

Memorandum 2012-32

**Common Interest Developments: Commercial and Industrial Associations
(Draft of Recommendation)**

The Commission has broad authority to study the law governing common interest developments (“CIDs”). 2009 Cal. Stat. res. ch. 98. All CIDs, residential and otherwise, are governed by the Davis-Stirling Common Interest Development Act (Civ. Code §§ 1350-1378) (“Davis-Stirling Act”).

At its October 2008 meeting, the Commission decided to study the application of the Davis-Stirling Act to CIDs that are exclusively commercial or industrial. Minutes (October 2008), p. 3. In the course of this study, the Commission has considered the following memoranda (all of which are available at the Commission’s website):

- Memorandum 2008-63 — Scope and Methodology of Study (12/2/2008)
- First Supplement to Memorandum 2008-63 — Scope and Methodology of Study (12/8/2008)
- Second Supplement to Memorandum 2008-63 — Scope and Methodology of Study (12/11/2008)
- Memorandum 2009-18 — Discussion of Issues (4/10/2009)
- First Supplement to Memorandum 2009-18 — Public Comment (4/17/2009)
- Memorandum 2009-24 — Discussion of Issues (5/29/2009)
- First Supplement to Memorandum 2009-24 — Discussion of Issues (6/8/2009)
- Second Supplement to Memorandum 2009-24 — Discussion of Issues (6/10/2009)
- Memorandum 2009-32 — Discussion of Issues (8/19/2009)
- First Supplement to Memorandum 2009-32 — Discussion of Issues (8/20/2009)
- Second Supplement to Memorandum 2009-32 — Discussion of Issues (8/28/2009)

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

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

- Memorandum 2010-10 — Proposed Legislation (2/18/2010)
- Memorandum 2010-37 — Discussion of Issues (8/11/2010)
- First Supplement to Memorandum 2010-37 — Discussion of Issues (8/19/2010)
- Memorandum 2010-45 — Further Public Comment (10/1/2010)
- Memorandum 2011-6 — Staff Draft Tentative Recommendation (1/28/2011)
- Memorandum 2011-21 — Comments on Tentative Recommendation (6/1/2011)
- First Supplement to Memorandum 2011-21 — Comments on Tentative Recommendation (6/7/2011)
- Second Supplement to Memorandum 2011-21 — Comments on Tentative Recommendation (6/9/2011)
- Memorandum 2011-30 — Comments on Tentative Recommendation (8/3/2011)

At its February 2011 meeting, the Commission approved the distribution of a tentative recommendation on *Commercial and Industrial Common Interest Developments* (Feb. 2011). See Minutes (Feb. 2011), p. 5. The deadline for public comment on the tentative recommendation was April 28, 2011.

After the Commission considered public comment on the tentative recommendation, the staff prepared Memorandum 2011-34 and its First and Second Supplements, which presented and discussed a draft of a final recommendation. However, the Commission meeting at which those memoranda were to be presented was canceled due to lack of a quorum, and the memoranda have not been considered by the Commission.

This memorandum reiterates the substance of, and supersedes, Memorandum 2011-34 and its First and Second Supplements. The memorandum also discusses new matter relevant to a final recommendation that has arisen since the preparation of those memoranda. Finally, the memorandum presents a new staff draft of a final recommendation, incorporating all prior Commission decisions to date, as well as anticipated decisions on the issues that are discussed for the first time in this memorandum.

The staff recommends that any Commissioner who is new to this material first read the narrative portion of the attached draft recommendation, before reading the remainder of this memorandum. This portion of the draft recommendation provides a good summary of the subject matter of the study. It

also provides necessary context for the new matter discussed for the first time in this memorandum.

The Exhibit to this memorandum includes the following public comments, discussed later in this memorandum, which have not yet been considered by the Commission:

	<i>Exhibit pp.</i>
• Duncan McPherson, Stockton (11/9/11).....	1
• Duncan McPherson, Stockton (11/23/11).....	3
• Rodney Plascencia, Costa Mesa (3/16/12)	6

After consideration of this memorandum and the attached staff draft, the Commission will need to decide whether to approve the draft recommendation, with or without changes, as its final recommendation, for submission to the Legislature and for printing in the Commission’s official reports.

Except as otherwise indicated, all statutory references in this memorandum are to the Civil Code.

RECASTING OF PRELIMINARY PART

The attached staff draft recasts the narrative portion of the tentative recommendation (the “preliminary part”), in order to clarify and emphasize various aspects of the recommendation, and to add additional supporting information. Those changes are discussed further below.

Revised Emphasis

The preliminary part of the attached staff draft would place greater emphasis on certain aspects of the recommended reforms.

First, greater emphasis would be placed on the value of creating a separate statute to govern commercial and industrial CIDs (rather than having commercial and industrial CIDs be governed by the same statute that regulates residential CIDs). Because the existing Davis-Stirling Act governs all CIDs, a bill that is designed to affect residential CIDs will also automatically affect commercial and industrial CIDs (unless they are expressly exempted).

If commercial and industrial CIDs are instead governed by a separate statute, a bill that is intended to affect residential CIDs would not automatically affect commercial and industrial CIDs. In order for a bill to affect commercial and

industrial CIDs, it would need to expressly provide for such application. This should largely eliminate the problem of inadvertent regulation of commercial and industrial CIDs.

The preliminary part would also more clearly emphasize that the Commission's recommendations in this study are based on a systematic extrapolation of the Legislature's own policy principles on this topic, rather than on an ad hoc reevaluation of the policy merits of each separate provision of the Davis-Stirling Act.

Finally, the preliminary part would note that each recommendation that the Commission has made to continue or discontinue a Davis-Stirling Act provision is severable from the remainder of the recommendation. In other words, if the Legislature would prefer a different result with regard to any particular provision of the Davis-Stirling Act, it could choose to disregard the Commission's recommendation on that point, without undermining the value of the remainder of the proposed legislation.

New Information

The preliminary part also includes some new information that the staff believes would be helpful in explaining the Commission's recommendation. That information is discussed below.

Business Sophistication

One of the recurring policy arguments in favor of regulating commercial and industrial CIDs differently from residential CIDs is grounded in the assumption that a typical business property owner will have greater financial and legal sophistication than a typical residential property owner.

While conceding that this will not always be true, the preliminary part now includes a new reference to factual support for this argument. See draft recommendation, footnote 31.

Statutory Distinction Between Residential and Nonresidential Property

The preliminary part includes a new example of a statute that draws a substantive distinction between residential and non-residential property owners. See draft recommendation, page 7 and footnote 30.

Legislative History

Since the distribution of the tentative recommendation in this study, the staff located additional archived documents relating to the enactment of Section 1373. The preliminary part includes cites to those documents where relevant. See footnotes 5, 7, 8, 13, 22, 23, 26.

New Legislation

As will be discussed in more detail in the next section of this memorandum, various bills that added, amended, or deleted provisions of the Davis-Stirling Act have been enacted since the distribution of the tentative recommendation. Two changes were made in the preliminary part to reflect those enactments. First, a reference to the number of sections in the Davis-Stirling Act was updated. See footnote 11. Second, the preliminary part discusses a new provision of Section 1373 (exempting commercial and industrial CIDs from new Section 1360.2). This new exemption is noted on page 2 of the preliminary part, and briefly discussed on page 6. See also the discussion of Senate Bill 150 (Correa), below.

Additional Acknowledgment

The list of acknowledgments at the front of the recommendation was revised to include the name of a new commenter.

Updated Status of AB 805 and 806 (Torres)

The draft recommendation describes the current posture of AB 805 and 806 (Torres), the bills that would enact the Commission's recommendation on *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010). See draft recommendation, p. 10.

If the status of those bills changes before the draft recommendation is printed in final form, the staff will adjust the description accordingly.

Recommendation

Subject to any changes that the Commission may wish to make, **the staff recommends that the Commission approve the preliminary part of the attached staff draft for inclusion in a final recommendation.**

RECENT LEGISLATIVE CHANGES

Since the distribution of the tentative recommendation, legislation has made changes to the Davis-Stirling Act. Before a recommendation in this study can be finalized, the Commission will need to decide how to address those changes.

The recent legislative changes are discussed in more detail below, followed by staff recommendations relating to how or whether the proposed law should be revised based on each bill. In the interest of efficiency, the staff has tentatively incorporated its recommendations in the attached draft. If the Commission decides not to approve any staff recommendation, the staff will revise the draft of the proposed law accordingly.

Assembly Bill 657 (Gordon) (2011 Cal. Stat. ch. 204)

Assembly Bill 657 amended Sections 1363.5 and 1363.6. As both sections would be continued in the proposed law, the recommendation should be revised to reflect the amendments. Those revisions are discussed below.

Section 1363.5

Section 1363.5, which would be continued by proposed Section 6622, requires certain public filings by an incorporated CID. It was amended as follows:

1363.5. (a) The articles of incorporation of a common interest development association filed with the Secretary of State ~~on or after January 1, 1995,~~ shall include a statement, which shall be in addition to the statement of purposes of the corporation, that does all of the following:

(1) Identifies the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act.

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

(3) States the name and address of the association's managing agent, as defined in Section 1363.1, if any.

(b) ~~The statement of principal business activity contained in the annual statement filed by an incorporated association with the Secretary of State pursuant to Section 1502 8210 of the Corporations Code shall also contain the a statement specified in subdivision (a) identifying the corporation as an association formed to manage a common interest development association under the Davis-Stirling Common Interest Development Act.~~

The staff sees no reason why these changes should not be incorporated in the Commission's recommendation. Nor does the staff see any reason why these changes would provide any basis for reevaluating the Commission's prior decision to continue Section 1363.5 in the proposed law. **Does the Commission approve making these revisions to proposed Section 6622?**

Section 1363.6

Section 1363.6, which would be continued by proposed Section 6760, requires a CID to provide specified information to the Secretary of State. It was amended as follows:

1363.6. (a) To assist with the identification of common interest developments, each association, whether incorporated or unincorporated, shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:

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

(2) The name of the association.

(3) The street address of the business or corporate office of the association, if any.

~~(3)~~ (4) The street address of the association's onsite office if different from the street address of the business or corporate office, or, if none, or if there is no onsite office, the street address of the responsible officer or managing agent of the association.

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

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

~~(6)~~ (7) The county, and if in an incorporated area, the city in which the development is physically located. If the boundaries of the development are physically located in more than one county, each of the counties in which it is located.

~~(7)~~ (8) If the development is in an unincorporated area, the city closest in proximity to the development.

~~(8)~~ (9) ~~The nine-digit ZIP Code,~~ front street, and nearest cross street of the physical location of the development.

~~(9)~~ (10) The type of common interest development, as defined in subdivision (c) of Section 1351, managed by the association.

~~(10)~~ (11) The number of separate interests, as defined in subdivision (l) of Section 1351, in the development.

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

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

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

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

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

(e) The statement required by this section may be filed, notwithstanding suspension of the corporate powers, rights, and privileges under this section or under provisions of the Revenue and Taxation Code. Upon the filing of a statement under this section by a corporation that has suffered suspension under this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved from suspension, unless the corporation is held in suspension by the Franchise Tax Board by reason of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

~~(e)~~ (f) The Secretary of State shall make the information submitted pursuant to paragraph ~~(4)~~ (5) of subdivision (a) available only for governmental purposes and only to Members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. The information submitted pursuant to this section shall be made available for governmental or public inspection, as the case may be, on or before July 1, 2004, and thereafter.

(g) Whenever any form is filed pursuant to this section, it supersedes any previously filed form.

(h) The Secretary of State may destroy or otherwise dispose of any form filed pursuant to this section after it has been superseded by the filing of a new form.

Again, the staff sees no reason why these changes should not be incorporated in the Commission's recommendation. Nor does the staff see any reason why these changes would provide any basis for reevaluating the Commission's prior decision to continue Section 1363.6 in the proposed law. **Does the Commission approve making these revisions to proposed Section 6760?**

Assembly Bill 771 (Butler) (2011 Cal. Stat. ch. 206)

Assembly Bill 771 (Butler) amended Section 1368 of the Davis-Stirling Act, to require that specified new disclosures be made to prospective purchasers of an interest in a CID. The bill also added Section 1368.2, which provides a statutory form for the new disclosures.

Under existing law, commercial and industrial CIDs are exempt from Section 1368. See Section 1373(a)(8). Under the proposed law, Section 1368 would not apply to commercial and industrial CIDs.

Assembly Bill 771 made minor changes to the content of the required disclosure, but did not alter its fundamental character:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

....
(6) A copy of the preliminary initial list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary initial list of defects pursuant to this paragraph does not waive any privilege attached to the document. The preliminary initial list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

....
(9) If there is a provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant, a statement describing the prohibition and its applicability.

(10) If requested by the prospective purchaser, a copy of the minutes of the meetings, excluding meetings held in executive session, of the association's board of directors, conducted over the

previous 12 months, that were approved by the association's board of directors.

(b) (1) Upon written request, an the association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest, or any other recipient authorized by the owner, with a copy of the requested items documents specified in paragraphs (1) to (8) (10), inclusive, of subdivision (a). Upon receipt of a written request, the association shall provide, on the form described in Section 1368.2, a written or electronic estimate of the fees that will be assessed for providing the requested documents. The items documents required to be made available pursuant to this section may be maintained in electronic form, and requesting may be posted on the association's Internet Web site. Requesting parties shall have the option of receiving them the documents by electronic transmission or machine-readable storage media if the association maintains these items the documents in electronic form. The association may charge collect a reasonable fee for this service based upon the association's actual cost to procure, prepare, and reproduce for the procurement, preparation, reproduction, and delivery of the documents requested pursuant to the provisions of this section.

(2) No additional fees may be charged by the association for the electronic delivery of the documents requested.

(3) Fees for any documents required by this section shall be distinguished from other fees, fines, or assessments billed as part of the transfer or sales transaction. Delivery of the documents required by this section shall not be withheld for any reason nor subject to any condition except the payment of the fee allowed pursuant to paragraph (1).

(4) An association may contract with any person or entity to facilitate compliance with the requirements of this subdivision on behalf of the association.

(5) The association shall also provide a recipient authorized by the owner of a separate interest with a copy of the completed form specified in Section 1368.2 at the time the required documents are delivered.

....

In the staff's view, the changes made to Section 1368 do not provide any reason for the Commission to reverse its prior decision to omit Section 1368 from the proposed law. **If the Commission agrees, there is no need to make any change to the recommendation to reflect the amendments to Section 1368.**

Senate Bill 150 (Correa) (2011 Cal. Stat. ch. 62)

Senate Bill 150 (Correa) added Section 1360.2 to the Davis-Stirling Act, addressing the right of a CID owner to rent or lease the owner's separate interest.

The new section provides that a CID declaration may not preclude an owner from renting or leasing his or her own interest, if the owner had that right when first acquiring the separate interest.

Senate Bill 150 specifically exempted commercial and industrial CIDs from Section 1360.2, through an amendment to Section 1373.

The staff recommends that this recent and express legislative policy decision be respected. **Section 1360.2 should not be made applicable to commercial and industrial CIDs. Further, because 1368.2 only serves to implement the requirements of Section 1368 (by providing a statutory form for the required disclosures), it is not needed in the proposed law.**

However, the version of Section 1373 that is included in the proposed legislation should be revised to reflect the enactment of SB 150. See proposed Section 1373 in the attached draft.

Senate Bills 209 (Corbett) (2011 Cal. Stat. ch. 121) and 880 (Corbett) (2012 Cal. Stat. ch. 6)

In 2011, Senate Bill 209 (Corbett) added Section 1353.9, which establishes a CID property owner's qualified right to install an electric vehicle charging station in a CID. In 2012, Senate Bill 880 (Corbett) was enacted on an urgency basis (taking effect on February 29, 2012). That bill made minor adjustments to Section 1353.9.

The Commission now needs to decide whether Section 1353.9 should apply to commercial and industrial CIDs. That question is analyzed below, using the same analytical criteria that have been applied earlier in this study.

Nature of Section 1353.9

Section 1353.9 provides generally that the governing documents of a CID may not prohibit or unreasonably restrict the installation of an electric vehicle charging station in the CID. See Section 1353.9(a). However, the owner who installs a charging station in a CID is responsible for the cost and maintenance of the station, including the cost of maintaining liability insurance for damages that might be caused by the station. See Section 1353.9(f). The owner must also notify prospective purchasers of the owner's separate interest of the existence of the charging station, and of the responsibilities imposed by Section 1353.9 (which would be passed on to the purchaser). *Id.*

Section 1353.9 now reads as follows:

1353.9. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, and any provision of a governing document, as defined in subdivision (j) of Section 1351, that either effectively prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in an owner's designated parking space, including, but not limited to, a deeded parking space, a parking space in an owner's exclusive use common area, or a parking space that is specifically designated for use by a particular owner, or is in conflict with the provisions of this section is void and unenforceable.

(b) (1) This section does not apply to provisions that impose reasonable restrictions on electric vehicle charging stations. However, it is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.

(2) For purposes of this section, "reasonable restrictions" are restrictions that do not significantly increase the cost of the station or significantly decrease its efficiency or specified performance.

(c) An electric vehicle charging station shall meet applicable health and safety standards and requirements imposed by state and local authorities as well as all other applicable zoning, land use or other ordinances, or land use permits.

(d) For purposes of this section, "electric vehicle charging station" means a station that is designed in compliance with the California Building Standards Code and delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging plug-in electric vehicles.

(e) If approval is required for the installation or use of an electric vehicle charging station, the application for approval shall be processed and approved by the association in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed. The approval or denial of an application shall be in writing. If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) If the electric vehicle charging station is to be placed in a common area or an exclusive use common area, as designated in the common interest development's declaration, the following provisions apply:

(1) The owner first shall obtain approval from the association to install the electric vehicle charging station and the association shall approve the installation if the owner agrees in writing to do all of the following:

(A) Comply with the association's architectural standards for the installation of the charging station.

(B) Engage a licensed contractor to install the charging station.

(C) Within 14 days of approval, provide a certificate of insurance that names the association as an additional insured under the owner's insurance policy in the amount set forth in paragraph (3).

(D) Pay for the electricity usage associated with the charging station.

(2) The owner and each successive owner of the charging station shall be responsible for all of the following:

(A) Costs for damage to the charging station, common area, exclusive use common area, or separate interests resulting from the installation, maintenance, repair, removal, or replacement of the charging station.

(B) Costs for the maintenance, repair, and replacement of the charging station until it has been removed and for the restoration of the common area after removal.

(C) The cost of electricity associated with the charging station.

(D) Disclosing to prospective buyers the existence of any charging station of the owner and the related responsibilities of the owner under this section.

(3) The owner and each successive owner of the charging station, at all times, shall maintain a homeowner liability coverage policy in the amount of one million dollars (\$1,000,000), and shall name the association as a named additional insured under the policy with a right to notice of cancellation.

(4) A homeowner shall not be required to maintain a homeowner liability coverage policy for an existing National Electrical Manufacturers Association standard alternating current power plug.

(g) Except as provided in subdivision (h), installation of an electric vehicle charging station for the exclusive use of an owner in a common area, that is not an exclusive use common area, shall be authorized by the association only if installation in the owner's designated parking space is impossible or unreasonably expensive. In such cases, the association shall enter into a license agreement with the owner for the use of the space in a common area, and the owner shall comply with all of the requirements in subdivision (f).

(h) The association or owners may install an electric vehicle charging station in the common area for the use of all members of the association and, in that case, the association shall develop appropriate terms of use for the charging station.

(i) An association may create a new parking space where one did not previously exist to facilitate the installation of an electric vehicle charging station.

(j) An association that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall

pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(k) In any action to enforce compliance with this section, the prevailing plaintiff shall be awarded reasonable attorney's fees.

Legislative Intent

Our general approach in this study has been to examine the historical legislative decisions that exempted commercial and industrial CIDs from some provisions of the Davis-Stirling Act, in an attempt to discern the policy principles underlying those decisions. We then applied those principles in considering whether other provisions of the Davis-Stirling Act should apply to commercial and industrial CIDs. This approach is intended to provide a consistent policy framework that is grounded in the Legislature's own *presumed* intent.

Here, Section 1353.9 was enacted so recently that it may not be necessary to reach back to presumed legislative policy preferences. Instead, it might be possible to directly assess whether the Legislature intended for Section 1353.9 to apply to commercial and industrial CIDs. Is there relevant evidence on that point?

Textual Analysis

According to its text, Section 1353.9 applies to "*any* interest in a common interest development." Section 1353.9(a) (emphasis added). Moreover, the section states a broad legislative policy: "[I]t is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations." Section 1353.9(b)(1). That broad policy goal would be best served by applying Section 1353.9 to all CIDs.

However, as originally enacted by SB 209, Section 1353.9 contained a number of specific references to "homeowners." For example, relevant portions of former Section 1353.9(f) read:

(1) The *homeowner* first shall obtain approval from the common interest development to install the electric vehicle charging station and the common interest development shall approve the installation if the homeowner agrees in writing to do all of the following:

...

(C) Within 14 days of approval, provide a certificate of insurance that names the common interest development as an additional insured under the *homeowner's* insurance policy.

...

(2) The *homeowner* and each successive *homeowner* of the parking stall on which or near where the electric vehicle charging station is placed shall be responsible for all of the following:

...

(D) Disclosing to prospective buyers the existence of any electric vehicle charging station and the related responsibilities of the *homeowner*.

(3) The *homeowner* and each successive *homeowner*, at all times, shall maintain an umbrella liability coverage policy in the amount of one million dollars (\$1,000,000) covering the obligations of the owner under paragraph (2), and shall name the common interest development as an additional insured under the policy with a right to notice of cancellation.

See 2011 Cal. Stat. ch. 121 (emphasis added).

Those references create an inference that the provision was only intended to apply to residential property (i.e., “homes”).

Before the enactment of SB 880, the staff contacted Senator Corbett’s staff, to ask whether the Senator had intended to limit the application of the section to residential CIDs. The informal response was that there was no intention to limit the application of the section.

Moreover, the Senator was pursuing emergency clean-up legislation (SB 880) which would, among other things, amend Section 1353.9 to replace the term “homeowner” with “owner” throughout.

As discussed below, not *every* use of the term “homeowner” was amended by SB 880. However, the informal response from Senator Corbett’s office and the changes made in SB 880 go a good way toward negating any inferred limitation on the application of Section 1353.9.

Legislative Analyses

The legislative history of SB 209 and SB 880 casts some doubt on whether the Legislature fully considered whether Section 1353.9 would apply to nonresidential CIDs.

An early legislative analysis of SB 209 specifically focused on benefits that would only accrue to *residential* property owners:

In order for electric vehicles to proliferate, it is important that early consumers have a positive experience. Installing a *home* charging station is one of the key elements to electric vehicle ownership, and according to the author, incidences of CIDs blocking the installation of electric vehicle chargers have arisen. If such prohibitions or restrictions become common, Californians

living in CIDs will be shut out of driving clean electric vehicles. This bill seeks to eliminate obstacles that currently impact or will impact electrical vehicle owners in CIDs. By facilitating home stations, this bill will also encourage *off-peak* charging for electric vehicles, thereby reducing the impact on the electric grid.

Senate Transportation & Housing Committee Analysis of SB 209 (March 22, 2011) (emphasis added). Obviously, the ability to install a “home” charging station for “off-peak” (i.e., overnight) charging is mostly relevant to a residential CID.

The legislative analysis of SB 880 also contains residential language, repeatedly referring to the duties that the bill would impose on “homeowners.” See, e.g., Senate Floor Analysis of SB 880 (Feb. 1, 2012), p. 2.

The terminology in these analyses could mean that Section 1353.9 was not expected to apply to nonresidential CIDs (despite the absence of any such limitation in the statute itself). However, it seems more likely that this is another instance of the Legislature simply not considering whether a reform would affect nonresidential CIDs. As discussed in the preliminary part, it is fairly common for the Legislature to focus exclusively on how CID reforms would affect homeowners, without any express acknowledgment or consideration of their effect on nonresidential property owners. See draft recommendation, p. 2.

Related Legislative Policy

Although not dispositive, it is worth noting that in 2010 the Legislature enacted another provision relating to electric vehicle charging stations. That provision stated a very broad public policy in favor of developing charging infrastructure in both residential *and commercial* settings:

(a) The Legislature finds and declares all of the following:

....

(2) Electric vehicle charging infrastructure is a necessary component to transitioning to increase electric vehicle usage. Electric vehicles and their electric charging infrastructure also address the issue of global climate change.

(3) The upfront cost of installing electric vehicle charging infrastructure improvements for residential, *commercial, industrial, agricultural, or other real property* prevents many property owners from making those improvements. To make those improvements more affordable and to promote the installation of those improvements, it is necessary to authorize an alternative procedure for authorizing assessments to finance the cost of installing electric vehicle charging infrastructure.

....

Sts. & Hy. Code § 5899.3 (emphasis added). The unrestricted application of Section 1353.9 would be consistent with that recent policy declaration.

Foundational v. Operational Analysis

As explained in the preliminary part, the original enactment of Section 1373 can be understood as generally drawing a distinction between the “foundational” provisions of the Davis-Stirling Act (which remained applicable to nonresidential CIDs) and the Act’s “operational” provisions (which were generally made inapplicable to nonresidential CIDs). See draft recommendation, pp. 3-6.

Under this theory, a “foundational” provision is one that enables the existence of the CID property ownership form. It defines the character of CID property and the fundamental legal incidents of CID property ownership. Such provisions are necessary for the existence of CIDs, regardless of type. See draft recommendation, p. 6.

By contrast, “operational provisions” are those that regulate the operation of a CID’s governing entity. They specify procedural rules for board meetings, record inspection, maintenance, accounting, and the like. See draft recommendation, p. 6. This sort of provision may be particularly helpful for residential property owners who have the responsibility of managing and governing their collective property. For reasons discussed by the Legislature, operational procedures designed for homeowners may not be appropriate or necessary for commercial or industrial property owners. See Section 1373(b); draft recommendation, pp. 4-6.

Based on those principles, the Commission has recommended that all foundational provisions remain applicable to commercial and industrial CIDs. By contrast, the Commission has generally concluded that the operational provisions are not necessary for nonresidential CIDs and should not be included in the proposed law. See draft recommendation, p. 7.

Section 1353.9 does not perfectly fit into either of the categories discussed above. On the one hand, it establishes a use right, incidental to ownership of CID property. We have generally considered provisions establishing incidental use rights to be foundational in our analysis, and have included such provisions in the proposed law.

On the other hand, Section 1353.9 also includes procedural rules for administration of the right to install a charging station. Those elements of the

section seem somewhat operational. However, the operational components of the section appear to be incidental to the main thrust of the section, which is to establish the right to install a charging station.

On balance, the provision is probably best characterized as foundational.

Public Comment

The Commission has received comment on Section 1353.9 from a group of attorneys and property managers representing commercial and industrial CIDs who have been working with the Commission on this study since its beginning (referred to in past memoranda, and hereafter, as “the stakeholder group”). The Commission has also received comment on the section from attorney Duncan McPherson, a member of the group speaking on his own behalf.

The stakeholder group argues that Section 1353.9 should not be continued in the proposed law (or the section should be substantially revised in an unspecified manner), because the parking arrangements in a commercial or industrial CID make the installation of a charging station by an individual owner impractical and too expensive. Exhibit p. 2. Mr. McPherson agrees that Section 1353.9 does not make practical sense in a commercial setting. Exhibit p. 4.

The commenters may be correct. However, in this study the Commission has generally not been second-guessing legislative policy preferences (where they can be discerned). Instead, we are attempting to extend the Legislature’s preferences on a comprehensive basis, as a first step toward separate regulation of residential and nonresidential CIDs. Once that broad task has been completed, the Legislature will be in a better position to evaluate, on a case-by-case basis, whether specific regulatory provisions make sense in a nonresidential context.

This is intended to be a pragmatic approach. If we were instead to review each provision of the Davis-Stirling Act on its own individual merits and context, the Commission could quickly become bogged down in policy minutiae. Moreover, a legislative proposal that contains several dozen separate policy recommendations, each requiring individualized explanation and evaluation, would probably be much harder to enact than a broad brush proposal that simply extends a few previously established legislative themes.

If, as the evidence suggests, the Legislature intended for Section 1353.9 to apply to commercial and industrial CIDs, then it would be prudent for the Commission respect that very recent policy decision. Once the proposed law has been enacted, the stakeholder group could then seek corrective legislation to

make any changes to Section 1353.9 they believe to be warranted. That legislation could proceed on its own merits, without jeopardizing the Commission's overall proposal.

General Recommendation

Based on the analysis above, the staff recommends that the substance of Section 1353.9 be included in the proposed law. There is no clear evidence that the Legislature intended to limit the application of the provision to residential CIDs. To the contrary, we have been told that the author of the bill adding the section intended for it to have broad application. Although the intention of a single legislator is not dispositive of the intentions of the Legislature as a whole, it is the best evidence of legislative intent that we have available. Moreover, we know that Senator Corbett took further steps, in emergency clean-up legislation, to remove language that could be read to imply limited application. Finally, the foundational v. operational analysis we have been employing in this study (which is intended to extend prior legislative policy preferences) also tilts toward preserving the provision.

Drafting Considerations

If Section 1353.9 is to be continued in the proposed law, a few minor adjustments should probably be made to its text. As discussed above, SB 880 removed most references to "homeowners" from Section 1353.9, but not all of them. The staff's understanding is that a few references to "homeowners insurance" were retained in order to address technical concerns raised by the insurance industry.

The staff contacted Senator Corbett's office and insurance industry representatives who were involved in making that decision. We explained the nature of the proposed law, emphasizing the fact that its provisions would not apply to residential property at all and therefore need not refer to "homeowners." We asked whether there would be any technical objections to removing all references to "homeowners" in the proposed law.

The informal response was that there was no objection to making those technical changes. **Consequently, the staff recommends that the substance of Section 1353.9 be continued in the proposed law as Section 6713, located in Chapter 5 ("Property Use and Maintenance") of the new proposed Part 5.5 of the Civil Code, Article 1 ("Protected Uses"), to read as shown below.** (Note that

the draft below shows the changes to the term “homeowner” in ~~strikeout~~ and underscore, only for ease of reference in this memorandum).

§ 6713. Electric vehicle charging stations

6713. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, and any provision of a governing document, as defined in Section 6552, that either effectively prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in an owner’s designated parking space, including, but not limited to, a deeded parking space, a parking space in an owner’s exclusive use common area, or a parking space that is specifically designated for use by a particular owner, or is in conflict with the provisions of this section is void and unenforceable.

(b) (1) This section does not apply to provisions that impose reasonable restrictions on electric vehicle charging stations. However, it is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.

(2) For purposes of this section, “reasonable restrictions” are restrictions that do not significantly increase the cost of the station or significantly decrease its efficiency or specified performance.

(c) An electric vehicle charging station shall meet applicable health and safety standards and requirements imposed by state and local authorities as well as all other applicable zoning, land use or other ordinances, or land use permits.

(d) For purposes of this section, “electric vehicle charging station” means a station that is designed in compliance with the California Building Standards Code and delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging plug-in electric vehicles.

(e) If approval is required for the installation or use of an electric vehicle charging station, the application for approval shall be processed and approved by the association in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed. The approval or denial of an application shall be in writing. If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) If the electric vehicle charging station is to be placed in a common area or an exclusive use common area, as designated in

the common interest development's declaration, the following provisions apply:

(1) The owner first shall obtain approval from the association to install the electric vehicle charging station and the association shall approve the installation if the owner agrees in writing to do all of the following:

(A) Comply with the association's architectural standards for the installation of the charging station.

(B) Engage a licensed contractor to install the charging station.

(C) Within 14 days of approval, provide a certificate of insurance that names the association as an additional insured under the owner's insurance policy in the amount set forth in paragraph (3).

(D) Pay for the electricity usage associated with the charging station.

(2) The owner and each successive owner of the charging station shall be responsible for all of the following:

(A) Costs for damage to the charging station, common area, exclusive use common area, or separate interests resulting from the installation, maintenance, repair, removal, or replacement of the charging station.

(B) Costs for the maintenance, repair, and replacement of the charging station until it has been removed and for the restoration of the common area after removal.

(C) The cost of electricity associated with the charging station.

(D) Disclosing to prospective buyers the existence of any charging station of the owner and the related responsibilities of the owner under this section.

(3) The owner and each successive owner of the charging station, at all times, shall maintain a ~~homeowner~~ liability coverage policy in the amount of one million dollars (\$1,000,000), and shall name the association as a named additional insured under the policy with a right to notice of cancellation.

(4) ~~A homeowner~~ An owner shall not be required to maintain a ~~homeowner~~ liability coverage policy for an existing National Electrical Manufacturers Association standard alternating current power plug.

(g) Except as provided in subdivision (h), installation of an electric vehicle charging station for the exclusive use of an owner in a common area, that is not an exclusive use common area, shall be authorized by the association only if installation in the owner's designated parking space is impossible or unreasonably expensive. In such cases, the association shall enter into a license agreement with the owner for the use of the space in a common area, and the owner shall comply with all of the requirements in subdivision (f).

(h) The association or owners may install an electric vehicle charging station in the common area for the use of all members of the association and, in that case, the association shall develop appropriate terms of use for the charging station.

(i) An association may create a new parking space where one did not previously exist to facilitate the installation of an electric vehicle charging station.

(j) An association that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(k) In any action to enforce compliance with this section, the prevailing plaintiff shall be awarded reasonable attorney's fees.

Comment. With respect to a commercial or industrial common interest development, Section 6713 continues Section 1353.9 without change, except as indicated below.

The following substantive change is made:

- In paragraphs (f)(3) and (4), the word "homeowner" is deleted or replaced with "owner."

The following nonsubstantive change is made:

- A cross-reference in subdivision (a) is updated to reflect the new location of the referenced provision.

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6532 ("common area"), 6550 ("exclusive use common area"), 6552 ("governing documents"), 6564 ("separate interest").

Although the staff did not encounter any opposition to the technical changes noted above, insurance industry representatives did express some concern about the existing substantive effect of Section 1353.9, as it applies to commercial and industrial CIDs. The staff explained that such issues were beyond the scope of the current project, but could perhaps be addressed by whatever bill is introduced to implement the Commission's recommendation (assuming that the bill's author was amenable to doing so). In such a case, the insurance industry's amendments would not be part of the Commission's recommendation and the Commission would take no position on them.

Senate Bill 563 (Committee on Transportation and Housing) (2011 Cal. Stat. ch. 257)

Senate Bill 563 (Committee on Transportation and Housing) amended two sections of the Davis-Stirling Act that the Commission has previously decided not to continue in the proposed law. See Sections 1363.05 (board meeting procedures) and 1365.2 (maintenance and inspection of records). The bill also deleted a provision that the Commission had decided not to continue. See Section 1363(e) (board meetings).

Because the amendments did not alter the fundamental character of those provisions, **the staff sees no reason to revisit the Commission’s prior decisions to exclude the provisions from the proposed law.**

However, SB 563 did make minor technical changes to some provisions that are included in the proposed law. The Comments to proposed Sections 6850 and 6854 were revised, nonsubstantively, to conform to those changes. See attached staff draft.

Conforming Revisions

The attached staff draft also proposes technical revisions to various sections that cross-reference the Davis-Stirling Act, in order to update the cross-references.

The 2011 legislation amended three of those sections. See Gov’t Code §§ 12956.1, 12956.2; Veh. Code § 22651. The proposed law was revised to conform to those amendments.

CONFORMITY WITH ASSEMBLY BILL 805 (TORRES)

Prior to and concurrent with its work on this study, the Commission spent several years preparing a recodification of the Davis-Stirling Act. *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm’n Reports 235 (2010). Implementing legislation was introduced in 2011 and is currently pending before the Legislature. See AB 805 & 806 (Torres).

Early in the course of this study, the Commission decided that the proposed law governing commercial and industrial CIDs should closely parallel the proposed recodification of the Davis-Stirling Act (which, under this proposed law, would continue to govern residential CIDs). See Minutes (October 2010), p. 8.

The parallelism was intended to avoid any ambiguity or confusion that might arise if substantively identical provisions were to use different language. The text of the proposed law in this study has therefore been conformed as closely as possible with the text of corresponding provisions in the Commission’s recodification recommendation.

As AB 805 proceeded through the legislative process, some minor changes were made to the proposed recodification of the Davis-Stirling Act. Some of those changes were incorporated into the printed version of the Commission’s

recommendation. Others were not (due to timing or a general procedural reluctance to endorse a change proposed by others).

The Commission now needs to decide whether to incorporate changes made in AB 805 into the proposed law on commercial and industrial CIDs. **The staff generally recommends doing so, in order to continue the established policy of maintaining textual parallelism between the two bodies of law.**

That is the general approach taken in the attached draft. In most cases, this is plainly appropriate, because we are simply conforming to nonsubstantive technical changes. Those changes are not discussed in this memorandum, but the staff is prepared to discuss them orally at the meeting, if requested to do so. See proposed Sections 6550(c), 6562, 6610(a), 6618(a), 6622(b), 6713(c), 6706(a), 6720(d), 6758(c), 6760(a)(7) & (f), 6870(a) & (k)(1)(G), and the proposed heading of Article 2 of Chapter 6.

In addition, there are other differences between the recodification legislation as amended by AB 805 and the proposed law that merit further discussion. Those differences are discussed below.

PROVISION RELATING TO GOVERNING DOCUMENT HIERARCHY

The recodification recommendation and the proposed law both contain a provision that clarifies the hierarchy of the most common governing documents of a CID. In the proposed law, that provision presently reads as follows:

6600. (a) The governing documents may not include a provision that is inconsistent with the law. To the extent of any inconsistency between the governing documents and the law, the law controls.

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

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

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

Assembly Bill 805 substantively amended this provision in the recodification legislation, to delete the first sentence of each subdivision. The amendment was made to prevent the provision from being interpreted as further imposing an affirmative duty, unintended by the Commission, to purge superseded material from governing documents. Memorandum 2012-6, pp. 8-10.

The Commission has since indicated its acceptance of this amendment to the recodification legislation. Minutes (February 2012), p. 5.

The rationale for the revision, previously accepted by the Commission in the context of the recodification legislation, applies with equal force to the proposed law. The staff therefore recommends that **the corresponding provision in the proposed law be revised as follows:**

§ 6600. Document authority

~~6600. (a) The governing documents may not include a provision that is inconsistent with the law.~~ To the extent of any inconsistency between the governing documents and the law, the law controls.

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

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

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

The staff further recommends that **the Commission Comment accompanying Section 6600 be revised as follows, to conform to the Comment previously approved by the Commission in connection with the recodification legislation** (see First Supplement to Memorandum 2012-19, p. 9; Minutes (June 2012), p. 3.):

Comment. Section 6600 is added to clarify the relationship between the law and the most common types of governing documents. Nothing in the section is intended to create an affirmative duty to amend a governing document to delete superseded material.

Subdivisions (a) and (b) of Section 6600 are new.

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

Subdivision (d) is drawn from Section 1357.110 providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

See also Sections 6546 (“declaration”), 6552 (“governing documents”).

OMISSION OF RECOMMENDED LANGUAGE IN AB 805

In the course of the legislative process, text appearing in two provisions included in both the recodification legislation and the proposed law was omitted from AB 805.

Proposed Section 4005 of the recodification legislation omits a reference to “section headings,” and proposed Section 4035 omits a provision authorizing notices to be mailed to an association. Those omissions should be corrected in 2013 clean-up legislation relating to the recodification recommendation.

The staff recommends that **these omissions not be paralleled in the draft recommendation.**

NEW PROVISION ADDED BY AB 805

The proposed law permits the delivery of a document in a CID by various electronic means, if the intended recipient has agreed to receive delivery in that manner. See proposed Sections 6512(b)(2), 6514(a)(2).

Assembly Bill 805 would add a new substantive provision to the Davis-Stirling Act relating to electronic delivery of notices:

If the association or a member has consented to receive information by electronic delivery, and a provision of this act requires that the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

See proposed Section 4055. That language was drawn from and is similar to the substance of Civil Code Section 1633.8(a), which is part of the Uniform Electronic Transactions Act (“UETA”).

If AB 805 is enacted (as seems likely), this new provision will be part of the Davis-Stirling Act. Therefore, the Commission will need to decide whether that provision is appropriate for inclusion in the proposed law governing commercial and industrial CIDs.

Although the provision is “operational” in the sense that it governs operational procedures, it is closely connected to other procedural provisions that the Commission has already decided to include in the proposed law (i.e., those relating to notice delivery methods). See proposed Sections 6512, 65614, 6518. Because the Commission has decided to include those notice provisions in the proposed law, it would seem to make sense to also include this related provision.

Moreover, business property owners who use electronic communications should already be familiar with the requirements of UETA, which governs most business transactions. So compliance with this “new” requirement should not be unduly burdensome.

The staff recommends that the provision be included in the proposed law as follows:

§ 6520. Electronic delivery

6520. If the association or a member has consented to receive information by electronic delivery, and a provision of this act requires that the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

Comment. Section 6520 is new. It is drawn from and is similar to the substance of Section 1633.8(a), which is part of the Uniform Electronic Transactions Act (“UETA”).

See also Sections 6528 (“association”), 6554 (“member”).

If the Commission agrees to include Section 6520 in the proposed law, the staff further recommends that **the Commission Comments to Sections 6512 and 6514 be revised, as follows:**

§ 6512. Delivered to an association

6512. (a) If a provision of this act requires that a document be delivered to an association, the document shall be delivered to the president or secretary of the association.

(b) A document delivered pursuant to this section may be delivered by any of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier.

(2) By e-mail, facsimile, or other electronic means, if the association has assented to that method of delivery.

