice are generalized in Sections 4035-4055.

35 (2) Former Section 1364(c), governing the cost of relocation, has been restated in subdivision
36 (e) so as to make clear that it only applies to a relocation involving wood destroying organisms.

37 **Note.** Proposed Section 5705(a)(1) seems to repeat most of the substance of proposed Section
38 5700(a), but with its application limited to community apartment projects, condominiums, and
39 stock cooperatives. Similarly, the first sentence of proposed Section 5705(a)(2) seems to repeat
40 most of the substance of proposed Section 5700(b), but with its application limited to planned
41 developments. The intended purpose of these provisions is unclear. The Commission invites
42 comment explaining how these provisions differ from the general rules stated in proposed Section
43 5700, and why.

1 **§ 5710. Exclusive use communication wiring**

2 5710. Notwithstanding the governing documents, the owner of a separate
3 interest is entitled to reasonable access to the common areas for the purpose of
4 maintaining the internal and external communication wiring that is exclusive use
5 common area pursuant to Section 4145. The access shall be subject to the consent
6 of the association, whose approval shall not be unreasonably withheld, and which
7 may include the association’s approval of communication wiring upon the exterior
8 of the common area, and other conditions as the association determines
9 reasonable.

10 **Comment.** Section 5710 continues former Section 1364(f) without substantive change, except
11 that the reference to “telephone wiring” has been generalized as “communication wiring” to
12 accommodate non-telephonic communication technology.

13 **Article 2. Limitation of Association Authority**
14 **to Regulate Property Use**

15 **§ 5725. Application of article**

16 5725. This article includes provisions that limit the authority of an association to
17 regulate the use of a member’s separate interest. Nothing in this article is intended
18 to affect the application of any other provision that limits the authority of an
19 association to regulate the use of a member’s separate interest, including, but not
20 limited to, the following provisions:

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

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

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

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

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

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

31 **Comment.** Section 5725 is new. It provides a non-exclusive list of provisions outside of this
32 part that limit the authority of an association to regulate separate interest property use.

33 **Note.** The Commission requests comment on whether there are any other provisions that
34 should be added to the nonexclusive list of cross-references provided in Section 5725.

35 **§ 5730. Display of flag or other noncommercial display**

36 5730. (a) Except as otherwise provided in this section, the governing documents
37 of an association may not prohibit the display of the flag of the United States or
38 any other noncommercial sign, poster, flag, or banner within a member’s separate
39 interest or exclusive use common area.

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

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

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

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

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

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

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

16 **Comment.** Section 5730 continues former Sections 1353.5 and 1353.6 without substantive
17 change, except that Section 5730(b)(2) now applies to a flag of the United States.

18 **Note.** Proposed Section 5730 preserves two existing distinctions between the treatment of
19 the U.S. flag and any other noncommercial display: (1) an association may not limit the display of
20 a U.S. flag that is more than 15 square feet in size, and (2) a person who prevails in challenging a
21 restriction on the display of the U.S. flag is entitled to attorney's fees. The Commission invites
22 comment on whether those distinctions should be preserved (and if not, whether the special rules
23 should be eliminated or generalized).

24 **§ 5735. Pets**

25 5735. (a) No governing documents shall prohibit the owner of a separate interest
26 within a common interest development from keeping at least one pet within the
27 common interest development, subject to reasonable rules and regulations of the
28 association. This section may not be construed to affect any other rights provided
29 by law to an owner of a separate interest to keep a pet within the development.

30 (b) For purposes of this section, "pet" means any domesticated bird, cat, dog,
31 aquatic animal kept within an aquarium, or other animal as agreed to between the
32 association and the homeowner.

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

38 (d) For the purposes of this section, "governing documents" shall include, but
39 are not limited to, the conditions, covenants, and restrictions of the common
40 interest development, and the bylaws, rules, and regulations of the association.

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

1 **Comment.** Section 5735 continues former Section 1360.5 without change.

2 **§ 5740. Roofing materials**

3 5740. (a) An association may not require that a homeowner install or repair a
4 roof in a manner that is in violation of Section 13132.7 of the Health and Safety
5 Code.

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

14 **Comment.** Section 5740 continues former Section 1353.7 without substantive change. See also
15 Section 5775(a)(3) (Notwithstanding a contrary provision of the governing documents, a decision
16 on a proposed change may not violate any governing provision of law, including, but not limited
17 to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of
18 Division 3 of Title 2 of the Government Code), or a building code or other applicable law
19 governing land use or public safety.”).

20 **§ 5745. Television antenna or satellite dish**

21 5745. (a) Except as otherwise provided in this section, a provision of the
22 governing documents is void to the extent that it would prohibit or restrict the use
23 or installation of an antenna.

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

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

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

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

33 (4) A requirement that the association approve the installation before installation
34 takes place.

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

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

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

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

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

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

11 **Comment.** Section 5745 restates former Section 1376 without substantive change.

12 **Notes.** (1) Proposed Section 5745 would significantly revise existing Section 1376, to
13 improve its clarity. The Commission requests comment on whether any of the revisions would
14 make a substantive change in the law.

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

20 (3) Proposed subdivision (b)(5) seems to be subsumed within subdivision (b)(4). The
21 Commission requests comment on whether subdivision (b)(5) can be deleted without substantive
22 effect.

23 (4) Proposed subdivision (b)(6) seems to be subsumed within subdivision (b)(7). The
24 Commission requests comment on whether subdivision (b)(6) can be deleted without substantive
25 effect.

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

33 **§ 5750. Marketing restriction**

34 5750. (a) A provision of the governing documents that arbitrarily or
35 unreasonably restricts a member's ability to market the member's interest in a
36 common interest development is void.

37 (b) An association shall not charge a fee in connection with the marketing of a
38 member's interest that exceeds the actual cost to the association that results from
39 the marketing of the member's interest.

40 (c) An association shall not require that a member use a particular real estate
41 broker to market the member's interest.

42 (d) For the purposes of this section, "market" and "marketing" mean listing,
43 advertising, or obtaining or providing access to show the member's interest.

44 **Comment.** Subdivision (a) of Section 5750 restates former Section 1368.1(a) without
45 substantive change. The phrase "rule or regulation" has been generalized to include any provision
46 of the association's governing documents.

1 Subdivision (b) restates former Section 1368.1(b)(1) without substantive change. Subdivision
2 (b) is a specific application of the general rule provided in 5575(b).

3 Subdivision (c) restates former Section 1368.1(b)(2) without substantive change. Language
4 making clear that the provision does not affect marketing by an association is not continued
5 because the restated language makes clear that the limitation only affects marketing by an
6 individual member.

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

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

9 **§ 5755. Low water-using plants**

10 5755. The architectural guidelines of a common interest development shall not
11 prohibit or include conditions that have the effect of prohibiting the use of low
12 water-using plants as a group.

13 **Comment.** Section 5755 continues former Section 1353.8 without change.

14 **§ 5760. Improvements to separate interest**

15 5760. (a) Any change in the exterior appearance of a separate interest shall be in
16 accordance with the governing documents and applicable law.

17 (b) Subject to the governing documents and applicable law, the owner of a
18 separate interest may make any improvement or alteration within the boundaries
19 of the separate interest that does not impair the structural integrity or mechanical
20 systems or lessen the support of any part of the common interest development.

21 (c) Subject to the governing documents and applicable law, the owner of a
22 separate interest may modify the separate interest, at the owner's expense, to
23 facilitate access for a person who is blind, visually handicapped, deaf, or
24 physically disabled, or to alter conditions that could be hazardous to the disabled
25 person. This may include a modification of the route from the public way to the
26 door of the separate interest if the separate interest is on the ground floor or is
27 already accessible by an existing ramp or elevator.

28 (d) A modification made pursuant to subdivision (c) is subject to the following
29 conditions:

30 (1) The modification shall be consistent with applicable building code
31 requirements.

32 (2) The modification shall be consistent with the intent of otherwise applicable
33 provisions of the governing documents pertaining to safety or aesthetics.

34 (3) A modification of the common area shall not prevent reasonable passage by
35 other residents, and shall be removed by the owner when the unit is no longer
36 occupied by a disabled person who requires the modification.

37 (4) The owner shall submit plans and specifications for a proposed modification
38 to the association for review to determine whether the proposed modification
39 complies with this section. The association shall not deny approval of the
40 proposed modification without good cause.

41 **Comment.** Section 5760 generalizes the substance of former Section 1360 so that it applies to
42 any separate interest and not just a separate interest that is contained within the boundaries of a
43 building. See also Section 5775 (association decision on modification of separate interest must

1 comply with Fair Employment and Housing Act); Gov't Code § 12927 (accommodation of
2 disability under Fair Employment and Housing Act).

3 **Note.** Existing Section 1360 is limited by its terms to a separate interest that is contained
4 within the boundaries of a building (as in a condominium). Proposed Section 5760 would
5 generalize the substance of Section 1360, so that it applies to any separate interest. That would
6 arguably broaden owner rights to modify a unit to accommodate a disability, although other
7 provisions of existing law may already establish those rights (see, e.g., Gov't Code § 12927). The
8 Commission invites comment on whether the broadened application of proposed Section 5760
9 would cause any problems.

10 Article 3. Architectural Review

11 § 5775. Architectural review and decisionmaking

12 5775. (a) This section applies if an association's governing documents require
13 association approval before an owner of a separate interest may make a physical
14 change to the owner's separate interest or to the common area. In reviewing and
15 approving or disapproving a proposed change, the association shall satisfy the
16 following requirements:

17 (1) The association shall provide a fair, reasonable, and expeditious procedure
18 for making its decision. The procedure shall be included in the association's
19 governing documents. The procedure shall provide for prompt deadlines. The
20 procedure shall state the maximum time for response to an application or a request
21 for reconsideration by the board of directors.