(3) By personal delivery, if the association has assented to that method of delivery. If the association accepts a document by personal delivery it shall provide a written receipt acknowledging delivery of the document.

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

See also Section 6520 (electronic delivery).

See also Section 6528 (“association”).

§ 6514. Individual notice

6514. (a) If a provision of this act requires that an association deliver a document by “individual delivery” or “individual notice,” the document shall be delivered by one of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the association.

(2) E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery. The consent may be revoked, in writing, by the recipient.

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

Comment. Section 6514 is new. It specifies acceptable methods for delivery of a notice to an individual member. The methods listed in subdivision (a) are drawn from Section 1350.7(b)(2)-(3).

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

See also Section 6520 (electronic delivery).

See also Sections 6528 (“association”), 6552 (“governing documents”), 6554 (“member”).

However, the recommendations above are premised on the assumption that AB 805 will be enacted, adding proposed Section 4055. If AB 805 is not enacted, or if it is amended to delete Section 4055, there would be no need to add parallel language to the proposed law in this study. **The staff therefore recommends that the changes proposed above be expressly contingent on the enactment of AB 805 and the addition of proposed Section 4055. If proposed Section 4055 is**

not added by AB 805, the staff would not implement the revisions recommended above.

FURTHER COMMENT ON DRAFT RECOMMENDATION

As indicated, the Commission has received public comment on the staff draft recommendation previously published in conjunction with Memorandum 2011-34. The comment is attached as an Exhibit.

Much of the comment was submitted by the stakeholder group, and by Mr. McPherson, both of which were mentioned previously in connection with comment on proposed Section 6713, relating to electric vehicle charging stations. Other comment was submitted by Rodney Plascencia, a property manager who represents commercial and industrial CIDs. Exhibit p. 6.

The suggested revisions, deletions, or additions of individual provisions in the proposed law are discussed below.

Short Title

Section 6500 of the proposed law would specify a short title for the new law: the “Commercial and Industrial Common Interest Development Act.” Mr. McPherson suggests this name is too long and awkward, and offers as suggested replacements either the “Nonresidential Common Interest Development Act,” or the “Commercial Common Interest Development Act.” Exhibit p. 3.

The name of the act is long, but it perfectly describes what the act is about. Further, neither of the suggested alternatives is as accurate in describing the governed class. As discussed in a related study, there are some “nonresidential” CIDs, such as storage condominiums and marinas, that would not be governed by the proposed law, because they are not “commercial or industrial.” See proposed Sections 6531 and 6582; Memorandum 2010-45, pp. 4-5.

Further, while it is reasonable to conclude, as Mr. McPherson suggests, that the term “commercial” would be considered by most to include “industrial,” an informal search reveals well over 100 California statutes that separately reference commercial and industrial buildings and activities. In light of this common statutory usage, a shorthand name for the part created by the proposed law could eventually lead to misunderstanding as to its application to industrial CIDs.

The staff recommends that **the short title remain unchanged**. Note, however, that this issue could be revisited if the Commission successfully recommends a change in the scope of the proposed law, as contemplated in its separate study of *Nonresidential Subdivisions*.

Disclosure of Managing Agent in Articles of Incorporation

Section 6622 of the proposed law would continue Section 1363.5 of the Davis-Stirling Act. Section 1363.5 requires that the articles of incorporation of an incorporated CID include, among other items, the name and address of the CID's managing agent, if any. Section 1363.5(a)(3). The stakeholder group suggests that this requirement (which would be continued in proposed Section 6622(a)(3)) be deleted from the proposed law. Exhibit p. 1.

The group offers the following reasons for making that change:

- A CID can change managing agents, in which case the information in the articles will become obsolete.
- The requirement is superfluous, because a CID is also required to name its managing agent in an annual disclosure filed with the Secretary of State under Section 1363.6.
- In a commercial or industrial CID, the person who acts as manager is often also an owner. It may not be clear whether an owner-manager is a "managing agent" within the meaning of Section 1363.5.

Notably, the first two of those concerns do not involve any special characteristic of commercial or industrial CIDs, as distinguished from residential CIDs. To the extent that those concerns have merit, they apply equally to *all* CIDs. **For that reason, the staff recommends against addressing those issues in the context of this study.** The general point of this study is to identify differences between residential and nonresidential CIDs that justify different treatment. General concerns about *all* CIDs should be addressed separately, and the staff has already noted those first two concerns for possible future study.

The third concern does turn on a distinct characteristic of a commercial or industrial CID — the greater likelihood that an owner in a commercial or industrial CID will also serve as the CID's manager.

The stakeholder group is concerned that this practice could cause some confusion as to what is required by Section 1363.5(a)(3). Specifically, it might not be clear whether an owner-manager is a "managing agent" for the purposes of

that provision. The staff is not sure of the reason for this concern. There does not seem to be any logical or terminological conflict between a person being both an owner and a managing agent. If an owner performs the same duties that would be performed by a managing agent who serves under contract to the association, that owner would seem to be the managing agent.

The staff recommends that **Section 6622(a)(3) remain in the proposed law.**

However, if those with expertise in this area are concerned that the term could create confusion in practice, perhaps some clarifying language could be added to the Commission Comment to Section 6622, along these lines: “Nothing in paragraph (a)(3) precludes an owner of a separate interest from serving as the association’s managing agent.”

Does the Commission wish to add this or similar language to the Commission Comment to Section 6622?

Mechanics Liens for Work on CID Common Area

Section 6658(b), which would continue a portion of Section 1369 of the Davis-Stirling Act, provides that authorized work performed on the common area of a condominium (one type of CID) is deemed to have been performed with the express consent of each condominium owner. In the event of nonpayment for the work, each owner’s separate property is therefore subject to a mechanics lien.

Mr. McPherson suggests that the proposed law should include additional provisions relating to how lien notices are to be served in this scenario, and necessary parties in an action involving property held as tenants in common. Exhibit p. 4.

As Mr. McPherson notes, these issues (which are not addressed in the Davis-Stirling Act) are equally relevant to residential CIDs. Moreover, the issues are complex, and would require additional study well outside the scope of the recommendation in this matter.

The staff recommends that the Commission not address these issues at this time. The issues have been noted by the staff for possible consideration by the Commission in a future CID study.

Noncommercial Signage

Section 6704, which would continue Section 1353.6 of the Davis-Stirling Act, provides that the governing documents of a CID may not prohibit an owner from

displaying noncommercial signage on or in the owner's separate interest, except as specified. Mr. McPherson urges that this section is not needed in the proposed law. Exhibit p. 2.

Mr. McPherson offers two justifications for this suggestion that relate specifically to commercial or industrial CIDs. First, he asserts that because commercial signage is so important in a commercial setting, all signage in those settings is generally strictly regulated by local ordinance. Second, he notes that, as contrasted with a residential CID, the owners of the separate interests in a commercial or industrial CID are generally entities, rather than individuals.

The Commission has previously discussed, at some length, whether or not to continue sections of the Davis-Stirling Act that establish ownership rights, and concluded that all such provisions should be continued. See Memorandum 2009-32, pp. 79-81, Minutes (August 2009), p. 5. Such provisions were found to be "foundational" in character. Moreover, deletion of such provisions could raise concerns about disturbance of vested property rights.

Those general considerations remain valid. The staff recommends that **Section 6704 remain in the proposed law.**

Pets

Section 6706, which would continue Section 1360.5 of the Davis-Stirling Act, provides that a CID's governing documents may not prohibit an owner from keeping at least one pet on the grounds of the CID, subject to reasonable rules and regulations of the association. Mr. McPherson urges that this section is also not needed in the proposed law. Exhibit p. 2.

Specifically, Mr. McPherson argues that the section was meant to apply only in a residential setting, and should not apply in an environment where people do not live. He further suggests that issues relating to the ADA and customer and invitee access are more of an issue in a commercial CID.

Despite those concerns, the Commission previously decided to retain the pet provision in the proposed law. See Memorandum 2009-32, pp. 79-81. **The staff believes that was the correct decision.** The pet provision establishes a property use right and is therefore foundational under the analytical frame that has been employed in this study. Moreover, any legislative change involving pets (or flags) could generate sufficient controversy to jeopardize enactment of the proposed law. In a very broad reform of this type, it is best to avoid controversial policy issues. As discussed before, once the proposed law has been enacted, the

Legislature would be in a better position to evaluate the narrow question of whether pets should be permitted as a matter of right in nonresidential CIDs.

Antennas and Satellite Dishes

Section 6708, which would continue Section 1376 of the Davis-Stirling Act, protects an owner's right to install an antenna or satellite dish in a CID, subject to specified reasonable conditions. Mr. McPherson asserts this is "a residential provision which makes little sense in a commercial application." Exhibit p. 4.

We have previously received comment suggesting that Section 1376 is defective (for all CIDs), in large part because it has been preempted by federal law. **The Commission has noted that problem for future study.** Memorandum 2010-49, p. 14; Minutes (December 2010), p. 3.

Low Water Using Plants

Section 6712, which would continue Section 1353.8 of the Davis-Stirling Act, invalidates any provision of a CID governing document that prohibits the use of low water-using plants. Mr. McPherson asserts that this section is not relevant in most commercial developments, as owners in such developments are typically neither responsible for nor restricted as to planting. Exhibit p. 4.

The Commission has considered the exclusion of this section from the proposed law as well. See Memorandum 2009-32, pp. 79-81. **Again, for the reasons discussed above, the staff believes that this was the correct decision.** Section 1353.8 establishes a property use right and is therefore foundational. It is best to preserve that right for now, subject to more focused legislative evaluation after the enactment of the proposed law.

Telephone Wiring

Section 6722, which would continue Section 1364(f) of the Davis-Stirling Act, allows a CID owner reasonable access to the CID's common area, for the purpose of maintaining the internal and external telephone wiring corresponding to the owner's separate interest. Mr. McPherson suggests that the section is dated because it applies only to telephone wiring, and asserts that exterior wiring could be very undesirable in a commercial setting. Exhibit p. 4.

As with the provision governing antennae, the Commission previously received comment, in relation to the recodification of the Davis-Stirling Act, suggesting that this section could involve federal preemption issues. For that

reason, the Commission decided against modifying its substance. Memorandum 2010-47, p. 16; Minutes (October 2010), p. 4.

The same concerns also weigh against changing the provision in this study. **The Commission should examine this issue in a future study.**

Disclosure of Number of Separate Interests in a CID

Section 6760, which would continue Section 1363.6 of the Davis-Stirling Act, requires CIDs to file an annual informational disclosure with the Secretary of State. The disclosure must include the number of separate interests in the development. Section 6760(a)(11).

The stakeholder group asserts that the disclosure required by Section 6760(a)(11) should not be continued in the proposed law, or in the alternative that it should be revised. Exhibit p. 2. The concern is that disclosure of the number of separate interest would be meaningless in a “grid condominium.” A grid condominium is a type of condominium where each separate interest is a fixed unit of space (e.g., a square foot column of space), rather than a “unit” bounded by fixed walls. This arrangement is used in some commercial developments, to facilitate flexible allocation and reallocation of space between owners, without the need for revision of the condominium plan.

The Commission has already considered this argument, and decided against implementing the suggestion, instead noting the issue for possible future study. See Memorandum 2010-30, p. 22; Minutes (August 2011), pp. 3-4.

Foreclosure for Damage to Common Area

Section 6824(a), which would continue parts of Section 1367.1(d) of the Davis-Stirling Act, provides that a monetary charge assessed against an owner for the cost of repairing damage to CID common area caused by the owner or the owner’s guest or tenant may become a lien against the owner’s separate interest, enforceable by sale of the interest.

The section further expresses legislative intent not to contravene the provisions of a specified regulation in the California Code of Regulations, “for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.”

Mr. McPherson suggests that the latter provision should not be continued in the proposed law. Exhibit p. 5.

Mr. McPherson appears to be correct. The referenced Business and Professions Code provisions are part of the Subdivided Lands Act. Commercial and industrial CIDs are exempt from those provisions. See Bus. & Prof. Code §§ 11004.5, 11010.3, discussion in Memorandum 2011-29. Because those provisions have no application to commercial and industrial CIDs, there is no need to discuss whether Section 6824 contravenes them.

Additional input on this issue from practitioners in this area would be welcomed. However, in the absence of any comment to the contrary, the staff recommends that **Section 6824 and its accompanying Comment be revised as follows:**

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

(b)

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6824 continues the ~~seventh and eighth sentences~~ sentence of Section 1367.1(d) without change, except as indicated below.

....

Limitation of Liability

Mr. Plascencia questions why Section 1365.7 of the Davis-Stirling Act, which provides limited immunity to volunteer officers or directors of an association, has not been continued in the proposed law. Exhibit p. 6. This section has not been continued because its application is expressly limited to a CID "that is exclusively residential." Section 1365.7(a). Therefore, it has no application to a commercial or industrial CID.

Mr. Plascencia also expresses hope that the immunity provided to owners in a CID pursuant to Section 1365.9 has been continued in the proposed law. Section 1365.9 would be continued in the proposed law by Section 6840.

Provisions Presently Inapplicable to Commercial and Industrial CIDs

Mr. Plascencia also questions why provisions of the Davis-Stirling Act requiring an association to make disclosures to prospective purchasers (Section 1368) or conduct reserve studies (Section 1365.5(e)) are not included in the proposed law. Exhibit pp. 7-9.

Those provisions are presently inapplicable to commercial and industrial CIDs. Section 1373(a)(6), (9). The Commission has previously decided to continue that express legislative policy. Memorandum 2009-18; Minutes (April 2009), p. 4.

Open Meetings

Mr. Plascencia appears to express concern about an unspecified open meeting provision of the Davis-Stirling Act. Exhibit p. 9.

The staff is not completely sure to which provision Mr. Plascencia is referring. However, Section 1363.05, the section of the Davis-Stirling Act generally governing when open meetings are required, has not been continued in the proposed law.

CLEAN UP

A few other minor technical matters need to be brought to the Commission's attention before a recommendation can be finalized.

Revision of Section 6714

Mr. McPherson has informally pointed out to the staff that proposed Section 6714, which would continue a Davis-Stirling Act section relating to owner improvements, inadvertently continues a reference to a "dwelling." The residential connotation of the term is not relevant to the provision's effect, and its use would be confusing as applied to a commercial or industrial CID.

The staff therefore recommends that **the reference be revised to read "separate interest," and that the Commission Comment to Section 6714 be revised, as follows:**

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

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

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

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

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

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

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6714 continues Section 1360 without change, except as indicated below.

The following substantive change is made:

- The scope of the provision is broadened to apply to any separate interest, and not just a unit in a condominium project.

The following nonsubstantive changes are made:

- The word "dwelling" is replaced with "separate interest" in subdivision (a)(2)(C). See Section 6564 ("separate interest").
- The words "his or her" are not continued in subdivision (a)(2)(D).
- The word "owner" is replaced with "member" throughout. See Section 6554 ("member").

For further information, see Section 6500 Comment.

See also Sections 6528 ("association"), 6534 ("common interest development"), 6552 ("governing documents"), ~~6564 ("separate interest").~~

Operative Date of Proposed Law

To allow commercial and industrial CIDs to transition to the new law after its enactment, the proposed law includes an uncodified provision deferring the operative date of the new law for a period of one year beyond when it would normally become operative. At the time the tentative recommendation in this study was distributed, the Commission had hopes that a bill implementing the proposed law might be introduced in 2012. For that reason, the uncodified provision specifies an operative date of January 1, 2014.

However, delays in completing the recommendation now preclude introduction of an implementing bill until 2013 at the soonest. Accordingly, the operative date should be extended to January 1, 2015.

If that change is made, a provision in the proposed law that turns on the operative date should also be revised, as follows:

§ 6828. Application of article

6828. (a) Except as otherwise provided, this article applies to a lien created on or after January 1, ~~2014~~ 2015.

(b) A lien created before January 1, ~~2014~~ 2015, is governed by the law in existence at the time the lien was created.

Does the Commission wish to make those changes?

Technical Drafting Errors

In readying the proposed legislation for inclusion in a final recommendation, the staff has also noted and corrected a handful of minor drafting errors, made a number of technical changes to Commission Comments to conform to conventional Comment usage, and made minor technical clarifications to the disposition table that follows the proposed law.

These revisions have already been incorporated in the attached staff draft, but the staff will be prepared to discuss any particular revision at the upcoming Commission meeting upon request.

Respectfully submitted,

Steve Cohen
Staff Counsel



56330-24953

Duncan R. McPherson
Attorney at Law

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November 9, 2011

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Re: Memoranda 2011-34 and 2011-35 Comments
by Non-Residential Stakeholder Group

Dear Brian:

Our stakeholder group was able to get together by telephone last week to discuss the two memoranda after the various members were able to review the memoranda and I wanted to relay our comments to you and to Steve Cohen prior to the CLRC Meeting on November 29, 2011. As I had previously told you we are pleased with the conclusions reached in Memorandum 2011-35 regarding the basis of the distinction between residential and non-residential common interest development (CID) projects and the real underlying reasons for the additional regulation of the operations of residential projects. We also are pleased with the language of the proposed code sections drawing the distinction between residential and non-residential for the proposals will both draw a clear line between what is considered residential and what is not and preserve current status of the Department of Real Estate jurisdiction. If there are going to be two separate acts then it is imperative that there be a clear understandable line between what is considered residential and what is not.

With Regard to Memorandum 2011-34 our group is generally in agreement with the conclusions but has a small number of matters to bring to your attention.

1. **Sections 1363.5 and 6622. Page 4.** We think that it would be better policy to not have the articles of incorporation contain the name of the association manager. The managers change frequently in CIDs and the manager is often changed at the time when projects are no longer under the control of the original developer. Having the name of a manager who is no longer managing a project enshrined in the articles of incorporation is not a good policy. It is not a good policy in a residential project and even less so in commercial project where the manager position is often filled by one of the major owners. The policy of disclosing the manager's name is better served in the ongoing Secretary of State filings where current information can be easily placed in the filing.



2. **Section 6760.** We think that it would be better not to require the state registry for commercial projects to include the number of separate interests. The problem is with commercial condominiums which can contain bar or grid systems to allow changes in the size and configuration of units. Sometimes a project can have thousands of grids perhaps as small as one foot square. Even where this is not done some buildings are subdivided into units of from a few hundred square feet to over a thousand square feet with the ownership of a single business typically involving owning a series of these smaller units for a single operating business. Each of these is technically a condominium unit. Some other measure needs to be in the commercial act to prevent an association from having to disclose this entirely misleading information. Perhaps in this case the separate interests could be defined to be what is used as a single operating unit and not technical separate interests.

3. **Senate Bill 209.** Our group is not concerned about the use of vehicle charging stations but SB 209 as a method of achieving this goal is impractical and generally unworkable even though its goals may be laudable. The problem of course is not legal issues but the practical and expense issues with bringing power and especially high voltage power to a parking area in a commercial development and having that power separately metered. In residential complexes where the houses or condominium units contain individual garages or adjacent exclusive use parking this may work. We are not aware of why any residential project would oppose chargers with or without the law if the station is in garage or parking area which is part of a unit or lot or in exclusive use common area. However outside of those areas unless the project developer or the association installs systems, the cost of bringing metered power to an outside parking space is impractical and too costly and no one in the groups representing owners associations expects SB 209 to be useable due to the cost factors. The situation in non-residential CIDs makes this even harder on a practical basis. Generally there is no exclusive use parking and parking is in lots surrounding or off to the side of a building. Employee parking may be even more isolated and located away from the closer-in parking reserved for customers and clients. The other common situation is that parking is in a stacked garage. The idea of having a single owner pay to extend power to these areas is not practical. A huge amount of time was spent on analysis of this issue but from a practical basis SB 209 makes little sense in a commercial setting. What does make sense is the efforts of local jurisdictions to require wiring for charging systems when new projects are built based on the specific designs and use of the commercial buildings. We would strongly suggest leaving this language out of the non-residential legislation or confining the language to allow an owner to install charging systems in separate interests and exclusive use common areas. While none of us is opposed to making it easy to use electric vehicles this legislation in its present form is just not a practical method for doing so in a commercial setting.

Very truly yours,


DUNCAN R. McPHERSON

DRM:clm

cc: Steve Cohen, Staff Counsel
Members of Stakeholder's Group



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November 23, 2011

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Re: Additional Comments on the Staff Draft of October 25, 2011 for Legislation
Related to Commercial or Industrial Common Interest Developments

Dear Brian:

I wanted to send to you some additional personal comments on the draft legislation for Commercial or Industrial CIDs prior to the Commissions meeting on November 29, 2011.

Section 6500. Since the name of the act will be cited repeatedly and the short hand name of Davis-Stirling will not be available I would like to suggest that the name of the Act be shortened as much as possible. Commercial or Industrial is too long and awkward. One easy fix would be to remove the "and Industrial" for commercial would generally seem to cover industrial use. Another and perhaps more precise definition would be to use "Non-Residential" in place of "Commercial or Industrial". Perhaps the section could allow the act to be cited as the "Non-Residential CID Act" or the "Commercial CID Act" either of which would be a fairly short and useful method to describe the act.

Section 6531. I assume the new proposed definitions of Residential and Commercial or Industrial will be inserted here if approved by the Commission.

6600. Thanks for suggesting the change to delete the "may not include" language from this Section. That should remove a number of technical issues with the documents.

6628. While I know the Commission is not going to deal with this issue at this time it is important for commercial development that the provisions regarding amendment of condominium plans be revised to allow easier amendment of plans so that the boundaries of units can be moved between consenting owners to allow for the alteration of spaces for

different uses and to allow for the original configuration of units as the developer sells out space within a building.

Section 6658. There needs to be some direction on how to file pre-lien notices when a contractor is working on common area owned in common by large numbers of condominium owners. This could be as simple as requiring the notice be given to the Association rather than to all of the owners. Similar provisions may also be needed in who must be made a party in any mechanic's lien enforcement action involving tenancy in common property. This is also an issue for residential CIDs.

Section 6704. This non-commercial signage provision is not needed in this act. This is designed for a residential setting and in a commercial setting signage of a commercial nature is of prime importance and signage of all kinds is generally strictly regulated by local ordinance. Generally owners do not control the outside of buildings and the owners generally are not individuals but entities.

Section 6706. One of the issues raised by the Stakeholder Group was that this legislation as much as possible should be kept simple and free from provisions that are not necessary and more like the original Davis-Stirling Act. This pet provision was drafted for residential use and really has no place in a commercial environment where people are not living and where probably ADA consideration and access by customers and other invitees are more of an issue.

Section 6708. Here again this is a residential provision which make little sense in a commercial application.

Section 6712. This provision on low water using plants is not relevant in most commercial applications for the Association controls planting not individual owners within buildings. Generally CC&Rs for commercial developments do not control the type of plants that are used by building owners if the project is an industrial or office park.

Section 6713. Again the electric charging station provisions do not make practical sense in a commercial setting and these provisions just junk up the act without adding any value.

Section 6722. This provision is designed to deal with issues related to residential developments and is dated since it applies only to telephone wiring. It could have some very negative aspects since it apparently allow external wiring on buildings which could be very undesirable in a commercial setting.

Chapter 7. While again I recognize the Commission will not take up this subject at this time the provision regarding Assessments and Assessment Collection have some very

Mr. Brian Hebert
November 23, 2011
Page 3

negative effects on assessment collection in commercial developments where due to the use of multiple smaller units to make up one single business in commercial condominiums many questions arise as to how assessments can be enforced. Also the provisions related to payment plans and dispute resolution are probably not appropriate in a commercial setting.

6824(a). The provisions in this section dealing with the regulations of the Real Estate Commissioner and public reports are not appropriate in this act.

Very truly yours,

Duncan R. McPherson

cc: Steve Cohen "scohen@clrc.ca.gov"

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March 16, 2012

Steve Cohen and Brian Hebert
California Law Revision Commission
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MAR 19 2012

Dear Messrs. Cohen and Hebert,

Thank you for sending me a copy of the CLRC Staff Draft Recommendation dated November 2011. I reviewed the material from the perspective of me being in property management for nearly 25 years. I am a real estate broker and have earned the CPM designation from the Institute of Real Estate Management industry group (as a side note, years ago I was asked to write an article for IREM concerning commercial CIDs). I used to attend CAI meetings and functions regularly - until the material started to repeat. Since you have sent me the information in January, I have thought about it, and I am now ready to respond. I based my comments on my first hand experiences in managing a variety of real estate including management of both residential and business CIDs. I presently manage industrial, office, and medical CIDs and my experience with residential CIDs ranges from landscape maintenance to those with security guards, access gates and boat slips/docks.

While I understand the document's stated reasoning for separating business oriented CIDs from residential because of the inferences that can be made accidentally concerning the two forms of CIDs, I am not whole hearted about the need to separate the two. The current way where exemptions have been carved out for business CIDs seems to be working (CC 1373). Why duplicate the law into two different areas especially since the foundational items are the same? Perhaps when new bills are enacted, they can state in the opening sentence whether the bill applies to all CIDs or specifically to residential or to business CIDs. Below are additional thoughts and some concerns.

I do not fully understand why some of the operational items have been exempted for business associations -- such as CC 1365.7 states the protection of volunteers only applies to residential associations. Why not apply it to business associations? A board member of a business association is still a volunteer and they can be difficult to find at times; I have lost a few business volunteers when they found out about this section. Also, section 1365.9 appears to imply, and hopefully so, that any owner (residential or business) is protected individually against lawsuits.

I believe the assumption/premise on pages 4 - 7 overstates the sophistication of a person or entity that may purchase into a business CID. Most of the board members I have worked with (residential or business) have rarely read their CC&R's, let alone prior to the closing of their escrow. At times, escrow will ask us to send them the association's

governing documents a day or two before escrow closes; but how can a person (sophisticated or not) absorb all that information? After escrow closes, I have had new owners tell me to take a "flying leap" as no one is going to tell them what they can or cannot do with their buildings/property or where and what they can park there. I have also had people sell their buildings and not tell the new owner that there is an association or that the association is inactive. Most of the time buyers do not spend the time nor the money to do their "due diligence" as is purported in the beginning pages of the proposed draft document! (Again, why is there an exemption to CC 1368?)

Additionally, in regards to Note #2 on page 7, I do not ever recall a buyer's attorney contacting me for clarification concerning the association's governing documents. Occasionally, I will have a real estate person contact me when they get a listing. However, I once had a person who bought a building in a business association who thought they could convert it to self storage/wine storage use; however, the Association's CC&Rs specifically prohibits self storage use (and I believe their building cost about \$2 million). Page 8, starting at line 21, states that the current Davis-Stirling act may impose undue burdens on commercial operations - I generally disagree. I cannot think of an undue burden except when it comes to membership voting where votes in a business association are generally based on lot or building size--and this is not a burden to the association members but for the management companies. Commercial business should have similar procedures as residential. Its important to maintain uniform procedures and functions for the protection of the public.

I do not understand why Note #1 on page 7 is relevant to the proper management of a business association. The person or entity described is only one of several members of an association. This note assumes the buyer is sophisticated just because they hire someone to form an ownership interest, but from my experience, this is not necessarily true. It also assumes that the buyer will hire legal council to investigate the association's operations and finances; and it also seems to imply that if that person/ entity does not like something that they will take legal action against the association - causing an undue hardship to all of the association members.

I believe there is a need for business CIDs to perform reserve studies as the residential associations are required to do. I have managed various types of real estate for investors and associations. While most investors and board members are responsible, there are those that do not want to spend a penny in maintaining the property -- slumlords and slumboards! These non-responsible or uneducated ones need encouragement to do what's best for the property or the other association members. I try to encourage my business association boards to follow the steps and procedures in CC 1365 and 1365.5 - it only makes common sense to do these items, especially since the public's reference and perception of a CID is his or her homeowner association.

A "sophisticated," prudent and well informed person would want a reserve study and budget. For example, in February, I was contacted by a small residential association board president who is looking to switch management companies because he believes

their association is being mismanaged. The president did not know if there was a reserve study, and they are just now filing 2009 and 2010 taxes. The point is with or without the law, CIDs are not being managed properly and to further take away common sense requirements is not in the public's benefit. (And as a side note, I believe the Department of Real Estate should handle any proposed licensing of association managers. I do not want to spend money on an additional/new license or have additional continuing education requirements beyond what the DRE imposes now! Or allow real estate agents to be exempt from any new association licensing.) Perhaps the Commission should interview the people that are involved in CIDs such as attorneys, CPAs, managers, and board members - this proposed change is a big decision along with the pending rewrite; therefore, first hand information is best the kind of information.

Association members look to both the property manager and the board members when something unexpected happens that causes discomfort to their wallet. All of the associations we manage do budgets, reserve studies, audits or reviews, meet at least quarterly to review financials and go over association business. We try to operate each CID in a fashion that no owner or board member can say they were uniformed concerning operational or financial matters. To this day, I do not understand why the State exempts business associations from doing the right things. *The association was created for the benefit of its members and some of the business exemptions take away the procedures that should be done to protect the members of that association.*

Another example of the need to require reserve studies for business CIDs is that lenders of certain commercial property generally require an owner to impound money with the loan payment each month for property taxes and for: repairs, replacement and maintenance of the property's improvements. Why... because the lenders want to preserve the investor's assets as even some "sophisticated" investors/owners may not be diligent in setting aside money for the upkeep of their property. Lenders will annually visit the properties they have loaned money on and make a report of the items that they want repaired, replaced, or fixed. They do not like leaky roofs or pot holes, and they like the property to have a positive appearance. Lenders want the real estate assets preserved so that the investor will be successful; and in the event the lender needs to foreclose, they have something of value to sell. In the case of commercial CIDs, I can only remember one lender ever contacting me to ask if the association has money impounded to repair or replace the roof; only one in nearly 25 years in the business! My point is that people are assuming that if it is a CID -- the association will take care of things. This may not be necessarily so when procedures are not required.

Another related problem, I know of other business associations that "special assess" their members anytime something needs to be fixed. This causes several challenges. One, the members are not aware that they should be setting aside money for that unknown event; and two, that owner may not have the money at that moment to contribute to the needed repair--then what happens; the roof or pot hole does not get fixed? Also, the association may have to take legal action to enforce collection of a special assessment. So why exempt a business association from acting businesslike when residential associations have to.

I gave a management proposal presentation to a business association. They were complaining that nothing gets done to maintain the property (painting, parking lot, routine repairs like replacing light bulbs). I asked if they have a reserve study and they asked what that was. I explained that it's a study that estimates the useful life of such major items like a parking lot. The study estimates the projected cost to seal coat or repair the parking lot in the future [and will break down that future cost into a monthly contribution] so that funds will be available from the date of the study to when they are needed in the future. I also explained that it "assesses" the building owners a fair prorated share while that owner is enjoying the use of the parking lot and/or roof during their period of time they are an owner in the association. They thought that was a good idea! Also, when a CPA does a CID audit, they will note in their report to the members that required information concerning impounds/reserves is not available. If CPAs are making a note that a basic business function is not being done... I would think that is a clue that reserve studies should be required.

As I considered the proposed changes to current Davis-Stirling Act, I realized that things could become complex if you have separate rules and regulations for different property types. Should an RV resort be classified residential or business if they use the CID concept to sell parking plots/spaces at a resort location where there is a club house, pool, tennis courts and lake access? Or what happens when airport hangers are sold as condo units, where some keep their private airplane and others may work and live out of their hanger. What of the new idea where self storage spaces are to be sold as condos? How will that be classified? There might even be a boat slip/dock condo project out there that I'm not aware of. And last what about a mixed use project of residential units and business combined (and how would CC 1365.7 be interrupted?). How are these CID projects to be classified and what rules should they follow to protect the public when the public thinks these projects will be governed and managed just like their homeowner association.

And last, if there is going to be a rewrite and some changes to the CID laws, here's a few more things to ponder:

IRS Taxation - it can be a difficult process to assess the members of a business association whenever certain projects are needed such as painting. I keep hoping that a change in the tax code will occur that would exempt the funding of impounds/reserve from being taxed. We need someone to encourage the IRS to treat business associations' tax matters as a time share or residential association similar to the 1120H guidelines, so that impounds can be funded without being taxed.

Actions Without Board Meetings With Unanimous Written Consent - I have nothing positive to say about the new law prohibiting their use, only strong opposition. Perhaps a compromise should be considered, especially since business association boards do not have to meet regularly and some residential associations only meet quarterly. I propose that a board can use an action without board meeting decision if the matter is for the repair or maintenance of an item up to a dollar limit based upon their annual dues figure

or something similar. Also, because we meet quarterly, a lot of times we have used an action without meeting to approve a new sign or to fix something that is above our pre established management spending limit. *We have lost a very useful tool.*

In conclusion maintaining and requiring uniform procedures for all CID properties (business and residential) benefits the public and the association members. I also believe that having separate sections of law for residential and commercial CIDs is not necessary and should be left "as is." I know a lot of time, thought and effort has gone into this current project. I hope that I have been able to present a variety of angles to this matter as there is more to this subject than the front and back side of a coin. And as a final thought: *A well maintained property is in the best interest of property owners and the surrounding community. It leads to desirability and eventually higher property values, and in turn higher property taxes.* Please contact me, I would like to hear back from you on what I have shared.

Sincerely,



Rodney Plascencia, C.P.M.

#H-856

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Commercial and Industrial
Common Interest Developments

August 2012

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SUMMARY OF RECOMMENDATION

A common interest development (“CID”) is a form of real property development, in which ownership of a separate interest is coupled with a shared interest in common area property.

CIDs are governed by the Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”), which authorizes and defines the CID property ownership form and regulates the operation of a CID’s managing association.

The available legislative history indicates that the Davis-Stirling Act was originally intended to govern only residential property, with no expectation that it would apply to commercial or industrial property.

When it later became apparent that the Act also applied to nonresidential developments, Civil Code Section 1373 was enacted to limit that application. Section 1373 generally preserved the application of the foundational provisions of the Davis-Stirling Act (i.e., those that relate to the establishment and definition of the CID property form), while the operational provisions (i.e., those that regulated the ongoing operation of the managing association) were made inapplicable to commercial and industrial CIDs.

Since the enactment of Section 1373 in 1988, the Davis-Stirling Act has more than tripled in size, mostly through the addition of numerous new operational provisions. Many of those provisions appear to have been designed specifically for homeowners. For the most part, the Legislature does not appear to have analyzed whether those new provisions were necessary or beneficial to commercial or industrial property owners.

The Commission has completed such an analysis, based on an extrapolation of the policies supporting the enactment of Section 1373. The Commission makes three general recommendations:

- (1) The law governing commercial and industrial CIDs should be separated from the law governing residential CIDs. This will prevent any new laws enacted to benefit residential owners from being inadvertently applied to commercial and industrial developments.
- (2) The existing foundational provisions of the Davis-Stirling Act should continue to apply to commercial and industrial CIDs. These provisions are necessary for any CID, regardless of type.
- (3) Most of the existing operational provisions of the Davis-Stirling Act should be made inapplicable to commercial and industrial CIDs. These provisions are not strictly necessary for all CIDs. They appear to have been added to the Davis-Stirling Act to benefit residential property owners, without separate consideration of their effect on commercial or industrial property owners.

This recommendation was prepared pursuant to Resolution Chapter 98 of the Statutes of 2009.

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Inclusion of the name of an individual or organization should not be taken as an indication of the individual's opinion or the organization's position on any aspect of this recommendation. The Commission regrets any errors or omissions that may have been made in compiling these acknowledgments.

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COMMERCIAL AND INDUSTRIAL COMMON INTEREST DEVELOPMENTS

1 A common interest development (“CID”) is a real property development that includes
2 all of the following: (1) separate ownership of a lot or unit, coupled with an undivided
3 interest in common property, (2) covenants, conditions, and restrictions that limit use of
4 both the common area and separate ownership interests, and (3) management of common
5 property and enforcement of restrictions by a community association.¹

6 The Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”)² is the
7 main body of statutory law that governs CIDs in California. The Act was enacted in
8 1985,³ primarily to consolidate and standardize statutory provisions governing different
9 types of CIDs.⁴

10 The available legislative history indicates that the Davis-Stirling Act was originally
11 intended to govern only residential property, with no expectation that it would apply to
12 commercial or industrial property.⁵

13 Two years later, when it became apparent that the Act also applied to commercial and
14 industrial CIDs, a bill was introduced to entirely exempt such developments from the
15 Davis-Stirling Act.⁶ However, persons representing commercial property owners objected
16 to that approach, noting that some provisions of the Act were beneficial for all CIDs,
17 regardless of type.⁷ The bill was then amended to instead exempt commercial and
18 industrial CIDs from selected provisions of the Act that were identified as necessary to
19 protect residential property owners, but unnecessary and burdensome for commercial or
20 industrial property owners.⁸ Civil Code Section 1373 was enacted in that form,⁹ with an
21 express statement of legislative findings:

1. Civ. Code §§ 1352, 1363(a); C. Sproul & K. Rosenberry, *Advising California Common Interest Communities*, §§ 1.2, 1.14, 1.15, pp. 3-4, 15-19 (2010).

2. Civ. Code §§ 1350-1378.

3. 1985 Cal. Stat. ch. 874.

4. C. Sproul & K. Rosenberry, *supra* Note 1, at § 1.4, pp. 5-6.

5. See letter from Jerold L. Miles to Michael Krisman (Sept. 16, 1986) (on file with Commission) (“In a recent conversation between my partner Rob Thomson and Assemblyman Davis, Assemblyman Davis assured Mr. Thomson that the act was intended to apply only to residential projects.”); Office of Local Government Affairs, Enrolled Bill Report on AB 2484 (May 23, 1988) (on file with Commission) (“According to the consultant for the Assembly Housing Committee, the Davis-Stirling Act was enacted to benefit residential common interest developments. However, the language of the Davis-Stirling Act *inadvertently* included commercial and industrial developments.”) (emphasis added).

6. AB 2484 (Hauser) (1987).

7. See, e.g., letter from Jeffrey G. Wagner to Assembly Member Daniel Hauser (June 12, 1987) (attached to Commission Staff Memorandum 2008-63 (Dec. 2, 2008), Exhibit pp. 1-2); letter from F. Scott Jackson to Assembly Member Hauser (June 29, 1987) (on file with Commission); Exhibit to letter from Donna L. May to Michael Krisman (May 7, 1987) (on file with Commission).

8. See, e.g., Assembly Floor Analysis of AB 2484 (Jan. 19, 1988), p. 1 (specified provisions of Davis-Stirling Act were “enacted to benefit residential common interest developments”); Assembly Committee on

1 The Legislature finds that the [provisions declared inapplicable to commercial
2 or industrial CIDs] may be appropriate to protect purchasers in residential
3 common interest developments, however, the provisions are not necessary to
4 protect purchasers in commercial or industrial developments since the application
5 of those provisions results in unnecessary burdens and costs for these types of
6 developments.¹⁰

7 Since the enactment of Section 1373, the Davis-Stirling Act has more than tripled in
8 size.¹¹ However, over that 23 year period, only three additions have been made to the list
9 of exemptions in Section 1373 for commercial and industrial developments.¹²

10 The Commission believes that most of the new provisions of the Davis-Stirling Act
11 have been enacted to solve problems faced by residential property owners, without
12 separate consideration of their effects on nonresidential CIDs.¹³ As a consequence, nearly
13 all of the numerous regulatory provisions of the Davis-Stirling Act currently apply to
14 commercial and industrial CIDs, despite having been designed to protect residential
15 property owners. This seems contrary to the Legislature’s intent in enacting Section 1373.

16 The Commission has completed a review of the provisions that were added to the
17 Davis-Stirling Act since 1988, in order to determine whether those provisions should
18 apply to commercial and industrial CIDs. In conducting this study, the Commission

Housing and Community Development Analysis of AB 2484 (Jan. 11, 1988), p. 1 (specified provisions of Davis-Stirling Act were “enacted primarily to regulate and benefit residential common interest developments”); Senate Committee on Housing and Urban Affairs Analysis of AB 2484 (May 12, 1987), p. 1 (specified provisions of Davis-Stirling Act were “designed to protect individuals in residential common interest developments”); Committee Statement of Assembly Member Hauser on AB 2484 (on file with Commission) (problems to be solved by Davis-Stirling Act “revolved around residential subdivisions”).

9. 1988 Cal. Stat. ch. 123.

10. See Civ. Code § 1373(b).

11. The Act has grown from 25 code sections in 1986 to 92 code sections in 2012.

12. See 2003 Cal. Stat. ch. 557 (adding Civ. Code §§ 1357.100-1357.150), 2004 Cal. Stat. ch. 346 (adding Civ. Code § 1378), and 2011 Cal. Stat. ch. 62 (adding Civ. Code § 1360.2).

13. Legislative analyses of major recent CID reform bills make no mention of the bills’ effects on nonresidential CIDs, instead expressly focusing on the bills’ effects on “homeowners.” See, e.g., Senate Transportation and Housing Committee Analysis of SB 528 (Feb. 22, 2007), p. 1 (“A common-interest development (CID) is a form of real estate where each *homeowner* has an exclusive interest in a unit or lot and a shared or undivided interest in common area property.”) (emphasis added); Senate Floor Analysis of SB 61 (Sept. 5, 2005), p. 7 (“According to the author’s office, ballots in CID elections are not required by law to be secret. This leaves an opening for potential abuse wherein *homeowners* can be intimidated and disinclined to vote in accordance with their true desires.”) (emphasis added); Senate Floor Analysis of SB 137 (Sept. 7, 2005) (“This bill protects owners’ equity in their *homes*...” (emphasis added); Assembly Floor Analysis of AB 1098 (Sept. 8, 2005), p. 2 (“The author identifies the purpose of the bill as preserving common interest developments as affordable *housing* by detailing the financial records that are subject to *homeowner* inspection.”) (emphasis added). Note too that bills proposing changes to the Davis-Stirling Act are typically referred to the housing policy committees in each chamber, and are not heard by the policy committees tasked with evaluating new business regulations.

See also the statutory text of Civ. Code §§ 1353.7 (prohibiting a CID from requiring a “homeowner” to install or repair roof in violation of statute) and 1365.2 (referencing records of interior architectural plans for individual “homes”).

1 attempted to identify the original policy rationale for the enactment of Section 1373 and
2 then apply that rationale to the new provisions of the Act. In other words, the
3 Commission has attempted to extrapolate from established legislative policy, rather than
4 make its own ad hoc judgments about which provisions are appropriate for commercial
5 and industrial CIDs.¹⁴ The Commission’s analysis and recommendations on that issue are
6 discussed below.

7 The Commission also recommends that the law governing commercial and industrial
8 CIDs be separated from the law governing residential CIDs. That would avoid any future
9 inadvertent regulation of commercial and industrial CIDs, through the enactment of new
10 provisions designed to benefit residential property owners. This would not prevent the
11 Legislature from adopting reforms that apply to all types of CIDs, but it would require an
12 affirmative step in order to give a new provision such universal application.

13 PRIOR LEGISLATIVE POLICY

14 In order to better understand the legislative policy rationale for the enactment of
15 Section 1373, it is helpful to examine the content of the Davis-Stirling Act when Section
16 1373 was added. At that time, the Davis-Stirling Act consisted of only 25 sections, most
17 of which governed the establishment and basic structure of a CID, rather than regulating
18 how a CID should conduct its daily affairs.

19 After the enactment of Section 1373, the provisions of the Act that continued to apply
20 to a commercial or industrial CID included all of the following:

- 21 • *Definitions and other general provisions.*¹⁵ These provisions are necessary to
22 the operation of the statute and the definition of the CID property ownership
23 form, and impose no significant burden on the operation of a CID.
- 24 • *Governing document provisions.*¹⁶ These provisions define the character of a
25 CID’s founding documents.
- 26 • *Property ownership and transfer provisions.*¹⁷ These provisions provide
27 special rules relevant to the CID form of property ownership.
- 28 • *Basic governance provisions.*¹⁸ These provisions establish the basic
29 governance structure for the management and maintenance of CID common

14. But see “Exceptions to the General Recommendations,” below.

15. Civ. Code §§ 1350 (short title), 1351 (definitions), 1352 (application of Act).

16. Civ. Code §§ 1353 (content of declaration), 1354 (enforcement of restrictions as equitable servitudes), 1355 and 1357 (amendment of declaration).

17. Civ. Code §§ 1358 (transfer of separate interest), 1359 (partition), 1360 (separate interest improvements), 1361 (rights of ingress, egress, and support), 1362 (ownership of common area), 1369 (mechanics liens on common area), 1370 (liberal construction of title documents), 1371 (presumption regarding unit boundaries), 1372 (construction of local zoning ordinances).

18. Civ. Code §§ 1363(a) (existence and powers of association), 1364 (maintenance obligations), 1366(a) (authority to levy assessments), 1366(c) (authority to recover collection costs), 1366(d) (exemption from interest rate limitations), 1367 (authority to lien to collect overdue assessments).

1 area, and the enforcement of mutual restrictions. They enable governance,
2 without regulating governance operations.

3 By preserving the application of those types of provisions, the Legislature seems to
4 have concluded that such provisions are necessary for commercial and industrial CIDs,
5 and are not unduly burdensome to their operations.

6 Significantly, Section 1373 exempted commercial and industrial CIDs from the
7 following types of provisions:

- 8 • *Provisions regulating fiscal planning and reporting.*¹⁹ These provisions state
9 mandatory requirements governing an association’s fiscal planning and
10 reporting.
- 11 • *Judicial override of supermajority amendment requirement.*²⁰ This provision
12 authorizes a court to approve an amendment of a CID’s declaration,
13 notwithstanding a failure to satisfy a supermajority member approval
14 requirement stated in the declaration.
- 15 • *Transfer disclosure requirements.*²¹ This provision requires that specified
16 information be provided to a prospective purchaser of a separate interest in a
17 CID, before transfer of title.

18 The exemption of commercial and industrial CIDs from those provisions indicates that
19 the Legislature found them to be unnecessary and unduly burdensome for those types of
20 CIDs.²²

21 The basis for these conclusions can be found in a legislative analysis of the bill that
22 added Section 1373. The analysis discussed the special character of commercial and
23 industrial CIDs²³:

- 24 • Commercial and industrial CIDs are “business endeavors in which the parties
25 engage the services of attorneys, accountants, management companies, and
26 developers.”
- 27 • Unlike owners in residential CIDs, owners in commercial and industrial CIDs
28 are “well-informed” and “governed by other provisions of commercial law.”

19. Civ. Code §§ 1363(b) and 1365 (mandatory financial statement), 1365.5 (fiscal duties of board), 1366(b) and 1366.1 (limitations on assessment setting).

20. Civ. Code § 1356.

21. Civ. Code § 1368.

22. See, e.g., Civ. Code § 1373(b); Assembly Floor Analysis of AB 2484 (Jan. 19, 1988) (on file with Commission); Assembly Committee on Housing and Community Development Analysis of AB 2484 (Jan. 11, 1988) (on file with Commission); Senate Committee on Housing and Urban Affairs Analysis of AB 2484 (May 12, 1987) (on file with Commission); Committee Statement of Assembly Member Hauser on AB 2484 (on file with Commission).

23. Senate Rules Committee Analysis of AB 2484 (May 18, 1988) (on file with Commission). See also Assembly Floor Analysis of AB 2484 (Jan. 19, 1988) (on file with Commission); Assembly Committee on Housing and Community Development Analysis of AB 2484 (Jan. 11, 1988) (on file with Commission); Senate Committee on Housing and Urban Affairs Analysis of AB 2484 (May 12, 1987) (on file with Commission); Committee Statement of Assembly Member Hauser on AB 2484 (on file with Commission).

- 1 • “The operational needs of commercial and industrial CIDs are different than the
2 needs of residential [CIDs].”²⁴
3 • Regulatory requirements designed to protect residential owners “interfere with
4 commerce, and increase the costs of doing business.”

5 Taken as a whole, the enactment of Section 1373 suggests the following policy
6 principles:

- 7 • Provisions that define the basic property ownership and governance structure
8 for CIDs are needed by commercial and industrial CIDs and do not unduly
9 burden those CIDs.
10 • Provisions that are designed to help homeowners avoid mismanagement, by
11 mandating specific management practices, are unnecessary and unduly
12 burdensome for business owners in commercial and industrial CIDs.²⁵
13 • Provisions that are designed to help homeowners understand the consequences
14 of purchasing a home in a CID are not needed by purchasers of units in
15 commercial or industrial developments. Business owners purchasing
16 commercial or industrial properties are presumably professionally advised and
17 do not need the same statutory guidance provided to homeowners.²⁶
18 • A provision authorizing the court to circumvent a supermajority approval
19 requirement for amendment of the declaration may be helpful in a residential
20 CID, where homeowner apathy and fractiousness may make it difficult to obtain
21 the approval required for a necessary amendment. This problem is less likely to
22 arise in a commercial or industrial CID.²⁷ Furthermore, a business owner may
23 have carefully read and relied on a CID’s governing documents before
24 purchasing a unit in a commercial or industrial CID. A judicial override of the
25 declaration could frustrate the owners’ reasonable expectations.

24. For example, a commercial or industrial CID may require greater flexibility than a residential CID, in order to address significant business-related changes in the development’s use, facilities, and costs.

25. The Legislature has expressly recognized the difference between the needs of homeowners and business owners involved in seemingly similar ventures as recently as 2011, when adding procedural protections relating to CID meetings to Civil Code Section 1363.05. 2011 Cal. Stat. ch. 257 (SB 563 (Committee on Transportation and Housing)). As indicated in a legislative committee analysis of SB 563:

Although CIDs, as corporations, are regulated by meeting provisions of Corporations Code, as well as the Davis-Stirling Act, CIDs are not typical business corporations. For example, while shareholders of a business corporation have an obvious economic interest in the actions of the board of directors, the separate interest owners of a CID arguably have a much greater interest in the actions of its board, given that those actions affect not just economic interests, but the rules and regulations affecting day-to-day life within the development.

Assembly Committee On Judiciary Analysis of SB 563 (June 28, 2011).

26. The Legislature has drawn similar distinctions in the statutory treatment of owners of residential real property and owners of nonresidential real property in other contexts as well. See e.g., Bus. & Prof. Code § 11010.3 (inapplicability of Subdivided Lands Act to sale of lots or interests in commercial and industrial subdivisions); Civ. Code § 1102 *et seq* (statutory disclosures required only upon transfer of residential property); Ins. Code § 10101 *et seq* (statutory disclosures required only for residential property insurance).

27. See, e.g., Exhibit to letter from Donna L. May to Michael Krisman (May 6, 1987) (on file with Commission), p. 6 (“Owner apathy in residential projects which makes it difficult to obtain required extra majority consensus for declaration change is uncommon among business owners in commercial projects.”).

1 Section 1373 has been amended three times since its enactment. Each amendment has
2 been consistent with the principles set out above, exempting commercial and industrial
3 CIDs from provisions regulating governance operations:

- 4 • In 2003, Section 1373 was amended to exempt commercial and industrial
5 CIDs from new statutory procedures on association rulemaking.²⁸
- 6 • In 2004, Section 1373 was amended to exempt commercial and industrial
7 CIDs from new statutory procedures on architectural review
8 decisionmaking.²⁹
- 9 • In 2011, Section 1373 was amended to exempt commercial and industrial
10 CIDs from a new restriction on an association’s authority to regulate the rental
11 of separate interests.³⁰

12 In summary, in enacting and amending Section 1373, the Legislature seems to have
13 drawn a distinction between two broad classes of Davis-Stirling Act provisions:

- 14 • *Foundational Provisions.* These are enabling provisions that address the
15 fundamental character of the CID property ownership form. They include (1)
16 definitions of key concepts, (2) provisions relating to a CID’s founding
17 documents, (3) provisions relating to basic property ownership, transfer, and
18 maintenance, and (4) provisions establishing the governing association and
19 prescribing its necessary powers. Foundational provisions also include
20 provisions necessary for the operation of the statute, such as rules of
21 construction and technical definitions. These provisions are necessary for all
22 CIDs and do not impose operational burdens on CIDs.
- 23 • *Operational Provisions.* These are regulatory provisions that impose mandates
24 or restrictions relating to CID governance. These provisions are designed to
25 assist and protect unsophisticated homeowners in managing their
26 communities, but are not needed by sophisticated commercial property
27 owners.³¹ To the extent that they mandate “one-size-fits-all” management
28 practices, they can unduly burden commercial and industrial CIDs.

28. 2003 Cal. Stat. ch. 557. This change to Civil Code Section 1373, which exempted commercial and industrial CIDs from Sections 1357.100 through 1357.150, related to a Law Revision Commission recommendation. See *2003-2004 Annual Report*, 33 Cal. L. Revision Comm’n Reports 569, 645-47 (2003).

29. 2004 Cal. Stat. ch. 346. This change to Civil Code Section 1373, which exempted commercial and industrial CIDs from Section 1378, also related to a Law Revision Commission recommendation. See *Common Interest Development Law: Architectural Review and Decisionmaking*, 34 Cal. L. Revision Comm’n Reports 107 (2004).

30. 2011 Cal. Stat. ch. 62. This change to Civil Code Section 1373 exempted commercial and industrial CIDs from Section 1360.2.

31. While the legislative assumption of greater sophistication and resources is likely to be true as a general proposition, it will not be true in every case. Some business owners will be less sophisticated, and some residential property owners will be more sophisticated. However, there is good reason to believe that a business owner who purchases real property for the operation of a business is likely to be a sophisticated actor. As the California Association of Community Managers related in a letter to the Commission in 2007:

The following two demographic facts differentiate the purchaser of a commercial building or unit from the purchaser of a residence:

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RECOMMENDATION

The Commission makes three general recommendations regarding the treatment of commercial and industrial CIDs:

- The law governing residential CIDs and commercial and industrial CIDs should be divided into two separate bodies of law.
- The operational provisions of the Davis-Stirling Act should not apply to commercial and industrial CIDs.
- The foundational provisions of the Davis-Stirling Act should continue to apply to commercial and industrial CIDs.

Those recommendations, and a small number of exceptions, are discussed below.

Statutory Separation

The Commission recommends that the law governing commercial and industrial CIDs be separated from the law governing residential CIDs. This would be accomplished by entirely exempting commercial and industrial CIDs from the existing Davis-Stirling Act, and enacting a parallel statute that would be applicable to commercial and industrial CIDs only.

This organization would prevent any future inadvertent regulation of commercial and industrial CIDs. Provisions enacted to benefit residential CIDs would be added to the existing Davis-Stirling Act, where they would have no application to commercial and industrial CIDs. If the Legislature intended for such the new provision to apply to commercial or industrial CIDs as well, a parallel provision would need to be added to the new statute governing commercial and industrial CIDs.

In addition, this organization would facilitate future development of the law governing commercial and industrial CIDs, by providing a straightforward way to enact laws appropriate to those types of CIDs, without creating complications for residential CIDs.

(1) Approximately 90% of the owners who purchase buildings or commercial units in the associations own them as a corporation, LLC, trust or partnership. Almost all of these, whether they are owned as noted above or as individuals/joint tenants, own and operate an incorporated business within the building or unit. These parties are sophisticated. They have hired legal counsel to form their legal entities and have the legal and financial resources to hire legal counsel when they believe it appropriate to protect their interests.

(2) The typical purchase price, represented as the middle 70% of the building or units sold today, varies between \$1,000,000 - \$4,000,000. The purchase and sale of these buildings and units are typically facilitated by one or more attorneys, who are obligated to protect the interests of their clients through the diligence process. In summary, these are parties who have the sophistication to manage businesses, take advantage of legal and tax opportunities presented to such businesses and to purchase multi-million dollar buildings for the tax and estate benefits provided thereby.

See Commission Staff Memorandum 2008-63 (Dec. 2, 2008), Exhibit p. 4.

1 **Exemption from Operational Regulations**

2 With the exceptions described below, the Commission recommends that the new
3 statute governing commercial and industrial CIDs include the foundational provisions of
4 the Davis-Stirling Act, but not the operational provisions of that Act.

5 This would preserve and extend the policy rationales discussed earlier:

- 6 • The foundational provisions of the Davis-Stirling Act are necessary to
7 define and enable all CIDs. They are appropriately applied to commercial
8 and industrial CIDs.
- 9 • The operational regulations of the Davis-Stirling Act were enacted to benefit
10 residential property owners. They are not needed by business property
11 owners, who have the sophistication to order their own operations and are
12 already adequately regulated by general commercial law. Because the
13 operational needs of business property owners are different from those of
14 residential property owners, the one-size-fits-all procedural mandates of the
15 Davis-Stirling Act may impose undue burdens on commercial operations.

16 *Special Notice Requirement.* Civil Code Section 1363(g) of the Davis-Stirling Act
17 requires distribution of a schedule of monetary penalties that may be imposed as
18 punishment for a violation of the governing documents. Civil Code Section 1363(j) is an
19 accompanying disclaimer, providing that nothing in Section 1363(g) shall affect an
20 association's authority to impose those monetary penalties. Although these provisions
21 could be characterized as operational, they seem appropriate as an element of a fair
22 disciplinary procedure. The requirements do not appear to impose any significant burden
23 on CID operations.

24 The Commission recommends that the proposed law include these provisions.³²

25 *Exemption from Constitutional Interest Rate Limitations.* Civil Code Section 1366(f)
26 generally exempts CIDs from interest rate limitations imposed by Article XV of the
27 California Constitution.

28 Although this provision could be characterized as operational, it does not appear to
29 impose any burden on CID operations. To the extent that it facilitates assessment
30 collection, it may provide a benefit to all CIDs, including commercial and industrial
31 CIDs.

32 The Commission recommends that Section 1366(f) be continued in the new statute.³³

33 *Assessment Collection Provisions.* Civil Code Section 1367.1 contains a detailed
34 procedural scheme for the collection of delinquent assessment payments. While the
35 section relates to an operational aspect of CID governance, the Commission concluded
36 that the well-developed procedure would likely prove useful, and not unduly
37 burdensome, in a commercial or industrial CID.

32. See proposed Civ. Code §§ 6850, 6854 *infra*.

33. See proposed Civ. Code § 6808(b) *infra*.

1 With the exception of severable provisions relating alternate dispute resolution,³⁴
2 calculation of delinquent assessment balances,³⁵ and notice delivery,³⁶ the Commission
3 recommends that the provisions of Section 1367.1 be continued in the new statute.³⁷

4 *Construction Litigation Provisions.* Three sections of the Davis-Stirling Act govern
5 construction defect litigation in a CID.³⁸ Although they might be described as operational
6 provisions, the Commission recommends that they be preserved.³⁹ The well-developed
7 procedures provided in those sections relate to a dispute between an association and a
8 builder, a third party who is not involved in CID governance. Those provisions appear to
9 be equally appropriate for the resolution of such disputes in any type of CID, and the
10 Commission recommends that they be continued in the new statute.⁴⁰

11 *Assessment Calculation.* Civil Code Section 1366.4 provides that, with limited
12 exception, assessments in a CID may not be calculated based on the taxable value of a
13 separate interest. The section has an arguable foundational aspect, in that it relates to
14 basic payment obligations of the owners and the total funding available to a CID.
15 However, on balance, the Commission found that this level of micromanagement of
16 business financial matters would unduly interfere with the ability of a business to make
17 its own financial planning decisions.

18 The Commission therefore recommends that Section 1366.4 not be continued in the
19 new statute.

20 **Severability of Recommendations**

21 The broad elements of this recommendation are severable from one another. There is
22 independent value in establishing a separate statute for commercial and industrial CIDs,
23 even if the Legislature does not choose to follow all of the Commission's
24 recommendations as to its content. Conversely, there is benefit to modernizing the scope
25 of the exemptions provided for commercial and industrial CIDs, even if the Legislature
26 elects to forego the creation of a separate statute.

27 Furthermore, each of the individual recommendations as to which provisions of the
28 Davis-Stirling Act should apply to commercial and industrial CIDs is severable from the
29 rest of those recommendations. Those specific recommendations represent the

34. Civ. Code § 1367.1(a)(4)-(6), (c).

35. Civ. Code § 1367.1(b).

36. Civ. Code § 1367.1(k).

37. See proposed Civ. Code §§ 6808(a), 6810, 6812, 6814, 6816, 6818, 6820, 6822, 6824, and 6826
infra.

38. Civ. Code §§ 1368.5, 1375, and 1375.1.

39. A fourth section of the Davis-Stirling Act relating to CID construction defect litigation, Civil Code
Section 1375.05, was repealed by operation of law on January 1, 2011, and is not continued in the proposed
law.

40. See proposed Civ. Code §§ 6870, 6872, 6874, and 6876 *infra*.

1 Commission’s best effort to identify the historical policy rationale for the enactment of
2 Civil Code Section 1373 and apply that rationale to subsequently enacted provisions of
3 the Davis-Stirling Act. If the Legislature decides that a particular provision should be
4 handled differently than the Commission has recommended, that decision should not
5 undermine the value of any of the other specific recommendations made in this report.

6 **Source of Statutory Language and Organization**

7 In a separate recommendation, the Commission has proposed the recodification of the
8 Davis-Stirling Act, to make the Act simpler to understand and use, and to make minor
9 substantive improvements.⁴¹ That proposal is currently being considered by the
10 Legislature.⁴²

11 The proposed new statute governing commercial and industrial CIDs would parallel the
12 language and structure of the pending recodification legislation. This approach has two
13 benefits. It permits the new statute to benefit from the improvements that were
14 implemented in the recodification, and it preserves the parallelism between provisions
15 that would be common to both bodies of law.

16 **Disposition Table**

17 A “disposition table,” located after the proposed law, shows the relationship between
18 the existing provisions of the Davis-Stirling Act and the provisions of the proposed law.
19 This table also identifies the provisions of the Davis-Stirling Act that have not been
20 included in the proposed law, by an indication that those provisions are “not continued.”

21 **Conforming Revisions**

22 There are a number of code sections outside the Davis-Stirling Act that include a cross-
23 reference to a provision of the Davis-Stirling Act. To the extent that such a reference is
24 relevant to commercial or industrial CIDs, a technical amendment of the reference would
25 be included in the “Conforming Revisions” portion of the proposed law.

26 However, conforming revisions have not been recommended for code sections that fall
27 into either of the following two categories:

- 28 • Code sections in which the referenced provision(s) of the Davis-Stirling Act
29 would not be continued in the proposed legislation.⁴³
- 30 • Code sections that, by virtue of either their plain language or another express
31 statutory provision, do not apply to exclusively commercial or industrial
32 CIDs.⁴⁴

41. See *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm’n Reports 235 (2010).

42. See AB 805 & 806 (Torres).

43. See, e.g., Civ. Code § 2079.3.

44. See, e.g., Bus. & Prof. Code § 10131.01; see also Bus. & Prof. Code § 11010.10 (read in conjunction with Bus. & Prof. Code § 11010.3).

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PROPOSED LEGISLATION

1 **Civ. Code § 1373 (amended). Commercial or industrial common interest development**

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

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

7 ~~(1) Section 1356.~~

8 ~~(2) Article 4 (commencing with Section 1357.100) of Chapter 2 of Title 6 of Part 4 of~~
9 ~~Division 2.~~

10 ~~(3) Section 1360.2.~~

11 ~~(4) Subdivision (b) of Section 1363.~~

12 ~~(5) Section 1365.~~

13 ~~(6) Section 1365.5.~~

14 ~~(7) Subdivision (b) of Section 1366.~~

15 ~~(8) Section 1366.1.~~

16 ~~(9) Section 1368.~~

17 ~~(10) Section 1378.~~

18 ~~(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to~~
19 ~~protect purchasers in residential common interest developments, however, the provisions~~
20 ~~may not be necessary to protect purchasers in commercial or industrial developments~~
21 ~~since the application of those provisions could result in unnecessary burdens and costs for~~
22 ~~these types of developments.~~

23 This title does not apply to a commercial or industrial common interest development,
24 as defined in Section 6531.

25 **Comment.** Section 1373 is amended to make the provisions of the Davis-Stirling Common
26 Interest Development Act inapplicable to an exclusively commercial or industrial common
27 interest development, as defined in Section 6531. Many provisions of that act are continued and
28 made applicable to exclusively commercial or industrial common interest developments by the
29 Commercial and Industrial Common Interest Development Act, Part 5.5 (commencing with
30 Section 6500) of Division 4. To determine whether that act continues a particular provision of the
31 Davis-Stirling Common Interest Development Act, see *Commercial and Industrial Common*
32 *Interest Developments*, 40 Cal. L. Revision Comm'n Reports 235 (2010).

33 **Civ. Code §§ 6500-6876 (added). Commercial and industrial common interest developments**

34 SEC. ____ . Part 5.5 (commencing with Section 6500) is added to Division 4 of the Civil
35 Code to read:

1 The term “documents” is used to describe notices, forms, and other procedural or transactional
2 instruments. It is not meant to include the governing documents of the association. Governing
3 documents must conform to the law. See Section 6600.

4 See also Sections 6534 (“common interest development”), 6552 (“governing documents”).

5 **§ 6510. Construction of zoning ordinance**

6 6510. Unless a contrary intent is clearly expressed, a local zoning ordinance is
7 construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless
8 of the form of the common interest development.

9 **Comment.** With respect to a commercial or industrial common interest development, Section
10 6510 continues Section 1372 without change, except as indicated below.

11 The following nonsubstantive change is made:

- 12 • A list of all of the types of common interest developments is replaced with general
13 language.

14 For further information, see Section 6500 Comment.

15 See also Section 6534 (“common interest development”).

16 **§ 6512. Delivered to an association**

17 6512. (a) If a provision of this act requires that a document be delivered to an
18 association, the document shall be delivered to the president or secretary of the
19 association.

20 (b) A document delivered pursuant to this section may be delivered by any of the
21 following methods:

22 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
23 overnight delivery by an express service carrier.

24 (2) By e-mail, facsimile, or other electronic means, if the association has assented to
25 that method of delivery.

26 (3) By personal delivery, if the association has assented to that method of delivery. If
27 the association accepts a document by personal delivery it shall provide a written receipt
28 acknowledging delivery of the document.

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

31 See also Section 6520 (electronic delivery).

32 See also Section 6528 (“association”).

33 **§ 6514. Individual notice**

34 6514. (a) If a provision of this act requires that an association deliver a document by
35 “individual delivery” or “individual notice,” the document shall be delivered by one of
36 the following methods:

37 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
38 overnight delivery by an express service carrier. The document shall be addressed to the
39 recipient at the address last shown on the books of the association.

40 (2) E-mail, facsimile, or other electronic means, if the recipient has consented, in
41 writing, to that method of delivery. The consent may be revoked, in writing, by the
42 recipient.

1 (b) For the purposes of this section, an unrecorded provision of the governing
2 documents providing for a particular method of delivery does not constitute agreement by
3 a member to that method of delivery.

4 **Comment.** Section 6514 is new. It specifies acceptable methods for delivery of a notice to an
5 individual member. The methods listed in subdivision (a) are drawn from Section
6 1350.7(b)(2)-(3).

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

10 See also Section 6520 (electronic delivery).

11 See also Sections 6528 (“association”), 6552 (“governing documents”), 6554 (“member”).

12 **§ 6518. Time and proof of delivery**

13 6518. (a) This section governs the delivery of a document pursuant to this act.

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

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

18 **Comment.** Section 6518 is new. Subdivision (b) is drawn from the second sentence of Section
19 1350.7(b)(2).

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

21 **§ 6520. Electronic delivery**

22 6520. If the association or a member has consented to receive information by electronic
23 delivery, and a provision of this act requires that the information be in writing, that
24 requirement is satisfied if the information is provided in an electronic record capable of
25 retention by the recipient at the time of receipt. An electronic record is not capable of
26 retention by the recipient if the sender or its information processing system inhibits the
27 ability of the recipient to print or store the electronic record.

28 **Comment.** Section 6520 is new. It is drawn from and is similar to the substance of Section
29 1633.8(a), which is part of the Uniform Electronic Transactions Act (“UETA”).

30 See also Sections 6528 (“association”), 6554 (“member”).

31 **§ 6522. Approved by majority of all members**

32 6522. If a provision of this act requires that an action be approved by a majority of all
33 members, the action shall be approved or ratified by an affirmative vote of a majority of
34 the votes entitled to be cast.

35 **Comment.** Section 6522 is new. It is added for drafting convenience. This section only
36 governs an election conducted pursuant to a provision of this act (i.e., the Commercial and
37 Industrial Common Interest Development Act). An election that is not required by this act would
38 be governed by the association’s governing documents.

39 See also Section 6554 (“member”).

40 **§ 6524. Approved by majority of quorum of members**

41 6524. If a provision of this act requires that an action be approved by a majority of a
42 quorum of the members, the action shall be approved or ratified by an affirmative vote of

1 a majority of the votes represented and voting at a duly held meeting at which a quorum
2 is present, which affirmative votes also constitute a majority of the required quorum.

3 **Comment.** Section 6524 is new. It is added for drafting convenience. This section only
4 governs an election conducted pursuant to a provision of this act (i.e., the Commercial and
5 Industrial Common Interest Development Act). An election that is not required by this act would
6 be governed by the association’s governing documents.

7 See also Section 6554 (“member”).

8 Article 2. Definitions

9 **§ 6526. Application of definitions**

10 6526. The definitions in this article govern the construction of this act.

11 **Comment.** With respect to a commercial or industrial common interest development, Section
12 6526 continues the substance of the introductory clause of Section 1351.

13 For further information, see Section 6500 Comment.

14 **§ 6528. “Association”**

15 6528. “Association” means a nonprofit corporation or unincorporated association
16 created for the purpose of managing a common interest development.

17 **Comment.** With respect to a commercial or industrial common interest development, Section
18 6528 continues Section 1351(a) without change.

19 For further information, see Section 6500 Comment.

20 See also Section 6534 (“common interest development”).

21 **§ 6530. “Board”**

22 6530. “Board” means the board of directors of the association.

23 **Comment.** Section 6530 is new.

24 See also Sections 6528 (“association”).

25 **§ 6531. “Commercial or industrial common interest development”**

26 6531. A “commercial or industrial common interest development” means a common
27 interest development that is limited to industrial or commercial uses by zoning or by a
28 declaration of covenants, conditions, and restrictions that has been recorded in the official
29 records of each county in which the common interest development is located.

30 **Comment.** Section 6531 is drawn from Section 1373(a). It is added for drafting convenience.

31 See also Section 6534 (“common interest development”).

32 **§ 6532. “Common area”**

33 6532. (a) “Common area” means the entire common interest development except the
34 separate interests therein. The estate in the common area may be a fee, a life estate, an
35 estate for years, or any combination of the foregoing.

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

1 **Comment.** With respect to a commercial or industrial common interest development,
2 subdivision (a) of Section 6532 continues the first two sentences of Section 1351(b) without
3 change.

4 With respect to a commercial or industrial common interest development, subdivision (b)
5 continues the substance of the third sentence of Section 1351(b), but restates it for clarity.

6 For further information, see Section 6500 Comment.

7 See also Sections 6534 (“common interest development”), 6562 (“planned development”),
8 6564 (“separate interest”).

9 **§ 6534. “Common interest development”**

10 6534. “Common interest development” means any of the following:

11 (a) A condominium project.

12 (b) A planned development.

13 (c) A stock cooperative.

14 **Comment.** With respect to a commercial or industrial common interest development, Section
15 6534 continues Section 1351(c) without change, except as indicated below.

16 The following nonsubstantive change is made:

- 17 • The reference to a “community apartment project” is not continued.

18 For further information, see Section 6500 Comment.

19 See also Sections 6542 (“condominium project”), 6562 (“planned development”), 6566 (“stock
20 cooperative”).

21 **§ 6540. “Condominium plan”**

22 6540. “Condominium plan” means a plan described in Section 6624.

23 **Comment.** Section 6540 is new. It is included for drafting convenience.

24 **§ 6542. “Condominium project”**

25 6542. (a) A “condominium project” means a real property development consisting of
26 condominiums.

27 (b) A condominium consists of an undivided interest in common in a portion of real
28 property coupled with a separate interest in space called a unit, the boundaries of which
29 are described on a recorded final map, parcel map, or condominium plan in sufficient
30 detail to locate all boundaries thereof. The area within these boundaries may be filled
31 with air, earth, water, or fixtures, or any combination thereof, and need not be physically
32 attached to land except by easements for access and, if necessary, support. The
33 description of the unit may refer to (1) boundaries described in the recorded final map,
34 parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be
35 constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an
36 entire structure containing one or more units, or (4) any combination thereof.

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

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

3 **Comment.** With respect to a commercial or industrial common interest development, Section
4 6542 continues Section 1351(f) without change, except as indicated below.

5 The following nonsubstantive changes are made:

- 6 • The section is organized into subdivisions for ease of reference.
- 7 • In subdivision (a), the word “development” is replaced with “real property development.”
- 8 • Subdivisions (b) and (c) make clear that the contents of the area within the boundaries of
9 a condominium may include “fixtures.”

10 For further information, see Section 6500 Comment.

11 See also Sections 6540 (“condominium plan”), 6564 (“separate interest”).

12 **§ 6544. “Declarant”**

13 6544. “Declarant” means the person or group of persons designated in the declaration
14 as declarant, or if no declarant is designated, the person or group of persons who sign the
15 original declaration or who succeed to special rights, preferences, or privileges
16 designated in the declaration as belonging to the signator of the original declaration.

17 **Comment.** With respect to a commercial or industrial common interest development, Section
18 6544 continues Section 1351(g) without change.

19 For further information, see Section 6500 Comment.

20 See also Sections 6546 (“declaration”), 6560 (“person”).

21 **§ 6546. “Declaration”**

22 6546. “Declaration” means the document, however denominated, that contains the
23 information required by Section 6614.

24 **Comment.** With respect to a commercial or industrial common interest development, Section
25 6546 continues Section 1351(h) without change, except as indicated below.

26 The following nonsubstantive changes are made:

- 27 • The word “which” is replaced with “that.”
- 28 • The statutory cross-reference is updated to reflect the new location of the referenced
29 provision.

30 For further information, see Section 6500 Comment.

31 **§ 6548. “Director”**

32 6548. “Director” means a natural person who serves on the board.

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

34 See also Section 6530 (“board”).

35 **§ 6550. “Exclusive use common area”**

36 6550. (a) “Exclusive use common area” means a portion of the common area
37 designated by the declaration for the exclusive use of one or more, but fewer than all, of
38 the owners of the separate interests and which is or will be appurtenant to the separate
39 interest or interests.

40 (b) Unless the declaration otherwise provides, any shutters, awnings, window boxes,
41 doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware

1 incident thereto, screens and windows or other fixtures designed to serve a single separate
2 interest, but located outside the boundaries of the separate interest, are exclusive use
3 common area allocated exclusively to that separate interest.

4 (c) Notwithstanding the provisions of the declaration, internal and external telephone
5 wiring designed to serve a single separate interest, but located outside the boundaries of
6 the separate interest, is exclusive use common area allocated exclusively to that separate
7 interest.

8 **Comment.** With respect to a commercial or industrial common interest development, Section
9 6550 continues Section 1351(i) without change, except as indicated below.

10 The following nonsubstantive changes are made:

- 11 • The phrase “common areas” is singularized.
- 12 • Subdivision (c) is revised to correct a drafting error.

13 For further information, see Section 6500 Comment.

14 See also Sections 6532 (“common area”), 6546 (“declaration”), 6564 (“separate interest”).

15 § 6552. “Governing documents”

16 6552. “Governing documents” means the declaration and any other documents, such as
17 bylaws, operating rules, articles of incorporation, or articles of association, which govern
18 the operation of the common interest development or association.

19 **Comment.** With respect to a commercial or industrial common interest development, Section
20 6552 continues Section 1351(j) without change, except as indicated below.

21 The following nonsubstantive change is made:

- 22 • The superfluous words “of the association” are not continued.

23 For further information, see Section 6500 Comment.

24 See also Sections 6528 (“association”), 6534 (“common interest development”), 6546
25 (“declaration”).

26 § 6553. “Individual notice”

27 6553. “Individual notice” means the delivery of a document pursuant to Section 6514.

28 **Comment.** Section 6553 is new. It is added for drafting convenience.

29 § 6554. “Member”

30 6554. “Member” means an owner of a separate interest.

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

32 See also Section 6564 (“separate interest”).

33 § 6560. “Person”

34 6560. “Person” means a natural person, corporation, government or governmental
35 subdivision or agency, business trust, estate, trust, partnership, limited liability company,
36 association, or other entity.

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

1 § 6562. “Planned development”

2 6562. “Planned development” means a real property development other than a
3 condominium project, or a stock cooperative, having either or both of the following
4 features:

5 (a) Common area that is owned either by an association or in common by the owners of
6 the separate interests who possess appurtenant rights to the beneficial use and enjoyment
7 of the common area.

8 (b) Common area and an association that maintains the common area with the power to
9 levy assessments that may become a lien upon the separate interests in accordance with
10 Article 2 (commencing with Section 6808) of Chapter 6.

11 **Comment.** With respect to a commercial or industrial common interest development, Section
12 6562 continues the substance of Section 1351(k), except as indicated below.

13 The following nonsubstantive changes are made:

- 14 • In the introductory clause, the word “development” is replaced with “real property
15 development.”
- 16 • Parentheses in the introductory clause are deleted, and are replaced with a comma
17 following the term “stock cooperative.”
- 18 • A reference to a “community apartment project” is not continued.
- 19 • Subdivision (a) is restated for clarity.
- 20 • Subdivision (b) is restated for clarity and to update a cross-reference.

21 For further information, see Section 6500 Comment.

22 See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium
23 project”), 6564 (“separate interest”), 6566 (“stock cooperative”).

24 § 6564. “Separate interest”

25 6564. (a) “Separate interest” has the following meanings:

26 (1) In a condominium project, “separate interest” means a separately owned unit, as
27 specified in Section 6542.

28 (2) In a planned development, “separate interest” means a separately owned lot, parcel,
29 area, or space.

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

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

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

39 **Comment.** With respect to a commercial or industrial common interest development, Section
40 6564 continues Section 1351(l) without change, except as indicated below.

41 The following nonsubstantive changes are made:

- 42 • In subdivision (a)(2), the words “individual unit” are replaced with “separately owned
43 unit.”
- 44 • The last two unnumbered paragraphs of Section 1351(l) are designated as subdivisions
45 (b) and (c).

- 1 • Cross-references are updated to reflect the new locations of referenced provisions.
- 2 • The phrase “common areas” is singularized.
- 3 • Section 1351(l)(1), which states the meaning of “separate interest” in a community
- 4 apartment project, is not continued.

5 For further information, see Section 6500 Comment.

6 See also Sections 6532 (“common area”), 6540 (“condominium plan”), 6542 (“condominium

7 project”), 6546 (“declaration”), 6562 (“planned development”), 6566 (“stock cooperative”).

8 **§ 6566. “Stock cooperative”**

9 6566. “Stock cooperative” means a development in which a corporation is formed or

10 availed of, primarily for the purpose of holding title to, either in fee simple or for a term

11 of years, improved real property, and all or substantially all of the shareholders of the

12 corporation receive a right of exclusive occupancy in a portion of the real property, title

13 to which is held by the corporation. The owners’ interest in the corporation, whether

14 evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed

15 to be an interest in a common interest development and a real estate development for

16 purposes of subdivision (f) of Section 25100 of the Corporations Code.

17 **Comment.** With respect to a commercial or industrial common interest development, Section

18 6566 continues the first paragraph of Section 1351(m) without change.

19 For further information, see Section 6500 Comment.

20 See also Section 6534 (“common interest development”).

21 **CHAPTER 2. APPLICATION OF ACT**

22 **§ 6580. Creation of common interest development**

23 6580. Subject to Section 6582, this act applies and a common interest development is

24 created whenever a separate interest coupled with an interest in the common area or

25 membership in the association is, or has been, conveyed, provided all of the following are

26 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) of Title

30 7 of the Government Code requires the recording of either a final map or parcel map for

31 the common interest development.

32 **Comment.** With respect to a commercial or industrial common interest development, Section

33 6580 continues Section 1352 without change, except as indicated below.

34 The following nonsubstantive changes are made:

- 35 • The term “title” is replaced with “act.”
- 36 • A cross-reference is added to refer to Section 6582.

37 For further information, see Section 6500 Comment.

38 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest

39 development”), 6540 (“condominium plan”), 6546 (“declaration”), 6564 (“separate interest”).

1 **§ 6582. Application of act**

2 6582. (a) This act applies only to a commercial or industrial common interest
3 development.

4 (b) Nothing in this act may be construed to apply to a real property development that
5 does not contain common area. This subdivision is declaratory of existing law.

6 **Comment.** Subdivision (a) of Section 6582 is consistent with Section 1373 as that section
7 provided prior to the enactment of 2012 Cal. Stat. ch. ____, except that the act that added this
8 section makes the following provisions of the Davis-Stirling Common Interest Development Act
9 inapplicable to a commercial or industrial common interest development: Section 1350.7, the
10 second paragraph of Section 1351(d), the provisions of Section 1353 that require notice if a
11 development is within an airport influence area or within the jurisdiction of the San Francisco
12 Bay Conservation and Development Commission, Section 1353.7, a portion of Section 1355(b), a
13 portion of Section 1357(b)-(c), Sections 1363(d), (e), (f), (h), and (i), Section 1363.03, Section
14 1363.04, Section 1363.05, Section 1363.07, Section 1363.09, Section 1363.1, Sections 1363.810
15 through 1363.850, Section 1363.2, Section 1365.1, Section 1365.2, Section 1365.2.5, Section
16 1365.7, the last two sentences of Section 1366(a), Section 1366(d), Section 1366(e), Section
17 1366.2, Section 1367.1(c), Section 1367.1(n), Section 1367.4, Section 1367.5, Section 1367.6,
18 and Sections 1369.510 through 1369.590.

19 A common interest development is created as provided in Section 6580.

20 With respect to a commercial or industrial common interest development, subdivision (b)
21 continues Section 1374 without change, except as indicated below.

22 The following nonsubstantive changes are made:

- 23 • The word “title” is replaced with “act.”
- 24 • The phrase “wherein there does not exist” is restated for clarity.

25 For further information, see Section 6500 Comment.

26 See also Sections 6532 (“common area”), 6534 (“common interest development”).

27 CHAPTER 3. GOVERNING DOCUMENTS

28 Article 1. General Provisions

29 **§ 6600. Document authority**

30 6600. (a) To the extent of any inconsistency between the governing documents and the
31 law, the law controls.

32 (b) To the extent of any inconsistency between the articles of incorporation and the
33 declaration, the declaration controls.

34 (c) To the extent of any inconsistency between the bylaws and the articles of
35 incorporation or declaration, the articles of incorporation or declaration control.

36 (d) To the extent of any inconsistency between the operating rules and the bylaws,
37 articles of incorporation, or declaration, the bylaws, articles of incorporation, or
38 declaration control.

39 **Comment.** Section 6600 is added to clarify the relationship between the law and the most
40 common types of governing documents. Nothing in the section is intended to create an
41 affirmative duty to amend a governing document to delete superseded material.

42 Subdivisions (a) and (b) of Section 6600 are new.

43 Subdivision (c) is consistent with Corporations Code Section 7151(c), providing that the
44 bylaws shall be consistent with the articles of incorporation.

1 Subdivision (d) is drawn from Section 1357.110 providing that an operating rule may not be
2 inconsistent with the declaration, articles of incorporation, or bylaws of the association.