22 (2) A decision on a proposed change shall be made in good faith and may not be
23 unreasonable, arbitrary, or capricious.

24 (3) Notwithstanding a contrary provision of the governing documents, a decision
25 on a proposed change may not violate any governing provision of law, including,
26 but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing
27 with Section 12900) of Division 3 of Title 2 of the Government Code), or a
28 building code or other applicable law governing land use or public safety.

29 (4) A decision on a proposed change shall be in writing. If a proposed change is
30 disapproved, the written decision shall include both an explanation of why the
31 proposed change is disapproved and a description of the procedure for
32 reconsideration of the decision by the board of directors.

33 (5) If a proposed change is disapproved, the applicant is entitled to
34 reconsideration by the board of directors of the association that made the decision,
35 at an open meeting of the board. This paragraph does not require reconsideration
36 of a decision that is made by the board of directors or a body that has the same
37 membership as the board of directors, at a meeting that satisfies the requirements
38 of Article 2 (commencing with Section 4500) of Chapter 3. Reconsideration by the
39 board does not constitute dispute resolution within the meaning of Section 5055.

40 (b) Nothing in this section authorizes a physical change to the common area in a
41 manner that is inconsistent with an association's governing documents, unless the
42 change is required by law.

1 (c) An association shall annually provide its members with notice of any
2 requirements for association approval of physical changes to property. The notice
3 shall describe the types of changes that require association approval and shall
4 include a copy of the procedure used to review and approve or disapprove a
5 proposed change.

6 **Comment.** Section 5775 continues former Section 1378 without substantive change.

7 CHAPTER 7. PROPERTY OWNERSHIP AND TRANSFER

8 Article 1. Ownership Rights and Interests

9 § 5800. Ownership of common area

10 5800. Unless the declaration provides otherwise, in a condominium project, or in
11 a planned development in which the common area is owned by the owners of the
12 separate interests, the common area is owned by the owners of the separate
13 interests as tenants in common, with one share for each separate interest.

14 **Comment.** Section 5800 restates former Section 1362 without substantive change.

15 § 5805. Appurtenant rights and easements

16 5805. Unless the declaration provides otherwise:

17 (a) In a community apartment project, condominium, or a planned development
18 in which the common area is owned in common by the owners of the separate
19 interests, there are appurtenant to each separate interest nonexclusive rights of
20 ingress, egress, and support, if necessary, through the common areas. The common
21 area is subject to these rights.

22 (b) In a stock cooperative, and in a planned development in which the common
23 area is owned by the association, there is an easement for ingress, egress, and
24 support, if necessary, appurtenant to each separate interest. The common areas are
25 subject to these easements.

26 **Comment.** Section 5805 restates former Section 1361 without substantive change.

27 § 5810. Access to separate interest property

28 5810. Except as otherwise provided in law, an order of the court, or an order
29 pursuant to a final and binding arbitration decision, an association may not deny a
30 member or other occupant of a separate interest physical access to the separate
31 interest, either by restricting access through the common area, or by restricting
32 access solely to the separate interest.

33 **Comment.** Section 5810 continues former Section 1361.5 without substantive change.

34 **Note.** What purpose is served by the language providing that a right of access may be
35 restricted pursuant to court order or an arbitration decision? When would such a restriction be
36 enforced by an association?

Article 2. Transfer Disclosure

§ 5825. Disclosure to prospective purchaser

5825. As soon as practicable before the transfer of title to a separate interest or the execution of a real property sales contract for a separate interest, as defined in Section 2985, the owner of the separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall provide the following documents to the prospective purchaser:

(a) A copy of the governing documents of the common interest development, including any operating rules, and including a copy of the association's articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

(b) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(c) A copy of the most recent documents distributed pursuant to Article 7 (commencing with Section 4800) of Chapter 3.

(d) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Article 3 (commencing with Section 5600) of Chapter 5.

(e) A copy or a summary of any notice previously sent to the owner pursuant to Section 5005 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(f) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 6200, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 6210. Disclosure of the preliminary list of defects pursuant to this paragraph does not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final

1 determination as to whether the list of defects is accurate and complete has not
2 been made.

3 (g) A copy of the latest information provided for in Section 6210.

4 (h) Any change in the association's current regular and special assessments and
5 fees that have been approved by the association's board of directors, but have not
6 become due and payable as of the date disclosure is provided pursuant to this
7 subdivision.

8 **Comment.** Section 5825 continues former Section 1368(a) without substantive change.

9 **§ 5830. Information to be provided by association**

10 5830. (a) A member may request, in writing, that the association provide the
11 member with the documents described in Section 5825.

12 (b) Within 10 days after the request is delivered to the board (Section 4035), the
13 association shall provide the requesting member with a copy of the requested
14 documents.

15 (c) If the requested documents are maintained in electronic form, the requesting
16 member shall have the option of receiving them by electronic transmission or on
17 machine readable storage media.

18 (d) The association may charge a reasonable fee to recover the actual cost to
19 procure, prepare, and reproduce the requested documents.

20 **Comment.** Section 5830 continues former Section 1368(b) without substantive change.

21 **§ 5835. Related requirements**

22 5835. In addition to the requirements of this article, an owner transferring title to
23 a separate interest shall comply with applicable requirements of Sections 1133 and
24 1134.

25 **Comment.** Section 5835 restates former Section 1368(f) without substantive change.

26 **§ 5840. Enforcement of article**

27 5840. Any person or entity who willfully violates this article is liable to the
28 purchaser of a separate interest that is subject to this section for actual damages
29 caused by the violation and, in addition, shall pay a civil penalty in an amount not
30 to exceed five hundred dollars (\$500). In an action to enforce this liability, the
31 prevailing party shall be awarded reasonable attorneys' fees.

32 **Comment.** Section 5840 restates former Section 1368(d) without substantive change.

33 **§ 5845. Validity of title unaffected**

34 5845. Nothing in this article affects the validity of title to real property
35 transferred in violation of this section.

36 **Comment.** Section 5845 restates former Section 1368(e) without substantive change.

1 **§ 5850. Agency**

2 5850. For the purposes of this section, a person who acts as a community
3 association manager is an agent, as defined in Section 2297, of the association.

4 **Comment.** Section 5850 restates former Section 1368(g) without substantive change.

5  **Note.** The Commission invites comment on the need for this provision.

6 **Article 3. Transfer Fee**

7 **§ 5875. Transfer fee**

8 5875. Except as provided in Section 5880, an association or community service
9 organization or similar entity may not impose or collect any assessment, penalty,
10 or fee in connection with a transfer of title or any other interest except for the
11 following:

12 (1) An amount not to exceed the association's actual costs to change its records.

13 (2) A fee under Section 5370.

14 **Comment.** Section 5875 continues former Section 1368(c)(1) without substantive change. See
15 Section 4110 ("community service organization" defined).

16 **§ 5880. Exemption from transfer fee limitations**

17 5880. Section 5875 does not apply to a community service organization or
18 similar entity of either of the following types:

19 (a) An entity that satisfies both of the following conditions:

20 (1) It was established before February 20, 2003.

21 (2) It exists and operates, in whole or in part, to fund or perform environmental
22 mitigation or to restore or maintain wetlands or native habitat, as required by the
23 state or local government as an express written condition of development.

24 (b) An entity that satisfies all of the following conditions:

25 (1) It is not an entity described by subdivision (a).

26 (2) It was established and received a transfer fee before January 1, 2004.

27 (3) On and after January 1, 2006, it offers a purchaser the following payment
28 options for the fee or charge it collects at time of transfer:

29 (A) Paying the fee or charge at the time of transfer.

30 (B) Paying the fee or charge pursuant to an installment payment plan for a
31 period of not less than seven years. If the purchaser elects to pay the fee or charge
32 in installment payments, the community service organization or similar entity may
33 also collect additional amounts that do not exceed the actual costs for billing and
34 financing on the amount owed. If the purchaser sells the separate interest before
35 the end of the installment payment plan period, the purchaser shall pay the
36 remaining balance before the transfer.

37 **Comment.** Section 5880 restates former Section 1368(c)(2) without substantive change. See
38 Section 4110 ("community service organization" defined).

Article 4. Restrictions on Transfers

§ 5900. Grant of exclusive use

5900. (a) Unless the governing documents provide otherwise, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board of directors may grant exclusive use of any portion of the common area to a member.

(b) Subdivision (a) does not apply to the following actions:

(1) A reconveyance of all or any portion of the common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report.

(2) A grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report or in accordance with the governing documents approved by the Real Estate Commissioner.

(3) A grant of exclusive use to eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(4) A grant of exclusive use to eliminate or correct encroachments due to errors in construction of any improvements.

(5) A grant of exclusive use to permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(6) A grant of exclusive use to fulfill the requirement of a public agency.

(7) A grant of exclusive use to transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the association.

(8) A grant in connection with an expressly zoned industrial or commercial development, or any grant within a subdivision of the type defined in Section 4020.

(c) Any measure placed before the members requesting that the board of directors grant exclusive use of any portion of the common area shall specify whether the association will receive any monetary consideration for the grant and whether the association or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.

Comment. Section 5900 restates former Section 1363.07 without substantive change, with the following exceptions:

(1) The section is no longer limited in its application to a common area that the association owns or in which the association has an easement right. It now applies to any common area.

(2) The substance of former subdivision (a)(1)(F) is continued in Section 4020.

1 **Note.** By its terms, existing Section 1363.07 only applies “[after] an association acquires fee
2 title to, or any easement right over, a common area....” That would seem to preclude application
3 of the section to a common area that is not owned by the association (e.g., where the common
4 area is owned by the members as tenants in common). It seems unlikely that the section was
5 intended to be limited in that way. Proposed Section 5900 does not continue the limitation. The
6 Commission invites comment on whether that would cause a problem.

7 **§ 5905. Partition of condominium project**

8 5905. (a) Except as provided in this section, the common area in a condominium
9 project shall remain undivided, and there shall be no judicial partition of the
10 common area. Nothing in this section shall be deemed to prohibit partition of a
11 cotenancy of a separate interest in a condominium.

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

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

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

25 (3) The project has been in existence more than 50 years, is obsolete and
26 uneconomic, and owners of separate interests holding in the aggregate more than a
27 50-percent interest in the common area oppose repair or restoration of the project.

28 (4) The conditions for such a sale, set forth in the declaration, have been met.

29 **Comment.** Section 5905 restates former Section 1359 without substantive change.

30 **Note.** The second sentence of Section 1359(a) has been revised to make clear that it refers to
31 a cotenancy in a separate interest and not the collective member cotenancy in the common area.
32 The Commission invites comment on whether that change would cause any problem.

33 **§ 5910. Lien for work performed in condominium project**

34 5910. (a) In a condominium project, no labor performed or services or materials
35 furnished with the consent of, or at the request of, an owner in the condominium
36 project or the owner’s agent or contractor shall be the basis for the filing of a lien
37 against the property of any other owner in the condominium project unless that
38 other owner has expressly consented to or requested the performance of the labor
39 or furnishing of the materials or services.

40 (b) Express consent shall be deemed to have been given by the owner of any
41 condominium in the case of emergency repairs to the condominium.

1 (c) Labor performed or services or materials furnished for the common area, if
2 duly authorized by the association, shall be deemed to be performed or furnished
3 with the express consent of each condominium owner.

4 (d) An owner may remove the owner's condominium from a lien against two or
5 more condominiums or any part thereof by payment to the lien holder of the
6 fraction of the total sum secured by the lien which is attributable to the owner's
7 condominium.

8 **Comment.** Section 5910 continues former Section 1369 without substantive change.

9 **Article 5. Transfer of Separate Interest**

10 **§ 5925. Community apartment project**

11 5925. In a community apartment project, any conveyance, judicial sale, or other
12 voluntary or involuntary transfer of the separate interest includes the undivided
13 interest in the community apartment project. Any conveyance, judicial sale, or
14 other voluntary or involuntary transfer of the owner's entire estate also includes
15 the owner's membership interest in the association.

16 **Comment.** Section 5925 continues former Section 1358(a) without substantive change.

17 **§ 5930. Condominium project**

18 5930. In a condominium project the common area is not subject to partition,
19 except as provided in Section 5905. Any conveyance, judicial sale, or other
20 voluntary or involuntary transfer of the separate interest includes the undivided
21 interest in the common area. Any conveyance, judicial sale, or other voluntary or
22 involuntary transfer of the owner's entire estate also includes the owner's
23 membership interest in the association.

24 **Comment.** Section 5930 continues former Section 1358(b) without substantive change.

25 **§ 5935. Planned unit development**

26 5935. In a planned development, any conveyance, judicial sale, or other
27 voluntary or involuntary transfer of the separate interest includes the undivided
28 interest in the common area. Any conveyance, judicial sale, or other voluntary or
29 involuntary transfer of the owner's entire estate also includes the owner's
30 membership interest in the association.

31 **Comment.** Section 5935 continues former Section 1358(c) without substantive change, except
32 that language suggesting that a planned unit development may not include common area is not
33 continued. All common interest developments included common area. See Section 4100
34 ("common interest development" defined).

35 **§ 5940. Stock cooperative**

36 5940. In a stock cooperative, any conveyance, judicial sale, or other voluntary or
37 involuntary transfer of the separate interest includes the ownership interest in the
38 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary

1 or involuntary transfer of the owner’s entire estate also includes the owner’s
2 membership interest in the association.

3 **Comment.** Section 5940 continues former Section 1358(d) without substantive change.

4 **§ 5945. Transfer of exclusive use common area**

5 5945. Nothing in this article prohibits the transfer of exclusive use common
6 area, independent of any other interest in a common interest development, if
7 authorization to separately transfer exclusive use common area is expressly stated
8 in the declaration and the transfer occurs in accordance with the terms of the
9 declaration.

10 **Comment.** Section 5945 continues the next to last paragraph of former Section 1358 without
11 substantive change.

12 **§ 5950. Severability of interests**

13 5950. Any restriction on the severability of the component interests in real
14 property which are contained in the declaration shall not be deemed conditions
15 repugnant to the interest created within the meaning of Section 711 of the Civil
16 Code. However, these restrictions shall not extend beyond the period in which the
17 right to partition a project is suspended under Section 5905.

18 **Comment.** Section 5950 continues the last paragraph of former Section 1358 without
19 substantive change.

20 **CHAPTER 8. GOVERNING DOCUMENTS**

21 **Article 1. General Provisions**

22 **§ 6000. Creation of common interest development**

23 6000. For the purposes of this part, a common interest development is created
24 when a separate interest coupled with an interest in the common area or
25 membership in the association is, or has been, conveyed, provided that all of the
26 following are recorded:

27 (a) A declaration.

28 (b) A condominium plan, if any exists.

29 (c) A final map or parcel map, if Division 2 (commencing with Section 66410)
30 of Title 7 of the Government Code requires the recording of either a final map or
31 parcel map for the common interest development.

32 **Comment.** Section 6000 continues part of former Section 1352 without substantive change. It
33 governs the application of this part and is not intended to govern the date of creation of a common
34 interest development for other purposes. See *City of West Hollywood v. Beverly Towers, Inc.*, 52
35 Cal. 3d 1184, 805 P.2d 329, 278 Cal. Rptr. 375 (1991) (failure to convey a unit not determinative
36 of whether condominium project exists for purposes of local planning law).

37 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
38 development”), 4120 (“condominium plan”), 4135 (“declaration”), 4185 (“separate interest”).

1 “NOTICE OF AIRPORT IN VICINITY

2 This property is presently located in the vicinity of an airport, within what
3 is known as an airport influence area. For that reason, the property may be
4 subject to some of the annoyances or inconveniences associated with
5 proximity to airport operations (for example: noise, vibration, or odors).
6 Individual sensitivities to those annoyances can vary from person to person.
7 You may wish to consider what airport annoyances, if any, are associated
8 with the property before you complete your purchase and determine whether
9 they are acceptable to you.”

10 (b) For purposes of this section, an “airport influence area,” also known as an
11 “airport referral area,” is the area in which current or future airport-related noise,
12 overflight, safety, or airspace protection factors may significantly affect land uses
13 or necessitate restrictions on those uses as determined by an airport land use
14 commission.

15 (c) A statement in a declaration acknowledging that a property is located in an
16 airport influence area is not a title defect, lien, or encumbrance.

17 **Comment.** Section 6030 continues part of former Sections 1353(a)(1)-(2), (4) without
18 substantive change. The remainder of former Section 1351(a)(1) is continued without substantive
19 change in Section 6025. See Bus. & Prof. Code § 11010 (disclosure of property within airport
20 influence area); Pub. Util. Code § 21675 (designation of “airport influence area” by county
21 airport land use commission).

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

23 **§ 6035. Disclosure of BCDC jurisdiction**

24 6035. (a) If a common interest development is within the jurisdiction of the San
25 Francisco Bay Conservation and Development Commission, as described in
26 Section 66610 of the Government Code, and its declaration is recorded on or after
27 January 1, 2006, the declaration shall contain the following notice:

28 “NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
29 DEVELOPMENT COMMISSION JURISDICTION

30 This property is located within the jurisdiction of the San Francisco Bay
31 Conservation and Development Commission. Use and development of
32 property within the commission’s jurisdiction may be subject to special
33 regulations, restrictions, and permit requirements. You may wish to
34 investigate and determine whether they are acceptable to you and your
35 intended use of the property before you complete your transaction.”

36 (b) A statement in a declaration acknowledging that a property is located within
37 the jurisdiction of the San Francisco Bay Conservation and Development
38 Commission is not a title defect, lien, or encumbrance.

39 **Comment.** Section 6035 continues former Section 1353(a)(3)-(4) without substantive change.
40 See also Section 4100 (“common interest development”), 4135 (“declaration”).

1 **§ 6040. Amendment authorized**

2 6040. (a) Unless a declaration expressly provides otherwise, any provision of the
3 declaration can be amended.

4 (b) If a provision of a declaration can be amended, it can be amended at any
5 time.

6 (c) The Legislature finds that there are common interest developments that have
7 been created with deed restrictions that do not provide a means for the property
8 owners to extend the term of the declaration. The Legislature further finds that
9 covenants and restrictions, contained in the declaration, are an appropriate method
10 for protecting the common plan of developments and to provide for a mechanism
11 for financial support for the upkeep of common areas including, but not limited to,
12 roofs, roads, heating systems, and recreational facilities. If declarations terminate
13 prematurely, common interest developments may deteriorate and the supply of
14 affordable housing units could be impacted adversely. The Legislature further
15 finds and declares that it is in the public interest to provide a vehicle for extending
16 the term of the declaration if owners having more than 50 percent of the votes in
17 the association choose to do so.