3 See also Sections 6546 (“declaration”), 6552 (“governing documents”).

4 **§ 6602. Liberal construction of instruments**

5 6602. Any deed, declaration, or condominium plan for a common interest development
6 shall be liberally construed to facilitate the operation of the common interest
7 development, and its provisions shall be presumed to be independent and severable.
8 Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2 of Part 1 of
9 Division 2 shall operate to invalidate any provisions of the governing documents.

10 **Comment.** With respect to a commercial or industrial common interest development, Section
11 6602 continues Section 1370 without change, except as indicated below.

12 The following nonsubstantive changes are made:

- 13 • “This division” is replaced with “Division 2.”
- 14 • The words “of a common interest development” are not continued.

15 For further information, see Section 6500 Comment.

16 See also Sections 6534 (“common interest development”), 6540 (“condominium plan”), 6546
17 (“declaration”), 6552 (“governing documents”).

18 **§ 6604. Boundaries of units**

19 6604. In interpreting deeds and condominium plans, the existing physical boundaries of
20 a unit in a condominium project, when the boundaries of the unit are contained within a
21 building, or of a unit reconstructed in substantial accordance with the original plans
22 thereof, shall be conclusively presumed to be its boundaries rather than the metes and
23 bounds expressed in the deed or condominium plan, if any exists, regardless of settling or
24 lateral movement of the building and regardless of minor variance between boundaries
25 shown on the plan or in the deed and those of the building.

26 **Comment.** With respect to a commercial or industrial common interest development, Section
27 6604 continues Section 1371 without change.

28 For further information, see Section 6500 Comment.

29 See also Sections 6540 (“condominium plan”), 6542 (“condominium project”).

30 **§ 6606. Deletion of unlawful restrictive covenants**

31 6606. (a) No declaration or other governing document shall include a restrictive
32 covenant in violation of Section 12955 of the Government Code.

33 (b) Notwithstanding any other provision of law or provision of the governing
34 documents, the board, without approval of the members, shall amend any declaration or
35 other governing document that includes a restrictive covenant prohibited by this section
36 to delete the restrictive covenant, and shall restate the declaration or other governing
37 document without the restrictive covenant but with no other change to the declaration or
38 governing document.

39 (c) If the declaration is amended under this section, the board shall record the restated
40 declaration in each county in which the common interest development is located. If the
41 articles of incorporation are amended under this section, the board shall file a certificate

1 of amendment with the Secretary of State pursuant to Section 7814 of the Corporations
2 Code.

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

10 **Comment.** With respect to a commercial or industrial common interest development, Section
11 6606 continues Section 1352.5 without change, except as indicated below.

12 The following nonsubstantive changes are made:

- 13 • In subdivision (b), the words “board of directors of an association” are replaced with
14 “board.” See Section 6530 (“board”).
- 15 • In subdivision (b), the word “owners” is replaced with “members.” See Section 6554
16 (“member”).
- 17 • Subdivision (c) is added.
- 18 • Subdivision (d) is revised to include a reference to the provision governing notice to an
19 association (Section 6512).

20 For further information, see Section 6500 Comment.

21 See also Sections 6528 (“association”), 6530 (“board”), 6534 (“common interest
22 development”), 6546 (“declaration”), 6552 (“governing documents”), 6560 (“person”).

23 **§ 6608. Deletion of declarant provisions in governing documents**

24 6608. (a) Notwithstanding any provision of the governing documents to the contrary,
25 the board may, after the developer has completed construction of the development, has
26 terminated construction activities, and has terminated marketing activities for the sale,
27 lease, or other disposition of separate interests within the development, adopt an
28 amendment deleting from any of the governing documents any provision which is
29 unequivocally designed and intended, or which by its nature can only have been designed
30 or intended, to facilitate the developer in completing the construction or marketing of the
31 development. However, provisions of the governing documents relative to a particular
32 construction or marketing phase of the development may not be deleted under the
33 authorization of this subdivision until that construction or marketing phase has been
34 completed.

35 (b) The provisions which may be deleted by action of the board shall be limited to
36 those which provide for access by the developer over or across the common area for the
37 purposes of (1) completion of construction of the development, and (2) the erection,
38 construction, or maintenance of structures or other facilities designed to facilitate the
39 completion of construction or marketing of separate interests.

40 (c) At least 30 days prior to taking action pursuant to subdivision (a), the board shall
41 deliver to all members, by individual delivery pursuant to Section 6514, (1) a copy of all
42 amendments to the governing documents proposed to be adopted under subdivision (a),
43 and (2) a notice of the time, date, and place the board will consider adoption of the
44 amendments. The board may consider adoption of amendments to the governing

1 documents pursuant to subdivision (a) only at a meeting that is open to all members, who
2 shall be given opportunity to make comments thereon. All deliberations of the board on
3 any action proposed under subdivision (a) shall only be conducted in an open meeting.

4 (d) The board may not amend the governing documents pursuant to this section without
5 the approval of a majority of a quorum of the members, pursuant to Section 6524. For the
6 purposes of this section, “quorum” means more than 50 percent of the members who own
7 no more than two separate interests in the development.

8 **Comment.** With respect to a commercial or industrial common interest development, Section
9 6608 continues Section 1355.5 without change, except as indicated below.

10 The following substantive change is made:

- 11 • Subdivision (c) is revised to provide for individual delivery of the specified notice. See
12 Section 6514.

13 The following nonsubstantive changes are made:

- 14 • The words “his or her” are not continued in subdivision (a).
- 15 • The words “of a common interest development” are not continued in subdivision (a).
- 16 • The words “board of directors” and “board of directors of the association” are replaced
17 throughout with “board.” See Section 6530 (“board”).
- 18 • Subdivision (b) are revised to use numerals to number the listed items, rather than letters.
- 19 • Subdivisions (c) and (d) are revised to use “member.” See Section 6554 (“member”).
- 20 • Subdivision (c) is revised to delete the unnecessary word “such.”
- 21 • Subdivision (c) is revised to replace the word “which” with “that.”
- 22 • Subdivision (d) is revised to use the standard term “approval of a majority of a quorum of
23 the members.” See Section 6524.

24 For further information, see Section 6500 Comment.

25 See also Sections 6530 (“board”), 6532 (“common area”), 6552 (“governing documents”),
26 6564 (“separate interest”).

27 § 6610. Correction of statutory cross-reference

28 6610. (a) Notwithstanding any other provision of law or provision of the governing
29 documents, if the governing documents include a reference to a provision of the Davis
30 Stirling Common Interest Development Act that was continued in a new provision by the
31 act that added this section, the board may amend the governing documents, solely to
32 correct the cross-reference, by adopting a board resolution that shows the correction.
33 Member approval is not required in order to adopt a resolution pursuant to this section.

34 (b) A declaration that is corrected under this section may be restated in corrected form
35 and recorded, provided that a copy of the board resolution authorizing the corrections is
36 recorded along with the restated declaration.

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

41 See also Sections 6530 (“board”), 6546 (“declaration”), 6552 (“governing documents”).

1 Article 2. Declaration

2 **§ 6614. Content of declaration**

3 6614. (a) A declaration, recorded on or after January 1, 1986, shall contain a legal
4 description of the common interest development, and a statement that the common
5 interest development is a condominium project, planned development, stock cooperative,
6 or combination thereof. The declaration shall additionally set forth the name of the
7 association and the restrictions on the use or enjoyment of any portion of the common
8 interest development that are intended to be enforceable equitable servitudes.

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

11 **Comment.** With respect to a commercial or industrial common interest development,
12 subdivision (a) of Section 6614 continues the first two sentences of Section 1353(a)(1) without
13 change, except as indicated below.

14 The following nonsubstantive change is made:

- 15 • A reference to a “community apartment project” is not continued.

16 With respect to a commercial or industrial common interest development, subdivision (b)
17 continues Section 1353(b) without change, except as indicated below.

18 The following nonsubstantive changes are made:

- 19 • The word “owners” is replaced with “members.” See Section 6554 (“member”).
- 20 • The words “original signator of the declaration” are replaced with “declarant.” See
21 Section 6544 (“declarant”).

22 For further information, see Section 6500 Comment.

23 See also Sections 6528 (“association”), 6534 (“common interest development”), 6542
24 (“condominium project”), 6546 (“declaration”), 6562 (“planned development”), 6566 (“stock
25 cooperative”).

26 **§ 6616. Amendment authorized**

27 6616. Except to the extent that a declaration provides by its express terms that it is not
28 amendable, in whole or in part, a declaration that fails to include provisions permitting its
29 amendment at all times during its existence may be amended at any time.

30 **Comment.** With respect to a commercial or industrial common interest development, Section
31 6616 continues the first sentence of Section 1355(b) without change, except as indicated below.

32 The following nonsubstantive change is made:

- 33 • The word “which” is replaced with “that.”

34 For the procedure to amend a declaration, see Section 6620.

35 For further information, see Section 6500 Comment.

36 See also Section 6546 (“declaration”).

37 **§ 6618. Amendment to extend term of declaration authorized**

38 6618. (a) The Legislature finds that there are common interest developments that have
39 been created with deed restrictions that do not provide a means for the members to extend
40 the term of the declaration. The Legislature further finds that covenants and restrictions,
41 contained in the declaration, are an appropriate method for protecting the common plan
42 of developments and to provide for a mechanism for financial support for the upkeep of
43 common area including, but not limited to, roofs, roads, heating systems, and recreational

1 facilities. If declarations terminate prematurely, common interest developments may
2 deteriorate and the supply of affordable units could be impacted adversely. The
3 Legislature further finds and declares that it is in the public interest to provide a vehicle
4 for extending the term of the declaration if the extension is approved by a majority of all
5 members, pursuant to Section 6522.

6 (b) A declaration that specifies a termination date, but that contains no provision for
7 extension of the termination date, may be extended, before its termination date, by the
8 approval of members pursuant to Section 6620.

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

12 **Comment.** With respect to a commercial or industrial common interest development,
13 subdivision (a) of Section 6618 continues Section 1357(a) without change, except as indicated
14 below.

15 The following nonsubstantive changes are made:

- 16 • The defined term “member” is used. See Section 6554 (“member”).
- 17 • The phrase “common areas” is singularized.
- 18 • The word “which” is replaced with “that.”
- 19 • A reference to approval by “members having more than 50 percent of the votes in the
20 association” is replaced with standard terminology.
- 21 • A reference to “housing” is deleted.
- 22 • A comma is added after the word “restrictions” in the second sentence.

23 With respect to a commercial or industrial common interest development, subdivision (b)
24 continues part of the substance of Section 1357(b), authorizing extension of the termination date
25 of a declaration that does not provide for extension of the termination date, except as indicated
26 below.

27 The following nonsubstantive change is made:

- 28 • Language is added to make clear that the extension must occur before the termination
29 date.

30 The procedure for extension of the termination date provided in Section 1357(b)-(c) is not
31 continued. An extension would instead be made pursuant to the general procedure for amendment
32 of a declaration. See Section 6620.

33 With respect to a commercial or industrial common interest development, subdivision (c)
34 continues Section 1357(d) without change.

35 For further information, see Section 6500 Comment.

36 See also Sections 6532 (“common area”), 6534 (“common interest development”), 6546
37 (“declaration”).

38 **§ 6620. Amendment procedure**

39 6620. (a) A declaration may be amended pursuant to the declaration or this act. An
40 amendment is effective after all of the following requirements have been met:

41 (1) The proposed amendment has been delivered by individual notice to all members
42 not less than 15 days and not more than 60 days prior to any approval being solicited.

43 (2) The amendment has been approved by the percentage of members required by the
44 declaration and any other person whose approval is required by the declaration.

1 (3) That fact has been certified in a writing executed and acknowledged by the officer
2 designated in the declaration or by the association for that purpose, or if no one is
3 designated, by the president of the association.

4 (4) The amendment has been recorded in each county in which a portion of the
5 common interest development is located.

6 (b) If the declaration does not specify the percentage of members who must approve an
7 amendment of the declaration, an amendment may be approved by a majority of all
8 members, pursuant to Section 6522.

9 **Comment.** With respect to a commercial or industrial common interest development,
10 subdivision (a) of Section 6620 continues Section 1355(a) without change, except as indicated
11 below.

12 The following substantive changes are made:

- 13 • A notice requirement drawn from Section 1355(b) is added.
- 14 • The term “governing documents” is replaced with the term “declaration.” See Section
15 6546 (“declaration”).
- 16 • Paragraph (a)(2) is revised to recognize that a declaration may require that an amendment
17 be approved by a non-member.

18 The following nonsubstantive changes are made:

- 19 • The first word is replaced with “A.”
- 20 • The word “title” is replaced with “act.”
- 21 • A reference to a statutory exception that is not continued in this act is deleted.
- 22 • The defined term “member” is used. See Section 6554 (“member”).
- 23 • The subdivision is divided into paragraphs, with conforming technical adjustments to the
24 language.

25 Subdivision (b) generalizes a rule stated in Sections 1355(b) and 1357.

26 For further information, see Section 6500 Comment.

27 See also Sections 6528 (“association”), 6534 (“common interest development”), 6553
28 (“individual notice”), 6560 (“person”).

29 Article 3. Articles of Incorporation

30 § 6622. Content of articles

31 6622. (a) The articles of incorporation of an association filed with the Secretary of
32 State shall include a statement, which shall be in addition to the statement of purposes of
33 the corporation, that does all of the following:

34 (1) Identifies the corporation as an association formed to manage a common interest
35 development under the Commercial and Industrial Common Interest Development Act.

36 (2) States the business or corporate office of the association, if any, and, if the office is
37 not on the site of the common interest development, states the front street and nearest
38 cross street for the physical location of the common interest development.

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

40 (b) The statement filed by an incorporated association with the Secretary of State
41 pursuant to Section 8210 of the Corporations Code shall also contain a statement
42 identifying the corporation as an association formed to manage a common interest
43 development under the Commercial and Industrial Common Interest Development Act.

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6622 continues Section 1363.5 without change, except as indicated below.

3 The following substantive change is made:

- 4 • A cross-reference to the definition of “managing agent” is not continued.
- 5 • A reference to this act is substituted for a reference to the Davis Stirling Common Interest
6 Development Act.

7 The following nonsubstantive change is made:

- 8 • References to “common interest development association” have been standardized.

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

12 See also Sections 6528 (“association”), 6534 (“common interest development”).

13 Article 4. Condominium Plan

14 § 6624. “Condominium plan”

15 6624. A condominium plan shall contain all of the following:

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

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

21 (c) A certificate consenting to the recordation of the condominium plan pursuant to this
22 act that is signed and acknowledged as provided in Section 6626.

23 **Comment.** With respect to a commercial or industrial common interest development, Section
24 6624 continues Section 1351(e)(1)-(2) and a part of Section 1351(e)(3) without change, except as
25 indicated below.

26 The following nonsubstantive changes are made:

- 27 • The enumerated items are set out as subdivisions.
- 28 • The word “title” is replaced with “act.”
- 29 • The list of persons who must sign and acknowledge the certificate consenting to
30 recordation of the condominium plan is replaced with a reference to the section
31 governing the creation and recordation of a condominium plan.

32 For further information, see Section 6500 Comment.

33 See also Sections 6532 (“common area”), 6542 (“condominium project”), 6564 (“separate
34 interest”).

35 § 6626. Recordation of condominium plan

36 6626. (a) The certificate consenting to the recordation of a condominium plan that is
37 required by subdivision (c) of Section 6624 shall be signed and acknowledged by all of
38 the following persons:

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

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

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

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

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

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

11 **Comment.** With respect to a commercial or industrial common interest development, Section
12 6626 continues the substance of Section 1351(e)(3), except as indicated below.

13 The following nonsubstantive changes are made:

- 14 • A reference to a conversion of a community apartment project is not continued.
- 15 • The last paragraph of Section 1351(e) is not continued in this section.
- 16 • A cross-reference to Section 6624(c) is added to the first paragraph.
- 17 • Subdivision (b) is revised to make clear that it states an exception to who must sign the
18 certificate of consent to recordation, rather than the condominium plan itself.

19 For further information, see Section 6500 Comment.

20 See also Sections 6540 (“condominium plan”), 6542 (“condominium project”), 6560
21 (“person”), 6566 (“stock cooperative”).

22 § 6628. Amendment or revocation of condominium plan

23 6628. A condominium plan may be amended or revoked by a recorded instrument that
24 is acknowledged and signed by all the persons who, at the time of amendment or
25 revocation, are persons whose signatures are required under Section 6626.

26 **Comment.** With respect to a commercial or industrial common interest development, Section
27 6628 continues the last paragraph of Section 1351(e) without change, except as indicated below.

28 The following nonsubstantive change is made:

- 29 • Language is added to make clear that the persons whose signatures are required for
30 amendment or revocation of a condominium plan are the persons who fall within the
31 groups described in Section 6626 at the time of amendment or revocation.

32 For further information, see Section 6500 Comment.

33 See also Sections 6540 (“condominium plan”), 6560 (“person”).

34 Article 5. Operating Rules

35 § 6630. “Operating rule”

36 6630. For the purposes of this article, “operating rule” means a regulation adopted by
37 the board that applies generally to the management and operation of the common interest
38 development or the conduct of the business and affairs of the association.

39 **Comment.** With respect to a commercial or industrial common interest development, Section
40 6630 continues Section 1357.100(a) without change.

41 See also Sections 6528 (association), 6534 (common interest development).

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6652 continues Section 1361 without change, except as indicated below.

3 The following nonsubstantive changes are made:

- 4 • A reference to a “community apartment project” is not continued.
- 5 • The phrase “common areas” is singularized.

6 For further information, see Section 6500 Comment.

7 See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium
8 project”), 6546 (“declaration”), 6562 (“planned development”), 6564 (“separate interest”), 6566
9 (“stock cooperative”).

10 **§ 6654. Access to separate interest property**

11 6654. Except as otherwise provided in law, an order of the court, or an order pursuant
12 to a final and binding arbitration decision, an association may not deny a member or
13 occupant physical access to the member’s or occupant’s separate interest, either by
14 restricting access through the common area to the separate interest, or by restricting
15 access solely to the separate interest.

16 **Comment.** With respect to a commercial or industrial common interest development, Section
17 6654 continues Section 1361.5 without change, except as indicated below.

18 The following nonsubstantive changes are made:

- 19 • The words “his or her” are replaced with “the member’s or occupant’s.”
- 20 • References to the “owner’s” separate interest are revised to omit the word “owner’s.”
21 This will help to avoid any implication that the reference does not also apply to an
22 “occupant” of a separate interest.
- 23 • The word “owner” is replaced with “member” throughout. See Section 6554 (“member”).
- 24 • The phrase “common areas” is singularized.

25 For further information, see Section 6500 Comment.

26 See also Sections 6528 (“association”), 6532 (“common area”), 6564 (“separate interest”).

27 Article 2. Restrictions on Transfers

28 **§ 6656. Partition of condominium project**

29 6656. (a) Except as provided in this section, the common area in a condominium
30 project shall remain undivided, and there shall be no judicial partition thereof. Nothing in
31 this section shall be deemed to prohibit partition of a cotenancy in a condominium.

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

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

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

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

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

9 **Comment.** With respect to a commercial or industrial common interest development, Section
10 6656 continues Section 1359 without change, except as indicated below.

11 The following nonsubstantive changes are made:

- 12 • The phrase “common areas” is singularized.
- 13 • Subdivision (b)(4) is rephrased to avoid use of “such.”

14 For further information, see Section 6500 Comment.

15 See also Sections 6532 (“common area”), 6542 (“condominium project”), 6546
16 (“declaration”), 6564 (“separate interest”).

17 **§ 6658. Lien for work performed in condominium project**

18 6658. (a) In a condominium project, no labor performed or services or materials
19 furnished with the consent of, or at the request of, an owner in the condominium project
20 or the owners’ agent or contractor shall be the basis for the filing of a lien against any
21 other property of any other owner in the condominium project unless that other owner has
22 expressly consented to or requested the performance of the labor or furnishing of the
23 materials or services. However, express consent shall be deemed to have been given by
24 the owner of any condominium in the case of emergency repairs thereto.

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

28 (c) The owner of any condominium may remove that owner’s condominium from a
29 lien against two or more condominiums or any part thereof by payment to the holder of
30 the lien of the fraction of the total sum secured by the lien that is attributable to the
31 owner’s condominium.

32 **Comment.** With respect to a commercial or industrial common interest development, Section
33 6658 continues Section 1369 without change, except as indicated below.

34 The following nonsubstantive changes are made:

- 35 • The section is divided into subdivisions for ease of reference.
- 36 • The words “his or her” are replaced with “owner” throughout.
- 37 • The phrase “common areas” is singularized.
- 38 • The word “which” is replaced with “that” in subdivision (c).

39 For further information, see Section 6500 Comment.

40 See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium
41 project”).

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Article 3. Transfer of Separate Interest

§ 6662. Condominium project

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

Comment. With respect to a commercial or industrial common interest development, Section 6662 continues Section 1358(b) without change, except as indicated below.

The following nonsubstantive changes are made:

- A cross-reference is updated to reflect the new location of the referenced provision.
- The phrase “common areas” is singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium project”), 6564 (“separate interest”).

§ 6664. Planned development

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

Comment. With respect to a commercial or industrial common interest development, Section 6664 continues Section 1358(c) without change, except as indicated below.

The following nonsubstantive change is made:

- The phrase “common areas” is singularized.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6562 (“planned development”), 6564 (“separate interest”).

§ 6666. Stock cooperative

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

Comment. With respect to a commercial or industrial common interest development, Section 6666 continues Section 1358(d) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6564 (“separate interest”), 6566 (“stock cooperative”).

§ 6668. Transfer of exclusive use common area

6668. Nothing in this article prohibits the transfer of exclusive use areas, independent of any other interest in a common interest subdivision, if authorization to separately

1 transfer exclusive use areas is expressly stated in the declaration and the transfer occurs
2 in accordance with the terms of the declaration.

3 **Comment.** With respect to a commercial or industrial common interest development, Section
4 6668 continues the next to last paragraph of Section 1358 without change, except as indicated
5 below.

6 The following nonsubstantive change is made:

- 7 • “Section” is replaced with “article.”

8 For further information, see Section 6500 Comment.

9 See also Section 6546 (“declaration”).

10 § 6670. Severability of interests

11 6670. Any restrictions upon the severability of the component interests in real property
12 which are contained in the declaration shall not be deemed conditions repugnant to the
13 interest created within the meaning of Section 711. However, these restrictions shall not
14 extend beyond the period in which the right to partition a project is suspended under
15 Section 6656.

16 **Comment.** With respect to a commercial or industrial common interest development, Section
17 6670 continues the last paragraph of Section 1358 without change, except as indicated below.

18 The following nonsubstantive changes are made:

- 19 • A superfluous reference to the “Civil Code” is not continued.
- 20 • The cross-reference is updated to reflect the new location of the referenced provision.

21 For further information, see Section 6500 Comment.

22 See also Section 6546 (“declaration”).

23 CHAPTER 5. PROPERTY USE AND MAINTENANCE

24 Article 1. Protected Uses

25 § 6700. Application of article

26 6700. This article includes provisions that limit the authority of an association or the
27 governing documents to regulate the use of a member’s separate interest. Nothing in this
28 article is intended to affect the application of any other provision that limits the authority
29 of an association to regulate the use of a member’s separate interest, including, but not
30 limited to, the following provisions:

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

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

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

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

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

39 See also Sections 6528 (“association”), 6552 (“governing documents”), 6554 (“member”),
40 6564 (“separate interest”).

1 **§ 6702. Display of U.S. flag**

2 6702. (a) Except as required for the protection of the public health or safety, no
3 governing document shall limit or prohibit, or be construed to limit or prohibit, the
4 display of the flag of the United States by a member on or in the member’s separate
5 interest or within the member’s exclusive use common area.

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

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

13 **Comment.** With respect to a commercial or industrial common interest development, Section
14 6702 continues Section 1353.5 without change, except as indicated below.

15 The following nonsubstantive changes are made:

- 16 • A superfluous cross-reference to governing definitions is not continued.
- 17 • A superfluous reference to a declaration is not continued.
- 18 • The word “owner” is replaced with “member.” See Section 6554 (“member”).

19 For further information, see Section 6500 Comment.

20 See also Sections 6532 (“common area”), 6546 (“declaration”), 6550 (“exclusive use common
21 area”), 6552 (“governing documents”), 6564 (“separate interest”).

22 **§ 6704. Noncommercial sign**

23 6704. (a) The governing documents may not prohibit posting or displaying of
24 noncommercial signs, posters, flags, or banners on or in a member’s separate interest,
25 except as required for the protection of public health or safety or if the posting or display
26 would violate a local, state, or federal law.

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

33 (c) An association may prohibit noncommercial signs and posters that are more than
34 nine square feet in size and noncommercial flags or banners that are more than 15 square
35 feet in size.

36 **Comment.** With respect to a commercial or industrial common interest development, Section
37 6704 continues Section 1353.6 without change, except as indicated below.

38 The following nonsubstantive changes are made:

- 39 • The words “including the operating rules” are not continued.
- 40 • The word “owner” is replaced with “member.” See Section 6554 (“member”).
- 41 • In subdivision (c), the numeral “9” is replaced with “nine” for stylistic reasons.

42 For further information, see Section 6500 Comment.

43 See also Sections 6528 (“association”), 6552 (“governing documents”), 6564 (“separate
44 interest”).

1 **§ 6706. Pets**

2 6706. (a) No governing documents shall prohibit the owner of a separate interest within
3 a common interest development from keeping at least one pet within the common interest
4 development, subject to reasonable rules and regulations of the association. This section
5 may not be construed to affect any other rights provided by law to an owner of a separate
6 interest to keep a pet within the development.

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

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

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

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

19 **Comment.** With respect to a commercial or industrial common interest development, Section
20 6704 continues Section 1360.5 without change, except as indicated below.

21 The following nonsubstantive changes are made:

- 22 • A reference to “homeowner” is replaced with “owner” in subdivision (b).
- 23 • The words “his or her” are replaced with “the owner’s” in subdivision (c).

24 For further information, see Section 6500 Comment.

25 See also Sections 6528 (“association”), 6534 (“common interest development”), 6552
26 (“governing documents”), 6564 (“separate interest”).

27 **§ 6708. Television antenna or satellite dish**

28 6708. (a) Any covenant, condition, or restriction contained in any deed, contract,
29 security instrument, or other instrument affecting the transfer or sale of, or any interest in,
30 a common interest development that effectively prohibits or restricts the installation or
31 use of a video or television antenna, including a satellite dish, or that effectively prohibits
32 or restricts the attachment of that antenna to a structure within that development where
33 the antenna is not visible from any street or common area, except as otherwise prohibited
34 or restricted by law, is void and unenforceable as to its application to the installation or
35 use of a video or television antenna that has a diameter or diagonal measurement of 36
36 inches or less.

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

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

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

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

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

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

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

18 **Comment.** With respect to a commercial or industrial common interest development, Section
19 6708 continues Section 1376 without change, except as indicated below.

20 The following nonsubstantive change is made:

- 21 • The word "owner" is replaced with "member." See Section 6554 ("member").

22 For further information, see Section 6500 Comment.

23 See also 47 C.F.R. § 1.4000.

24 See also Sections 6528 ("association"), 6532 ("common area"), 6534 ("common interest
25 development"), 6564 ("separate interest").

26 § 6710. Marketing restriction

27 6710. (a) Any provision of a governing document that arbitrarily or unreasonably
28 restricts an owner's ability to market the owner's interest in a common interest
29 development is void.

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

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

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

38 (c) For purposes of this section, "market" and "marketing" mean listing, advertising, or
39 obtaining or providing access to show the owner's interest in the development.

40 (d) This section does not apply to rules or regulations made pursuant to Section 712 or
41 713 regarding real estate signs.

42 **Comment.** With respect to a commercial or industrial common interest development, Section
43 6710 continues Section 1368.1 without change, except as indicated below.

1 The following substantive changes are made:

- 2 • The introductory clause is revised to make clear that a void provision does not void the
- 3 entire governing document that contains it.
- 4 • The words “rule or regulation” are replaced with “governing document.” See Section
- 5 6552 (“governing documents”). This broadens the application of the section so that it
- 6 governs any provision in the governing documents and not just an operating rule.

7 The following nonsubstantive changes are made:

- 8 • The words “his or her” are replaced with “the owner’s” in subdivision (a).
- 9 • The phrase “common areas” is singularized.
- 10 • The words “of an association” are not continued.
- 11 • A reference to a statutory limitation set forth in Section 1366.1, a provision that is not
- 12 continued in this act, is deleted.

13 For further information, see Section 6500 Comment.

14 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest

15 development”), 6552 (“governing documents”), 6564 (“separate interest”).

16 **§ 6712. Low water-using plants**

17 6712. (a) Notwithstanding any other law, a provision of the governing documents shall

18 be void and unenforceable if it does any of the following:

19 (1) Prohibits, or includes conditions that have the effect of prohibiting, the use of low

20 water-using plants as a group.

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

22 (A) A water-efficient landscape ordinance adopted or in effect pursuant to subdivision

23 (c) of Section 65595 of the Government Code.

24 (B) Any regulation or restriction on the use of water adopted pursuant to Section 353 or

25 375 of the Water Code.

26 (b) This section shall not prohibit an association from applying landscaping rules

27 established in the governing documents, to the extent the rules fully conform with the

28 requirements of subdivision (a).

29 **Comment.** With respect to a commercial or industrial common interest development, Section

30 6712 continues Section 1353.8 without change, except as indicated below.

31 The following nonsubstantive change is made:

- 32 • Surplus language is not continued (i.e., the phrases “of any,” “of a common interest
- 33 development,” and “and regulations”). The term “governing documents” includes all
- 34 governing documents of a common interest development. See Section 6552 (“governing
- 35 documents”).

36 For further information, see Section 6500 Comment.

37 See also Sections 6528 (“association”), 6552 (“governing documents”).

38 **§ 6713. Electric vehicle charging stations**

39 6713. (a) Any covenant, restriction, or condition contained in any deed, contract,

40 security instrument, or other instrument affecting the transfer or sale of any interest in a

41 common interest development, and any provision of a governing document, as defined in

42 Section 6552, that either effectively prohibits or unreasonably restricts the installation or

43 use of an electric vehicle charging station in an owner’s designated parking space,

44 including, but not limited to, a deeded parking space, a parking space in an owner’s

1 exclusive use common area, or a parking space that is specifically designated for use by a
2 particular owner, or is in conflict with the provisions of this section is void and
3 unenforceable.

4 (b) (1) This section does not apply to provisions that impose reasonable restrictions on
5 electric vehicle charging stations. However, it is the policy of the state to promote,
6 encourage, and remove obstacles to the use of electric vehicle charging stations.

7 (2) For purposes of this section, “reasonable restrictions” are restrictions that do not
8 significantly increase the cost of the station or significantly decrease its efficiency or
9 specified performance.

10 (c) An electric vehicle charging station shall meet applicable health and safety
11 standards and requirements imposed by state and local authorities, and all other
12 applicable zoning, land use or other ordinances, or land use permits.

13 (d) For purposes of this section, “electric vehicle charging station” means a station that
14 is designed in compliance with the California Building Standards Code and delivers
15 electricity from a source outside an electric vehicle into one or more electric vehicles. An
16 electric vehicle charging station may include several charge points simultaneously
17 connecting several electric vehicles to the station and any related equipment needed to
18 facilitate charging plug-in electric vehicles.

19 (e) If approval is required for the installation or use of an electric vehicle charging
20 station, the application for approval shall be processed and approved by the association in
21 the same manner as an application for approval of an architectural modification to the
22 property, and shall not be willfully avoided or delayed. The approval or denial of an
23 application shall be in writing. If an application is not denied in writing within 60 days
24 from the date of receipt of the application, the application shall be deemed approved,
25 unless that delay is the result of a reasonable request for additional information.

26 (f) If the electric vehicle charging station is to be placed in a common area or an
27 exclusive use common area, as designated in the common interest development’s
28 declaration, the following provisions apply:

29 (1) The owner first shall obtain approval from the association to install the electric
30 vehicle charging station and the association shall approve the installation if the owner
31 agrees in writing to do all of the following:

32 (A) Comply with the association’s architectural standards for the installation of the
33 charging station.

34 (B) Engage a licensed contractor to install the charging station.

35 (C) Within 14 days of approval, provide a certificate of insurance that names the
36 association as an additional insured under the owner’s insurance policy in the amount set
37 forth in paragraph (3).

38 (D) Pay for the electricity usage associated with the charging station.

39 (2) The owner and each successive owner of the charging station shall be responsible
40 for all of the following:

41 (A) Costs for damage to the charging station, common area, exclusive use common
42 area, or separate interests resulting from the installation, maintenance, repair, removal, or
43 replacement of the charging station.

1 (B) Costs for the maintenance, repair, and replacement of the charging station until it
2 has been removed and for the restoration of the common area after removal.

3 (C) The cost of electricity associated with the charging station.

4 (D) Disclosing to prospective buyers the existence of any charging station of the owner
5 and the related responsibilities of the owner under this section.

6 (3) The owner and each successive owner of the charging station, at all times, shall
7 maintain a liability coverage policy in the amount of one million dollars (\$1,000,000),
8 and shall name the association as a named additional insured under the policy with a right
9 to notice of cancellation.

10 (4) An owner shall not be required to maintain a liability coverage policy for an
11 existing National Electrical Manufacturers Association standard alternating current power
12 plug.

13 (g) Except as provided in subdivision (h), installation of an electric vehicle charging
14 station for the exclusive use of an owner in a common area, that is not an exclusive use
15 common area, shall be authorized by the association only if installation in the owner's
16 designated parking space is impossible or unreasonably expensive. In such cases, the
17 association shall enter into a license agreement with the owner for the use of the space in
18 a common area, and the owner shall comply with all of the requirements in subdivision
19 (f).

20 (h) The association or owners may install an electric vehicle charging station in the
21 common area for the use of all members of the association and, in that case, the
22 association shall develop appropriate terms of use for the charging station.

23 (i) An association may create a new parking space where one did not previously exist
24 to facilitate the installation of an electric vehicle charging station.

25 (j) An association that willfully violates this section shall be liable to the applicant or
26 other party for actual damages, and shall pay a civil penalty to the applicant or other party
27 in an amount not to exceed one thousand dollars (\$1,000).

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

30 **Comment.** With respect to a commercial or industrial common interest development, Section
31 6713 continues Section 1353.9 without change, except as indicated below.

32 The following substantive changes are made:

- 33 • In paragraphs (f)(3) and (4), the word "homeowner" is deleted or replaced with "owner."

34 The following nonsubstantive changes are made:

- 35 • A cross-reference in subdivision (a) is updated to reflect the new location of the
36 referenced provision.
- 37 • In subdivision (c), the words "as well as" are replaced with ", and."

38 For further information, see Section 6500 Comment.

39 See also Sections 6528 ("association"), 6532 ("common area"), 6534 ("common interest
40 development"), 6546 ("declaration"), 6550 ("exclusive use common area"), 6552 ("governing
41 documents"), 6564 ("separate interest").

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Article 2. Modification of Separate Interest

§ 6714. Improvements to separate interest

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

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

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

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

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

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

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

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

Comment. With respect to a commercial or industrial common interest development, Section 6714 continues Section 1360 without change, except as indicated below.

The following substantive change is made:

- The scope of the provision is broadened to apply to any separate interest, and not just a unit in a condominium project.

The following nonsubstantive changes are made:

- The word “dwelling” is replaced with “separate interest” in subdivision (a)(2)(C). See Section 6564 (“separate interest”).
- The words “his or her” are not continued in subdivision (a)(2)(D).
- The word “owner” is replaced with “member” throughout. See Section 6554 (“member”).

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6534 (“common interest development”), 6552 (“governing documents”).

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Article 3. Maintenance

§ 6716. Maintenance responsibility generally

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

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

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6716 continues Section 1364(a) without change, except as indicated below.

The following nonsubstantive change is made:

- The phrase “common areas” is singularized.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1364(c) without change.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest development”), 6546 (“declaration”), 6550 (“exclusive use common area”), 6564 (“separate interest”).

§ 6718. Wood-destroying pests or organisms

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

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

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6718 continues Section 1364(b)(1) without change, except as indicated below.

The following nonsubstantive changes are made:

- A reference to a “community apartment project” is not continued.
- A superfluous cross-reference to governing definitions is not continued.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1364(b)(2) without change, except as indicated below.

The following nonsubstantive changes are made:

- A superfluous cross-reference to a governing definition is not continued.
- A cross-reference to Section 6522 is added.
- The last sentence is revised to avoid use of the word “such.”

For further information, see Section 6500 Comment.

1 See also Sections 6528 (“association”), 6532 (“common area”), 6542 (“condominium
2 project”), 6546 (“declaration”), 6554 (“member”), 6562 (“planned development”), 6564
3 (“separate interest”), 6566 (“stock cooperative”).

4 **§ 6720. Temporary removal of occupant to perform treatment of wood-destroying pests**

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

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

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

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

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

21 (d) For purposes of this section, “occupant” means an owner, resident, guest, invitee,
22 tenant, lessee, sublessee, or other person in possession of the separate interest.

23 **Comment.** With respect to a commercial or industrial common interest development, Section
24 6720 continues Section 1364(d)-(e) without change, except as indicated below.

25 The following substantive change is made:

- 26 • The provision is revised to incorporate the “individual delivery” notice procedure.

27 The following nonsubstantive changes are made:

- 28 • Subdivision (c) is revised to improve its clarity.
- 29 • A typographical error is corrected in subdivision (d).

30 For further information, see Section 6500 Comment.

31 See also Sections 6528 (“association”), 6534 (“common interest development”), 6564
32 (“separate interest”).

33 **§ 6722. Exclusive use communication wiring**

34 6722. Notwithstanding the provisions of the declaration, a member is entitled to
35 reasonable access to the common area for the purpose of maintaining the internal and
36 external telephone wiring made part of the exclusive use common area of the member’s
37 separate interest pursuant to subdivision (c) of Section 6550. The access shall be subject
38 to the consent of the association, whose approval shall not be unreasonably withheld, and
39 which may include the association’s approval of telephone wiring upon the exterior of the
40 common area, and other conditions as the association determines reasonable.

41 **Comment.** With respect to a commercial or industrial common interest development, Section
42 6722 continues Section 1364(f) without change, except as indicated below.

43 The following nonsubstantive changes are made:

- 1 • A cross-reference is updated to reflect the new location of the referenced provision.
- 2 • The word “owner” is replaced with “member.” See Section 6554 (“member”).
- 3 • The phrase “common areas” is singularized.

4 For further information, see Section 6500 Comment.

5 See also Sections 6528 (“association”), 6532 (“common area”), 6546 (“declaration”), 6550
6 (“exclusive use common area”), 6564 (“separate interest”).

7 CHAPTER 6. ASSOCIATION GOVERNANCE

8 Article 1. Association Existence and Powers

9 § 6750. Association

10 6750. A common interest development shall be managed by an association that may be
11 incorporated or unincorporated. The association may be referred to as an owners’
12 association or a community association.

13 **Comment.** With respect to a commercial or industrial common interest development, Section
14 6750 continues Section 1363(a) without change, except as indicated below.

15 The following nonsubstantive change is made:

- 16 • Use of the term “owners’ association” to describe the association is expressly authorized.

17 For further information, see Section 6500 Comment.

18 See also Sections 6528 (“association”), 6534 (“common interest development”).

19 § 6752. Association powers

20 6752. (a) Unless the governing documents provide otherwise, and regardless of
21 whether the association is incorporated or unincorporated, the association may exercise
22 the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section
23 7140 of the Corporations Code, except that an unincorporated association may not adopt
24 or use a corporate seal or issue membership certificates in accordance with Section 7313
25 of the Corporations Code.

26 (b) The association, whether incorporated or unincorporated, may exercise the powers
27 granted to an association in this act.

28 **Comment.** With respect to a commercial or industrial common interest development, Section
29 6752 continues Section 1363(c) without change, except as indicated below.

30 The following nonsubstantive changes are made:

- 31 • The provision is divided into subdivisions for ease of reference.
- 32 • The word “title” is replaced with “act.”

33 For further information, see Section 6500 Comment.

34 See also Sections 6528 (“association”), 6552 (“governing documents”).

35 Article 2. Record Keeping

36 § 6756. Mailing-related requests

37 6756. To be effective, any of the following requests shall be delivered in writing to the
38 association, pursuant to Section 6512:

- 1 (a) A request to change the member’s information in the association membership list.
2 (b) A request to add or remove a second address for delivery of documents to the
3 member pursuant to Section 6814.
4 **Comment.** Section 6756 is new. It requires that the specified requests be written and delivered
5 to the association pursuant to Section 6512.
6 See also Sections 6528 (“association”), 6554 (“member”).

7 Article 3. Conflict of Interest

8 § 6758. Interested director

9 6758. (a) Notwithstanding any other law, and regardless of whether an association is
10 incorporated or unincorporated, the provisions of Sections 7233 and 7234 of the
11 Corporations Code shall apply to any contract or other transaction authorized, approved,
12 or ratified by the board or a committee of the board.

13 (b) A director or member of a committee shall not vote on any of the following
14 matters:

- 15 (1) Discipline of the director or committee member.
16 (2) An assessment against the director or committee member for damage to the
17 common area or facilities.
18 (3) A request, by the director or committee member, for a payment plan for overdue
19 assessments.
20 (4) A decision whether to foreclose on a lien on the separate interest of the director or
21 committee member.
22 (5) Review of a proposed physical change to the separate interest of the director or
23 committee member.
24 (6) A grant of exclusive use common area to the director or committee member.

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

27 **Comment.** With respect to a commercial or industrial common interest development,
28 subdivision (a) of Section 6758 continues the substance of Section 1365.6, except as indicated
29 below.

30 The following nonsubstantive change is made:

- 31 • The reference to Corporations Code Section 310, which governs the General Corporation
32 Law, is replaced with a reference to Corporations Code Sections 7233 and 7234, which
33 state equivalent rules for nonprofit mutual benefit corporations.

34 Subdivisions (b) and (c) are new. The “discipline” referenced in subdivision (b)(1) may include
35 discipline for a violation of the governing documents, this act, or a fiduciary duty.

36 For further information, see Section 6500 Comment.

37 See also Sections 6528 (“association”), 6530 (“board”), 6532 (“common area”), 6548
38 (“director”), 6550 (“exclusive use common area”), 6552 (“governing documents”), 6564
39 (“separate interest”).

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Article 4. Government Assistance

§ 6760. State registry

6760. (a) To assist with the identification of common interest developments, each association, whether incorporated or unincorporated, shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:

(1) A statement that the association is formed to manage a common interest development under the Commercial and Industrial Common Interest Development Act.

(2) The name of the association.

(3) The street address of the business or corporate office of the association, if any.

(4) The street address of the association's onsite office if different from the street address of the business or corporate office, or if there is no onsite office, the street address of the responsible officer or managing agent of the association.

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

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

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

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

(9) The front street and nearest cross street of the physical location of the development.

(10) The type of common interest development managed by the association.

(11) The number of separate interests in the development.

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

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

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

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

(d) The penalty for an incorporated association's noncompliance with the initial or biennial filing requirements of this section shall be suspension of the association's rights, privileges, and powers as a corporation and monetary penalties, to the same extent and in

1 the same manner as suspension and monetary penalties imposed pursuant to Section 8810
2 of the Corporations Code.

3 (e) The statement required by this section may be filed, notwithstanding suspension of
4 the corporate powers, rights, and privileges under this section or under provisions of the
5 Revenue and Taxation Code. Upon the filing of a statement under this section by a
6 corporation that has suffered suspension under this section, the Secretary of State shall
7 certify that fact to the Franchise Tax Board and the corporation may thereupon be
8 relieved from suspension, unless the corporation is held in suspension by the Franchise
9 Tax Board by reason of Section 23301, 23301.5, or 23775 of the Revenue and Taxation
10 Code.

11 (f) The Secretary of State shall make the information submitted pursuant to paragraph
12 (5) of subdivision (a) available only for governmental purposes and only to Members of
13 the Legislature and the Business, Transportation and Housing Agency, upon written
14 request. All other information submitted pursuant to this section shall be subject to public
15 inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with
16 Section 6250) of Division 7 of Title 1 of the Government Code). The information
17 submitted pursuant to this section shall be made available for governmental or public
18 inspection.

19 (g) Whenever any form is filed pursuant to this section, it supersedes any previously
20 filed form.

21 (h) The Secretary of State may destroy or otherwise dispose of any form filed pursuant
22 to this section after it has been superseded by the filing of a new form.

23 **Comment.** With respect to a commercial or industrial common interest development, Section
24 6760 continues Section 1363.6 without change, except as indicated below.

25 The following substantive change is made:

- 26 • A reference to this act is substituted for a reference to the Davis-Stirling Common
27 Interest Development Act.

28 The following nonsubstantive changes are made:

- 29 • The words “of the association” at the end of Section 1363.6(a)(5) are not continued.
- 30 • Superfluous references to definition sections are not continued.
- 31 • In paragraph (a)(7), a comma is added after the word “and.”
- 32 • Obsolete transitional dates are not continued in subdivisions (d) and (f).
- 33 • The words “as the case may be” are not continued in subdivision (f).
- 34 • In subdivision (f), a comma is deleted after “California Public Records Act” and
35 parentheses are added around the following statutory reference to that act.

36 See also Sections 6528 (“association”), 6534 (“common interest development”).

1 CHAPTER 7. ASSESSMENTS AND ASSESSMENT COLLECTION

2 Article 1. Establishment and Imposition of Assessments

3 **§ 6800. Levy of assessment**

4 6800. The association shall levy regular and special assessments sufficient to perform
5 its obligations under the governing documents and this act.

6 **Comment.** With respect to a commercial or industrial common interest development, Section
7 6800 continues the first sentence of Section 1366(a) without change, except as indicated below.

8 The following nonsubstantive changes are made:

- 9 • The word “title” is replaced with “act.”
10 • A superfluous reference to the remainder of Section 1366 is deleted.

11 For further information, see Section 6500 Comment.

12 See also Sections 6528 (“association”), 6552 (“governing documents”).

13 **§ 6804. Exemption from execution**

14 6804. (a) Regular assessments imposed or collected to perform the obligations of an
15 association under the governing documents or this act shall be exempt from execution by
16 a judgment creditor of the association only to the extent necessary for the association to
17 perform essential services, such as paying for utilities and insurance. In determining the
18 appropriateness of an exemption, a court shall ensure that only essential services are
19 protected under this subdivision.

20 (b) This exemption shall not apply to any consensual pledges, liens, or encumbrances
21 that have been approved by a majority of a quorum of members, pursuant to Section
22 6524, at a member meeting or election, or to any state tax lien, or to any lien for labor or
23 materials supplied to the common area.

24 **Comment.** With respect to a commercial or industrial common interest development, Section
25 6804 continues Section 1366(c) without change, except as indicated below.

26 The following nonsubstantive changes are made:

- 27 • The provision is divided into subdivisions for ease of reference.
28 • A reference to approval of a majority of members casting a vote at a meeting at which a
29 quorum is established is replaced with a reference to the standard provision on approval
30 by a majority of a quorum of members (Section 4070).
31 • Quorum-related language from Section 1366(b)-(c) is not continued.
32 • The word “title” is replaced with “act.”

33 For further information, see Section 6500 Comment.

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

36 Article 2. Assessment Payment and Delinquency

37 **§ 6808. Assessment debt and delinquency**

38 6808. (a) A regular or special assessment and any late charges, reasonable fees and
39 costs of collection, reasonable attorney’s fees, if any, and interest, if any, as determined

1 in accordance with subdivision (b), shall be a debt of the owner of the separate interest at
2 the time the assessment or other sums are levied.

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

5 **Comment.** With respect to a commercial or industrial common interest development,
6 subdivision (a) of Section 6808 continues the first sentence of Section 1367.1(a) without change,
7 except as indicated below.

8 The following nonsubstantive change is made:

- 9 • A cross-reference is updated to reflect the new location of the referenced provision.

10 With respect to a commercial or industrial common interest development, subdivision (b)
11 continues Section 1366(f) without change.

12 For further information, see Section 6500 Comment.

13 See also Sections 6528 (“association”), 6564 (“separate interest”).

14 § 6810. Payments

15 6810. (a) When an owner of a separate interest makes a payment toward an assessment,
16 the owner may request a receipt and the association shall provide it. The receipt shall
17 indicate the date of payment and the person who received it.

18 (b) The association shall provide a mailing address for overnight payment of
19 assessments.

20 **Comment.** With respect to a commercial or industrial common interest development, Section
21 6810 continues the substance of Section 1367.1(b), except as indicated below.

22 The following substantive change is made:

- 23 • The first sentence of Section 1367.1(b) is not continued.

24 The following nonsubstantive change is made:

- 25 • The provision is divided into subdivisions for ease of reference.

26 For further information, see Section 6500 Comment.

27 See also Sections 6528 (“association”), 6564 (“separate interest”).

28 § 6812. Pre-lien notice

29 6812. At least 30 days prior to recording a lien upon the separate interest of the owner
30 of record to collect a debt that is past due under Section 6808, the association shall notify
31 the owner of record in writing by certified mail of the following:

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

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

40 (b) An itemized statement of the charges owed by the owner, including items on the
41 statement which indicate the amount of any delinquent assessments, the fees and

1 reasonable costs of collection, reasonable attorney’s fees, any late charges, and interest, if
2 any.

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

5 **Comment.** With respect to a commercial or industrial common interest development, Section
6 6812 continues the second sentence of Section 1367.1(a), and paragraphs (1) to (3) of that
7 provision, inclusive, without change, except as indicated below.

8 The following nonsubstantive change is made:

- 9 • A cross-reference is updated to reflect the new location of the referenced provision.

10 For further information, see Section 6500 Comment.

11 See also Sections 6528 (“association”), 6564 (“separate interest”).

12 § 6814. Notice of delinquent assessment

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

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

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

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

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

35 **Comment.** With respect to a commercial or industrial common interest development, Section
36 6814 continue the first five sentences of Section 1367.1(d) without change, except as indicated
37 below.

38 The following nonsubstantive change is made:

- 39 • Cross-references are updated to reflect the new locations of the referenced provisions.

40 For further information, see Section 6500 Comment.

41 See also Sections 6528 (“association”), 6534 (“common interest development”), 6546
42 (“declaration”), 6560 (“person”), 6564 (“separate interest”).

1 **§ 6816. Lien priority**

2 6816. A lien created pursuant to Section 6814 shall be prior to all other liens recorded
3 subsequent to the notice of delinquent assessment, except that the declaration may
4 provide for the subordination thereof to any other liens and encumbrances.

5 **Comment.** With respect to a commercial or industrial common interest development, Section
6 6816 continues Section 1367.1(f) without change, except as indicated below.

7 The following nonsubstantive changes are made:

- 8 • The words “notice of assessment” are replaced with the more specific “notice of
9 delinquent assessment.”
- 10 • A cross-reference is updated to reflect the new location of the referenced provision.

11 For further information, see Section 6500 Comment.

12 See also Section 6546 (“declaration”).

13 **§ 6818. Lien release**

14 6818. (a) Within 21 days of the payment of the sums specified in the notice of
15 delinquent assessment, the association shall record or cause to be recorded in the office of
16 the county recorder in which the notice of delinquent assessment is recorded a lien
17 release or notice of rescission and provide the owner of the separate interest a copy of the
18 lien release or notice that the delinquent assessment has been satisfied.

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

25 **Comment.** With respect to a commercial or industrial common interest development,
26 subdivision (a) of Section 6818 continues the sixth sentence of Section 1367.1(d) without change.

27 With respect to a commercial or industrial common interest development, subdivision (b)
28 continues Section 1367.1(i) without change.

29 For further information, see Section 6500 Comment.

30 See also Sections 6528 (“association”), 6564 (“separate interest”).

31 **§ 6819. Procedural noncompliance**

32 6819. An association that fails to comply with the procedures set forth in this section
33 shall, prior to recording a lien, recommence the required notice process. Any costs
34 associated with recommencing the notice process shall be borne by the association and
35 not by the owner of a separate interest.

36 **Comment.** With respect to a commercial or industrial common interest development, Section
37 6819 continues Section 1367.1(l) without change, except as indicated below.

38 The following nonsubstantive change is made:

- 39 • The word “section” is replaced with “article.”

40 For further information, see Section 6500 Comment.

41 See also Sections 6528 (“association”), 6564 (“separate interest”).

Article 3. Assessment Collection

§ 6820. Collection generally

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

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

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6820 continues the substance of the second sentence of Section 1367.1(g), except as indicated below.

The following nonsubstantive changes are made:

- The introductory clause is broadened to recognize the application of all restrictions on collection that are provided in this article. See, e.g., Section 6826 (limitation on assignment).
- Cross-references are updated to reflect the new locations of the referenced provisions.

With respect to a commercial or industrial common interest development, subdivision (b) continues Section 1367.1(h) without change, except as indicated below.

The following nonsubstantive change is made:

- Cross-references are updated to reflect the new locations of the referenced provisions.

For further information, see Section 6500 Comment.

See also Sections 6528 (“association”), 6564 (“separate interest”).

§ 6822. Foreclosure

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

(b) In addition to the requirements of Section 2924, the association shall serve a notice of default on the person named as the owner of the separate interest in the association’s records or, if that person has designated a legal representative pursuant to this subdivision, on that legal representative. Service shall be in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. An owner may designate a legal representative in a writing that is mailed to the association in a manner that indicates that the association has received it.

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

Comment. With respect to a commercial or industrial common interest development, subdivision (a) of Section 6822 continues the third sentence of Section 1367.1(g) without change.

1 With respect to a commercial or industrial common interest development, subdivision (b)
2 continues the substance of Section 1367.1(j).

3 With respect to a commercial or industrial common interest development, subdivision (c)
4 continues the fourth sentence and paragraph (1) of Section 1367.1(g), without change.

5 For further information, see Section 6500 Comment.

6 See also Sections 6528 (“association”), 6564 (“separate interest”).

7 **§ 6824. Limitations on authority to foreclose liens for monetary penalties and damage to the**
8 **common area**

9 6824. (a) A monetary charge imposed by the association as a means of reimbursing the
10 association for costs incurred by the association in the repair of damage to common area
11 and facilities caused by a member or the member’s guest or tenant may become a lien
12 against the member’s separate interest enforceable by the sale of the interest under
13 Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in
14 the governing documents.

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

20 **Comment.** With respect to a commercial or industrial common interest development,
21 subdivision (a) of Section 6824 continues the seventh sentence of Section 1367.1(d) without
22 change, except as indicated below.

23 The following nonsubstantive change is made:

- 24 • The phrase “common areas” is singularized.

25 With respect to a commercial or industrial common interest development, subdivision (b)
26 continues Section 1367.1(e) without change, except as indicated below.

27 The following nonsubstantive changes are made:

- 28 • The introductory clause “except as indicated in subdivision (d)” is not continued.
- 29 • The words “governing instruments” are replaced with “governing documents.” See
30 Section 6552 (“governing documents”).
- 31 • The words “subdivision separate interest” are replaced with “separate interest.” See
32 Section 6564 (“separate interest”).

33 For further information, see Section 6500 Comment.

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

36 **§ 6826. Assignment or pledge**

37 6826. (a) An association may not voluntarily assign or pledge the association’s right to
38 collect payments or assessments, or to enforce or foreclose a lien to a third party, except
39 when the assignment or pledge is made to a financial institution or lender chartered or
40 licensed under federal or state law, when acting within the scope of that charter or
41 license, as security for a loan obtained by the association.

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

1 **Comment.** With respect to a commercial or industrial common interest development, Section
2 6826 continues the first sentence of Section 1367.1(g) without change, except as indicated below.

3 The following nonsubstantive changes are made:

- 4 • The provision is divided into subdivisions for ease of reference.
- 5 • An introductory clause is added in subdivision (b) to make the relationship between the
6 two provisions clearer.

7 For further information, see Section 6500 Comment.

8 See also Sections 6528 (“association”), 6554 (“member”).

9 **§ 6828. Application of article**

10 6828. (a) Except as otherwise provided, this article applies to a lien created on or after
11 January 1, 2015.

12 (b) A lien created before January 1, 2015, is governed by the law in existence at the
13 time the lien was created.

14 **Comment.** Section 6828 is new. A lien created on or after January 1, 1986, and before January
15 1, 2003, is governed by Section 1367. See 2002 Cal. Stat. ch. 111, § 7. A lien created on or after
16 January 1, 2003 and before the operative date of the act that added this section, is governed by
17 Section 1367.1 and Section 1367.4.

18 CHAPTER 8. INSURANCE AND LIABILITY

19 **§ 6840. Limitation of member liability**

20 6840. (a) It is the intent of the Legislature to offer civil liability protection to owners of
21 the separate interests in a common interest development that have common area owned in
22 tenancy-in-common if the association carries a certain level of prescribed insurance that
23 covers a cause of action in tort.

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

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

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

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

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

36 **Comment.** With respect to a commercial or industrial common interest development, Section
37 6840 continues Section 1365.9 without change, except as indicated below.

38 The following nonsubstantive changes are made:

- 39 • A superfluous cross-reference to a governing definition is not continued.
- 40 • The phrase “common areas” is singularized.
- 41 • In subdivision (b)(1), the word “which” is replaced with “that.”

1 For further information, see Section 6500 Comment.
2 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
3 development”), 6564 (“separate interest”).

4 CHAPTER 9. DISPUTE RESOLUTION AND ENFORCEMENT

5 Article 1. Disciplinary Action

6 **§ 6850. Schedule of monetary penalties**

7 6850. (a) If an association adopts or has adopted a policy imposing any monetary
8 penalty, including any fee, on any association member for a violation of the governing
9 documents, including any monetary penalty relating to the activities of a guest or tenant
10 of the member, the board shall adopt and distribute to each member, by individual notice,
11 a schedule of the monetary penalties that may be assessed for those violations, which
12 shall be in accordance with authorization for member discipline contained in the
13 governing documents.

14 (b) Any new or revised monetary penalty that is adopted after complying with
15 subdivision (a) may be included in a supplement that is delivered to the members
16 individually, pursuant to Section 6553.

17 (c) A monetary penalty for a violation of the governing documents shall not exceed the
18 monetary penalty stated in the schedule of monetary penalties or supplement that is in
19 effect at the time of the violation.

20 (d) An association shall provide a copy of the most recently distributed schedule of
21 monetary penalties, along with any applicable supplements to that schedule, to any
22 member on request.

23 **Comment.** With respect to a commercial or industrial common interest development,
24 subdivision (a) of Section 6850 continues the first sentence of Section 1363(f) without change,
25 except as indicated below.

26 The following substantive changes are made:

- 27 • A reference to delivery by personal delivery or first class mail is changed to incorporate
28 the “individual notice” procedure.
29 • The word “invitee” is replaced with “tenant,” to make clear that the provision applies to
30 tenants.

31 The following nonsubstantive changes are made:

- 32 • A reference to the “rules of the association” is superfluous and is not continued. The term
33 “governing documents” encompasses rules. See Section 6552 (“governing documents”).
34 • The words “board of directors” are replaced with “board.” See Section 6530 (“board”).

35 Subdivisions (b)-(d) are new.

36 For further information, see Section 6500 Comment.

37 See also Sections 6528 (“association”), 6553 (“individual notice”), 6554 (“member”).

38 **§ 6854. No effect on authority of board**

39 6854. Nothing in Section 6850 shall be construed to create, expand, or reduce the
40 authority of the board to impose monetary penalties on a member for a violation of the
41 governing documents.

1 For further information, see Section 6500 Comment.
2 See also Sections 6528 (“association”), 6532 (“common area”), 6552 (“governing
3 documents”), 6564 (“separate interest”).

4 **§ 6860. Comparative fault**

5 6860. (a) In an action maintained by an association pursuant to subdivision (b), (c), or
6 (d) of Section 6858, the amount of damages recovered by the association shall be reduced
7 by the amount of damages allocated to the association or its managing agents in direct
8 proportion to their percentage of fault based upon principles of comparative fault. The
9 comparative fault of the association or its managing agents may be raised by way of
10 defense, but shall not be the basis for a cross-action or separate action against the
11 association or its managing agents for contribution or implied indemnity, where the only
12 damage was sustained by the association or its members. It is the intent of the Legislature
13 in enacting this subdivision to require that comparative fault be pleaded as an affirmative
14 defense, rather than a separate cause of action, where the only damage was sustained by
15 the association or its members.

16 (b) In an action involving damages described in subdivision (b), (c), or (d) of Section
17 6858, the defendant or cross-defendant may allege and prove the comparative fault of the
18 association or its managing agents as a setoff to the liability of the defendant or cross-
19 defendant even if the association is not a party to the litigation or is no longer a party
20 whether by reason of settlement, dismissal, or otherwise.

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

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

25 **Comment.** With respect to a commercial or industrial common interest development, Section
26 6860 continues Section 1368.4 without change.

27 For further information, see Section 6500 Comment.

28 See also Sections 6528 (“association”), 6554 (“member”), 6560 (“person”).

29 **CHAPTER 10. CONSTRUCTION DEFECT LITIGATION**

30 **§ 6870. Actions for damages**

31 6870. (a) Before an association files a complaint for damages against a builder,
32 developer, or general contractor (respondent) of a common interest development based
33 upon a claim for defects in the design or construction of the common interest
34 development, all of the requirements of this section shall be satisfied with respect to the
35 builder, developer, or general contractor.

36 (b) The association shall serve upon the respondent a “Notice of Commencement of
37 Legal Proceedings.” The notice shall be served by certified mail to the registered agent of
38 the respondent, or if there is no registered agent, then to any officer of the respondent. If
39 there are no current officers of the respondent, service shall be upon the person or entity
40 otherwise authorized by law to receive service of process. Service upon the general
41 contractor shall be sufficient to initiate the process set forth in this section with regard to

1 any builder or developer, if the builder or developer is not amenable to service of process
2 by the foregoing methods. This notice shall toll all applicable statutes of limitation and
3 repose, whether contractual or statutory, by and against all potentially responsible parties,
4 regardless of whether they were named in the notice, including claims for indemnity
5 applicable to the claim for the period set forth in subdivision (c). The notice shall include
6 all of the following:

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

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

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

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

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

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

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

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

36 (1) The respondent shall provide the association with access to, for inspection and
37 copying of, all plans and specifications, subcontracts, and other construction files for the
38 project that are reasonably calculated to lead to the discovery of admissible evidence
39 regarding the defects claimed. The association shall provide the respondent with access
40 to, for inspection and copying of, all files reasonably calculated to lead to the discovery
41 of admissible evidence regarding the defects claimed, including all reserve studies,
42 maintenance records and any survey questionnaires, or results of testing to determine the
43 nature and extent of defects. To the extent any of the above documents are withheld

1 based on privilege, a privilege log shall be prepared and submitted to all other parties. All
2 other potentially responsible parties shall have the same rights as the respondent
3 regarding the production of documents upon receipt of written notice of the claim, and
4 shall produce all relevant documents within 60 days of receipt of the notice of the claim.

5 (2) The respondent shall provide written notice by certified mail to all subcontractors,
6 design professionals, their insurers, and the insurers of any additional insured whose
7 identities are known to the respondent or readily ascertainable by review of the project
8 files or other similar sources and whose potential responsibility appears on the face of the
9 notice. This notice to subcontractors, design professionals, and insurers shall include a
10 copy of the Notice of Commencement of Legal Proceedings, and shall specify the date
11 and manner by which the parties shall meet and confer to select a dispute resolution
12 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its
13 obligation to participate in the meet and confer or serve a written acknowledgment of
14 receipt regarding this notice, advise the recipient that it will waive any challenge to
15 selection of the dispute resolution facilitator if it elects not to participate in the meet and
16 confer, advise the recipient that it may seek the assistance of an attorney, and advise the
17 recipient that it should contact its insurer, if any. Any subcontractor or design
18 professional, or insurer for that subcontractor, design professional, or additional insured,
19 who receives written notice from the respondent regarding the meet and confer shall,
20 prior to the meet and confer, serve on the respondent a written acknowledgment of
21 receipt. That subcontractor or design professional shall, within 10 days of service of the
22 written acknowledgment of receipt, provide to the association and the respondent a
23 Statement of Insurance that includes both of the following:

24 (A) The names, addresses, and contact persons, if known, of all insurance carriers,
25 whether primary or excess and regardless of whether a deductible or self-insured
26 retention applies, whose policies were in effect from the commencement of construction
27 of the subject project to the present and which potentially cover the subject claims.

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

29 (3) Any subcontractor or design professional, or insurer for that subcontractor, design
30 professional, or additional insured, who so chooses, may, at any time, make a written
31 request to the dispute resolution facilitator for designation as a peripheral party. That
32 request shall be served contemporaneously on the association and the respondent. If no
33 objection to that designation is received within 15 days, or upon rejection of that
34 objection, the dispute resolution facilitator shall designate that subcontractor or design
35 professional as a peripheral party, and shall thereafter seek to limit the attendance of that
36 subcontractor or design professional only to those dispute resolution sessions deemed
37 peripheral party sessions or to those sessions during which the dispute resolution
38 facilitator believes settlement as to peripheral parties may be finalized. Nothing in this
39 subdivision shall preclude a party who has been designated a peripheral party from being
40 reclassified as a nonperipheral party, nor shall this subdivision preclude a party
41 designated as a nonperipheral party from being reclassified as a peripheral party after
42 notice to all parties and an opportunity to object. For purposes of this subdivision, a

1 peripheral party is a party having total claimed exposure of less than twenty-five
2 thousand dollars (\$25,000).

3 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of subdivision (e),
4 the association, respondent, subcontractors, design professionals, and their insurers who
5 have been sent a notice as described in paragraph (2) of subdivision (e) shall meet and
6 confer in an effort to select a dispute resolution facilitator to preside over the mandatory
7 dispute resolution process prescribed by this section. Any subcontractor or design
8 professional who has been given timely notice of this meeting but who does not
9 participate, waives any challenge he or she may have as to the selection of the dispute
10 resolution facilitator. The role of the dispute resolution facilitator is to attempt to resolve
11 the conflict in a fair manner. The dispute resolution facilitator shall be sufficiently
12 knowledgeable in the subject matter and be able to devote sufficient time to the case. The
13 dispute resolution facilitator shall not be required to reside in or have an office in the
14 county in which the project is located. The dispute resolution facilitator and the
15 participating parties shall agree to a date, time, and location to hold a case management
16 meeting of all parties and the dispute resolution facilitator, to discuss the claims being
17 asserted and the scheduling of events under this section. The case management meeting
18 with the dispute resolution facilitator shall be held within 100 days of service of the
19 Notice of Commencement of Legal Proceedings at a location in the county where the
20 project is located. Written notice of the case management meeting with the dispute
21 resolution facilitator shall be sent by the respondent to the association, subcontractors and
22 design professionals, and their insurers who are known to the respondent to be on notice
23 of the claim, no later than 10 days prior to the case management meeting, and shall
24 specify its date, time, and location. The dispute resolution facilitator in consultation with
25 the respondent shall maintain a contact list of the participating parties.

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

37 (3) A dispute resolution facilitator shall be disqualified by the court if he or she fails to
38 comply with this subdivision and any party to the dispute resolution process serves a
39 notice of disqualification prior to the case management meeting. If the dispute resolution
40 facilitator complies with this subdivision, he or she shall be disqualified by the court on
41 the basis of the disclosure if any party to the dispute resolution process serves a notice of
42 disqualification prior to the case management meeting.

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

7 (5) Any subcontractor or design professional who receives notice of the association's
8 claim without having previously received timely notice of the meet and confer to select
9 the dispute resolution facilitator shall be notified by the respondent regarding the name,
10 address, and telephone number of the dispute resolution facilitator. Any such
11 subcontractor or design professional may serve upon the parties and the dispute
12 resolution facilitator a written objection to the dispute resolution facilitator within 15
13 days of receiving notice of the claim. Within seven days after service of this objection,
14 the subcontractor or design professional may petition the superior court to replace the
15 dispute resolution facilitator. The court may replace the dispute resolution facilitator only
16 upon a showing of good cause, liberally construed. Failure to satisfy the deadlines set
17 forth in this subdivision shall constitute a waiver of the right to challenge the dispute
18 resolution facilitator.

19 (6) The costs of the dispute resolution facilitator shall be apportioned in the following
20 manner: one-third to be paid by the association; one-third to be paid by the respondent;
21 and one-third to be paid by the subcontractors and design professionals, as allocated
22 among them by the dispute resolution facilitator. The costs of the dispute resolution
23 facilitator shall be recoverable by the prevailing party in any subsequent litigation
24 pursuant to Section 1032 of the Code of Civil Procedure, provided however that any
25 nonsettling party may, prior to the filing of the complaint, petition the facilitator to
26 reallocate the costs of the dispute resolution facilitator as they apply to any nonsettling
27 party. The determination of the dispute resolution facilitator with respect to the allocation
28 of these costs shall be binding in any subsequent litigation. The dispute resolution
29 facilitator shall take into account all relevant factors and equities between all parties in
30 the dispute 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 force and
33 effect.

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

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

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

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

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

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

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

11 (1) Establishment of a document depository, located in the county where the project is
12 located, for deposit of documents, defect lists, demands, and other information provided
13 for under this section. All documents exchanged by the parties and all documents created
14 pursuant to this subdivision shall be deposited in the document depository, which shall be
15 available to all parties throughout the pre-filing dispute resolution process and in any
16 subsequent litigation. When any document is deposited in the document depository, the
17 party depositing the document shall provide written notice identifying the document to all
18 other parties. The costs of maintaining the document depository shall be apportioned
19 among the parties in the same manner as the costs of the dispute resolution facilitator.

20 (2) Provision of a more detailed list of defects by the association to the respondent after
21 the association completes a visual inspection of the project. This list of defects shall
22 provide sufficient detail for the respondent to ensure that all potentially responsible
23 subcontractors and design professionals are provided with notice of the dispute resolution
24 process. If not already completed prior to the case management meeting, the Notice of
25 Commencement of Legal Proceedings shall be served by the respondent on all additional
26 subcontractors and design professionals whose potential responsibility appears on the
27 face of the more detailed list of defects within seven days of receipt of the more detailed
28 list. The respondent shall serve a copy of the case management statement, including the
29 name, address, and telephone number of the dispute resolution facilitator, to all the
30 potentially responsible subcontractors and design professionals at the same time.

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

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

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

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

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

1 (8) Facilitated dispute resolution of the claim, with all parties, including peripheral
2 parties, as appropriate, and insurers, if any, present and having settlement authority. The
3 dispute resolution facilitators shall endeavor to set specific times for the attendance of
4 specific parties at dispute resolution sessions. If the dispute resolution facilitator does not
5 set specific times for the attendance of parties at dispute resolution sessions, the dispute
6 resolution facilitator shall permit those parties to participate in dispute resolution sessions
7 by telephone.

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

14 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the time
15 the case management statement is established, set deadlines for the occurrence of each
16 event set forth in the case management statement, taking into account such factors as the
17 size and complexity of the case, and the requirement of this section that this dispute
18 resolution process not exceed 180 days absent agreement of the parties to an extension of
19 time.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (G) The discussions at the meeting and the contents of the notice and the items required
13 to be specified in the notice pursuant to subparagraph (E) are privileged communications
14 and are not admissible in evidence in any civil action, unless the association consents to
15 their admission.

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

18 (I) All defect lists and demands, communications, negotiations, and settlement offers
19 made in the course of the prelitigation dispute resolution process provided by this section
20 shall be inadmissible pursuant to Sections 1119 to 1124, inclusive, of the Evidence Code
21 and all applicable decisional law. This inadmissibility shall not be extended to any other
22 documents or communications which would not otherwise be deemed inadmissible.

23 (m) Any subcontractor or design professional may, at any time, petition the dispute
24 resolution facilitator to release that party from the dispute resolution process upon a
25 showing that the subcontractor or design professional is not potentially responsible for
26 the defect claims at issue. The petition shall be served contemporaneously on all other
27 parties, who shall have 15 days from the date of service to object. If a subcontractor or
28 design professional is released, and it later appears to the dispute resolution facilitator
29 that it may be a responsible party in light of the current defect list or demand, the
30 respondent shall renounce the party as provided by paragraph (2) of subdivision (e),
31 provide a copy of the current defect list or demand, and direct the party to attend a
32 dispute resolution session at a stated time and location. A party who subsequently appears
33 after having been released by the dispute resolution facilitator shall not be prejudiced by
34 its absence from the dispute resolution process as the result of having been previously
35 released by the dispute resolution facilitator.

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

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

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

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

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

7 (5) To seek a determination that a settlement is a good faith settlement pursuant to
8 Section 877.6 of the Code of Civil Procedure and all related authorities. The page
9 limitations and meet and confer requirements specified in this section shall not apply to
10 these motions, which may be made on shortened notice. Instead, these motions shall be
11 subject to other applicable state law, rules of court, and local rules. A determination made
12 by the court pursuant to this motion shall have the same force and effect as the
13 determination of a postfiling application or motion for good faith settlement.

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

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

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

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

29 (p) As used in this section:

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

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

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

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

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

38 (s) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is
39 repealed, unless a later enacted statute, that becomes operative on or before January 1,
40 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

41 **Comment.** With respect to a commercial or industrial common interest development, Section
42 6870 continues Section 1375 without change, except as indicated below.

43 The following substantive change is made:

- 1 • A reference in Section 1375(d) to a meeting subject to Section 1363.05(b) is replaced
2 with the relevant substance of Section 1363.05(b). Section 1363.05 is not continued in
3 this act.

4 The following nonsubstantive changes are made:

- 5 • Cross-references are updated to reflect the new location of the referenced provisions.
6 • In subdivision (a), quotation marks are removed before and after the word “respondent.”
7 • A reference to “homeowner” in paragraph (4) of subdivision (b) is changed to “owner.”
8 • The words “board of directors” and “board of directors of the association” are replaced
9 throughout with “board.” See Section 6530 (“board”).
10 • Subdivision (e)(2) is revised to delete references to former Section 1375.05, which was
11 repealed by its own terms on January 1, 2011.
12 • Subdivision (f)(3) is revised to correct erroneous references to “this paragraph.” The
13 revised provision refers to “this subdivision.”
14 • In subparagraph (k)(1)(G), the word “paragraph” is replaced with “subparagraph.”
15 • Subdivision (l) is revised to delete a reference to former Section 1375.05, which was
16 repealed by its own terms on January 1, 2011.

17 For further information, see Section 6500 Comment.

18 See also Sections 6528 (“association”), 6534 (“common interest development”), 6554
19 (“member”), 6560 (“person”).

20 **§ 6874. Notice of resolution**

21 6874. (a) As soon as is reasonably practicable after the association and the builder have
22 entered into a settlement agreement or the matter has otherwise been resolved regarding
23 alleged defects in the common areas, alleged defects in the separate interests that the
24 association is obligated to maintain or repair, or alleged defects in the separate interests
25 that arise out of, or are integrally related to, defects in the common areas or separate
26 interests that the association is obligated to maintain or repair, where the defects giving
27 rise to the dispute have not been corrected, the association shall, in writing, inform only
28 the members of the association whose names appear on the records of the association that
29 the matter has been resolved, by settlement agreement or other means, and disclose all of
30 the following:

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

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

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

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

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

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

3 **Comment.** With respect to a commercial or industrial common interest development, Section
4 6874 continues Section 1375.1 without change.

5 For further information, see Section 6500 Comment.

6 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
7 development”), 6554 (“member”), 6564 (“separate interest”).

8 **§ 6876. Notice of civil action**

9 6876. (a) Not later than 30 days prior to the filing of any civil action by the association
10 against the declarant or other developer of a common interest development for alleged
11 damage to the common areas, alleged damage to the separate interests that the association
12 is obligated to maintain or repair, or alleged damage to the separate interests that arises
13 out of, or is integrally related to, damage to the common areas or separate interests that
14 the association is obligated to maintain or repair, the board shall provide a written notice
15 to each member of the association who appears on the records of the association when the
16 notice is provided. This notice shall specify all of the following:

17 (1) That a meeting will take place to discuss problems that may lead to the filing of a
18 civil action.

19 (2) The options, including civil actions, that are available to address the problems.

20 (3) The time and place of this meeting.

21 (b) Notwithstanding subdivision (a), if the association has reason to believe that the
22 applicable statute of limitations will expire before the association files the civil action, the
23 association may give the notice, as described above, within 30 days after the filing of the
24 action.

25 **Comment.** With respect to a commercial or industrial common interest development, Section
26 6876 continues Section 1368.5 without change, except as indicated below.

27 The following nonsubstantive change is made:

- 28 • The words “board of directors of the association” are replaced with “board.” See Section
29 6530 (“board”).

30 For further information, see Section 6500 Comment.

31 See also Sections 6528 (“association”), 6532 (“common area”), 6534 (“common interest
32 development”), 6544 (“declarant”), 6554 (“member”), 6564 (“separate interest”).

33 **Uncodified (added). Operative date**

34 This act shall become operative on January 1, 2015.

CONFORMING REVISIONS

BUSINESS AND PROFESSIONS CODE

1 **Bus. & Prof. Code § 10153.2 (amended). Course requirements for real estate broker license**

2 SEC. ____ . Section 10153.2 of the Business and Professions Code is amended to read:

3 10153.2. (a) An applicant to take the examination for an original real estate broker
4 license shall also submit evidence, satisfactory to the commissioner, of successful
5 completion, at an accredited institution, of:

6 (1) A three-semester unit course, or the quarter equivalent thereof, in each of the
7 following:

8 (A) Real estate practice.

9 (B) Legal aspects of real estate.

10 (C) Real estate appraisal.

11 (D) Real estate financing.

12 (E) Real estate economics or accounting.

13 (2) A three-semester unit course, or the quarter equivalent thereof, in three of the
14 following:

15 (A) Advanced legal aspects of real estate.

16 (B) Advanced real estate finance.

17 (C) Advanced real estate appraisal.

18 (D) Business law.

19 (E) Escrows.

20 (F) Real estate principles.

21 (G) Property management.

22 (H) Real estate office administration.

23 (I) Mortgage loan brokering and lending.

24 (J) Computer applications in real estate.

25 (K) On and after July 1, 2004, California law that relates to common interest
26 developments, including, but not limited to, topics addressed in the Davis-Stirling
27 Common Interest Development Act (Title 6 (commencing with Section 1350) of Part 4 of
28 Division 2 of the Civil Code) and in the Commercial and Industrial Common Interest
29 Development Act (Part 5.5 (commencing with Section 6500) of Division 4 of the Civil
30 Code).

31 (b) The commissioner shall waive the requirements of this section for an applicant who
32 is a member of the State Bar of California and shall waive the requirements for which an
33 applicant has successfully completed an equivalent course of study as determined under
34 Section 10153.5.

35 (c) The commissioner shall extend credit under this section for any course completed to
36 satisfy requirements of Section 10153.3 or 10153.4.

37 **Comment.** Section 10153.2 is amended to add a cross-reference to Part 5.5 (commencing with
38 Section 6500) of Division 4 of the Civil Code, reflecting the enactment of the Commercial and
39 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

1 **Bus. & Prof. Code § 11003 (amended). “Planned development”**

2 SEC. ____ . Section 11003 of the Business and Professions Code is amended to read:

3 11003. “Planned development” has the same meaning as specified in subdivision (k) of
4 Section 1351 or in Section 6562 of the Civil Code.

5 **Comment.** Section 11003 is amended to add a cross-reference to Civil Code Section 6562,
6 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
7 (Civ. Code §§ 6500-6876).

8 **Bus. & Prof. Code § 11003.2 (amended). “Stock cooperative”**

9 SEC. ____ . Section 11003.2 of the Business and Professions Code is amended to read:

10 11003.2. “Stock cooperative” has the same meaning as specified in subdivision (m) of
11 Section 1351 or in Section 6566 of the Civil Code, except that, as used in this chapter, a
12 “stock cooperative” does not include a limited-equity housing cooperative.

13 **Comment.** Section 11003.2 is amended to add a cross-reference to Civil Code Section 6566,
14 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
15 (Civ. Code §§ 6500-6876).

16 **Bus. & Prof. Code § 11004.5 (amended). Further definition of “subdivided lands” and**
17 **“subdivision”**

18 SEC. ____ . Section 11004.5 of the Business and Professions Code is amended to read:

19 11004.5. In addition to any provisions of Section 11000, the reference in this code to
20 “subdivided lands” and “subdivision” shall include all of the following:

21 (a) Any planned development, as defined in Section 11003, containing five or more
22 lots.

23 (b) Any community apartment project, as defined by Section 11004, containing five or
24 more apartments.

25 (c) Any condominium project containing five or more condominiums, as defined in
26 Section 783 of the Civil Code.

27 (d) Any stock cooperative as defined in Section 11003.2, including any legal or
28 beneficial interests therein, having or intended to have five or more shareholders.

29 (e) Any limited-equity housing cooperative, as defined in Section 11003.4.

30 (f) In addition, the following interests shall be subject to this chapter and the
31 regulations of the commissioner adopted pursuant thereto:

32 (1) Any accompanying memberships or other rights or privileges created in, or in
33 connection with, any of the forms of development referred to in subdivision (a), (b), (c),
34 (d), or (e) by any deeds, conveyances, leases, subleases, assignments, declarations of
35 restrictions, articles of incorporation, bylaws, or contracts applicable thereto.

36 (2) Any interests or memberships in any owners’ association as defined in Section
37 1351 or 6528 of the Civil Code, created in connection with any of the forms of the
38 development referred to in subdivision (a), (b), (c), (d), or (e).

39 (g) Notwithstanding this section, time-share plans, exchange programs, incidental
40 benefits, and short-term product subject to Chapter 2 (commencing with Section 11210)
41 are not “subdivisions” or “subdivided lands” subject to this chapter.

1 **Comment.** Section 11004.5 is amended to add a cross-reference to Civil Code Section 6528,
2 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
3 (Civ. Code §§ 6500-6876).

4 **Bus. & Prof. Code § 23426.5 (amended). Tennis club**

5 SEC. ____ . Section 23426.5 of the Business and Professions Code is amended to read:

6 23426.5. (a) For purposes of this article, “club” also means any tennis club that
7 maintains not less than four regulation tennis courts, together with the necessary facilities
8 and clubhouse, has members paying regular monthly dues, has been in existence for not
9 less than 45 years, and is not associated with a common interest development as defined
10 in Section 1351 or 6534 of the Civil Code, a community apartment project as defined in
11 Section 11004 of this code, a project consisting of condominiums as defined in Section
12 783 of the Civil Code, or a mobilehome park as defined in Section 18214 of the Health
13 and Safety Code.

14 (b) It shall be unlawful for any club licensed pursuant to this section to make any
15 discrimination, distinction, or restriction against any person on account of age or any
16 characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

17 **Comment.** Section 23426.5 is amended to add a cross-reference to Civil Code Section 6534,
18 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
19 (Civ. Code §§ 6500-6876).