18 (d) A declaration may be amended to extend the termination date of the
19 declaration, notwithstanding any contrary provision of the declaration. No single
20 extension of the term of the declaration made pursuant to this subdivision shall
21 exceed the initial term of the declaration or 20 years, whichever is less. However,
22 more than one extension may be made pursuant to this subdivision.

23 **Comment.** Subdivisions (a)-(b) of Section 6040 restate the first sentence of former Section
24 1355(b) without substantive change.

25 Subdivisions (c)-(d) restate Section 1357 without substantive change except that the procedure
26 for approving an amendment of a declaration to extend its termination date is not continued. An
27 amendment under this subdivision would be approved pursuant to Section 6045.

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

30 **Notes. (1)** The Commission invites comment on whether the proposed restatement of the first
31 sentence of Section 1355(b) would cause any substantive change in the law.

32 **(2)** Existing law acknowledges that a declaration may be drafted so as to limit or prohibit its
33 amendment. That could result in permanent restrictions that become inappropriate over time, due
34 to changed circumstances or the changed desires of the property owners. The common law
35 recognizes a defense to the enforcement of an equitable servitude where “the original purpose for
36 the restrictions has become obsolete and continued enforcement of the restrictions would be
37 oppressive and inequitable.” H. Miller & M. Starr, California Real Estate § 24:20 (3d ed. 2004).
38 As a matter of policy, should there be a procedure for amendment of a declaration by the
39 members of a homeowner association, even if the declaration prohibits its own amendment?

40 **§ 6045. Approval of amendment**

41 6045. (a) If the governing documents provide a procedure for approval of an
42 amendment of the declaration, an amendment may be approved by that procedure.

43 (b) If the governing documents do not provide a procedure for approval of an
44 amendment of the declaration, an amendment may be approved by a majority of
45 all members (Section 4065).

1 (c) The board shall provide individual notice (Section 4040) to all members of
2 an amendment approved under this section.

3 **Comment.** Section 6045 is comparable to the provisions of former Section 1355 that relate to
4 approval of an amendment of the declaration. See Sections 4040 (individual notice), 4065
5 (approved by all members).

6 See also Sections 4085 (“board”), 4135 (“declaration”), 4150 (“governing documents”), 4160
7 (“member”).

8 **Notes.** (1) The Corporations Code provisions governing the amendment of the articles of
9 incorporation and bylaws address the possibility that the governing documents may require the
10 approval of a specific class of voters or of a specified third party in order to amend the governing
11 documents. See, e.g. Corp. Code § 7150(b), (d). Should similar provisions be applied to
12 amendment of the declaration? For example, suppose that the declaration provides that a minority
13 class of voters must approve any action that changes the proportional share of assessments
14 collected from each class. Should the majority class be able to delete that provision from the
15 declaration without the approval of a majority of the other class?

16 (2) Civil Code Section 1356 authorizes a director or member to petition the superior court for
17 an order lowering the number or percentage of affirmative votes required to approve an
18 amendment of the declaration. A comparable order may be obtained under Corporations Code
19 Section 7515, which is continued in proposed Section 4620. The Commission does not see the
20 benefit in providing two separate and slightly different provisions to achieve the same result. For
21 that reason, Section 1356 is not continued in the proposed law.

22 § 6050. Approval of amendment to delete obsolete construction or marketing provision

23 6050. Notwithstanding Section 6045, the deletion of a provision of the
24 declaration may be approved by the board (Section 4060) and by a majority of a
25 quorum of the members (Section 4070) if all of the following conditions are
26 satisfied:

27 (a) The provision to be deleted is unequivocally designed and intended, or by its
28 nature can only have been designed or intended, to facilitate the developer in
29 completing the construction or marketing of the development or of a particular
30 phase of the development.

31 (b) The provision to be deleted authorizes access by the developer over or across
32 the common area for the purposes of (1) completion of construction of the
33 development, and (2) the erection, construction, or maintenance of structures or
34 other facilities designed to facilitate the completion of construction or marketing
35 of separate interests.

36 (c) The construction or marketing activities governed by the provision to be
37 deleted have been completed or terminated.

38 **Comment.** Section 6050 is comparable to former Section 1355.5 but applies only to the
39 amendment of a declaration. The requirement of former Section 1355.5(c), mandating that
40 members be given notice before the board approves the amendment, is not continued. Member
41 notice is required before board meetings and before a member vote is held. See Sections 4520
42 (board meeting), 4595 (member meeting).

43 See Sections 4060 (approved by board), 4070 (approved by majority of quorum of all
44 members). See also Sections 4085 (“board”), 4095 (“common area”), 4135 (“declaration”), 4160
45 (“member”), 4185 (“separate interest”).

1 **Notes.** (1) Existing Section 1355.5 provides an optional procedure for deletion of obsolete
2 developer provisions from any type of governing document, including the articles of
3 incorporation and bylaws. However, it doesn't appear that this section serves a useful purpose
4 when applied to the articles or bylaws. The existing procedures for amendment of those
5 documents is as expeditious or more expeditious than the procedure provided in Section 1355.5.
6 See Corp. Code §§ 7151 (amendment of bylaws), 7810-7820 (amendment of articles).

7 (2) Existing Section 1355.5 limits the optional procedure to deletion of provisions that
8 "[provide] for access by the developer over or across the common area for the purposes of (a)
9 completion of construction of the development, and (b) the erection, construction, or maintenance
10 of structures or other facilities designed to facilitate the completion of construction or marketing
11 of separate interests. Does the use of "and" imply that the provision must satisfy both of the
12 enumerated criteria? Should "and" be changed to "or"?

13 (3) Is it necessary to continue the requirement that the board approve an amendment under this
14 section? It seems unlikely that a board would ever oppose such an amendment if it were approved
15 by the members.

16 **§ 6055. Effective date of amendment**

17 6055. Notwithstanding any contrary provision of the governing documents, an
18 amendment approved pursuant to this article becomes effective once the following
19 actions have been completed:

20 (a) An officer of the association certifies, in a writing that is signed and
21 acknowledged by the officer, that the amendment was approved pursuant to this
22 article. The certifying officer is the officer designated for that purpose by the
23 governing documents, or if no one is designated, the president of the association.

24 (b) The written certification and the amended text of the declaration are recorded
25 in each county in which the common interest development is located.

26 **Comment.** Subdivisions (a) and (b) of Section 6055 are comparable to the provisions of
27 former Section 1355 that relate to certification and recordation of an amendment of the
28 declaration. See Sections 1180-1207 (acknowledgement of instrument).

29 See also Sections 4080 ("association"), 4100 ("common interest development"), 4135
30 ("declaration"), 4150 ("governing documents").

31 **Article 3. Articles of Incorporation**

32 **§ 6060. Content of articles**

33 6060. (a) The articles of incorporation of an association that are filed with the
34 Secretary of State on or after January 1, 1995, shall include all of the following:

35 (1) A statement that the corporation is an association formed to manage a
36 common interest development under the Davis-Stirling Common Interest
37 Development Act.

38 (2) The address of the business or corporate office of the association, if any.

39 (3) If the association has no business or corporate office, or if the business or
40 corporate office is not on the site of the common interest development, the nine-
41 digit ZIP Code, front street, and nearest cross street for the physical location of the
42 common interest development.

43 (4) The name and address of the association's managing agent.

1 (b) The statement of principal business activity contained in the annual
2 statement filed by an incorporated association with the Secretary of State pursuant
3 to Section 1502 of the Corporations Code shall also contain the information
4 specified in subdivision (a).

5 **Comment.** Section 6060 restates former Section 1363.5 without substantive change, except
6 that the requirement to state the location of the common interest development is expanded to
7 apply to an association that has no business or corporate office. See Corp. Code §§ 1502 (annual
8 statement), 7130-7135 (content of articles of incorporation), 7810-7820 (amendment of articles of
9 incorporation), 7150-7153 (content and amendment of bylaws).

10 See also Sections 4080 (“association”), 4100 (“common interest development”), 4155
11 (“managing agent”).

12 Article 4. Condominium Plan

13 § 6075. Content of condominium plan

14 6075. A condominium plan shall include all of the following:

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

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

21 (c) A certificate consenting to the recordation of the condominium plan pursuant
22 to this part signed and acknowledged by all of the following persons:

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

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

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

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

31 (5) In a conversion of a community apartment project or stock cooperative to a
32 condominium project that has been approved by the required number of owners,
33 trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the
34 Government Code, by those owners, trustees, beneficiaries, and mortgagees who
35 approved the conversion.

36 (d) A person who owns only a mineral right, easement, right-of-way, or other
37 nonpossessory interest in the property that is included in the condominium project
38 does not need to sign the condominium plan.

39 **Comment.** Section 6075 continues former Section 1351(e) without substantive change, except
40 that the last paragraph is not continued. That paragraph is continued without substantive change
41 in Section 5060.

42 See also Sections 4095 (“common area”), 4120 (“condominium plan”), 4125 (“condominium
43 project”), 4170 (“person”), 4185 (“separate interest”), 4190 (“stock cooperative”).

1 (4) A rule change that is required by law, if the board has no discretion as to the
2 substantive effect of the rule change.

3 (5) Issuance of a document that merely repeats existing law or the governing
4 documents.

5 **Comment.** Section 6110 continues former Section 1357.120 without substantive change,
6 except that subdivision (a)(7) is new. That provision is added to conform to Section 4625.