20 **Bus. & Prof. Code § 23428.20 (amended). Further definition of “club”**

21 SEC. ____ . Section 23428.20 of the Business and Professions Code is amended to read:

22 23428.20. (a) For the purposes of this article, “club” also means any bona fide
23 nonprofit corporation that has been in existence for not less than nine years, has more
24 than 8,500 memberships issued and outstanding to owners of condominiums and owners
25 of memberships in stock cooperatives, and owns, leases, operates, or maintains
26 recreational facilities for its members.

27 (b) For the purposes of this article, “club” also means any bona fide nonprofit
28 corporation that was formed as a condominium homeowners’ association, has at least 250
29 members, has served daily meals to its members and guests for a period of not less than
30 12 years, owns or leases, operates, and maintains a clubroom or rooms for its
31 membership, has an annual fee of not less than nine hundred dollars (\$900) per year per
32 member, and has as a condition of membership that one member of each household be at
33 least 54 years old.

34 (c) Section 23399 and the numerical limitation of Section 23430 shall not apply to a
35 club defined in this section.

36 (d) No license shall be issued pursuant to this section to any club that withholds
37 membership or denies facilities or services to any person on account of any basis listed in
38 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are
39 defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p)
40 of Section 12955, and Section 12955.2 of the Government Code.

41 (e) Notwithstanding subdivision (d), with respect to familial status, subdivision (d)
42 shall not be construed to apply to housing for older persons, as defined in Section

1 12955.9 of the Government Code. With respect to familial status, nothing in subdivision
2 (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the
3 Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and~~
4 ~~Section Sections~~ 1360 ~~and~~ 6714 of the Civil Code, and subdivisions (n), (o), and (p) of
5 Section 12955 of the Government Code shall apply to subdivision (d).

6 **Comment.** Section 23428.20 is amended to add a cross-reference to Civil Code Section 6714,
7 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
8 (Civ. Code §§ 6500-6876).

9 CIVIL CODE

10 **Civ. Code § 714 (amended). Unenforceability of restrictions on use of solar energy system**

11 SEC. ____ . Section 714 of the Civil Code is amended to read:

12 714. (a) Any covenant, restriction, or condition contained in any deed, contract,
13 security instrument, or other instrument affecting the transfer or sale of, or any interest in,
14 real property, and any provision of a governing document, as defined in subdivision (j) of
15 Section 1351 or in Section 6552, that effectively prohibits or restricts the installation or
16 use of a solar energy system is void and unenforceable.

17 (b) This section does not apply to provisions that impose reasonable restrictions on
18 solar energy systems. However, it is the policy of the state to promote and encourage the
19 use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable
20 restrictions on a solar energy system are those restrictions that do not significantly
21 increase the cost of the system or significantly decrease its efficiency or specified
22 performance, or that allow for an alternative system of comparable cost, efficiency, and
23 energy conservation benefits.

24 (c)(1) A solar energy system shall meet applicable health and safety standards and
25 requirements imposed by state and local permitting authorities.

26 (2) A solar energy system for heating water shall be certified by the Solar Rating
27 Certification Corporation (SRCC) or other nationally recognized certification agencies.
28 SRCC is a nonprofit third party supported by the United States Department of Energy.
29 The certification shall be for the entire solar energy system and installation.

30 (3) A solar energy system for producing electricity shall also meet all applicable safety
31 and performance standards established by the National Electrical Code, the Institute of
32 Electrical and Electronics Engineers, and accredited testing laboratories such as
33 Underwriters Laboratories and, where applicable, rules of the Public Utilities
34 Commission regarding safety and reliability.

35 (d) For the purposes of this section:

36 (1)(A) For solar domestic water heating systems or solar swimming pool heating
37 systems that comply with state and federal law, “significantly” means an amount
38 exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar
39 energy system by an amount exceeding 20 percent, as originally specified and proposed.

40 (B) For photovoltaic systems that comply with state and federal law, “significantly”
41 means an amount not to exceed two thousand dollars (\$2,000) over the system cost as

1 originally specified and proposed, or a decrease in system efficiency of an amount
2 exceeding 20 percent as originally specified and proposed.

3 (2) “Solar energy system” has the same meaning as defined in paragraphs (1) and (2) of
4 subdivision (a) of Section 801.5.

5 (e)(1) Whenever approval is required for the installation or use of a solar energy
6 system, the application for approval shall be processed and approved by the appropriate
7 approving entity in the same manner as an application for approval of an architectural
8 modification to the property, and shall not be willfully avoided or delayed.

9 (2) For an approving entity that is a ~~homeowners’~~ an association, as defined in
10 subdivision (a) of Section 1351 or in Section 6528, and that is not a public entity, both of
11 the following shall apply:

12 (A) The approval or denial of an application shall be in writing.

13 (B) If an application is not denied in writing within 60 days from the date of receipt of
14 the application, the application shall be deemed approved, unless that delay is the result
15 of a reasonable request for additional information.

16 (f) Any entity, other than a public entity, that willfully violates this section shall be
17 liable to the applicant or other party for actual damages occasioned thereby, and shall pay
18 a civil penalty to the applicant or other party in an amount not to exceed one thousand
19 dollars (\$1,000).

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

22 (h)(1) A public entity that fails to comply with this section may not receive funds from
23 a state-sponsored grant or loan program for solar energy. A public entity shall certify its
24 compliance with the requirements of this section when applying for funds from a state-
25 sponsored grant or loan program.

26 (2) A local public entity may not exempt residents in its jurisdiction from the
27 requirements of this section.

28 **Comment.** Subdivision (a) of Section 714 is amended to add a cross-reference to Section 6552,
29 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
30 (Civ. Code §§ 6500-6876).

31 Paragraph (2) of subdivision (e) is amended to add a cross-reference to Section 6528, and to
32 make a conforming terminological change, for the same reason.

33 **Civ. Code § 714.1 (amended). Permissible restrictions by common interest development**
34 **association**

35 SEC. ____ . Section 714.1 of the Civil Code is amended to read:

36 714.1. Notwithstanding Section 714, any association, as defined in Section 1351 or
37 6528, may impose reasonable provisions which:

38 (a) Restrict the installation of solar energy systems installed in common areas, as
39 defined in Section 1351 or 6532, to those systems approved by the association.

40 (b) Require the owner of a separate interest, as defined in Section 1351 or 6564, to
41 obtain the approval of the association for the installation of a solar energy system in a
42 separate interest owned by another.

1 (c) Provide for the maintenance, repair, or replacement of roofs or other building
2 components.

3 (d) Require installers of solar energy systems to indemnify or reimburse the association
4 or its members for loss or damage caused by the installation, maintenance, or use of the
5 solar energy system.

6 **Comment.** Section 714.1 is amended to add cross-references to Sections 6528, 6532, and
7 6534, reflecting the enactment of the Commercial and Industrial Common Interest Development
8 Act (Civ. Code §§ 6500-6876).

9 **Civ. Code § 782 (amended). Discriminatory provision in deed of real property**

10 SEC. ____ . Section 782 of the Civil Code is amended to read:

11 782. (a) Any provision in any deed of real property in California, whether executed
12 before or after the effective date of this section, that purports to restrict the right of any
13 persons to sell, lease, rent, use or occupy the property to persons having any
14 characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code,
15 as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
16 of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, by
17 providing for payment of a penalty, forfeiture, reverter, or otherwise, is void.

18 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a)
19 shall not be construed to apply to housing for older persons, as defined in Section
20 12955.9 of the Government Code. With respect to familial status, nothing in subdivision
21 (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating
22 to housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections 1351
23 and 6714 of this code, and subdivisions (n), (o), and (p) of Section 12955 of the
24 Government Code shall apply to subdivision (a).

25 **Comment.** Section 782 is amended to add a cross-reference to Section 6714, reflecting the
26 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
27 6500-6876).

28 **Civ. Code § 782.5 (amended). Revision of instrument to omit provision that restricts rights**
29 **based on race or color**

30 SEC. ____ . Section 782.5 of the Civil Code is amended to read:

31 782.5. (a) Any deed or other written instrument that relates to title to real property, or
32 any written covenant, condition, or restriction annexed or made a part of, by reference or
33 otherwise, any ~~such~~ deed or instrument that relates to title to real property, that which
34 contains any provision that purports to forbid, restrict, or condition the right of any
35 person or persons to sell, buy, lease, rent, use, or occupy the property on account of any
36 basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those
37 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
38 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, with
39 respect to any person or persons, shall be deemed to be revised to omit that provision.

40 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a)
41 shall not be construed to apply to housing for older persons, as defined in Section
42 12955.9 of the Government Code. With respect to familial status, nothing in subdivision

1 (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating
2 to housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections 1351
3 and 6714 of this code, and subdivisions (n), (o), and (p) of Section 12955 of the
4 Government Code shall apply to subdivision (a).

5 (c) This section shall not be construed to limit or expand the powers of a court to
6 reform a deed or other written instrument.

7 **Comment.** Subdivision (a) of Section 782.5 is amended to make stylistic revisions, reflecting
8 the enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code
9 §§ 6500-6876).

10 Subdivision (b) is amended to add a cross-reference to Section 6714, for the same reason.

11 **Civ. Code § 783 (amended). “Condominium”**

12 SEC. ____ . Section 783 of the Civil Code is amended to read:

13 783. A condominium is an estate in real property described in subdivision (f) of
14 Section 1351 or in Section 6542. A condominium may, with respect to the duration of its
15 enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate for life,
16 (3) an estate for years, such as a leasehold or a subleasehold, or (4) any combination of
17 the foregoing.

18 **Comment.** Section 783 is amended to add a cross-reference to Section 6542, reflecting the
19 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
20 6500-6876).

21 **Civ. Code § 783.1 (amended). Separate and correlative interests as interests in real property**

22 SEC. ____ . Section 783.1 of the Civil Code is amended to read:

23 783.1. In a stock cooperative, as defined in subdivision (m) of Section 1351 or in
24 Section 6566, both the separate interest, as defined in paragraph (4) of subdivision (l) of
25 Section 1351 or in paragraph (4) of subdivision (a) of Section 6564, and the correlative
26 interest in the stock cooperative corporation, however designated, are interests in real
27 property.

28 **Comment.** Section 783.1 is amended to add cross-references to Sections 6564(a)(4) and 6566,
29 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
30 (Civ. Code §§ 6500-6876).

31 **Civ. Code § 1098 (amended). Transfer fee defined**

32 SEC. ____ . Section 1098 of the Civil Code is amended to read:

33 1098. A “transfer fee” is any fee payment requirement imposed within a covenant,
34 restriction, or condition contained in any deed, contract, security instrument, or other
35 document affecting the transfer or sale of, or any interest in, real property that requires a
36 fee be paid upon transfer of the real property. A transfer fee does not include any of the
37 following:

38 (a) Fees or taxes imposed by a governmental entity.

39 (b) Fees pursuant to mechanics’ liens.

40 (c) Fees pursuant to court-ordered transfers, payments, or judgments.

1 (d) Fees pursuant to property agreements in connection with a legal separation or
2 dissolution of marriage.

3 (e) Fees, charges, or payments in connection with the administration of estates or trusts
4 pursuant to Division 7 (commencing with Section 7000), Division 8 (commencing with
5 Section 13000), or Division 9 (commencing with Section 15000) of the Probate Code.

6 (f) Fees, charges, or payments imposed by lenders or purchasers of loans, as these
7 entities are described in subdivision (c) of Section 10232 of the Business and Professions
8 Code.

9 (g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling Common
10 Interest Development Act (Title 6 (commencing with Section 1350) of Part 4 of Division
11 2) or by the Commercial and Industrial Common Interest Development Act (Part 5.5
12 (commencing with Section 6500) of Division 4).

13 (h) Fees, charges, or payments for failing to comply with, or for transferring the real
14 property prior to satisfying, an obligation to construct residential improvements on the
15 real property.

16 (i) Any fee reflected in a document recorded against the property on or before
17 December 31, 2007, that is separate from any covenants, conditions, and restrictions, and
18 that substantially complies with subdivision (a) of Section 1098.5 by providing a
19 prospective transferee notice of the following:

20 (1) Payment of a transfer fee is required.

21 (2) The amount or method of calculation of the fee.

22 (3) The date or circumstances under which the transfer fee payment requirement
23 expires, if any.

24 (4) The entity to which the fee will be paid.

25 (5) The general purposes for which the fee will be used.

26 **Comment.** Subdivision (g) of Section 1098 is amended to add a cross-reference to Part 5.5
27 (commencing with Section 6500) of Division 4, reflecting the enactment of the Commercial and
28 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

29 **Civ. Code § 1133 (amended). Sale or lease of subdivision lot subject to blanket encumbrance**

30 SEC. ____. Section 1133 of the Civil Code is amended to read:

31 1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket encumbrance, as
32 defined in Section 11013 of the Business and Professions Code, but is exempt from a
33 requirement of compliance with Section 11013.2 of the Business and Professions Code,
34 the subdivider, his or her agent, or representative, shall not sell, or lease for a term
35 exceeding five years, the lot, parcel, or unit, nor cause it to be sold, or leased for a term
36 exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit
37 has been furnished with and has signed a true copy of the following notice:

38 (b) "Subdivision," as used in subdivision (a), means improved or unimproved land that
39 is divided or proposed to be divided for the purpose of sale, lease, or financing, whether
40 immediate or future, into two or more lots, parcels, or units and includes a condominium
41 project, as defined in subdivision (f) of Section 1351 or in Section 6542, a community
42 apartment project, as defined in subdivision (d) of Section 1351, a stock cooperative, as

1 defined in subdivision (m) of Section 1351 or in Section 6566, and a limited equity
2 housing cooperative, as defined in subdivision (m) of Section 1351.

3 (c) The failure of the buyer or lessee to sign the notice shall not invalidate any grant,
4 conveyance, lease, or encumbrance.

5 (d) Any person or entity who willfully violates the provisions of this section shall be
6 liable to the purchaser of a lot or unit which is subject to the provisions of this section, for
7 actual damages, and in addition thereto, shall be guilty of a public offense punishable by
8 a fine in an amount not to exceed five hundred dollars (\$500). In an action to enforce
9 ~~such~~ the liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

10 **Comment.** Subdivision (b) of Section 1133 is amended to add cross-references to Sections
11 6542 and 6566, reflecting the enactment of the Commercial and Industrial Common Interest
12 Development Act (Civ. Code §§ 6500-6876).

13 Subdivision (d) is amended to make a stylistic revision.

14 **Civ. Code § 1633.3 (amended). Transactions governed by title**

15 SEC. ____ . Section 1633.3 of the Civil Code is amended to read:

16 1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to
17 electronic records and electronic signatures relating to a transaction.

18 (b) This title does not apply to transactions subject to the following laws:

19 (1) A law governing the creation and execution of wills, codicils, or testamentary
20 trusts.

21 (2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code,
22 except Sections 1107 and 1206.

23 (3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101),
24 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing
25 with Section 9101), and 11 (commencing with Section 11101) of the Uniform
26 Commercial Code.

27 (4) A law that requires that specifically identifiable text or disclosures in a record or a
28 portion of a record be separately signed, including initialed, from the record. However,
29 this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the
30 Code of Civil Procedure.

31 (c) This title does not apply to any specific transaction described in Section 17511.5 of
32 the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of,
33 Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5
34 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720,
35 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of, Chapter 1 (commencing with Section
36 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713,
37 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5
38 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of,
39 Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d
40 (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, ~~or~~ Section
41 3071.5 of, or Part 5.5 (commencing with Section 6500) of Division 4 of, the Civil Code,
42 subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section

1 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section
2 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7, 10127.9,
3 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09,
4 or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public
5 Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may
6 not be substituted for any notice that is required to be sent pursuant to Section 1162 of the
7 Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the
8 recordation of any document with a county recorder by electronic means.

9 (d) This title applies to an electronic record or electronic signature otherwise excluded
10 from the application of this title under subdivision (b) when used for a transaction subject
11 to a law other than those specified in subdivision (b).

12 (e) A transaction subject to this title is also subject to other applicable substantive law.

13 (f) The exclusion of a transaction from the application of this title under subdivision (b)
14 or (c) shall be construed only to exclude the transaction from the application of this title,
15 but shall not be construed to prohibit the transaction from being conducted by electronic
16 means if the transaction may be conducted by electronic means under any other
17 applicable law.

18 **Comment.** Subdivision (c) of Section 1633.3 is amended to add a cross-reference to Part 5.5
19 (commencing with Section 6500) of Division 4, reflecting the enactment of the Commercial and
20 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

21 **Civ. Code § 2924b (amended). Request for copy of notice of default or sale**

22 SEC. ____ . Section 2924b of the Civil Code is amended to read:

23 2924b. (a) Any person desiring a copy of any notice of default and of any notice of sale
24 under any deed of trust or mortgage with power of sale upon real property or an estate for
25 years therein, as to which deed of trust or mortgage the power of sale cannot be exercised
26 until these notices are given for the time and in the manner provided in Section 2924
27 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to
28 recordation of notice of default thereunder, cause to be filed for record in the office of the
29 recorder of any county in which any part or parcel of the real property is situated, a duly
30 acknowledged request for a copy of the notice of default and of sale. This request shall be
31 signed and acknowledged by the person making the request, specifying the name and
32 address of the person to whom the notice is to be mailed, shall identify the deed of trust
33 or mortgage by stating the names of the parties thereto, the date of recordation thereof,
34 and the book and page where the deed of trust or mortgage is recorded or the recorder's
35 number, and shall be in substantially the following form:

36 **Note.** A table has been omitted to conserve resources.

37 Upon the filing for record of the request, the recorder shall index in the general index
38 of grantors the names of the trustors (or mortgagor) recited therein and the names of
39 persons requesting copies.

40 (b) The mortgagee, trustee, or other person authorized to record the notice of default or
41 the notice of sale shall do each of the following:

1 (1) Within 10 business days following recordation of the notice of default, deposit or
2 cause to be deposited in the United States mail an envelope, sent by registered or certified
3 mail with postage prepaid, containing a copy of the notice with the recording date shown
4 thereon, addressed to each person whose name and address are set forth in a duly
5 recorded request therefor, directed to the address designated in the request and to each
6 trustor or mortgagor at his or her last known address if different than the address
7 specified in the deed of trust or mortgage with power of sale.

8 (2) At least 20 days before the date of sale, deposit or cause to be deposited in the
9 United States mail an envelope, sent by registered or certified mail with postage prepaid,
10 containing a copy of the notice of the time and place of sale, addressed to each person
11 whose name and address are set forth in a duly recorded request therefor, directed to the
12 address designated in the request and to each trustor or mortgagor at his or her last known
13 address if different than the address specified in the deed of trust or mortgage with power
14 of sale.

15 (3) As used in paragraphs (1) and (2), the “last known address” of each trustor or
16 mortgagor means the last business or residence physical address actually known by the
17 mortgagee, beneficiary, trustee, or other person authorized to record the notice of default.
18 For the purposes of this subdivision, an address is “actually known” if it is contained in
19 the original deed of trust or mortgage, or in any subsequent written notification of a
20 change of physical address from the trustor or mortgagor pursuant to the deed of trust or
21 mortgage. For the purposes of this subdivision, “physical address” does not include an e-
22 mail or any form of electronic address for a trustor or mortgagor. The beneficiary shall
23 inform the trustee of the trustor’s last address actually known by the beneficiary.
24 However, the trustee shall incur no liability for failing to send any notice to the last
25 address unless the trustee has actual knowledge of it.

26 (4) A “person authorized to record the notice of default or the notice of sale” shall
27 include an agent for the mortgagee or beneficiary, an agent of the named trustee, any
28 person designated in an executed substitution of trustee, or an agent of that substituted
29 trustee.

30 (c) The mortgagee, trustee, or other person authorized to record the notice of default or
31 the notice of sale shall do the following:

32 (1) Within one month following recordation of the notice of default, deposit or cause to
33 be deposited in the United States mail an envelope, sent by registered or certified mail
34 with postage prepaid, containing a copy of the notice with the recording date shown
35 thereon, addressed to each person set forth in paragraph (2), provided that the estate or
36 interest of any person entitled to receive notice under this subdivision is acquired by an
37 instrument sufficient to impart constructive notice of the estate or interest in the land or
38 portion thereof that is subject to the deed of trust or mortgage being foreclosed, and
39 provided the instrument is recorded in the office of the county recorder so as to impart
40 that constructive notice prior to the recording date of the notice of default and provided
41 the instrument as so recorded sets forth a mailing address that the county recorder shall
42 use, as instructed within the instrument, for the return of the instrument after recording,
43 and which address shall be the address used for the purposes of mailing notices herein.

1 (2) The persons to whom notice shall be mailed under this subdivision are:

2 (A) The successor in interest, as of the recording date of the notice of default, of the
3 estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or
4 mortgage being foreclosed.

5 (B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent
6 to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently
7 with the deed of trust or mortgage being foreclosed but subject to a recorded agreement
8 or a recorded statement of subordination to the deed of trust or mortgage being
9 foreclosed.

10 (C) The assignee of any interest of the beneficiary or mortgagee described in
11 subparagraph (B), as of the recording date of the notice of default.

12 (D) The vendee of any contract of sale, or the lessee of any lease, of the estate or
13 interest being foreclosed that is recorded subsequent to the deed of trust or mortgage
14 being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage
15 being foreclosed but subject to a recorded agreement or statement of subordination to the
16 deed of trust or mortgage being foreclosed.

17 (E) The successor in interest to the vendee or lessee described in subparagraph (D), as
18 of the recording date of the notice of default.

19 (F) The office of the Controller, Sacramento, California, where, as of the recording
20 date of the notice of default, a “Notice of Lien for Postponed Property Taxes” has been
21 recorded against the real property to which the notice of default applies.

22 (3) At least 20 days before the date of sale, deposit or cause to be deposited in the
23 United States mail an envelope, sent by registered or certified mail with postage prepaid,
24 containing a copy of the notice of the time and place of sale addressed to each person to
25 whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and
26 (2), and addressed to the office of any state taxing agency, Sacramento, California, that
27 has recorded, subsequent to the deed of trust or mortgage being foreclosed, a notice of tax
28 lien prior to the recording date of the notice of default against the real property to which
29 the notice of default applies.

30 (4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance
31 with Section 7425 of the Internal Revenue Code and any applicable federal regulation, if
32 a “Notice of Federal Tax Lien under Internal Revenue Laws” has been recorded,
33 subsequent to the deed of trust or mortgage being foreclosed, against the real property to
34 which the notice of sale applies. The failure to provide the Internal Revenue Service with
35 a copy of the notice of sale pursuant to this paragraph shall be sufficient cause to rescind
36 the trustee’s sale and invalidate the trustee’s deed, at the option of either the successful
37 bidder at the trustee’s sale or the trustee, and in either case with the consent of the
38 beneficiary. Any option to rescind the trustee’s sale pursuant to this paragraph shall be
39 exercised prior to any transfer of the property by the successful bidder to a bona fide
40 purchaser for value. A rescission of the trustee’s sale pursuant to this paragraph may be
41 recorded in a notice of rescission pursuant to Section 1058.5.

42 (5) The mailing of notices in the manner set forth in paragraph (1) shall not impose
43 upon any licensed attorney, agent, or employee of any person entitled to receive notices

1 as herein set forth any duty to communicate the notice to the entitled person from the fact
2 that the mailing address used by the county recorder is the address of the attorney, agent,
3 or employee.

4 (d) Any deed of trust or mortgage with power of sale hereafter executed upon real
5 property or an estate for years therein may contain a request that a copy of any notice of
6 default and a copy of any notice of sale thereunder shall be mailed to any person or party
7 thereto at the address of the person given therein, and a copy of any notice of default and
8 of any notice of sale shall be mailed to each of these at the same time and in the same
9 manner required as though a separate request therefor had been filed by each of these
10 persons as herein authorized. If any deed of trust or mortgage with power of sale
11 executed after September 19, 1939, except a deed of trust or mortgage of any of the
12 classes excepted from the provisions of Section 2924, does not contain a mailing address
13 of the trustor or mortgagor therein named, and if no request for special notice by the
14 trustor or mortgagor in substantially the form set forth in this section has subsequently
15 been recorded, a copy of the notice of default shall be published once a week for at least
16 four weeks in a newspaper of general circulation in the county in which the property is
17 situated, the publication to commence within 10 business days after the filing of the
18 notice of default. In lieu of publication, a copy of the notice of default may be delivered
19 personally to the trustor or mortgagor within the 10 business days or at any time before
20 publication is completed, or by posting the notice of default in a conspicuous place on the
21 property and mailing the notice to the last known address of the trustor or mortgagor.

22 (e) Any person required to mail a copy of a notice of default or notice of sale to each
23 trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall
24 simultaneously cause to be deposited in the United States mail, with postage prepaid and
25 mailed by first-class mail, an envelope containing an additional copy of the required
26 notice addressed to each trustor or mortgagor at the same address to which the notice is
27 sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall
28 execute and retain an affidavit identifying the notice mailed, showing the name and
29 residence or business address of that person, that he or she is over the age of 18 years, the
30 date of deposit in the mail, the name and address of the trustor or mortgagor to whom
31 sent, and that the envelope was sealed and deposited in the mail with postage fully
32 prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a
33 conclusive presumption of mailing.

34 (f)(1) Notwithstanding subdivision (a), with respect to separate interests governed by
35 an association, as defined in subdivision (a) of Section 1351 or in Section 6528, the
36 association may cause to be filed in the office of the recorder in the county in which the
37 separate interests are situated a request that a mortgagee, trustee, or other person
38 authorized to record a notice of default regarding any of those separate interests mail to
39 the association a copy of any trustee's deed upon sale concerning a separate interest. The
40 request shall include a legal description or the assessor's parcel number of all the separate
41 interests. A request recorded pursuant to this subdivision shall include the name and
42 address of the association and a statement that it is ~~a homeowners'~~ an association as
43 defined in subdivision (a) of Section 1351 or in Section 6528. Subsequent requests of an

1 association shall supersede prior requests. A request pursuant to this subdivision shall be
2 recorded before the filing of a notice of default. The mortgagee, trustee, or other
3 authorized person shall mail the requested information to the association within 15
4 business days following the date the trustee's deed is recorded. Failure to mail the
5 request, pursuant to this subdivision, shall not affect the title to real property.

6 (g) No request for a copy of any notice filed for record pursuant to this section, no
7 statement or allegation in the request, and no record thereof shall affect the title to real
8 property or be deemed notice to any person that any person requesting copies of notice
9 has or claims any right, title, or interest in, or lien or charge upon the property described
10 in the deed of trust or mortgage referred to therein.

11 (h) "Business day," as used in this section, has the meaning specified in Section 9.

12 **Comment.** Subdivision (f) of Section 2924b is amended to add a cross-reference to Section
13 6528, and to make a conforming terminological change, reflecting the enactment of the
14 Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

15 **Civ. Code § 2955.1 (amended). Disclosures regarding earthquake insurance requirements**

16 SEC. ____. Section 2955.1 of the Civil Code is amended to read:

17 2955.1. (a) Any lender originating a loan secured by the borrower's separate interest in
18 a condominium project, as defined in subdivision (f) of Section 1351 or in Section 6542,
19 which requires earthquake insurance or imposes a fee or any other condition in lieu
20 thereof pursuant to an underwriting requirement imposed by an institutional third-party
21 purchaser shall disclose all of the following to the potential borrower:

22 (1) That the lender or the institutional third party in question requires earthquake
23 insurance or imposes a fee or any other condition in lieu thereof pursuant to an
24 underwriting requirement imposed by an institutional third party purchaser.

25 (2) That not all lenders or institutional third parties require earthquake insurance or
26 impose a fee or any other condition in lieu thereof pursuant to an underwriting
27 requirement imposed by an institutional third party purchaser.

28 (3) Earthquake insurance may be required on the entire condominium project.

29 (4) That lenders or institutional third parties may also require that a condominium
30 project maintain, or demonstrate an ability to maintain, financial reserves in the amount
31 of the earthquake insurance deductible.

32 (b) For the purposes of this section, "institutional third party" means the Federal Home
33 Loan Mortgage Corporation, the Federal National Mortgage Association, the
34 Government National Mortgage Association, and other substantially similar institutions,
35 whether public or private.

36 (c) The disclosure required by this section shall be made in writing by the lender as
37 soon as reasonably practicable.

38 **Comment.** Section 2955.1 is amended to add a cross-reference to Section 6542, reflecting the
39 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
40 6500-6876).

CODE OF CIVIL PROCEDURE

1 **Code Civ. Proc. § 86, as it reads in 2010 Cal. Stat. ch. 697, § 21 (amended). Specific cases**
2 **and proceedings that are limited civil cases**

3 SEC. _____. Section 86 of the Code of Civil Procedure, as it reads in Section 21 of
4 Chapter 697 of the Statutes of 2010, is amended to read:

5 86. (a) The following civil cases and proceedings are limited civil cases:

6 (1) A case at law in which the demand, exclusive of interest, or the value of the
7 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less. This
8 paragraph does not apply to a case that involves the legality of any tax, impost,
9 assessment, toll, or municipal fine, except an action to enforce payment of delinquent
10 unsecured personal property taxes if the legality of the tax is not contested by the
11 defendant.

12 (2) An action for dissolution of partnership where the total assets of the partnership do
13 not exceed twenty-five thousand dollars (\$25,000); an action of interpleader where the
14 amount of money or the value of the property involved does not exceed twenty-five
15 thousand dollars (\$25,000).

16 (3) An action to cancel or rescind a contract when the relief is sought in connection
17 with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or
18 property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or
19 delivered under, or in consideration of, the contract; an action to revise a contract where
20 the relief is sought in an action upon the contract if the action otherwise is a limited civil
21 case.

22 (4) A proceeding in forcible entry or forcible or unlawful detainer where the whole
23 amount of damages claimed is twenty-five thousand dollars (\$25,000) or less.

24 (5) An action to enforce and foreclose a lien on personal property where the amount of
25 the lien is twenty-five thousand dollars (\$25,000) or less.

26 (6) An action to enforce and foreclose, or a petition to release, a lien arising under the
27 provisions of Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division
28 4 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest
29 development as defined in Section 1351 or 6534 of the Civil Code, where the amount of
30 the liens is twenty-five thousand dollars (\$25,000) or less. However, if an action to
31 enforce the lien affects property that is also affected by a similar pending action that is
32 not a limited civil case, or if the total amount of liens sought to be foreclosed against the
33 same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000),
34 the action is not a limited civil case.

35 (7) An action for declaratory relief when brought pursuant to either of the following:

36 (A) By way of cross-complaint as to a right of indemnity with respect to the relief
37 demanded in the complaint or a cross-complaint in an action or proceeding that is
38 otherwise a limited civil case.

39 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and client,
40 pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the

1 Business and Professions Code, where the amount in controversy is twenty-five thousand
2 dollars (\$25,000) or less.

3 (8) An action to issue a temporary restraining order or preliminary injunction; to take
4 an account, where necessary to preserve the property or rights of any party to a limited
5 civil case; to make any order or perform any act, pursuant to Title 9 (commencing with
6 Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to appoint a
7 receiver pursuant to Section 564 in a limited civil case; to determine title to personal
8 property seized in a limited civil case.

9 (9) An action under Article 3 (commencing with Section 708.210) of Chapter 6 of
10 Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to
11 enforce the liability of the debtor of a judgment debtor where the interest claimed
12 adversely is of a value not exceeding twenty-five thousand dollars (\$25,000) or the debt
13 denied does not exceed twenty-five thousand dollars (\$25,000).

14 (10) An arbitration-related petition filed pursuant to either of the following:

15 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except
16 for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the
17 Insurance Code, if the petition is filed before the arbitration award becomes final and the
18 matter to be resolved by arbitration is a limited civil case under paragraphs (1) to (9),
19 inclusive, of subdivision (a) or if the petition is filed after the arbitration award becomes
20 final and the amount of the award and all other rulings, pronouncements, and decisions
21 made in the award are within paragraphs (1) to (9), inclusive, of subdivision (a).

22 (B) To confirm, correct, or vacate a fee arbitration award between an attorney and
23 client that is binding or has become binding, pursuant to Article 13 (commencing with
24 Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where
25 the arbitration award is twenty-five thousand dollars (\$25,000) or less.

26 (b) The following cases in equity are limited civil cases:

27 (1) A case to try title to personal property when the amount involved is not more than
28 twenty-five thousand dollars (\$25,000).

29 (2) A case when equity is pleaded as a defensive matter in any case that is otherwise a
30 limited civil case.

31 (3) A case to vacate a judgment or order of the court obtained in a limited civil case
32 through extrinsic fraud, mistake, inadvertence, or excusable neglect.

33 **Comment.** Paragraph (6) of subdivision (a) of Section 86 is amended to add a cross-reference
34 to Civil Code Section 6534, reflecting the enactment of the Commercial and Industrial Common
35 Interest Development Act (Civ. Code §§ 6500-6876).

36 **Code Civ. Proc. § 116.540 (amended). Participation by individuals other than plaintiff and**
37 **defendant**

38 SEC. ____ . Section 116.540 of the Code of Civil Procedure is amended to read:

39 116.540. (a) Except as permitted by this section, no individual other than the plaintiff
40 and the defendant may take part in the conduct or defense of a small claims action.

41 (b) Except as additionally provided in subdivision (i), a corporation may appear and
42 participate in a small claims action only through a regular employee, or a duly appointed

1 or elected officer or director, who is employed, appointed, or elected for purposes other
2 than solely representing the corporation in small claims court.

3 (c) A party who is not a corporation or a natural person may appear and participate in a
4 small claims action only through a regular employee, or a duly appointed or elected
5 officer or director, or in the case of a partnership, a partner, engaged for purposes other
6 than solely representing the party in small claims court.

7 (d) If a party is an individual doing business as a sole proprietorship, the party may
8 appear and participate in a small claims action by a representative and without personally
9 appearing if both of the following conditions are met:

10 (1) The claim can be proved or disputed by evidence of an account that constitutes a
11 business record as defined in Section 1271 of the Evidence Code, and there is no other
12 issue of fact in the case.

13 (2) The representative is a regular employee of the party for purposes other than solely
14 representing the party in small claims actions and is qualified to testify to the identity and
15 mode of preparation of the business record.

16 (e) A plaintiff is not required to personally appear, and may submit declarations to
17 serve as evidence supporting his or her claim or allow another individual to appear and
18 participate on his or her behalf, if (1) the plaintiff is serving on active duty in the United
19 States Armed Forces outside this state, (2) the plaintiff was assigned to his or her duty
20 station after his or her claim arose, (3) the assignment is for more than six months, (4) the
21 representative is serving without compensation, and (5) the representative has appeared in
22 small claims actions on behalf of others no more than four times during the calendar year.
23 The defendant may file a claim in the same action in an amount not to exceed the
24 jurisdictional limits stated in Sections 116.220, 116.221, and 116.231.

25 (f) A party incarcerated in a county jail, a Department of Corrections and
26 Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to
27 personally appear, and may submit declarations to serve as evidence supporting his or her
28 claim, or may authorize another individual to appear and participate on his or her behalf
29 if that individual is serving without compensation and has appeared in small claims
30 actions on behalf of others no more than four times during the calendar year.

31 (g) A defendant who is a nonresident owner of real property may defend against a
32 claim relating to that property without personally appearing by (1) submitting written
33 declarations to serve as evidence supporting his or her defense, (2) allowing another
34 individual to appear and participate on his or her behalf if that individual is serving
35 without compensation and has appeared in small claims actions on behalf of others no
36 more than four times during the calendar year, or (3) taking the action described in both
37 (1) and (2).

38 (h) A party who is an owner of rental real property may appear and participate in a
39 small claims action through a property agent under contract with the owner to manage the
40 rental of that property, if (1) the owner has retained the property agent principally to
41 manage the rental of that property and not principally to represent the owner in small
42 claims court, and (2) the claim relates to the rental property.

1 (i) A party that is an association created to manage a common interest development, as
2 defined in Section 1351, or in Sections 6528 and 6534, of the Civil Code, may appear and
3 participate in a small claims action through an agent, a management company
4 representative, or bookkeeper who appears on behalf of that association.

5 (j) At the hearing of a small claims action, the court shall require any individual who is
6 appearing as a representative of a party under subdivisions (b) to (i), inclusive, to file a
7 declaration stating (1) that the individual is authorized to appear for the party, and (2) the
8 basis for that authorization. If the representative is appearing under subdivision (b), (c),
9 (d), (h), or (i), the declaration also shall state that the individual is not employed solely to
10 represent the party in small claims court. If the representative is appearing under
11 subdivision (e), (f), or (g), the declaration also shall state that the representative is serving
12 without compensation, and has appeared in small claims actions on behalf of others no
13 more than four times during the calendar year.

14 (k) A husband or wife who sues or who is sued with his or her spouse may appear and
15 participate on behalf of his or her spouse if (1) the claim is a joint claim, (2) the
16 represented spouse has given his or her consent, and (3) the court determines that the
17 interests of justice would be served.

18 (l) If the court determines that a party cannot properly present his or her claim or
19 defense and needs assistance, the court may in its discretion allow another individual to
20 assist that party.

21 (m) Nothing in this section shall operate or be construed to authorize an attorney to
22 participate in a small claims action except as expressly provided in Section 116.530.

23 **Comment.** Subdivision (i) of Section 116.540 is amended to add cross-references to Civil
24 Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial
25 Common Interest Development Act (Civ. Code §§ 6500-6876).

GOVERNMENT CODE

26 **Gov't Code § 12191 (amended). Miscellaneous business entity filing fees**

27 SEC. ____ . Section 12191 of the Government Code is amended to read:

28 12191. The miscellaneous business entity filing fees are the following:

29 (a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations Code:

30 (1) Filing the statement and designation upon the qualification of a foreign association
31 pursuant to Section 2105 of the Corporations Code: One hundred dollars (\$100).

32 (2) Filing an amended statement and designation by a foreign association pursuant to
33 Section 2107 of the Corporations Code: Thirty dollars (\$30).

34 (3) Filing a certificate showing the surrender of the right of a foreign association to
35 transact intrastate business pursuant to Section 2112 of the Corporations Code: No fee.

36 (b) Unincorporated Associations:

37 (1) Filing a statement in accordance with Section 24003 of the Corporations Code as to
38 principal place of office or place for sending notices or designating agent for service:
39 Twenty-five dollars (\$25).

40 (2) Insignia Registrations: Ten dollars (\$10).

1 (c) Community Associations and Common Interest Developments:

2 (1) Filing a statement by a community association in accordance with Section 1363.6
3 or 6760 of the Civil Code to register the common interest development that it manages:
4 An amount not to exceed thirty dollars (\$30).

5 (2) Filing an amended statement by a community association in accordance with
6 Section 1363.6 or 6760 of the Civil Code: No fee.

7 **Comment.** Section 12191 is amended to add cross-references to Civil Code Section 6760,
8 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
9 (Civ. Code §§ 6500-6876).

10 **Gov't Code § 12956.1 (amended). Restrictive covenant based on discriminatory grounds**

11 SEC. ____ . Section 12956.1 of the Government Code is amended to read:

12 12956.1. (a) As used in this section, “association,” “governing documents,” and
13 “declaration” have the same meanings as set forth in Section 1351, or in Sections 6528,
14 6546, and 6552, of the Civil Code.

15 (b)(1) A county recorder, title insurance company, escrow company, real estate broker,
16 real estate agent, or association that provides a copy of a declaration, governing
17 document, or deed to any person shall place a cover page or stamp on the first page of the
18 previously recorded document or documents stating, in at least 14-point boldface type,
19 the following:

20 “If this document contains any restriction based on race, color, religion, sex, gender,
21 gender identity, gender expression, sexual orientation, familial status, marital status,
22 disability, genetic information, national origin, source of income as defined in
23 subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal
24 fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the
25 Government Code. Lawful restrictions under state and federal law on the age of
26 occupants in senior housing or housing for older persons shall not be construed as
27 restrictions based on familial status.”

28 (2) The requirements set forth in paragraph (1) shall not apply to documents being
29 submitted for recordation to a county recorder.

30 (c) Any person who records a document for the express purpose of adding a racially
31 restrictive covenant is guilty of a misdemeanor. The county recorder shall not incur any
32 liability for recording the document. Notwithstanding any other provision of law, a
33 prosecution for a violation of this subdivision shall commence within three years after the
34 discovery of the recording of the document.

35 **Comment.** Section 12956.1 is amended to add cross-references to Civil Code Sections 6528,
36 6546, and 6552, reflecting the enactment of the Commercial and Industrial Common Interest
37 Development Act (Civ. Code §§ 6500-6876).

38 **Gov't Code § 12956.2 (amended). Restrictive Covenant Modification**

39 SEC. ____ . Section 12956.2 of the Government Code is amended to read:

40 12956.2. (a) A person who holds an ownership interest of record in property that he or
41 she believes is the subject of an unlawfully restrictive covenant in violation of
42 subdivision (l) of Section 12955 may record a document titled Restrictive Covenant

1 Modification. The county recorder may choose to waive the fee prescribed for recording
2 and indexing instruments pursuant to Section 27361 in the case of the modification
3 document provided for in this section. The modification document shall include a
4 complete copy of the original document containing the unlawfully restrictive language
5 with the unlawfully restrictive language stricken.

6 (b) Before recording the modification document, the county recorder shall submit the
7 modification document and the original document to the county counsel who shall
8 determine whether the original document contains an unlawful restriction based on race,
9 color, religion, sex, gender, gender identity, gender expression, sexual orientation,
10 familial status, marital status, disability, genetic information, national origin, source of
11 income as defined in subdivision (p) of Section 12955, or ancestry. The county counsel
12 shall return the documents and inform the county recorder of its determination. The
13 county recorder shall refuse to record the modification document if the county counsel
14 finds that the original document does not contain an unlawful restriction as specified in
15 this paragraph.

16 (c) The modification document shall be indexed in the same manner as the original
17 document being modified. It shall contain a recording reference to the original document
18 in the form of a book and page or instrument number, and date of the recording.

19 (d) Subject to covenants, conditions, and restrictions that were recorded after the
20 recording of the original document that contains the unlawfully restrictive language and
21 subject to covenants, conditions, and restrictions that will be recorded after the
22 Restrictive Covenant Modification, the restrictions in the Restrictive Covenant
23 Modification, once recorded, are the only restrictions having effect on the property. The
24 effective date of the terms and conditions of the modification document shall be the same
25 as the effective date of the original document.

26 (e) The county recorder shall make available to the public Restrictive Covenant
27 Modification forms.

28 (f) If the holder of an ownership interest of record in property causes to be recorded a
29 modified document pursuant to this section that contains modifications not authorized by
30 this section, the county recorder shall not incur liability for recording the document. The
31 liability that may result from the unauthorized recordation is the sole responsibility of the
32 holder of the ownership interest of record who caused the modified recordation.

33 (g) This section does not apply to persons holding an ownership interest in property
34 that is part of a common interest development as defined in subdivision (c) of Section
35 1351 or in Section 6534 of the Civil Code if the board of directors of that common
36 interest development is subject to the requirements of subdivision (b) of Section 1352.5
37 or of Section 6606 of the Civil Code.

38 **Comment.** Subdivision (g) of Section 12956.2 is amended to add cross-references to Civil
39 Code Sections 6534 and 6606, reflecting the enactment of the Commercial and Industrial
40 Common Interest Development Act (Civ. Code §§ 6500-6876).

41 **Gov't Code § 53341.5 (amended). Lot, parcel, or unit of subdivision subject to special tax**

42 SEC. ____ . Section 53341.5 of the Government Code is amended to read:

1 53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax levied
2 pursuant to this chapter, the subdivider, his or her agent, or representative, shall not sell,
3 or lease for a term exceeding five years, or permit a prospective purchaser or lessor to
4 sign a contract of purchase or a deposit receipt or any substantially equivalent document
5 in the event of a lease with respect to the lot, parcel, or unit, or cause it to be sold or
6 leased for a term exceeding five years, until the prospective purchaser or lessee of the lot,
7 parcel, or unit has been furnished with and has signed a written notice as provided in this
8 section. The notice shall contain the heading “NOTICE OF SPECIAL TAX” in type no
9 smaller than 8-point type, and shall be in substantially the following form. The form may
10 be modified as needed to clearly and accurately describe the tax structure and other
11 characteristics of districts created before January 1, 1993, or to clearly and accurately
12 consolidate information about the tax structure and other characteristics of two or more
13 districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or
14 unit:

15 (b) “Subdivision,” as used in subdivision (a), means improved or unimproved land that
16 is divided or proposed to be divided for the purpose of sale, lease, or financing, whether
17 immediate or future, into two or more lots, parcels, or units and includes a condominium
18 project, as defined by ~~Section 1350~~ subdivision (f) of Section 1351 or by Section 6542 of
19 the Civil Code, a community apartment project, a stock cooperative, and a limited-equity
20 housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4, respectively, of
21 the Business and Professions Code.

22 (c) The buyer shall have three days after delivery in person or five days after delivery
23 by deposit in the mail of any notice required by this section, to terminate his or her
24 agreement by delivery of written notice of that termination to the owner, subdivider, or
25 agent.

26 (d) The failure to furnish the notice to the buyer or lessee, and failure of the buyer or
27 lessee to sign the notice of a special tax, shall not invalidate any grant, conveyance, lease,
28 or encumbrance.

29 (e) Any person or entity who willfully violates the provisions of this section shall be
30 liable to the purchaser of a lot or unit that is subject to the provisions of this section, for
31 actual damages, and in addition thereto, shall be guilty of a public offense punishable by
32 a fine in an amount not to exceed five hundred dollars (\$500). In an action to enforce a
33 liability or fine, the prevailing party shall be awarded reasonable attorney’s fees.

34 **Comment.** Subdivision (b) of Section 53341.5 is amended to add a cross-reference to Civil
35 Code Section 6542, reflecting the enactment of the Commercial and Industrial Common Interest
36 Development Act (Civ. Code §§ 6500-6876), and to correct an erroneous cross-reference to
37 former Civil Code Section 1350, which should have been a reference to Civil Code Section
38 1351(f).

39 **Gov’t Code § 65008 (amended). Invalidity of discriminatory act**

40 SEC. ____. Section 65008 of the Government Code is amended to read:

41 65008. (a) Any action pursuant to this title by any city, county, city and county, or
42 other local governmental agency in this state is null and void if it denies to any individual

1 or group of individuals the enjoyment of residence, landownership, tenancy, or any other
2 land use in this state because of any of the following reasons:

3 (1)(A) The lawful occupation, age, or any characteristic of the individual or group of
4 individuals listed in subdivision (a) or (d) of Section 12955, as those bases are defined in
5 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
6 12955 and Section 12955.2.

7 (B) Notwithstanding subparagraph (A), with respect to familial status, subparagraph
8 (A) shall not be construed to apply to housing for older persons, as defined in Section
9 12955.9. With respect to familial status, nothing in subparagraph (A) shall be construed
10 to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to
11 housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and
12 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section 12955 of this code
13 shall apply to subparagraph (A).

14 (2) The method of financing of any residential development of the individual or group
15 of individuals.

16 (3) The intended occupancy of any residential development by persons or families of
17 very low, low, moderate, or middle income.

18 (b)(1) No city, county, city and county, or other local governmental agency shall, in the
19 enactment or administration of ordinances pursuant to any law, including this title,
20 prohibit or discriminate against any residential development or emergency shelter for any
21 of the following reasons:

22 (A) Because of the method of financing.

23 (B)(i) Because of the lawful occupation, age, or any characteristic listed in subdivision
24 (a) or (d) of Section 12955, as those characteristics are defined in Sections 12926,
25 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
26 Section 12955.2 of the owners or intended occupants of the residential development or
27 emergency shelter.

28 (ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not be
29 construed to apply to housing for older persons, as defined in Section 12955.9. With
30 respect to familial status, nothing in clause (i) shall be construed to affect Sections 51.2,
31 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior
32 citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and 6714 of the Civil
33 Code, and subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to
34 clause (i).

35 (C) Because the development or shelter is intended for occupancy by persons and
36 families of very low, low, or moderate income, as defined in Section 50093 of the Health
37 and Safety Code, or persons and families of middle income.

38 (D) Because the development consists of a multifamily residential project that is
39 consistent with both the jurisdiction's zoning ordinance and general plan as they existed
40 on the date the application was deemed complete, except that a project shall not be
41 deemed to be inconsistent with the zoning designation for the site if that zoning
42 designation is inconsistent with the general plan only because the project site has not
43 been rezoned to conform with a more recently adopted general plan.

1 (2) The discrimination prohibited by this subdivision includes the denial or
2 conditioning of a residential development or shelter because of, in whole or in part, either
3 of the following:

4 (A) The method of financing.

5 (B) The occupancy of the development by persons protected by this subdivision,
6 including, but not limited to, persons and families of very low, low, or moderate income.

7 (3) A city, county, city and county, or other local government agency may not,
8 pursuant to subdivision (d) of Section 65589.5, disapprove a housing development
9 project or condition approval of a housing development project in a manner that renders
10 the project infeasible if the basis for the disapproval or conditional approval includes any
11 of the reasons prohibited in paragraph (1) or (2).

12 (c) For the purposes of this section, “persons and families of middle income” means
13 persons and families whose income does not exceed 150 percent of the median income
14 for the county in which the persons or families reside.

15 (d)(1) No city, county, city and county, or other local governmental agency may
16 impose different requirements on a residential development or emergency shelter that is
17 subsidized, financed, insured, or otherwise assisted by the federal or state government or
18 by a local public entity, as defined in Section 50079 of the Health and Safety Code, than
19 those imposed on nonassisted developments, except as provided in subdivision (e). The
20 discrimination prohibited by this subdivision includes the denial or conditioning of a
21 residential development or emergency shelter based in whole or in part on the fact that
22 the development is subsidized, financed, insured, or otherwise assisted as described in
23 this paragraph.

24 (2)(A) No city, county, city and county, or other local governmental agency may,
25 because of the lawful occupation age, or any characteristic of the intended occupants
26 listed in subdivision (a) or (d) of Section 12955, as those characteristics are defined in
27 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
28 12955, and Section 12955.2 or because the development is intended for occupancy by
29 persons and families of very low, low, moderate, or middle income, impose different
30 requirements on these residential developments than those imposed on developments
31 generally, except as provided in subdivision (e).

32 (B) Notwithstanding subparagraph (A), with respect to familial status, subparagraph
33 (A) shall not be construed to apply to housing for older persons, as defined in Section
34 12955.9. With respect to familial status, nothing in subparagraph (A) shall be construed
35 to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to
36 housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~ Sections 1360 and
37 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section 12955 of this code
38 shall apply to subparagraph (A).

39 (e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title do not
40 prohibit either of the following:

41 (1) The County of Riverside from enacting and enforcing zoning to provide housing for
42 older persons, in accordance with state or federal law, if that zoning was enacted prior to
43 January 1, 1995.

1 (2) Any city, county, or city and county from extending preferential treatment to
2 residential developments or emergency shelters assisted by the federal or state
3 government or by a local public entity, as defined in Section 50079 of the Health and
4 Safety Code, or other residential developments or emergency shelters intended for
5 occupancy by persons and families of low and moderate income, as defined in Section
6 50093 of the Health and Safety Code, or persons and families of middle income, or
7 agricultural employees, as defined in subdivision (b) of Section 1140.4 of the Labor
8 Code, and their families. This preferential treatment may include, but need not be limited
9 to, reduction or waiver of fees or changes in architectural requirements, site development
10 and property line requirements, building setback requirements, or vehicle parking
11 requirements that reduce development costs of these developments.

12 (f) “Residential development,” as used in this section, means a single-family residence
13 or a multifamily residence, including manufactured homes, as defined in Section 18007
14 of the Health and Safety Code.

15 (g) This section shall apply to chartered cities.

16 (h) The Legislature finds and declares that discriminatory practices that inhibit the
17 development of housing for persons and families of very low, low, moderate, and middle
18 income, or emergency shelters for the homeless, are a matter of statewide concern.

19 **Comment.** Section 65008 is amended to add cross-references to Civil Code Section 6714,
20 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
21 (Civ. Code §§ 6500-6876).

22 **Gov’t Code § 66411 (amended). Local control of common interest developments and**
23 **subdivision design and improvement**

24 SEC. ____ . Section 66411 of the Government Code is amended to read:

25 66411. Regulation and control of the design and improvement of subdivisions are
26 vested in the legislative bodies of local agencies. Each local agency shall, by ordinance,
27 regulate and control the initial design and improvement of common interest
28 developments as defined in Section 1351 or 6534 of the Civil Code and subdivisions for
29 which this division requires a tentative and final or parcel map. In the development,
30 adoption, revision, and application of ~~such~~ this type of ordinance, the local agency shall
31 comply with the provisions of Section 65913.2. The ordinance shall specifically provide
32 for proper grading and erosion control, including the prevention of sedimentation or
33 damage to offsite property. Each local agency may by ordinance regulate and control
34 other subdivisions, provided that the regulations are not more restrictive than the
35 regulations for those subdivisions for which a tentative and final or parcel map are
36 required by this division, and provided further that the regulations shall not be applied to
37 short-term leases (terminable by either party on not more than 30 days’ notice in writing)
38 of a portion of the operating right-of-way of a railroad corporation as defined by Section
39 230 of the Public Utilities Code unless a showing is made in individual cases, under
40 substantial evidence, that public policy necessitates the application of the regulations to
41 those short-term leases in individual cases.

1 **Comment.** Section 66411 is amended to add a cross-reference to Civil Code Section 6534,
2 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
3 (Civ. Code §§ 6500-6876), and to make a stylistic revision.

4 **Gov't Code § 66412 (amended). Application of Subdivision Map Act**

5 66412. This division shall be inapplicable to any of the following:

6 (a) The financing or leasing of apartments, offices, stores, or similar space within
7 apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or
8 trailer parks.

9 (b) Mineral, oil, or gas leases.

10 (c) Land dedicated for cemetery purposes under the Health and Safety Code.

11 (d) A lot line adjustment between four or fewer existing adjoining parcels, where the
12 land taken from one parcel is added to an adjoining parcel, and where a greater number of
13 parcels than originally existed is not thereby created, if the lot line adjustment is
14 approved by the local agency, or advisory agency. A local agency or advisory agency
15 shall limit its review and approval to a determination of whether or not the parcels
16 resulting from the lot line adjustment will conform to the local general plan, any
17 applicable specific plan, any applicable coastal plan, and zoning and building ordinances.
18 An advisory agency or local agency shall not impose conditions or exactions on its
19 approval of a lot line adjustment except to conform to the local general plan, any
20 applicable specific plan, any applicable coastal plan, and zoning and building ordinances,
21 to require the prepayment of real property taxes prior to the approval of the lot line
22 adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements.
23 No tentative map, parcel map, or final map shall be required as a condition to the
24 approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed,
25 which shall be recorded. No record of survey shall be required for a lot line adjustment
26 unless required by Section 8762 of the Business and Professions Code. A local agency
27 shall approve or disapprove a lot line adjustment pursuant to the Permit Streamlining Act
28 (Chapter 4.5 (commencing with Section 65920) of Division 1).

29 (e) Boundary line or exchange agreements to which the State Lands Commission or a
30 local agency holding a trust grant of tide and submerged lands is a party.

31 (f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

32 (g) The conversion of a community apartment project, as defined in Section 1351 of
33 the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only
34 if all of the following requirements are met:

35 (1) The property was subdivided before January 1, 1982, as evidenced by a recorded
36 deed creating the community apartment project.

37 (2) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all
38 conveyances and other documents necessary to effectuate the conversion shall be
39 executed by the required number of owners in the project as specified in the bylaws or
40 other organizational documents. If the bylaws or other organizational documents do not
41 expressly specify the number of owners necessary to execute the conveyances and other
42 documents, a majority of owners in the project shall be required to execute the

1 conveyances or other documents. Conveyances and other documents executed under the
2 foregoing provisions shall be binding upon and affect the interests of all parties in the
3 project.

4 (3) If subdivision, as defined in Section 66424, of the property occurred after January
5 1, 1964, both of the following requirements are met:

6 (A) A final or parcel map of that subdivision was approved by the local agency and
7 recorded, with all of the conditions of that map remaining in effect after the conversion.

8 (B) No more than 49 percent of the units in the project were owned by any one person
9 as defined in Section 17, including an incorporator or director of the community
10 apartment project, on January 1, 1982.

11 (4) The local agency certifies that the above requirements were satisfied if the local
12 agency, by ordinance, provides for that certification.

13 (h) The conversion of a stock cooperative, as defined in Section 1351 or 6566 of the
14 Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all
15 of the following requirements are met:

16 (1) The property was subdivided before January 1, 1982, as evidenced by a recorded
17 deed creating the stock cooperative, an assignment of lease, or issuance of shares to a
18 stockholder.

19 (2) A person renting a unit in a cooperative shall be entitled at the time of conversion to
20 all tenant rights in state or local law, including, but not limited to, rights respecting first
21 refusal, notice, and displacement and relocation benefits.

22 (3) Subject to compliance with subdivision (e) of Section 1351, or with Sections 6626
23 and 6628, of the Civil Code, all conveyances and other documents necessary to effectuate
24 the conversion shall be executed by the required number of owners in the cooperative as
25 specified in the bylaws or other organizational documents. If the bylaws or other
26 organizational documents do not expressly specify the number of owners necessary to
27 execute the conveyances and other documents, a majority of owners in the cooperative
28 shall be required to execute the conveyances or other documents. Conveyances and other
29 documents executed under the foregoing provisions shall be binding upon and affect the
30 interests of all parties in the cooperative.

31 (4) If subdivision, as defined in Section 66424, of the property occurred after January
32 1, 1980, both of the following requirements are met:

33 (A) A final or parcel map of that subdivision was approved by the local agency and
34 recorded, with all of the conditions of that map remaining in effect after the conversion.

35 (B) No more than 49 percent of the shares in the project were owned by any one person
36 as defined in Section 17, including an incorporator or director of the cooperative, on
37 January 1, 1982.

38 (5) The local agency certifies that the above requirements were satisfied if the local
39 agency, by ordinance, provides for that certification.

40 (i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or
41 portions thereof, in conjunction with the financing, erection, and sale or lease of a
42 windpowered electrical generation device on the land, if the project is subject to
43 discretionary action by the advisory agency or legislative body.

1 (j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use
2 permit, or similar right on a portion of a parcel, to a telephone corporation as defined in
3 Section 234 of the Public Utilities Code, exclusively for the placement and operation of
4 cellular radio transmission facilities, including, but not limited to, antennae support
5 structures, microwave dishes, structures to house cellular communications transmission
6 equipment, power sources, and other equipment incidental to the transmission of cellular
7 communications, if the project is subject to discretionary action by the advisory agency or
8 legislative body.

9 (k) Leases of agricultural land for agricultural purposes. As used in this subdivision,
10 “agricultural purposes” means the cultivation of food or fiber, or the grazing or pasturing
11 of livestock.

12 (l) The leasing of, or the granting of an easement to, a parcel of land, or any portion or
13 portions thereof, in conjunction with the financing, erection, and sale or lease of a solar
14 electrical generation device on the land, if the project is subject to review under other
15 local agency ordinances regulating design and improvement or, if the project is subject to
16 other discretionary action by the advisory agency or legislative body.

17 (m) The leasing of, or the granting of an easement to, a parcel of land or any portion or
18 portions of the land in conjunction with a biogas project that uses, as part of its operation,
19 agricultural waste or byproducts from the land where the project is located and reduces
20 overall emissions of greenhouse gases from agricultural operations on the land if the
21 project is subject to review under other local agency ordinances regulating design and
22 improvement or if the project is subject to discretionary action by the advisory agency or
23 legislative body.

24 **Comment.** Subdivisions (g) and (h) of Section 66412 are amended to add cross-references to
25 Civil Code Sections 6566, 6626, and 6628, reflecting the enactment of the Commercial and
26 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

27 **Gov’t Code § 66424 (amended). Subdivision**

28 SEC. ____. Section 66424 of the Government Code is amended to read:

29 66424. “Subdivision” means the division, by any subdivider, of any unit or units of
30 improved or unimproved land, or any portion thereof, shown on the latest equalized
31 county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or
32 financing, whether immediate or future. Property shall be considered as contiguous units,
33 even if it is separated by roads, streets, utility easement or railroad rights-of-way.
34 “Subdivision” includes a condominium project, as defined in subdivision (f) of Section
35 1351 or in Section 6542 of the Civil Code, a community apartment project, as defined in
36 subdivision (d) of Section 1351 of the Civil Code, or the conversion of five or more
37 existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section
38 1351 or in Section 6566 of the Civil Code.

39 **Comment.** Section 66424 is amended to add cross-references to Civil Code Sections 6542 and
40 6566, reflecting the enactment of the Commercial and Industrial Common Interest Development
41 Act (Civ. Code §§ 6500-6876).

1 **Gov't Code § 66427 (amended). Map of condominium, community apartment project, or**
2 **stock cooperative project**

3 SEC. ____ . Section 66427 of the Government Code is amended to read:

4 66427. (a) A map of a condominium project, a community apartment project, or of the
5 conversion of five or more existing dwelling units to a stock cooperative project need not
6 show the buildings or the manner in which the buildings or the airspace above the
7 property shown on the map are to be divided, nor shall the governing body have the right
8 to refuse approval of a parcel, tentative, or final map of the project on account of the
9 design or the location of buildings on the property shown on the map that are not
10 violative of local ordinances or on account of the manner in which airspace is to be
11 divided in conveying the condominium.

12 (b) A map need not include a condominium plan or plans, as defined in subdivision (e)
13 of Section 1351 or in Section 6540 of the Civil Code, and the governing body may not
14 refuse approval of a parcel, tentative, or final map of the project on account of the
15 absence of a condominium plan.

16 (c) Fees and lot design requirements shall be computed and imposed with respect to
17 those maps on the basis of parcels or lots of the surface of the land shown thereon as
18 included in the project.

19 (d) Nothing herein shall be deemed to limit the power of the legislative body to
20 regulate the design or location of buildings in a project by or pursuant to local ordinances.

21 (e) If the governing body has approved a parcel map or final map for the establishment
22 of condominiums on property pursuant to the requirements of this division, the separation
23 of a three-dimensional portion or portions of the property from the remainder of the
24 property or the division of that three-dimensional portion or portions into condominiums
25 shall not constitute a further subdivision as defined in Section 66424, provided each of
26 the following conditions has been satisfied:

27 (1) The total number of condominiums established is not increased above the number
28 authorized by the local agency in approving the parcel map or final map.

29 (2) A perpetual estate or an estate for years in the remainder of the property is held by
30 the condominium owners in undivided interests in common, or by an association as
31 defined in subdivision (a) of Section 1351 or in Section 6528 of the Civil Code, and the
32 duration of the estate in the remainder of the property is the same as the duration of the
33 estate in the condominiums.

34 (3) The three-dimensional portion or portions of property are described on a
35 condominium plan or plans, as defined in subdivision (e) of Section 1351 or in Section
36 6540 of the Civil Code.

37 **Comment.** Section 66427 is amended to add cross-references to Civil Code Sections 6528 and
38 6540, reflecting the enactment of the Commercial and Industrial Common Interest Development
39 Act (Civ. Code §§ 6500-6876).

40 **Gov't Code § 66452.10 (amended). Stock cooperative or community apartment project**

41 SEC. ____ . Section 66452.10 of the Government Code is amended to read:

1 66452.10. A stock cooperative, as defined in Section 11003.2 of the Business and
2 Professions Code, or a community apartment project, as defined in Section 11004 of the
3 Business and Professions Code, shall not be converted to a condominium, as defined in
4 Section 783 of the Civil Code, unless the required number of (1) owners and (2) trustees
5 or beneficiaries of each recorded deed of trust and mortgagees of each recorded mortgage
6 in the cooperative or project, as specified in the bylaws, or other organizational
7 documents, have voted in favor of the conversion. If the bylaws or other organizational
8 documents do not expressly specify the number of votes required to approve the
9 conversion, a majority vote of the (1) owners and (2) trustees or beneficiaries of each
10 recorded deed of trust and mortgagees of each recorded mortgage in the cooperative or
11 project shall be required. Upon approval of the conversion as set forth above and in
12 compliance with subdivision (e) of Section 1351, or with Sections 6626 and 6628, of the
13 Civil Code, all conveyances and other documents necessary to effectuate the conversion
14 shall be executed by the required number of owners in the cooperative or project as
15 specified in the bylaws or other organizational documents. If the bylaws or other
16 organizational documents do not expressly specify the number of owners necessary to
17 execute the conveyances or other documents, a majority of owners in the cooperative or
18 project shall be required to execute the conveyances and other documents. Conveyances
19 and other documents executed under the foregoing provisions shall be binding upon and
20 affect the interests of all parties in the cooperative or project. The provisions of Section
21 66499.31 shall not apply to a violation of this section.

22 **Comment.** Section 66452.10 is amended to add cross-references to Civil Code Sections 6626
23 and 6628, reflecting the enactment of the Commercial and Industrial Common Interest
24 Development Act (Civ. Code §§ 6500-6876).

25 **Gov't Code § 66475.2 (amended). Local transit facilities**

26 SEC. ____ . Section 66475.2 of the Government Code is amended to read:

27 66475.2. (a) There may be imposed by local ordinance a requirement of a dedication or
28 an irrevocable offer of dedication of land within the subdivision for local transit facilities
29 such as bus turnouts, benches, shelters, landing pads and similar items that directly
30 benefit the residents of a subdivision. The irrevocable offers may be terminated as
31 provided in subdivisions (c) and (d) of Section 66477.2.

32 (b) Only the payment of fees in lieu of the dedication of land may be required in
33 subdivisions that consist of the subdivision of airspace in existing buildings into
34 condominium projects, stock cooperatives, or community apartment projects, as those
35 terms are defined in Section 1351, or in Sections 6542 and 6566, of the Civil Code.

36 **Comment.** Section 66475.2 is amended to add cross-references to Civil Code Sections 6542
37 and 6566, reflecting the enactment of the Commercial and Industrial Common Interest
38 Development Act (Civ. Code §§ 6500-6876).

HEALTH AND SAFETY CODE

1 **Health & Safety Code § 13132.7 (amended). Fire retardant roof covering that meets**
2 **building standards**

3 SEC. ____ . Section 13132.7 of the Health and Safety Code is amended to read:

4 13132.7. (a) Within a very high fire hazard severity zone designated by the Director of
5 Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of
6 Chapter 1 of Part 2 of Division 4 of the Public Resources Code and within a very high
7 hazard severity zone designated by a local agency pursuant to Chapter 6.8 (commencing
8 with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, the entire
9 roof covering of every existing structure where more than 50 percent of the total roof area
10 is replaced within any one-year period, every new structure, and any roof covering
11 applied in the alteration, repair, or replacement of the roof of every existing structure,
12 shall be a fire retardant roof covering that is at least class B as defined in the Uniform
13 Building Code, as adopted and amended by the State Building Standards Commission.

14 (b) In all other areas, the entire roof covering of every existing structure where more
15 than 50 percent of the total roof area is replaced within any one-year period, every new
16 structure, and any roof covering applied in the alteration, repair, or replacement of the
17 roof of every existing structure, shall be a fire retardant roof covering that is at least class
18 C as defined in the Uniform Building Code, as adopted and amended by the State
19 Building Standards Commission.

20 (c) Notwithstanding subdivision (b), within state responsibility areas classified by the
21 State Board of Forestry and Fire Protection pursuant to Article 3 (commencing with
22 Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except
23 for those state responsibility areas designated as moderate fire hazard responsibility
24 zones, the entire roof covering of every existing structure where more than 50 percent of
25 the total roof area is replaced within any one-year period, every new structure, and any
26 roof covering applied in the alteration, repair, or replacement of the roof of every existing
27 structure, shall be a fire retardant roof covering that is at least class B as defined in the
28 Uniform Building Code, as adopted and amended by the State Building Standards
29 Commission.

30 (d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard severity
31 zones designated by the Director of Forestry and Fire Protection pursuant to Article 9
32 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public
33 Resources Code or by a local agency pursuant to Chapter 6.8 (commencing with Section
34 51175) of Part 1 of Division 1 of Title 5 of the Government Code, the entire roof
35 covering of every existing structure where more than 50 percent of the total roof area is
36 replaced within any one-year period, every new structure, and any roof covering applied
37 in the alteration, repair, or replacement of the roof of every existing structure, shall be a
38 fire retardant roof covering that is at least class A as defined in the Uniform Building
39 Code, as adopted and amended by the State Building Standards Commission.

40 (2) Paragraph (1) does not apply to any jurisdiction containing a very high fire hazard
41 severity zone if the jurisdiction fulfills both of the following requirements:

1 (A) Adopts the model ordinance approved by the State Fire Marshal pursuant to
2 Section 51189 of the Government Code or an ordinance that substantially conforms to the
3 model ordinance of the State Fire Marshal.

4 (B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

5 (e) The State Building Standards Commission shall incorporate the requirements set
6 forth in subdivisions (a), (b), and (c) by publishing them as an amendment to the
7 California Building Standards Code in accordance with Chapter 4 (commencing with
8 Section 18935) of Part 2.5 of Division 13.

9 (f) Nothing in this section shall limit the authority of a city, county, city and county, or
10 fire protection district in establishing more restrictive requirements, in accordance with
11 current law, than those specified in this section.

12 (g) This section shall not affect the validity of an ordinance, adopted prior to the
13 effective date for the relevant roofing standard specified in subdivisions (a) and (b), by a
14 city, county, city and county, or fire protection district, unless the ordinance mandates a
15 standard that is less stringent than the standards set forth in subdivision (a), in which case
16 the ordinance shall not be valid on or after the effective date for the relevant roofing
17 standard specified in subdivisions (a) and (b).

18 (h) Any qualified historical building or structure as defined in Section 18955 may, on a
19 case-by-case basis, utilize alternative roof constructions as provided by the State
20 Historical Building Code.

21 (i) The installer of the roof covering shall provide certification of the roof covering
22 classification, as provided by the manufacturer or supplier, to the building owner and,
23 when requested, to the agency responsible for enforcement of this part. The installer shall
24 also install the roof covering in accordance with the manufacturer's listing.

25 (j) No wood roof covering materials shall be sold or applied in this state unless both of
26 the following conditions are met:

27 (1) The materials have been approved and listed by the State Fire Marshal as
28 complying with the requirements of this section.

29 (2) The materials have passed at least five years of the 10-year natural weathering test.
30 The 10-year natural weathering test required by this subdivision shall be conducted in
31 accordance with standard 15-2 of the 1994 edition of the Uniform Building Code at a
32 testing facility recognized by the State Fire Marshal.

33 (k) The Insurance Commissioner shall accept the use of fire retardant wood roof
34 covering material that complies with the requirements of this section, used in the partial
35 repair or replacement of nonfire retardant wood roof covering material, as complying
36 with the requirement in Section 2695.9 of Title 10 of the California Code of Regulations
37 relative to matching replacement items in quality, color, and size.

38 (l) No common interest development, as defined in Section 1351 or 6534 of the Civil
39 Code, may require a ~~homeowner~~ an owner to install or repair a roof in a manner that is in
40 violation of this section. The governing documents, as defined in Section 1351 or 6552 of
41 the Civil Code, of a common interest development within a very high fire severity zone
42 shall allow for at least one type of fire retardant roof covering material that meets the
43 requirements of this section.

1 **Comment.** Subdivision (l) of Section 13132.7 is amended to add cross-references to Civil
2 Code Sections 6534 and 6552, and to make a conforming terminological change, reflecting the
3 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
4 6500-6876).

5 **Health & Safety Code § 19850 (amended). Filing of building plans**

6 SEC. ____ . Section 19850 of the Health and Safety Code is amended to read:

7 19850. The building department of every city or county shall maintain an official copy,
8 which may be on microfilm or other type of photographic copy, of the plans of every
9 building, during the life of the building, for which the department issued a building
10 permit.

11 “Building department” means the department, bureau, or officer charged with the
12 enforcement of laws or ordinances regulating the erection, construction, or alteration of
13 buildings.

14 Except for plans of a common interest development as defined in Section 1351 or 6534
15 of the Civil Code, plans need not be filed for:

16 (a) Single or multiple dwellings not more than two stories and basement in height.

17 (b) Garages and other structures appurtenant to buildings described under subdivision
18 (a).

19 (c) Farm or ranch buildings.

20 (d) Any one-story building where the span between bearing walls does not exceed 25
21 feet. The exemption in this subdivision does not, however, apply to a steel frame or
22 concrete building.

23 **Comment.** Section 19850 is amended to add a cross-reference to Civil Code Section 6534,
24 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
25 (Civ. Code §§ 6500-6876).

26 **Health & Safety Code § 25400.22 (amended). Lien placed on contaminated property**

27 SEC. ____ . Section 25400.22 of the Health and Safety Code is amended to read:

28 25400.22. (a) No later than 10 working days after the date when a local health officer
29 determines that property is contaminated pursuant to subdivision (b) of Section 25400.20,
30 the local health officer shall do all of the following:

31 (1) Except as provided in paragraph (2), if the property is real property, record with the
32 county recorder a lien on the property. The lien shall specify all of the following:

33 (A) The name of the agency on whose behalf the lien is imposed.

34 (B) The date on which the property is determined to be contaminated.

35 (C) The legal description of the real property and the assessor’s parcel number.

36 (D) The record owner of the property.

37 (E) The amount of the lien, which shall be the greater of two hundred dollars (\$200) or
38 the costs incurred by the local health officer in compliance with this chapter, including,
39 but not limited to, the cost of inspection performed pursuant to Section 25400.19 and the
40 county recorder’s fee.

41 (2)(A) If the property is a mobilehome or manufactured home specified in paragraph
42 (2) of subdivision (t) of Section 25400.11, amend the permanent record with a restraint

1 on the mobilehome, or manufactured home with the Department of Housing and
2 Community Development, in the form prescribed by that department, providing notice of
3 the determination that the property is contaminated.

4 (B) If the property is a recreational vehicle specified in paragraph (2) of subdivision (t)
5 of Section 25400.11, perfect by filing with the Department of Motor Vehicles a vehicle
6 license stop on the recreational vehicle in the form prescribed by that department,
7 providing notice of the determination that the property is contaminated.

8 (C) If the property is a mobilehome or manufactured home, not subject to paragraph (2)
9 of subdivision (t) of Section 25400.11, is located on real property, and is not attached to
10 that real property, the local health officer shall record a lien for the real property with the
11 county recorder, and the Department of Housing and Community Development shall
12 amend the permanent record with a restraint for the mobilehome or manufactured home,
13 in the form and with the contents prescribed by that department.

14 (3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall
15 specify all of the following:

16 (A) The name of the agency on whose behalf the lien, restraint, or vehicle license stop
17 is imposed.

18 (B) The date on which the property is determined to be contaminated.

19 (C) The legal description of the real property and the assessor's parcel number, and the
20 mailing and street address or space number of the manufactured home, mobilehome, or
21 recreational vehicle or the vehicle identification number of the recreational vehicle, if
22 applicable.

23 (D) The registered owner of the mobilehome, manufactured home, or recreational
24 vehicle, if applicable, or the name of the owner of the real property as indicated in the
25 official county records.

26 (E) The amount of the lien, if applicable, which shall be the greater of two hundred
27 dollars (\$200) or the costs incurred by the local health officer in compliance with this
28 chapter, including, but not limited to, the cost of inspection performed pursuant to
29 Section 25400.19 and the fee charged by the Department of Housing and Community
30 Development and the Department of Motor Vehicles pursuant to paragraph (2) of
31 subdivision (b).

32 (F) Other information required by the county recorder for the lien, the Department of
33 Housing and Community Development for the restraint, or the Department of Motor
34 Vehicles for the vehicle license stop.

35 (4) Issue to persons specified in subdivisions (d), (e), and (f) an order prohibiting the
36 use or occupancy of the contaminated portions of the property.

37 (b)(1) The county recorder's fees for recording and indexing documents provided for in
38 this section shall be in the amount specified in Article 5 (commencing with Section
39 27360) of Chapter 6 of Part 3 of Title 3 of the Government Code.

40 (2) The Department of Housing and Community Development and the Department of
41 Motor Vehicles may charge a fee to cover its administrative costs for recording and
42 indexing documents provided for in paragraph (2) of subdivision (a).

1 (c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect, and
2 priority of a judgment lien. The restraint amending the permanent record pursuant to
3 subdivision (a) shall be displayed on any manufactured home or mobilehome title search
4 until the restraint is released. The vehicle license stop shall remain in effect until it is
5 released.

6 (2) The local health officer shall not authorize the release of a lien, restraint, or vehicle
7 license stop made pursuant to subdivision (a), until one of the following occurs:

8 (A) The property owner satisfies the real property lien, or the contamination in the
9 mobilehome, manufactured home, or recreational vehicle is abated to the satisfaction of
10 the local health officer consistent with the notice in the restraint, or vehicle license stop
11 and the local health officer issues a release pursuant to Section 25400.27.

12 (B) For a manufactured home or mobilehome, the local health officer determines that
13 the unit will be destroyed or permanently salvaged. For the purposes of this paragraph,
14 the unit shall not be reregistered after this determination is made unless the local health
15 officer issues a release pursuant to Section 25400.27.

16 (C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in a
17 foreclosure sale.

18 (d) Except as otherwise specified in this section, an order issued pursuant to this
19 section shall be served, either personally or by certified mail, return receipt requested in
20 the following manner:

21 (1) For real property, to all known occupants of the property and to all persons who
22 have an interest in the property, as contained in the records of the recorder's office of the
23 county in which the property is located.

24 (2) In the case of a mobilehome or manufactured home, the order shall be served to the
25 legal owner, as defined in Section 18005.8, each junior lienholder, as defined in Section
26 18005.3, and the registered owner, as defined in Section 18009.5.

27 (3) In the case of a recreational vehicle, the order shall be served on the legal owner, as
28 defined in Section 370 of the Vehicle Code, and the registered owner, as defined in
29 Section 505 of the Vehicle Code.

30 (e) If the whereabouts of the person described in subdivision (d) are unknown and
31 cannot be ascertained by the local health officer, in the exercise of reasonable diligence,
32 and the local health officer makes an affidavit to that effect, the local health officer shall
33 serve the order by personal service or by mailing a copy of the order by certified mail,
34 postage prepaid, return receipt requested, as follows:

35 (1) The order related to real property shall be served to each person at the address
36 appearing on the last equalized tax assessment roll of the county where the property is
37 located, and to all occupants of the affected unit.

38 (2) In the case of a mobilehome or manufactured home, the order shall be served to the
39 legal owner, as defined in Section 18005.8, each junior lienholder, as defined in Section
40 18005.3, and the registered owner, as defined in Section 18009.5, at the address
41 appearing on the permanent record and all occupants of the affected unit at the
42 mobilehome park space.

1 (3) In the case of a recreational vehicle, the order shall be served on the legal owner, as
2 defined in Section 370 of the Vehicle Code, and the registered owner, as defined in
3 Section 505 of the Vehicle Code, at the address appearing on the permanent record and
4 all occupants of the affected vehicle at the mobilehome park or special occupancy park
5 space.

6 (f)(1) The local health officer shall also mail a copy of the order required by this
7 section to the address of each person or party having a recorded right, title, estate, lien, or
8 interest in the property and to the association of a common interest development, as
9 defined in Section 1351, or in Sections 6528 and 6534, of the Civil Code.

10 (2) In addition to the requirements of paragraph (1), if the affected property is a
11 mobilehome, manufactured home, or recreational vehicle, specified in paragraph (2) of
12 subdivision (t) of Section 25400.11, the order issued by the local health officer shall also
13 be served, either personally or by certified mail, return receipt requested, to the owner of
14 the mobilehome park or special occupancy park.

15 (g) The order issued pursuant to this section shall include all of the following
16 information:

17 (1) A description of the property.

18 (2) The parcel identification number, address, or space number, if applicable.

19 (3) The vehicle identification number, if applicable.

20 (4) A description of the local health officer's intended course of action.

21 (5) A specification of the penalties for noncompliance with the order.

22 (6) A prohibition on the use of all or portions of the property that are contaminated.

23 (7) A description of the measures the property owner is required to take to
24 decontaminate the property.

25 (8) An indication of the potential health hazards involved.

26 (9) A statement that a property owner who fails to provide a notice or disclosure that is
27 required by this chapter is subject to a civil penalty of up to five thousand dollars
28 (\$5,000).

29 (h) The local health officer shall provide a copy of the order to the local building or
30 code enforcement agency or other appropriate agency responsible for the enforcement of
31 the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13).

32 (i) The local health officer shall post the order in a conspicuous place on the property
33 within one working day of the date that the order is issued.

34 **Comment.** Subdivision (f) of Section 25400.22 is amended to add cross-references to Civil
35 Code Sections 6528 and 6534, reflecting the enactment of the Commercial and Industrial
36 Common Interest Development Act (Civ. Code §§ 6500-6876).

37 **Health & Safety Code § 25915.2 (amended). Publication and mailing of notice**

38 SEC. ____ . Section 25915.2 of the Health and Safety Code is amended to read:

39 25915.2. (a) Notice provided pursuant to this chapter shall be provided in writing to
40 each individual employee, and shall be mailed to other owners designated to receive the
41 notice pursuant to subdivision (a) of Section 25915.5, within 15 days of the first receipt
42 by the owner of information identifying the presence or location of asbestos-containing

1 construction materials in the building. This notice shall be provided annually thereafter.
2 In addition, if new information regarding those items specified in paragraphs (1) to (5),
3 inclusive, of subdivision (a) of Section 25915 has been obtained within 90 days after the
4 notice required by this subdivision is provided or any subsequent 90-day period, then a
5 supplemental notice shall be provided within 15 days of the close of that 90-day period.

6 (b) Notice provided pursuant to this chapter shall be provided to new employees within
7 15 days of commencement of work in the building.

8 (c) Notice provided pursuant to this chapter shall be mailed to any new owner
9 designated to receive the notice pursuant to subdivision (a) of Section 25915.5 within 15
10 days of the effective date of the agreement under which a person becomes a new owner.

11 (d) Subdivisions (a) and (c) shall not be construed to require owners of a building or
12 part of a building within a residential common interest development to mail written
13 notification to other owners of a building or part of a building within the residential
14 common interest development, if all the following conditions are met:

15 (1) The association conspicuously posts, in each building or part of a building known
16 to contain asbestos-containing materials, a large sign in a prominent location that fully
17 informs persons entering each building or part of a building within the common interest
18 development that the association knows the building contains asbestos-containing
19 materials.

20 The sign shall also inform persons of the location where further information, as
21 required by this chapter, is available about the asbestos-containing materials known to be
22 located in the building.

23 (2) The owners or association disclose, as soon as practicable before the transfer of title
24 of a separate interest in the common interest development, to a transferee the existence of
25 asbestos-containing material in a building or part of a building within the common
26 interest development.

27 Failure to comply with this section shall not invalidate the transfer of title of real
28 property. This paragraph shall only apply to transfers of title of separate interests in the
29 common interest development of which the owners have knowledge. As used in this
30 section, “association” and “common interest development” are defined in Section 1351,
31 or Sections 6528 and 6534, of the Civil Code.

32 (e) If a person contracting with an owner receives notice pursuant to this chapter, that
33 contractor shall provide a copy of the notice to his or her employees or contractors
34 working within the building.