7 See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4145
8 (“exclusive use common area”), 4150 (“governing documents”), 4160 (“member”), 4165
9 (“operating rule”), 4180 (“rule change”), 4185 (“separate interest”).

10 **§ 6115. Approval of rule change by board**

11 6115. (a) The board shall provide general notice (Section 4045) of a proposed
12 rule change at least 30 calendar days before making the rule change. The notice
13 shall include the text of the proposed rule change and a description of the purpose
14 and effect of the proposed rule change. Notice is not required under this
15 subdivision if the board determines that an immediate rule change is necessary to
16 address an imminent threat to public health or safety or imminent risk of
17 substantial economic loss to the association.

18 (b) A proposed rule change may be approved by the board (Section 4060).

19 (c) As soon as possible after approving a rule change, but not more than 15
20 calendar days after approving the rule change, the board shall provide general
21 notice (Section 4045) of the rule change. If the rule change was an emergency rule
22 change made under subdivision (d), the notice shall include the text of the rule
23 change, a description of the purpose and effect of the rule change, and the date that
24 the rule change expires.

25 (d) If the board determines that an immediate rule change is required to address
26 an imminent threat to public health or safety, or an imminent risk of substantial
27 economic loss to the association, the board may approve an emergency rule
28 change (Section 4060) without providing general notice (Section 4045) of the
29 proposed rule change. An emergency rule change is effective for 120 calendar
30 days, unless the board provides for a shorter effective period. A rule change made
31 under this subdivision may not be readopted under this subdivision.

32 **Comment.** Section 6115 restates former Section 1357.130 without substantive change. See
33 Sections 4045 (general notice), 4060 (approved by board).

34 See also Sections 4080 (“association”), 4085 (“board”), 4180 (“rule change”).

35 **§ 6120. Reversal of rule change by members**

36 6120. (a) Members of an association owning five percent or more of the separate
37 interests may call a special member meeting to reverse a rule change that was
38 approved by the board.

39 (b) A special member meeting may be called by delivering a request to the board
40 (Section 4035) that includes the requisite number of member signatures, after
41 which the board shall provide general notice (Section 4045) of the meeting and
42 hold the meeting in conformity with Article 2 (commencing with Section 4500) of

1 Chapter 3. A written request may only be delivered within 30 calendar days after
2 general notice (Section 4045) of the rule change or enforcement of the resulting
3 rule, whichever occurs first.

4 (c) For the purposes of Article 3 (commencing with Section 4700) of Chapter 3,
5 collection of signatures to call a special meeting under this section is a purpose
6 reasonably related to the interests of the members of the association. A member
7 request to copy or inspect the membership list solely for that purpose may not be
8 denied on the grounds that the purpose is not reasonably related to the member's
9 interests as a member.

10 (d) A decision to reverse a rule change may be approved by a majority of a
11 quorum of the members (Section 4070), or if the declaration or bylaws require a
12 greater proportion, by the affirmative vote or written ballot of the proportion
13 required. In lieu of calling the meeting described in this section, the board may
14 distribute a written ballot to every member of the association.

15 (e) Unless otherwise provided in the declaration, articles of incorporation, or
16 bylaws, for the purposes of this section, a member may cast one vote per separate
17 interest owned.

18 (f) A meeting called under this section is governed by Article 3 (commencing
19 with Section 4575) and Article 4 (commencing with Section 4625) of Chapter 3.

20 (g) A rule change reversed under this section may not be readopted for one year
21 after the date of the meeting reversing the rule change. Nothing in this section
22 precludes the board from adopting a different rule on the same subject as the rule
23 change that has been reversed.

24 (h) As soon as possible after the close of voting, but not more than 15 calendar
25 days after the close of voting, the board shall provide general notice (Section
26 4045) of the results of the member vote.

27 (i) This section does not apply to an emergency rule change made under
28 subdivision (d) of Section 6115.

29 **Comment.** Section 6120 continues former Section 1357.140 without substantive change. See
30 Sections 4035 (delivered to board) 4045 (general notice), 4070 (approved by majority of quorum
31 of the members).

32 See also Sections 4080 ("association"), 4085 ("board"), 4135 ("declaration"), 4160
33 ("member"), 4180 ("rule change"), 4185 ("separate interest").

34 **§ 6125. Applicability of article to changes commenced before and after January 1, 2004**

35 6125. (a) This article applies to a rule change commenced on or after January 1,
36 2004.

37 (b) Nothing in this article affects the validity of a rule change commenced
38 before January 1, 2004.

39 (c) For the purposes of this section, a rule change is commenced when the board
40 takes its first official action leading to adoption of the rule change.

41 **Comment.** Section 6125 continues former Section 1357.150 without substantive change.
42 See also Sections 4085 ("board"), 4180 ("rule change").

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Article 6. Unlawful Restrictions

§ 6150. Discriminatory restriction

6150. (a) No governing document shall include a restrictive covenant in violation of Section 12955 of the Government Code.

(b) Notwithstanding any other provision of law or provision of the governing documents, the board shall amend the governing documents to delete the unlawful restrictive covenant and to restate the governing document without the deleted restrictive covenant. No other person is required to approve the amendment.

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

(d) The Department of Fair Employment and Housing, a city or county in which a common interest development is located, or any other person may provide written notice to a board (Section 6030) requesting that it comply with this section. If the board fails to comply with this section within 30 calendar days after delivery of the notice under this subdivision, the person who sent the notice may bring an action against the association for injunctive relief to enforce this section. The court may award attorney's fees to the prevailing party.

Comment. Section 6150 restates former Section 1352.5 without substantive change, except that subdivision (c) is added. See Section 4030 (delivery to board).

See also Sections 4080 ("association"), 4085 ("board"), 4100 ("common interest development"), 4135 ("declaration"), 4150 ("governing documents"), 4170 ("person").

Note. The use of the term "restrictive covenant" in existing Section 1352.5 would seem to limit its scope to a discriminatory provision in the recorded declaration (see Civ. Code § 1468(d) (covenant must be recorded to bind successive owners)). That is contrary to the express terms of the section, which provide that it applies to a "declaration *or other governing documents.*" Would it be appropriate to replace the term "restrictive covenant" with the broader term "rule or restriction"?

Article 7. Construction of Documents

§ 6175. Liberal construction of instruments

6175. (a) Any deed, declaration, or condominium plan for a common interest development shall be liberally construed to facilitate the operation of the common interest development, and its provisions shall be presumed to be independent and severable.

(b) Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the governing documents of a common interest development.

Comment. Section 6175 continues former Section 1370 without substantive change.

See also Sections 4100 ("common interest development"), 4120 ("condominium plan"), 4135 ("declaration"), 4150 ("governing documents").

1 **§ 6180. Boundaries of units**

2 6180. In interpreting a deed or condominium plan, the existing physical
3 boundaries of a unit in a condominium project, when the boundaries of the unit are
4 contained within a building, or of a unit reconstructed in substantial accordance
5 with the original plans thereof, shall be conclusively presumed to be its boundaries
6 rather than the metes and bounds expressed in the deed or condominium plan, if
7 any exists, regardless of settling or lateral movement of the building and
8 regardless of minor variance between boundaries shown on the plan or in the deed
9 and those of the building.

10 **Comment.** Section 6180 continues former Section 1371 without substantive change.
11 See also Sections 4120 (“condominium plan”), 4125 (“condominium project”).

12 **CHAPTER 9. CONSTRUCTION DEFECT LITIGATION**

13 **Note.** The proposed law continues Sections 1375, 1375.05, and 1375.1 without any change
14 other than to correct cross-references.

15 **§ 6200. Actions for damages**

16 6200. (a) Before an association files a complaint for damages against a builder,
17 developer, or general contractor (“respondent”) of a common interest development
18 based upon a claim for defects in the design or construction of the common
19 interest development, all of the requirements of this section shall be satisfied with
20 respect to the builder, developer, or general contractor.

21 (b) The association shall serve upon the respondent a “Notice of
22 Commencement of Legal Proceedings.” The notice shall be served by certified
23 mail to the registered agent of the respondent, or if there is no registered agent,
24 then to any officer of the respondent. If there are no current officers of the
25 respondent, service shall be upon the person or entity otherwise authorized by law
26 to receive service of process. Service upon the general contractor shall be
27 sufficient to initiate the process set forth in this section with regard to any builder
28 or developer, if the builder or developer is not amenable to service of process by
29 the foregoing methods. This notice shall toll all applicable statutes of limitation
30 and repose, whether contractual or statutory, by and against all potentially
31 responsible parties, regardless of whether they were named in the notice, including
32 claims for indemnity applicable to the claim for the period set forth in subdivision

33 (c). The notice shall include all of the following:

- 34 (1) The name and location of the project.
35 (2) An initial list of defects sufficient to apprise the respondent of the general
36 nature of the defects at issue.
37 (3) A description of the results of the defects, if known.
38 (4) A summary of the results of a survey or questionnaire distributed to
39 homeowners to determine the nature and extent of defects, if a survey has been
40 conducted or a questionnaire has been distributed.

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

3 (c) Service of the notice shall commence a period, not to exceed 180 days,
4 during which the association, the respondent, and all other participating parties
5 shall try to resolve the dispute through the processes set forth in this section. This
6 180-day period may be extended for one additional period, not to exceed 180 days,
7 only upon the mutual agreement of the association, the respondent, and any parties
8 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any
9 extensions beyond the first extension shall require the agreement of all
10 participating parties. Unless extended, the dispute resolution process prescribed by
11 this section shall be deemed completed. All extensions shall continue the tolling
12 period described in subdivision (b).

13 (d) Within 25 days of the date the association serves the Notice of
14 Commencement of Legal Proceedings, the respondent may request in writing to
15 meet and confer with the board of directors of the association. Unless the
16 respondent and the association otherwise agree, there shall be not more than one
17 meeting, which shall take place no later than 10 days from the date of the
18 respondent's written request, at a mutually agreeable time and place. The meeting
19 shall be subject to Sections 4525 and 4540. The discussions at the meeting are
20 privileged communications and are not admissible in evidence in any civil action,
21 unless the association and the respondent consent in writing to their admission.

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

24 (1) The respondent shall provide the association with access to, for inspection
25 and copying of, all plans and specifications, subcontracts, and other construction
26 files for the project that are reasonably calculated to lead to the discovery of
27 admissible evidence regarding the defects claimed. The association shall provide
28 the respondent with access to, for inspection and copying of, all files reasonably
29 calculated to lead to the discovery of admissible evidence regarding the defects
30 claimed, including all reserve studies, maintenance records and any survey
31 questionnaires, or results of testing to determine the nature and extent of defects.
32 To the extent any of the above documents are withheld based on privilege, a
33 privilege log shall be prepared and submitted to all other parties. All other
34 potentially responsible parties shall have the same rights as the respondent
35 regarding the production of documents upon receipt of written notice of the claim,
36 and shall produce all relevant documents within 60 days of receipt of the notice of
37 the claim.

38 (2) The respondent shall provide written notice by certified mail to all
39 subcontractors, design professionals, their insurers, and the insurers of any
40 additional insured whose identities are known to the respondent or readily
41 ascertainable by review of the project files or other similar sources and whose
42 potential responsibility appears on the face of the notice. This notice to
43 subcontractors, design professionals, and insurers shall include a copy of the

1 Notice of Commencement of Legal Proceedings, and shall specify the date and
2 manner by which the parties shall meet and confer to select a dispute resolution
3 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its
4 obligation to participate in the meet and confer or serve a written acknowledgment
5 of receipt regarding this notice, advise the recipient that it will waive any
6 challenge to selection of the dispute resolution facilitator if it elects not to
7 participate in the meet and confer, advise the recipient that it may be bound by any
8 settlement reached pursuant to subdivision (d) of Section 6205, advise the
9 recipient that it may be deemed to have waived rights to conduct inspection and
10 testing pursuant to subdivision (c) of Section 6205, advise the recipient that it may
11 seek the assistance of an attorney, and advise the recipient that it should contact its
12 insurer, if any. Any subcontractor or design professional, or insurer for that
13 subcontractor, design professional, or additional insured, who receives written
14 notice from the respondent regarding the meet and confer shall, prior to the meet
15 and confer, serve on the respondent a written acknowledgment of receipt. That
16 subcontractor or design professional shall, within 10 days of service of the written
17 acknowledgment of receipt, provide to the association and the respondent a
18 Statement of Insurance that includes both of the following:

19 (A) The names, addresses, and contact persons, if known, of all insurance
20 carriers, whether primary or excess and regardless of whether a deductible or self-
21 insured retention applies, whose policies were in effect from the commencement
22 of construction of the subject project to the present and which potentially cover the
23 subject claims.

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

25 (3) Any subcontractor or design professional, or insurer for that subcontractor,
26 design professional, or additional insured, who so chooses, may, at any time, make
27 a written request to the dispute resolution facilitator for designation as a peripheral
28 party. That request shall be served contemporaneously on the association and the
29 respondent. If no objection to that designation is received within 15 days, or upon
30 rejection of that objection, the dispute resolution facilitator shall designate that
31 subcontractor or design professional as a peripheral party, and shall thereafter seek
32 to limit the attendance of that subcontractor or design professional only to those
33 dispute resolution sessions deemed peripheral party sessions or to those sessions
34 during which the dispute resolution facilitator believes settlement as to peripheral
35 parties may be finalized. Nothing in this subdivision shall preclude a party who
36 has been designated a peripheral party from being reclassified as a nonperipheral
37 party, nor shall this subdivision preclude a party designated as a nonperipheral
38 party from being reclassified as a peripheral party after notice to all parties and an
39 opportunity to object. For purposes of this subdivision, a peripheral party is a party
40 having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

41 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of
42 subdivision (e), the association, respondent, subcontractors, design professionals,
43 and their insurers who have been sent a notice as described in paragraph (2) of

1 subdivision (e) shall meet and confer in an effort to select a dispute resolution
2 facilitator to preside over the mandatory dispute resolution process prescribed by
3 this section. Any subcontractor or design professional who has been given timely
4 notice of this meeting but who does not participate, waives any challenge he or she
5 may have as to the selection of the dispute resolution facilitator. The role of the
6 dispute resolution facilitator is to attempt to resolve the conflict in a fair manner.
7 The dispute resolution facilitator shall be sufficiently knowledgeable in the subject
8 matter and be able to devote sufficient time to the case. The dispute resolution
9 facilitator shall not be required to reside in or have an office in the county in which
10 the project is located. The dispute resolution facilitator and the participating
11 parties shall agree to a date, time, and location to hold a case management meeting
12 of all parties and the dispute resolution facilitator, to discuss the claims being
13 asserted and the scheduling of events under this section. The case management
14 meeting with the dispute resolution facilitator shall be held within 100 days of
15 service of the Notice of Commencement of Legal Proceedings at a location in the
16 county where the project is located. Written notice of the case management
17 meeting with the dispute resolution facilitator shall be sent by the respondent to
18 the association, subcontractors and design professionals, and their insurers who are
19 known to the respondent to be on notice of the claim, no later than 10 days prior to
20 the case management meeting, and shall specify its date, time, and location. The
21 dispute resolution facilitator in consultation with the respondent shall maintain a
22 contact list of the participating parties.

23 (2) No later than 10 days prior to the case management meeting, the dispute
24 resolution facilitator shall disclose to the parties all matters that could cause a
25 person aware of the facts to reasonably entertain a doubt that the proposed dispute
26 resolution facilitator would be able to resolve the conflict in a fair manner. The
27 facilitator's disclosure shall include the existence of any ground specified in
28 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any
29 attorney-client relationship the facilitator has or had with any party or lawyer for a
30 party to the dispute resolution process, and any professional or significant personal
31 relationship the facilitator or his or her spouse or minor child living in the
32 household has or had with any party to the dispute resolution process. The
33 disclosure shall also be provided to any subsequently noticed subcontractor or
34 design professional within 10 days of the notice.

35 (3) A dispute resolution facilitator shall be disqualified by the court if he or she
36 fails to comply with this paragraph and any party to the dispute resolution process
37 serves a notice of disqualification prior to the case management meeting. If the
38 dispute resolution facilitator complies with this paragraph, he or she shall be
39 disqualified by the court on the basis of the disclosure if any party to the dispute
40 resolution process serves a notice of disqualification prior to the case management
41 meeting.

42 (4) If the parties cannot mutually agree to a dispute resolution facilitator, then
43 each party shall submit a list of three dispute resolution facilitators. Each party

1 may then strike one nominee from the other parties' list, and petition the court,
2 pursuant to the procedure described in subdivisions (n) and (o), for final selection
3 of the dispute resolution facilitator. The court may issue an order for final
4 selection of the dispute resolution facilitator pursuant to this paragraph.

5 (5) Any subcontractor or design professional who receives notice of the
6 association's claim without having previously received timely notice of the meet
7 and confer to select the dispute resolution facilitator shall be notified by the
8 respondent regarding the name, address, and telephone number of the dispute
9 resolution facilitator. Any such subcontractor or design professional may serve
10 upon the parties and the dispute resolution facilitator a written objection to the
11 dispute resolution facilitator within 15 days of receiving notice of the claim.
12 Within seven days after service of this objection, the subcontractor or design
13 professional may petition the superior court to replace the dispute resolution
14 facilitator. The court may replace the dispute resolution facilitator only upon a
15 showing of good cause, liberally construed. Failure to satisfy the deadlines set
16 forth in this subdivision shall constitute a waiver of the right to challenge the
17 dispute resolution facilitator.

18 (6) The costs of the dispute resolution facilitator shall be apportioned in the
19 following manner: one-third to be paid by the association; one-third to be paid by
20 the respondent; and one-third to be paid by the subcontractors and design
21 professionals, as allocated among them by the dispute resolution facilitator. The
22 costs of the dispute resolution facilitator shall be recoverable by the prevailing
23 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil
24 Procedure, provided however that any nonsettling party may, prior to the filing of
25 the complaint, petition the facilitator to reallocate the costs of the dispute
26 resolution facilitator as they apply to any nonsettling party. The determination of
27 the dispute resolution facilitator with respect to the allocation of these costs shall
28 be binding in any subsequent litigation. The dispute resolution facilitator shall take
29 into account all relevant factors and equities between all parties in the dispute
30 resolution process when reallocating costs.

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

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

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

39 (A) The scope of the work performed by each potentially responsible
40 subcontractor.

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

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

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

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

13 (1) Establishment of a document depository, located in the county where the
14 project is located, for deposit of documents, defect lists, demands, and other
15 information provided for under this section. All documents exchanged by the
16 parties and all documents created pursuant to this subdivision shall be deposited in
17 the document depository, which shall be available to all parties throughout the
18 pre-filing dispute resolution process and in any subsequent litigation. When any
19 document is deposited in the document depository, the party depositing the
20 document shall provide written notice identifying the document to all other parties.
21 The costs of maintaining the document depository shall be apportioned among the
22 parties in the same manner as the costs of the dispute resolution facilitator.

23 (2) Provision of a more detailed list of defects by the association to the
24 respondent after the association completes a visual inspection of the project. This
25 list of defects shall provide sufficient detail for the respondent to ensure that all
26 potentially responsible subcontractors and design professionals are provided with
27 notice of the dispute resolution process. If not already completed prior to the case
28 management meeting, the Notice of Commencement of Legal Proceedings shall be
29 served by the respondent on all additional subcontractors and design professionals
30 whose potential responsibility appears on the face of the more detailed list of
31 defects within seven days of receipt of the more detailed list. The respondent shall
32 serve a copy of the case management statement, including the name, address, and
33 telephone number of the dispute resolution facilitator, to all the potentially
34 responsible subcontractors and design professionals at the same time.

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

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

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

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

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

6 (8) Facilitated dispute resolution of the claim, with all parties, including
7 peripheral parties, as appropriate, and insurers, if any, present and having
8 settlement authority. The dispute resolution facilitators shall endeavor to set
9 specific times for the attendance of specific parties at dispute resolution sessions.
10 If the dispute resolution facilitator does not set specific times for the attendance of
11 parties at dispute resolution sessions, the dispute resolution facilitator shall permit
12 those parties to participate in dispute resolution sessions by telephone.

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

19 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the
20 time the case management statement is established, set deadlines for the
21 occurrence of each event set forth in the case management statement, taking into
22 account such factors as the size and complexity of the case, and the requirement of
23 this section that this dispute resolution process not exceed 180 days absent
24 agreement of the parties to an extension of time.

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

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

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

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

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

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

38 (C) No less than 10 days after the respondent submits the items required by this
39 paragraph, the respondent and the board of directors of the association shall meet
40 and confer about the respondent's settlement offer.

41 (D) If the association's board of directors rejects a settlement offer presented at
42 the meeting held pursuant to this subdivision, the board shall hold a meeting open

1 to each member of the association. The meeting shall be held no less than 15 days
2 before the association commences an action for damages against the respondent.

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

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

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

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

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

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

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

24 (I) Except for the purpose of in camera review as provided in subdivision (c) of
25 Section 6205, all defect lists and demands, communications, negotiations, and
26 settlement offers made in the course of the prelitigation dispute resolution process
27 provided by this section shall be inadmissible pursuant to Sections 1119 to 1124,
28 inclusive, of the Evidence Code and all applicable decisional law. This
29 inadmissibility shall not be extended to any other documents or communications
30 which would not otherwise be deemed inadmissible.

31 (m) Any subcontractor or design professional may, at any time, petition the
32 dispute resolution facilitator to release that party from the dispute resolution
33 process upon a showing that the subcontractor or design professional is not
34 potentially responsible for the defect claims at issue. The petition shall be served
35 contemporaneously on all other parties, who shall have 15 days from the date of
36 service to object. If a subcontractor or design professional is released, and it later
37 appears to the dispute resolution facilitator that it may be a responsible party in
38 light of the current defect list or demand, the respondent shall renote the party as
39 provided by paragraph (2) of subdivision (e), provide a copy of the current defect
40 list or demand, and direct the party to attend a dispute resolution session at a stated
41 time and location. A party who subsequently appears after having been released by
42 the dispute resolution facilitator shall not be prejudiced by its absence from the

1 dispute resolution process as the result of having been previously released by the
2 dispute resolution facilitator.

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

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

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

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

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

16 (5) To seek a determination that a settlement is a good faith settlement pursuant
17 to Section 877.6 of the Code of Civil Procedure and all related authorities. The
18 page limitations and meet and confer requirements specified in this section shall
19 not apply to these motions, which may be made on shortened notice. Instead, these
20 motions shall be subject to other applicable state law, rules of court, and local
21 rules. A determination made by the court pursuant to this motion shall have the
22 same force and effect as the determination of a postfiling application or motion for
23 good faith settlement.

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

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

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

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

39 (p) As used in this section:

40 (1) “Association” shall have the same meaning as defined in Section 4080.

41 (2) “Builder” means the declarant, as defined in subdivision Section 4130.

1 (3) “Common interest development” shall have the same meaning as in Section
2 4100, except that it shall not include developments or projects with less than 20
3 units.

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

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

9 (s) This section shall become inoperative on July 1, 2010, and as of January 1,
10 2011, is repealed, unless a later enacted statute, that is enacted before January 1,
11 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

12 **Comment.** Section 6200 continues former Section 1375 without change other than to correct
13 obsolete cross-references.

14 **§ 6205. Action following pre-filing dispute resolution**

15 6205. (a) Upon the completion of the mandatory pre-filing dispute resolution
16 process described in Section 6200, if the parties have not settled the matter, the
17 association or its assignee may file a complaint in the superior court in the county
18 in which the project is located. Those matters shall be given trial priority.

19 (b) In assigning trial priority, the court shall assign the earliest possible trial
20 date, taking into consideration the pretrial preparation completed pursuant to
21 Section 6200, and shall deem the complaint to have been filed on the date of
22 service of the Notice of Commencement of Legal Proceedings described under
23 Section 6200.

24 (c) Any respondent, subcontractor, or design professional who received timely
25 prior notice of the inspections and testing conducted under Section 6200 shall be
26 prohibited from engaging in additional inspection or testing, except if all of the
27 following specific conditions are met, upon motion to the court:

28 (1) There is an insurer for a subcontractor or design professional, that did not
29 have timely notice that legal proceedings were commenced under Section 6200 at
30 least 30 days prior to the commencement of inspections or testing pursuant to
31 paragraph (6) of subdivision (h) of Section 6200.

32 (2) The insurer’s insured did not participate in any inspections or testing
33 conducted under the provisions of paragraph (6) of subdivision (h) of Section
34 6200.

35 (3) The insurer has, after receiving notice of a complaint filed in superior court
36 under subdivision (a), retained separate counsel, who did not participate in the
37 Section 6200 dispute resolution process, to defend its insured as to the allegations
38 in the complaint.

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

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

1 If the court permits additional inspections or testing upon finding that these
2 requirements are met, any additional inspections or testing shall be limited to the
3 extent reasonably necessary to avoid the likelihood of prejudice and shall be
4 coordinated among all similarly situated parties to ensure that they occur without
5 unnecessary duplication. For purposes of providing notice to an insurer prior to
6 inspections or testing under paragraph (6) of subdivision (h) of Section 6200, if
7 notice of the proceedings was not provided by the insurer's insured, notice may be
8 made via certified mail either by the subcontractor, design professional,
9 association, or respondent to the address specified in the Statement of Insurance
10 provided under paragraph (2) of subdivision (e) of Section 6200. Nothing herein
11 shall affect the rights of an intervenor who files a complaint in intervention. If the
12 association alleges defects that were not specified in the prefiling dispute
13 resolution process under Section 6200, the respondent, subcontractor, and design
14 professionals shall be permitted to engage in testing or inspection necessary to
15 respond to the additional claims. A party who seeks additional inspections or
16 testing based upon the amendment of claims shall apply to the court for leave to
17 conduct those inspections or that testing. If the court determines that it must
18 review the defect claims alleged by the association in the prefiling dispute
19 resolution process in order to determine whether the association alleges new or
20 additional defects, this review shall be conducted in camera. Upon objection of
21 any party, the court shall refer the matter to a judge other than the assigned trial
22 judge to determine if the claim has been amended in a way that requires additional
23 testing or inspection.

24 (d) Any subcontractor or design professional who had notice of the facilitated
25 dispute resolution conducted under Section 6200 but failed to attend, or attended
26 without settlement authority, shall be bound by the amount of any settlement
27 reached in the facilitated dispute resolution in any subsequent trial, although the
28 affected party may introduce evidence as to the allocation of the settlement. Any
29 party who failed to participate in the facilitated dispute resolution because the
30 party did not receive timely notice of the mediation shall be relieved of any
31 obligation to participate in the settlement. Notwithstanding any privilege
32 applicable to the prefiling dispute resolution process provided by Section 6200,
33 evidence may be introduced by any party to show whether a subcontractor or
34 design professional failed to attend or attended without settlement authority. The
35 binding effect of this subdivision shall in no way diminish or reduce a nonsettling
36 subcontractor or design professional's right to defend itself or assert all available
37 defenses relevant to its liability in any subsequent trial. For purposes of this
38 subdivision, a subcontractor or design professional shall not be deemed to have
39 attended without settlement authority because it asserted defenses to its potential
40 liability.

41 (e) Notice of the facilitated dispute resolution conducted under Section 6200
42 must be mailed by the respondent no later than 20 days prior to the date of the first
43 facilitated dispute resolution session to all parties. Notice shall also be mailed to

1 each of these parties' known insurance carriers. Mailing of this notice shall be by
2 certified mail. Any subsequent facilitated dispute resolution notices shall be served
3 by any means reasonably calculated to provide those parties actual notice.

4 (f) As to the complaint, the order of discovery shall, at the request of any
5 defendant, except upon a showing of good cause, permit the association's expert
6 witnesses to be deposed prior to any percipient party depositions. The depositions
7 shall, at the request of the association, be followed immediately by the defendant's
8 experts and then by the subcontractors' and design professionals' experts, except
9 on a showing of good cause. For purposes of this section, in determining what
10 constitutes "good cause," the court shall consider, among other things, the goal of
11 early disclosure of defects and whether the expert is prepared to render a final
12 opinion, except that the court may modify the scope of any expert's deposition to
13 address those concerns.

14 (g)(1) The only method of seeking judicial relief for the failure of the
15 association or the respondent to complete the dispute resolution process under
16 Section 6200 shall be the assertion, as provided for in this subdivision, of a
17 procedural deficiency to an action for damages by the association against the
18 respondent after that action has been filed. A verified application asserting a
19 procedural deficiency shall be filed with the court no later than 90 days after the
20 answer to the plaintiff's complaint has been served, unless the court finds that
21 extraordinary conditions exist.

22 (2) Upon the verified application of the association or the respondent alleging
23 substantial noncompliance with Section 6200, the court shall schedule a hearing
24 within 21 days of the application to determine whether the association or
25 respondent has substantially complied with this section. The issue may be
26 determined upon affidavits or upon oral testimony, in the discretion of the court.

27 (3)(A) If the court finds that the association or the respondent did not
28 substantially comply with this paragraph, the court shall stay the action for up to
29 90 days to allow the noncomplying party to establish substantial compliance. The
30 court shall set a hearing within 90 days to determine substantial compliance. At
31 any time, the court may, for good cause shown, extend the period of the stay upon
32 application of the noncomplying party.

33 (B) If, within the time set by the court pursuant to this paragraph, the association
34 or the respondent has not established that it has substantially complied with this
35 section, the court shall determine if, in the interest of justice, the action should be
36 dismissed without prejudice, or if another remedy should be fashioned. Under no
37 circumstances shall the court dismiss the action with prejudice as a result of the
38 association's failure to substantially comply with this section. In determining the
39 appropriate remedy, the court shall consider the extent to which the respondent has
40 complied with this section.

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

1 (i) This section shall become inoperative on July 1, 2010, and, as of January 1,
2 2011, is repealed, unless a later enacted statute that is enacted before January 1,
3 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

4 **Comment.** Section 6205 continues former Section 1375.05 without change other than to
5 correct obsolete cross-references.

6 **§ 6210. Notice of resolution**

7 6210. (a) As soon as is reasonably practicable after the association and the
8 builder have entered into a settlement agreement or the matter has otherwise been
9 resolved regarding alleged defects in the common areas, alleged defects in the
10 separate interests that the association is obligated to maintain or repair, or alleged
11 defects in the separate interests that arise out of, or are integrally related to, defects
12 in the common areas or separate interests that the association is obligated to
13 maintain or repair, where the defects giving rise to the dispute have not been
14 corrected, the association shall, in writing, inform only the members of the
15 association whose names appear on the records of the association that the matter
16 has been resolved, by settlement agreement or other means, and disclose all of the
17 following:

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

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

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

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

31 (c) Disclosure of the information required pursuant to subdivision (a) or
32 authorized by subdivision (b) shall not waive any privilege attached to the
33 information.

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

36 **Comment.** Section 6210 continues former Section 1375.1 without change other than to correct
37 obsolete cross-references.

38 **§ 6215. Notice of civil action**

39 6215. (a) Not later than 30 days prior to the filing of any civil action by the
40 association against the declarant or other developer of a common interest
41 development for alleged damage to the common areas, alleged damage to the

1 separate interests that the association is obligated to maintain or repair, or alleged
2 damage to the separate interests that arises out of, or is integrally related to,
3 damage to the common areas or separate interests that the association is obligated
4 to maintain or repair, the board shall deliver individual notice (Section 4040) to
5 each member of the association who appears on the records of the association
6 when the notice is provided. The notice shall specify all of the following:

7 (1) That a meeting will take place to discuss problems that may lead to the filing
8 of a civil action.

9 (2) The options, including civil actions, that are available to address the
10 problems.

11 (3) The time and place of this meeting.

12 (b) Notwithstanding subdivision (a), if the association has reason to believe that
13 the applicable statute of limitations will expire before the association files the civil
14 action, the association may give the notice, as described above, within 30 days
15 after the filing of the action.

16 **Comment.** Section 6215 continues former Section 1368.5 without substantive change.

CONFORMING REVISIONS

- 1 **Note.** As a result of the proposed reorganization of the Davis-Stirling Common Interest
- 2 Development Act, a number of sections that refer to the Davis-Stirling Act will need to be
- 3 amended to correct the cross-references. Those amendments will be presented in a separate draft.

DISPOSITION OF FORMER LAW

The table below shows the relationship between the provisions of the existing Davis-Stirling Common Interest Development Act and the corresponding provisions of the proposed law.

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
1350.....	4000	1361.5.....	5810
1350.5.....	4005	1362.....	5800
1350.7.....	4040, 4045	1363(a).....	4400
1351(a).....	4080	1363(b).....	omitted, see 4080
1351(b).....	4095	1363(c).....	4405
1351(c).....	4100	1363(d).....	4575(d)
1351(d).....	4105	1363(e).....	4595(c)
1351(e).....	4120	1363(f).....	omitted, see 47700-4750
1351(f).....	4125	1363(g).....	5000, 5015
1351(g).....	4130	1363(h).....	5005
1351(h).....	4135	1363(i).....	4560(b)
1351(i).....	4145	1363(j).....	omitted, see 5000
1351(j).....	4150	1363.001.....	4950
1351(k).....	4175	1363.03(a).....	4630, 4665(a)-(b), 4670
1351(l).....	4185	1363.03(b), (e), (f), (g), (k).....	4635(f), 4640, 4650
1351(m).....	4190	1363.03(c).....	4635
1352.....	4015, 6000	1363.03(d).....	4660
1352.5.....	6150	1363.03(h), (i).....	4655
1353.....	6025, 6030, 6035	1363.03(j).....	4665(b)-(d)
1353.5.....	5730	1363.03(l).....	omitted, see 4080
1353.6.....	5730	1363.03(m).....	4625
1353.7.....	5740	1363.03(n).....	omitted, see 4025
1353.8.....	5755	1363.03(o).....	omitted
1354.....	5125	1363.04.....	4670
1355.....	6040, 6045	1363.05(a).....	4500
1355.5.....	6050	1363.05(b).....	4525(a), 4540
1356.....	4620	1363.05(c)-(e).....	4550
1357.....	6040	1363.05(f).....	4090
1357.100(a).....	4165	1363.05(g).....	4520(a)-(b)
1357.100(b).....	4180	1363.05(h).....	4520(c)
1357.110.....	6100	1363.05(i).....	4525(b)
1357.120.....	6110	1363.07.....	5900
1357.130.....	6115	1363.09.....	4555(a)-(b), 4685
1357.140.....	6120	1363.1.....	4900
1357.150.....	6125	1363.2.....	4905
1358(a).....	5925	1363.5.....	6060
1358(b).....	5930	1363.6.....	4960
1358(c).....	5935	1363.810.....	5050(a)-(b)
1358(d).....	5940	1363.820.....	5055
1358, next to last ¶.....	5945	1363.830.....	5060
1358, last ¶.....	5950	1363.840.....	5065
1359.....	5905	1363.850.....	5070
1360.....	5760	1364(a).....	5700
1360.5.....	5735	1364(b)-(e).....	5705
1361.....	5805	1364(f).....	5710

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
1365(a).....	4800, 5500(c), 5555(b)-(c), (e), 5560	1367.5	5635(c)
1365(b).....	4820	1368(a).....	5825
1365(c).....	4805(b), 5510(a)	1368(b).....	5830
1365(d).....	4820	1368(c)(1).....	5875
1365(e).....	4810(a)(5)	1368(c)(2).....	5880
1365.1.....	4040, 5670	1368(c)(3).....	4110
1365.2.....	4700-4725, 4735, 4745-4750, 4800	1368(d).....	5840
1365.2.5	4800, 5555	1368(e).....	5845
1365.3.....	4815	1368(f).....	5835
1365.5.....	5500(d), 5510(b), 5515, 5520, 5550, 5555(a), 5555(b)(1), 5555(b)(3)-(4), 5560	1368(g).....	5850
1365.6.....	4855	1368.1(a).....	5750(a)
1365.7.....	5680	1368.1(b).....	5750(b)-(c)
1365.9.....	5685	1368.1(c).....	5750(d)
1366(a)-(b).....	5575(a), 5580(a)-(c), (e)	1368.1(d).....	5750(e)
1366(c).....	5585	1368.3	4410
1366(d).....	5580(d)	1368.4	4415
1366(e)-(f).....	5606(a)-(c)	1368.5	6215
1366.1.....	5575(b)	1369	5910
1366.2.....	5665	1369.510.....	5075
1367(a).....	5605(d)	1369.520.....	5080
1367(b)-(g).....	omitted, see 5675	1369.530.....	5085
1367.1(a).....	5605(d), 5615	1369.540.....	5090
1367.1(b).....	5600	1369.550.....	5095
1367.1(c).....	5620, 5625, 5630(g), 5655(a)	1369.560.....	5100
1367.1(d).....	5630(a)-(e), 5635(a), 5640(a)	1369.570.....	5105
1367.1(e).....	5640(b)	1369.580.....	5110
1367.1(f).....	5630(f)	1369.590.....	5115
1367.1(g).....	5610, 5645(a), 5655(b)	1370	6175
1367.1(h).....	5630(h)	1371	6180
1367.1(i).....	5635(b)	1372	4030
1367.1(j).....	5655(c)	1373	4020
1367.1(k).....	4040(b)	1374	4015(b)
1367.1(l).....	5630(i)	1375	6200
1367.4(b).....	5625, 5645(b), 5650(a)	1375.05.....	6205
1367.4(c).....	5655(a), 5660	1375.1	6210
1367.4(d).....	5650(b)	1376.....	5745
		1378	5775