35 (f) If the asbestos-containing construction material in the building is limited to an area
36 or areas within the building that meet all the following criteria:

37 (1) Are unique and physically defined.

38 (2) Contain asbestos-containing construction materials in structural, mechanical, or
39 building materials which are not replicated throughout the building.

40 (3) Are not connected to other areas through a common ventilation system; then, an
41 owner required to give notice to his or her employees pursuant to subdivision (a) of
42 Section 25915 or 25915.1 may provide that notice only to the employees working within
43 or entering that area or those areas of the building meeting the conditions above.

1 (g) If the asbestos-containing construction material in the building is limited to an area
2 or areas within the building that meet all the following criteria:

3 (1) Are accessed only by building maintenance employees or contractors and are not
4 accessed by tenants or employees in the building, other than on an incidental basis.

5 (2) Contain asbestos-containing construction materials in structural, mechanical, or
6 building materials which are not replicated in areas of the building which are accessed by
7 tenants and employees.

8 (3) The owner knows that no asbestos fibers are being released or have the reasonable
9 possibility to be released from the material; then, as to that asbestos-containing
10 construction material, an owner required to give notice to his or her employees pursuant
11 to subdivision (a) of Section 25915 or Section 25915.1 may provide that notice only to its
12 building maintenance employees and contractors who have access to that area or those
13 areas of the building meeting the conditions above.

14 (h) In those areas of a building where the asbestos-containing construction material is
15 composed only of asbestos fibers which are completely encapsulated, if the owner knows
16 that no asbestos fibers are being released or have the reasonable possibility to be released
17 from that material in its present condition and has no knowledge that other asbestos-
18 containing material is present, then an owner required to give notice pursuant to
19 subdivision (a) of Section 25915 shall provide the information required in paragraph (2)
20 of subdivision (a) of Section 25915 and may substitute the following notice for the
21 requirements of paragraphs (1), (3), (4), and (5) of subdivision (a) of Section 25915:

22 (1) The existence of, conclusions from, and a description or list of the contents of, that
23 portion of any survey conducted to determine the existence and location of asbestos-
24 containing construction materials within the building that refers to the asbestos materials
25 described in this subdivision, and information describing when and where the results of
26 the survey are available pursuant to Section 25917.

27 (2) Information to convey that moving, drilling, boring, or otherwise disturbing the
28 asbestos-containing construction material identified may present a health risk and,
29 consequently, should not be attempted by an unqualified employee. The notice shall
30 identify the appropriate person the employee is required to contact if the condition of the
31 asbestos-containing construction material deteriorates.

32 **Comment.** Paragraph (2) of subdivision (d) of Section 25915.2 is amended to add cross-
33 references to Civil Code Sections 6528 and 6534, reflecting the enactment of the Commercial and
34 Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

35 **Health & Safety Code § 33050 (amended). Legislative declaration of policy in undertaking**
36 **community redevelopment projects**

37 SEC. ____. Section 33050 of the Health and Safety Code is amended to read:

38 33050. (a) It is hereby declared to be the policy of the state that in undertaking
39 community redevelopment projects under this part there shall be no discrimination
40 because of any basis listed in subdivision (a) or (d) of Section 12955 of the Government
41 Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and

1 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
2 Government Code.

3 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a)
4 shall not be construed to apply to housing for older persons, as defined in Section
5 12955.9 of the Government Code. With respect to familial status, nothing in subdivision
6 (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the
7 Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and~~
8 ~~Section Sections~~ 1360 ~~and~~ 6714 of the Civil Code, and subdivisions (n), (o), and (p) of
9 Section 12955 of the Government Code shall apply to subdivision (a).

10 **Comment.** Section 33050 is amended to add a cross-reference to Civil Code Section 6714,
11 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
12 (Civ. Code §§ 6500-6876).

13 **Health & Safety Code § 33435 (amended). Obligation of lessees and purchasers to refrain**
14 **from discrimination**

15 SEC. ____. Section 33435 of the Health and Safety Code is amended to read:

16 33435. (a) Agencies shall obligate lessees and purchasers of real property acquired in
17 redevelopment projects and owners of property improved as a part of a redevelopment
18 project to refrain from restricting the rental, sale, or lease of the property on any basis
19 listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
20 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision
21 (p) of Section 12955, and Section 12955.2 of the Government Code. All deeds, leases, or
22 contracts for the sale, lease, sublease, or other transfer of any land in a redevelopment
23 project shall contain or be subject to the nondiscrimination or nonsegregation clauses
24 hereafter prescribed.

25 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a)
26 shall not be construed to apply to housing for older persons, as defined in Section
27 12955.9 of the Government Code. With respect to familial status, nothing in subdivision
28 (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the
29 Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and~~
30 ~~Section Sections~~ 1360 ~~and~~ 6714 of the Civil Code, and subdivisions (n), (o), and (p) of
31 Section 12955 of the Government Code shall apply to subdivision (a).

32 **Comment.** Section 33435 is amended to add a cross-reference to Civil Code Section 6714,
33 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
34 (Civ. Code §§ 6500-6876).

35 **Health & Safety Code § 33436 (amended). Nondiscrimination and nonsegregation clauses**

36 SEC. ____. Section 33436 of the Health and Safety Code is amended to read:

37 33436. Express provisions shall be included in all deeds, leases, and contracts that the
38 agency proposes to enter into with respect to the sale, lease, sublease, transfer, use,
39 occupancy, tenure, or enjoyment of any land in a redevelopment project in substantially
40 the following form:

41 (a)(1) In deeds the following language shall appear-- "The grantee herein covenants by
42 and for himself or herself, his or her heirs, executors, administrators, and assigns, and all

1 persons claiming under or through them, that there shall be no discrimination against or
2 segregation of, any person or group of persons on account of any basis listed in
3 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are
4 defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p)
5 of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease,
6 sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed,
7 nor shall the grantee or any person claiming under or through him or her, establish or
8 permit any practice or practices of discrimination or segregation with reference to the
9 selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees,
10 or vendees in the premises herein conveyed. The foregoing covenants shall run with the
11 land.”

12 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall
13 not be construed to apply to housing for older persons, as defined in Section 12955.9 of
14 the Government Code. With respect to familial status, nothing in paragraph (1) shall be
15 construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code,
16 relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~
17 Sections 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section
18 12955 of the Government Code shall apply to paragraph (1).

19 (b)(1) In leases the following language shall appear-- “The lessee herein covenants by
20 and for himself or herself, his or her heirs, executors, administrators, and assigns, and all
21 persons claiming under or through him or her, and this lease is made and accepted upon
22 and subject to the following conditions:

23 That there shall be no discrimination against or segregation of any person or group of
24 persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the
25 Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision
26 (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
27 Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or
28 enjoyment of the premises herein leased nor shall the lessee himself or herself, or any
29 person claiming under or through him or her, establish or permit any such practice or
30 practices of discrimination or segregation with reference to the selection, location,
31 number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the
32 premises herein leased.”

33 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall
34 not be construed to apply to housing for older persons, as defined in Section 12955.9 of
35 the Government Code. With respect to familial status, nothing in paragraph (1) shall be
36 construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code,
37 relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and Section~~
38 Sections 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of Section
39 12955 of the Government Code shall apply to paragraph (1).

40 (c) In contracts entered into by the agency relating to the sale, transfer, or leasing of
41 land or any interest therein acquired by the agency within any survey area or
42 redevelopment project the foregoing provisions in substantially the forms set forth shall
43 be included and the contracts shall further provide that the foregoing provisions shall be

1 binding upon and shall obligate the contracting party or parties and any subcontracting
2 party or parties, or other transferees under the instrument.

3 **Comment.** Section 33436 is amended to add cross-references to Civil Code Section 6714,
4 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
5 (Civ. Code §§ 6500-6876).

6 **Health & Safety Code § 35811 (amended). Consideration of ethnicity, religion, sex, marital**
7 **status, or national origin**

8 SEC. _____. Section 35811 of the Health and Safety Code is amended to read:

9 35811. (a) No financial institution shall discriminate in the availability of, or in the
10 provision of, financial assistance for the purpose of purchasing, constructing,
11 rehabilitating, improving, or refinancing housing accommodations due, in whole or in
12 part, to the consideration of any basis listed in subdivision (a) or (d) of Section 12955 of
13 the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision
14 (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
15 Government Code.

16 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a)
17 shall not be construed to apply to housing for older persons, as defined in Section
18 12955.9 of the Government Code. With respect to familial status, nothing in subdivision
19 (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the
20 Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and~~
21 ~~Section Sections~~ 1360 ~~and~~ 6714 of the Civil Code, and subdivisions (n), (o), and (p) of
22 Section 12955 of the Government Code shall apply to subdivision (a).

23 **Comment.** Section 35811 is amended to add a cross-reference to Civil Code Section 6714,
24 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
25 (Civ. Code §§ 6500-6876).

26 **Health & Safety Code § 37630 (amended). Equal opportunity**

27 SEC. _____. Section 37630 of the Health and Safety Code is amended to read:

28 37630. (a) The local agency shall require that any property that is rehabilitated with
29 financing obtained under this part shall be open, upon sale or rental of any portion
30 thereof, to all regardless of any basis listed in subdivision (a) or (d) of Section 12955 of
31 the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision
32 (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
33 Government Code. The local agency shall also require that contractors and subcontractors
34 engaged in historical rehabilitation financed under this part provide equal opportunity for
35 employment, without discrimination as to any basis listed in subdivision (a) of Section
36 12940 of the Government Code, as those bases are defined in Sections 12926 and
37 12926.1 of the Government Code, and except as otherwise provided in Section 12940 of
38 the Government Code. All contracts and subcontracts for historical rehabilitation
39 financed under this part shall be let without discrimination as to any basis listed in
40 subdivision (a) of Section 12940 of the Government Code, as those bases are defined in
41 Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided
42 in Section 12940 of the Government Code.

1 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a)
2 shall not be construed to apply to housing for older persons, as defined in Section
3 12955.9 of the Government Code. With respect to familial status, nothing in subdivision
4 (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the
5 Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and~~
6 ~~Section Sections~~ 1360 ~~and~~ 6714 of the Civil Code, and subdivisions (n), (o), and (p) of
7 Section 12955 of the Government Code shall apply to subdivision (a).

8 **Comment.** Section 37630 is amended to add a cross-reference to Civil Code Section 6714,
9 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
10 (Civ. Code §§ 6500-6876).

11 **Health & Safety Code § 50955 (amended). Civil rights and equal employment opportunity**

12 SEC. ____ . Section 50955 of the Health and Safety Code is amended to read:

13 50955. (a) The agency and every housing sponsor shall require that occupancy of
14 housing developments assisted under this part shall be open to all regardless of any basis
15 listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
16 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision
17 (p) of Section 12955, and Section 12955.2 of the Government Code, that contractors and
18 subcontractors engaged in the construction of housing developments shall provide an
19 equal opportunity for employment, without discrimination as to any basis listed in
20 subdivision (a) of Section 12940 of the Government Code, as those bases are defined in
21 Sections 12926 and 12926.1 of the Government Code, and except as otherwise provided
22 in Section 12940 of the Government Code, and that contractors and subcontractors shall
23 submit and receive approval of an affirmative action program prior to the commencement
24 of construction or rehabilitation. Affirmative action requirements respecting
25 apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070) of
26 Division 3 of the Labor Code.

27 All contracts for the management, construction, or rehabilitation of housing
28 developments, and contracts let by housing sponsors, contractors, and subcontractors in
29 the performance of management, construction or rehabilitation, shall be let without
30 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
31 Government Code, as those bases are defined in Sections 12926 and 12926.1 of the
32 Government Code, except as otherwise provided in Section 12940 of the Government
33 Code, and pursuant to an affirmative action program, which shall be at not less than the
34 Federal Housing Administration affirmative action standards unless the board makes a
35 specific finding that the particular requirement would be unworkable. The agency shall
36 periodically review implementation of affirmative action programs required by this
37 section.

38 It shall be the policy of the agency and housing sponsors to encourage participation
39 with respect to all projects by minority developers, builders, and entrepreneurs in all
40 levels of construction, planning, financing, and management of housing developments. In
41 areas of minority concentration the agency shall require significant participation of
42 minorities in the sponsorship, construction, planning, financing, and management of

1 housing developments. The agency shall (1) require that, to the greatest extent feasible,
2 opportunities for training and employment arising in connection with the planning,
3 construction, rehabilitation, and operation of housing developments financed pursuant to
4 this part be given to persons of low income residing in the area of that housing, and (2)
5 determine and implement means to secure the participation of small businesses in the
6 performance of contracts for work on housing developments and to develop the
7 capabilities of these small businesses to more efficiently and competently participate in
8 the economic mainstream. In order to achieve this participation by small businesses, the
9 agency may, among other things, waive retention requirements otherwise imposed on
10 contractors or subcontractors by regulation of the agency and may authorize or make
11 advance payments for work to be performed. The agency shall develop relevant selection
12 criteria for the participation of small businesses to ensure that, to the greatest extent
13 feasible, the participants possess the necessary nonfinancial capabilities. The agency
14 may, with respect to these small businesses, waive bond requirements otherwise imposed
15 upon contractors or subcontractors by regulation of the agency, but the agency shall in
16 that case substantially reduce the risk through (1) a pooled-risk bonding program, (2) a
17 bond program in cooperation with other federal or state agencies, or (3) development of a
18 self-insured bonding program with adequate reserves.

19 The agency shall adopt rules and regulations to implement this section.

20 Prior to commitment of a mortgage loan, the agency shall require each housing
21 sponsor, except with respect to mutual self-help housing, to submit an affirmative
22 marketing program that meets standards set forth in regulations of the agency. The
23 agency shall require ~~such a~~ each housing sponsor to conduct the affirmative marketing
24 program so approved. Additionally, the agency shall supplement the efforts of individual
25 housing sponsors by conducting affirmative marketing programs with respect to housing
26 at the state level.

27 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a)
28 shall not be construed to apply to housing for older persons, as defined in Section
29 12955.9 of the Government Code. With respect to familial status, nothing in subdivision
30 (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the
31 Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and~~
32 ~~Section~~ Sections 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of
33 Section 12955 of the Government Code shall apply to subdivision (a).

34 **Comment.** Subdivision (a) of Section 50955 is amended to make a stylistic revision.

35 Subdivision (b) is amended to add a cross-reference to Civil Code Section 6714, reflecting the
36 enactment of the Commercial and Industrial Common Interest Development Act (Civ. Code §§
37 6500-6876).

38 **Health & Safety Code § 51602 (amended). Nondiscrimination in occupancy of housing**

39 SEC. ____ . Section 51602 of the Health and Safety Code is amended to read:

40 51602. (a) The agency shall require that occupancy of housing for which a loan is
41 insured pursuant to this part shall be open to all regardless of any basis listed in
42 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are

1 defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p)
2 of Section 12955, and Section 12955.2 of the Government Code, and that contractors and
3 subcontractors engaged in the construction or rehabilitation of housing funded by a loan
4 insured pursuant to this part shall provide an equal opportunity for employment without
5 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
6 Government Code, as those bases are defined in Sections 12926 and 12926.1 of the
7 Government Code, and except as otherwise provided in Section 12940 of the
8 Government Code.

9 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a)
10 shall not be construed to apply to housing for older persons, as defined in Section
11 12955.9 of the Government Code. With respect to familial status, nothing in subdivision
12 (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the
13 Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51, ~~and~~
14 ~~Section~~ Sections 1360 and 6714 of the Civil Code, and subdivisions (n), (o), and (p) of
15 Section 12955 of the Government Code shall apply to subdivision (a).

16 (c) A qualified developer shall certify compliance with this section and Section 50955
17 according to requirements specified by the pertinent criteria of the agency.

18 **Comment.** Section 51602 is amended to add a cross-reference to Civil Code Section 6714,
19 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
20 (Civ. Code §§ 6500-6876).

21 **Health & Safety Code § 116048 (amended). Public swimming pool in common interest**
22 **development**

23 SEC. ____ . Section 116048 of the Health and Safety Code is amended to read:

24 116048. (a) On or after January 1, 1987, for public swimming pools in any common
25 interest development, as defined in Section 1351 or 6534 of the Civil Code, that consists
26 of fewer than 25 separate interests, as defined in subdivision (l) of Section 1351 or in
27 Section 6564 of the Civil Code, the person operating each ~~such~~ pool open for use shall be
28 required to keep a record of the information required by subdivision (a) of Section 65523
29 of Title 22 of the California Administrative Code, except that the information shall be
30 recorded at least two times per week and at intervals no greater than four days apart.

31 (b) On or after January 1, 1987, any rule or regulation of the department that is in
32 conflict with subdivision (a) is invalid.

33 **Comment.** Section 116048 is amended to add cross-references to Civil Code Sections 6534
34 and 6564, reflecting the enactment of the Commercial and Industrial Common Interest
35 Development Act (Civ. Code §§ 6500-6876).

36 The section is also amended to make a stylistic revision.

INSURANCE CODE

37 **Ins. Code § 790.031 (amended). Application of Sections 790.034, 2071.1 and 10082.3**

38 SEC. ____ . Section 790.031 of the Insurance Code is amended to read:

1 790.031. The requirements of subdivision (b) of Section 790.034, and Sections 2071.1
2 and 10082.3 shall apply only to policies of residential property insurance as defined in
3 Section 10087, policies and endorsements containing those coverages prescribed in
4 Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2, policies issued by
5 the California Earthquake Authority pursuant to Chapter 8.6 (commencing with Section
6 10089.5) of Part 1 of Division 2, policies and endorsements that insure against property
7 damage and are issued to common interest developments or to associations managing
8 common interest developments, as those terms are defined in Section 1351, or in Sections
9 6528 and 6534, of the Civil Code, and to policies issued pursuant to Section 120 that
10 insure against property damage to residential units or contents thereof owned by one or
11 more persons located in this state.

12 **Comment.** Section 790.031 is amended to add cross-references to Civil Code Sections 6528
13 and 6534, reflecting the enactment of the Commercial and Industrial Common Interest
14 Development Act (Civ. Code §§ 6500-6876).

REVENUE AND TAXATION CODE

15 **Rev. & Tax. Code § 2188.6 (amended). Separate assessment of property divided into**
16 **condominiums**

17 SEC. ____ . Section 2188.6 of the Revenue and Taxation Code is amended to read:

18 2188.6. (a) Unless a request for exemption has been recorded pursuant to subdivision
19 (d), prior to the creation of a condominium as defined in Section 783 of the Civil Code,
20 the county assessor may separately assess each individual unit which is shown on the
21 condominium plan of a proposed condominium project when all of the following
22 documents have been recorded as required by law:

23 (1) A subdivision final map or parcel map, as described in Sections 66434 and 66445,
24 respectively, of the Government Code.

25 (2) A condominium plan, as defined in subdivision (e) of Section 1351 or in Section
26 6540 of the Civil Code.

27 (3) A declaration, as defined in subdivision (h) of Section 1351 or in Section 6546 of
28 the Civil Code.

29 (b) The tax due on each individual unit shall constitute a lien solely on that unit.

30 (c) The lien created pursuant to this section shall be a lien on an undivided interest in a
31 portion of real property coupled with a separate interest in space called a unit as
32 described in subdivision (f) of Section 1351 or in subdivision (b) of Section 6542 of the
33 Civil Code.

34 (d) The record owner of the real property may record with the condominium plan a
35 request that the real property be exempt from separate assessment pursuant to this
36 section. If a request for exemption is recorded, separate assessment of a condominium
37 unit shall be made only in accordance with Section 2188.3.

38 (e) This section shall become operative on January 1, 1990, and shall apply to
39 condominium projects for which a condominium plan is recorded after that date.

1 **Comment.** Section 2188.6 is amended to add cross-references to Civil Code Sections 6540,
2 6542, and 6546, reflecting the enactment of the Commercial and Industrial Common Interest
3 Development Act (Civ. Code §§ 6500-6876).

VEHICLE CODE

4 **Veh. Code § 21107.7 (amended). Private road not open to public use**

5 SEC. _____. Section 21107.7 of the Vehicle Code is amended to read:

6 21107.7. (a) Any city or county may, by ordinance or resolution, find and declare that
7 there are privately owned and maintained roads as described in the ordinance or
8 resolution within the city or county that are not generally held open for use of the public
9 for purposes of vehicular travel but, by reason of their proximity to or connection with
10 highways, the interests of any residents residing along the roads and the motoring public
11 will best be served by application of the provisions of this code to those roads. No
12 ordinance or resolution shall be enacted unless there is first filed with the city or county a
13 petition requesting it by a majority of the owners of any privately owned and maintained
14 road, or by at least a majority of the board of directors of a common interest
15 development, as defined by Section 1351 or 6534 of the Civil Code, that is responsible
16 for maintaining the road, and without a public hearing thereon and 10 days' prior written
17 notice to all owners of the road or all of the owners in the development. Upon enactment
18 of the ordinance or resolution, the provisions of this code shall apply to the privately
19 owned and maintained road if appropriate signs are erected at the entrance to the road of
20 the size, shape, and color as to be readily legible during daylight hours from a distance of
21 100 feet, to the effect that the road is subject to the provisions of this code. The city or
22 county may impose reasonable conditions and may authorize the owners, or board of
23 directors of the common interest development, to erect traffic signs, signals, markings,
24 and devices which conform to the uniform standards and specifications adopted by the
25 Department of Transportation.

26 (b) The department shall not be required to provide patrol or enforce any provisions of
27 this code on any privately owned and maintained road subjected to the provisions of this
28 code under this section, except those provisions applicable to private property other than
29 by action under this section.

30 (c) As used in this section, "privately owned and maintained roads" includes roads
31 owned and maintained by a city, county or district that are not dedicated to use by the
32 public or are not generally held open for use of the public for purposes of vehicular
33 travel.

34 **Comment.** Section 21107.7 is amended to add a cross-reference to Civil Code Section 6534,
35 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
36 (Civ. Code §§ 6500-6876).

37 **Veh. Code § 22651 (amended). Circumstances in which removal of vehicle is permitted**

38 SEC. _____. Section 22651 of the Vehicle Code is amended to read:

1 22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of
2 Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who
3 is engaged in directing traffic or enforcing parking laws and regulations, of a city, county,
4 or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle
5 located within the territorial limits in which the officer or employee may act, under the
6 following circumstances:

7 (a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube
8 or tunnel where the vehicle constitutes an obstruction to traffic.

9 (b) When a vehicle is parked or left standing upon a highway in a position so as to
10 obstruct the normal movement of traffic or in a condition so as to create a hazard to other
11 traffic upon the highway.

12 (c) When a vehicle is found upon a highway or public land and a report has previously
13 been made that the vehicle is stolen or a complaint has been filed and a warrant thereon is
14 issued charging that the vehicle was embezzled.

15 (d) When a vehicle is illegally parked so as to block the entrance to a private driveway
16 and it is impractical to move the vehicle from in front of the driveway to another point on
17 the highway.

18 (e) When a vehicle is illegally parked so as to prevent access by firefighting equipment
19 to a fire hydrant and it is impracticable to move the vehicle from in front of the fire
20 hydrant to another point on the highway.

21 (f) When a vehicle, except highway maintenance or construction equipment, is
22 stopped, parked, or left standing for more than four hours upon the right-of-way of a
23 freeway that has full control of access and no crossings at grade and the driver, if present,
24 cannot move the vehicle under its own power.

25 (g) When the person in charge of a vehicle upon a highway or public land is, by reason
26 of physical injuries or illness, incapacitated to an extent so as to be unable to provide for
27 its custody or removal.

28 (h)(1) When an officer arrests a person driving or in control of a vehicle for an alleged
29 offense and the officer is, by this code or other law, required or permitted to take, and
30 does take, the person into custody.

31 (2) When an officer serves a notice of an order of suspension or revocation pursuant to
32 Section 13388 or 13389.

33 (i)(1) When a vehicle, other than a rented vehicle, is found upon a highway or public
34 land, or is removed pursuant to this code, and it is known that the vehicle has been issued
35 five or more notices of parking violations to which the owner or person in control of the
36 vehicle has not responded within 21 calendar days of notice of citation issuance or
37 citation issuance or 14 calendar days of the mailing of a notice of delinquent parking
38 violation to the agency responsible for processing notices of parking violations, or the
39 registered owner of the vehicle is known to have been issued five or more notices for
40 failure to pay or failure to appear in court for traffic violations for which a certificate has
41 not been issued by the magistrate or clerk of the court hearing the case showing that the
42 case has been adjudicated or concerning which the registered owner's record has not been
43 cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the

1 vehicle may be impounded until that person furnishes to the impounding law enforcement
2 agency all of the following:

3 (A) Evidence of his or her identity.

4 (B) An address within this state at which he or she can be located.

5 (C) Satisfactory evidence that all parking penalties due for the vehicle and all other
6 vehicles registered to the registered owner of the impounded vehicle, and all traffic
7 violations of the registered owner, have been cleared.

8 (2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by
9 the impounding law enforcement agency on and after the time that the Department of
10 Motor Vehicles is able to provide access to the necessary records.

11 (3) A notice of parking violation issued for an unlawfully parked vehicle shall be
12 accompanied by a warning that repeated violations may result in the impounding of the
13 vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking
14 penalties or bail has been deposited, that person may demand to be taken without
15 unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for
16 parking offenses, within the county in which the offenses charged are alleged to have
17 been committed and who has jurisdiction of the offenses and is nearest or most accessible
18 with reference to the place where the vehicle is impounded. Evidence of current
19 registration shall be produced after a vehicle has been impounded, or, at the discretion of
20 the impounding law enforcement agency, a notice to appear for violation of subdivision
21 (a) of Section 4000 shall be issued to that person.

22 (4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal
23 owner does all of the following:

24 (A) Pays the cost of towing and storing the vehicle.

25 (B) Submits evidence of payment of fees as provided in Section 9561.

26 (C) Completes an affidavit in a form acceptable to the impounding law enforcement
27 agency stating that the vehicle was not in possession of the legal owner at the time of
28 occurrence of the offenses relating to standing or parking. A vehicle released to a legal
29 owner under this subdivision is a repossessed vehicle for purposes of disposition or sale.
30 The impounding agency shall have a lien on any surplus that remains upon sale of the
31 vehicle to which the registered owner is or may be entitled, as security for the full amount
32 of the parking penalties for all notices of parking violations issued for the vehicle and for
33 all local administrative charges imposed pursuant to Section 22850.5. The legal owner
34 shall promptly remit to, and deposit with, the agency responsible for processing notices
35 of parking violations from that surplus, on receipt of that surplus, the full amount of the
36 parking penalties for all notices of parking violations issued for the vehicle and for all
37 local administrative charges imposed pursuant to Section 22850.5.

38 (5) The impounding agency that has a lien on the surplus that remains upon the sale of
39 a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a
40 deficiency claim against the registered owner for the full amount of the parking penalties
41 for all notices of parking violations issued for the vehicle and for all local administrative
42 charges imposed pursuant to Section 22850.5, less the amount received from the sale of
43 the vehicle.

1 (j) When a vehicle is found illegally parked and there are no license plates or other
2 evidence of registration displayed, the vehicle may be impounded until the owner or
3 person in control of the vehicle furnishes the impounding law enforcement agency
4 evidence of his or her identity and an address within this state at which he or she can be
5 located.

6 (k) When a vehicle is parked or left standing upon a highway for 72 or more
7 consecutive hours in violation of a local ordinance authorizing removal.

8 (l) When a vehicle is illegally parked on a highway in violation of a local ordinance
9 forbidding standing or parking and the use of a highway, or a portion thereof, is
10 necessary for the cleaning, repair, or construction of the highway, or for the installation
11 of underground utilities, and signs giving notice that the vehicle may be removed are
12 erected or placed at least 24 hours prior to the removal by a local authority pursuant to
13 the ordinance.

14 (m) When the use of the highway, or a portion of the highway, is authorized by a local
15 authority for a purpose other than the normal flow of traffic or for the movement of
16 equipment, articles, or structures of unusual size, and the parking of a vehicle would
17 prohibit or interfere with that use or movement, and signs giving notice that the vehicle
18 may be removed are erected or placed at least 24 hours prior to the removal by a local
19 authority pursuant to the ordinance.

20 (n) Whenever a vehicle is parked or left standing where local authorities, by resolution
21 or ordinance, have prohibited parking and have authorized the removal of vehicles.
22 Except as provided in subdivisions (v) and (w), a vehicle shall not be removed unless
23 signs are posted giving notice of the removal.

24 (o)(1) When a vehicle is found or operated upon a highway, public land, or an offstreet
25 parking facility under the following circumstances:

26 (A) With a registration expiration date in excess of six months before the date it is
27 found or operated on the highway, public lands, or the offstreet parking facility.

28 (B) Displaying in, or upon, the vehicle, a registration card, identification card,
29 temporary receipt, license plate, special plate, registration sticker, device issued pursuant
30 to Section 4853, or permit that was not issued for that vehicle, or is not otherwise
31 lawfully used on that vehicle under this code.

32 (C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or falsified
33 registration card, identification card, temporary receipt, license plate, special plate,
34 registration sticker, device issued pursuant to Section 4853, or permit.

35 (2) When a vehicle described in paragraph (1) is occupied, only a peace officer, as
36 defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal
37 Code, may remove the vehicle.

38 (3) For the purposes of this subdivision, the vehicle shall be released ~~to the~~ under either
39 of the following circumstances:

40 (A) To the registered owner or person in control of the vehicle only after the owner or
41 person furnishes the storing law enforcement agency with proof of current registration
42 and a currently valid driver's license to operate the vehicle.

1 (B) To the legal owner or the legal owner’s agency, without payment of any fees, fines,
2 or penalties for parking tickets or registration and without proof of current registration, if
3 the vehicle will only be transported pursuant to the exemption specified in Section 4022
4 and if the legal owner does all of the following:

5 (i) Pays the cost of towing and storing the vehicle.

6 (ii) Completes an affidavit in a form acceptable to the impounding law enforcement
7 agency stating that the vehicle was not in possession of the legal owner at the time of
8 occurrence of an offense relating to standing or parking. A vehicle released to a legal
9 owner under this subdivision is a repossessed vehicle for purposes of disposition or sale.
10 The impounding agency has a lien on any surplus that remains upon sale of the vehicle to
11 which the registered owner is or may be entitled, as security for the full amount of
12 parking penalties for any notices of parking violations issued for the vehicle and for all
13 local administrative charges imposed pursuant to Section 22850.5. Upon receipt of any
14 surplus, the legal owner shall promptly remit to, and deposit with, the agency responsible
15 for processing notices of parking violations from that surplus, the full amount of the
16 parking penalties for all notices of parking violations issued for the vehicle and for all
17 local administrative charges imposed pursuant to Section 22850.5.

18 (4) The impounding agency that has a lien on the surplus that remains upon the sale of
19 a vehicle to which a registered owner is entitled has a deficiency claim against the
20 registered owner for the full amount of parking penalties for any notices of parking
21 violations issued for the vehicle and for all local administrative charges imposed pursuant
22 to Section 22850.5, less the amount received from the sale of the vehicle.

23 (5) As used in this subdivision, “offstreet parking facility” means an offstreet facility
24 held open for use by the public for parking vehicles and includes a publicly owned
25 facility for offstreet parking, and a privately owned facility for offstreet parking if a fee is
26 not charged for the privilege to park and it is held open for the common public use of
27 retail customers.

28 (p) When the peace officer issues the driver of a vehicle a notice to appear for a
29 violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or
30 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so
31 removed from the highway or public land, or from private property after having been on a
32 highway or public land, shall not be released to the registered owner or his or her agent,
33 except upon presentation of the registered owner’s or his or her agent’s currently valid
34 driver’s license to operate the vehicle and proof of current vehicle registration, or upon
35 order of a court.

36 (q) When a vehicle is parked for more than 24 hours on a portion of highway that is
37 located within the boundaries of a common interest development, as defined in
38 subdivision (c) of Section 1351 or in Section 6534 of the Civil Code, and signs, as
39 required by paragraph (1) of subdivision (a) of Section 22658 of this code, have been
40 posted on that portion of highway providing notice to drivers that vehicles parked thereon
41 for more than 24 hours will be removed at the owner’s expense, pursuant to a resolution
42 or ordinance adopted by the local authority.

1 (r) When a vehicle is illegally parked and blocks the movement of a legally parked
2 vehicle.

3 (s)(1) When a vehicle, except highway maintenance or construction equipment, an
4 authorized emergency vehicle, or a vehicle that is properly permitted or otherwise
5 authorized by the Department of Transportation, is stopped, parked, or left standing for
6 more than eight hours within a roadside rest area or viewpoint.

7 (2) Notwithstanding paragraph (1), when a commercial motor vehicle, as defined in
8 paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or left standing for
9 more than 10 hours within a roadside rest area or viewpoint.

10 (3) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly
11 maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe
12 stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more
13 roadside rest areas are located on opposite sides of the highway, or upon the center
14 divider, within seven miles of each other, then that combination of rest areas is
15 considered to be the same rest area.

16 (t) When a peace officer issues a notice to appear for a violation of Section 25279.

17 (u) When a peace officer issues a citation for a violation of Section 11700 and the
18 vehicle is being offered for sale.

19 (v)(1) When a vehicle is a mobile billboard advertising display, as defined in Section
20 395.5, and is parked or left standing in violation of a local resolution or ordinance
21 adopted pursuant to subdivision (m) of Section 21100, if the registered owner of the
22 vehicle was previously issued a warning citation for the same offense, pursuant to
23 paragraph (2).

24 (2) Notwithstanding subdivision (a) of Section 22507, a city or county, in lieu of
25 posting signs noticing a local ordinance prohibiting mobile billboard advertising displays
26 adopted pursuant to subdivision (m) of Section 21100, may provide notice by issuing a
27 warning citation advising the registered owner of the vehicle that he or she may be
28 subject to penalties upon a subsequent violation of the ordinance, that may include the
29 removal of the vehicle as provided in paragraph (1). A city or county is not required to
30 provide further notice for a subsequent violation prior to the enforcement of penalties for
31 a violation of the ordinance.

32 (w) (1) When a vehicle is parked or left standing in violation of a local ordinance or
33 resolution adopted pursuant to subdivision (p) of Section 21100, if the registered owner
34 of the vehicle was previously issued a warning citation for the same offense, pursuant to
35 paragraph (2).

36 (2) Notwithstanding subdivision (a) of Section 22507, a city or county, in lieu of
37 posting signs noticing a local ordinance regulating advertising signs adopted pursuant to
38 subdivision (p) of Section 21100, may provide notice by issuing a warning citation
39 advising the registered owner of the vehicle that he or she may be subject to penalties
40 upon a subsequent violation of the ordinance that may include the removal of the vehicle
41 as provided in paragraph (1). A city or county is not required to provide further notice for
42 a subsequent violation prior to the enforcement of penalties for a violation of the
43 ordinance.

1 **Comment.** Subdivision (q) of Section 22651 is amended to add a cross-reference to Civil Code
2 Section 6534, reflecting the enactment of the Commercial and Industrial Common Interest
3 Development Act (Civ. Code §§ 6500-6876).

4 **Veh. Code § 22651.05 (amended). Removal of vehicle by trained volunteer in specified**
5 **circumstances**

6 SEC. ____ . Section 22651.05 of the Vehicle Code is amended to read:

7 22651.05. (a) A trained volunteer of a state or local law enforcement agency, who is
8 engaged in directing traffic or enforcing parking laws and regulations, of a city, county,
9 or jurisdiction of a state agency in which a vehicle is located, may remove or authorize
10 the removal of a vehicle located within the territorial limits in which an officer or
11 employee of that agency may act, under any of the following circumstances:

12 (1) When a vehicle is parked or left standing upon a highway for 72 or more
13 consecutive hours in violation of a local ordinance authorizing the removal.

14 (2) When a vehicle is illegally parked or left standing on a highway in violation of a
15 local ordinance forbidding standing or parking and the use of a highway, or a portion
16 thereof, is necessary for the cleaning, repair, or construction of the highway, or for the
17 installation of underground utilities, and signs giving notice that the vehicle may be
18 removed are erected or placed at least 24 hours prior to the removal by local authorities
19 pursuant to the ordinance.

20 (3) Wherever the use of the highway, or a portion thereof, is authorized by local
21 authorities for a purpose other than the normal flow of traffic or for the movement of
22 equipment, articles, or structures of unusual size, and the parking of a vehicle would
23 prohibit or interfere with that use or movement, and signs giving notice that the vehicle
24 may be removed are erected or placed at least 24 hours prior to the removal by local
25 authorities pursuant to the ordinance.

26 (4) Whenever a vehicle is parked or left standing where local authorities, by resolution
27 or ordinance, have prohibited parking and have authorized the removal of vehicles. A
28 vehicle may not be removed unless signs are posted giving notice of the removal.

29 (5) Whenever a vehicle is parked for more than 24 hours on a portion of highway that
30 is located within the boundaries of a common interest development, as defined in
31 subdivision (c) of Section 1351 or in Section 6534 of the Civil Code, and signs, as
32 required by Section 22658.2, have been posted on that portion of highway providing
33 notice to drivers that vehicles parked thereon for more than 24 hours will be removed at
34 the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

35 (b) The provisions of this chapter that apply to a vehicle removed pursuant to Section
36 22651 apply to a vehicle removed pursuant to subdivision (a).

37 (c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his or her
38 own free will, provides services, without any financial gain, to a local or state law
39 enforcement agency, and who is duly trained and certified to remove a vehicle by a local
40 or state law enforcement agency.

41 **Comment.** Section 22651.05 is amended to add a cross-reference to Civil Code Section 6534,
42 reflecting the enactment of the Commercial and Industrial Common Interest Development Act
43 (Civ. Code §§ 6500-6876).

1 **Veh. Code § 22658 (amended). Removal of vehicle from private property by property owner**

2 SEC. ____ . Section 22658 of the Vehicle Code is amended to read:

3 22658. (a) The owner or person in lawful possession of private property, including an
4 association of a common interest development as defined in Section 1351, or in Sections
5 6528 and 6534, of the Civil Code, may cause the removal of a vehicle parked on the
6 property to a storage facility that meets the requirements of subdivision (n) under any of
7 the following circumstances:

8 (1) There is displayed, in plain view at all entrances to the property, a sign not less than
9 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting
10 public parking and indicating that vehicles will be removed at the owner's expense, and
11 containing the telephone number of the local traffic law enforcement agency and the
12 name and telephone number of each towing company that is a party to a written general
13 towing authorization agreement with the owner or person in lawful possession of the
14 property. The sign may also indicate that a citation may also be issued for the violation.

15 (2) The vehicle has been issued a notice of parking violation, and 96 hours have
16 elapsed since the issuance of that notice.

17 (3) The vehicle is on private property and lacks an engine, transmission, wheels, tires,
18 doors, windshield, or any other major part or equipment necessary to operate safely on
19 the highways, the owner or person in lawful possession of the private property has
20 notified the local traffic law enforcement agency, and 24 hours have elapsed since that
21 notification.

22 (4) The lot or parcel upon which the vehicle is parked is improved with a single-family
23 dwelling.

24 (b) The tow truck operator removing the vehicle, if the operator knows or is able to
25 ascertain from the property owner, person in lawful possession of the property, or the
26 registration records of the Department of Motor Vehicles the name and address of the
27 registered and legal owner of the vehicle, shall immediately give, or cause to be given,
28 notice in writing to the registered and legal owner of the fact of the removal, the grounds
29 for the removal, and indicate the place to which the vehicle has been removed. If the
30 vehicle is stored in a storage facility, a copy of the notice shall be given to the proprietor
31 of the storage facility. The notice provided for in this section shall include the amount of
32 mileage on the vehicle at the time of removal and the time of the removal from the
33 property. If the tow truck operator does not know and is not able to ascertain the name of
34 the owner or for any other reason is unable to give the notice to the owner as provided in
35 this section, the tow truck operator shall comply with the requirements of subdivision (c)
36 of Section 22853 relating to notice in the same manner as applicable to an officer
37 removing a vehicle from private property.

38 (c) This section does not limit or affect any right or remedy that the owner or person in
39 lawful possession of private property may have by virtue of other provisions of law
40 authorizing the removal of a vehicle parked upon private property.

41 (d) The owner of a vehicle removed from private property pursuant to subdivision (a)
42 may recover for any damage to the vehicle resulting from any intentional or negligent act
43 of a person causing the removal of, or removing, the vehicle.

1 (e)(1) An owner or person in lawful possession of private property, or an association of
2 a common interest development, causing the removal of a vehicle parked on that property
3 is liable for double the storage or towing charges whenever there has been a failure to
4 comply with paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the
5 removal of the vehicle if requested by the legal or registered owner of the vehicle as
6 required by subdivision (f).

7 (2) A property owner or owner's agent or lessee who causes the removal of a vehicle
8 parked on that property pursuant to the exemption set forth in subparagraph (A) of
9 paragraph (1) of subdivision (l) and fails to comply with that subdivision is guilty of an
10 infraction, punishable by a fine of one thousand dollars (\$1,000).

11 (f) An owner or person in lawful possession of private property, or an association of a
12 common interest development, causing the removal of a vehicle parked on that property
13 shall notify by telephone or, if impractical, by the most expeditious means available, the
14 local traffic law enforcement agency within one hour after authorizing the tow. An owner
15 or person in lawful possession of private property, an association of a common interest
16 development, causing the removal of a vehicle parked on that property, or the tow truck
17 operator who removes the vehicle, shall state the grounds for the removal of the vehicle if
18 requested by the legal or registered owner of that vehicle. A towing company that
19 removes a vehicle from private property in compliance with subdivision (l) is not
20 responsible in a situation relating to the validity of the removal. A towing company that
21 removes the vehicle under this section shall be responsible for the following:

22 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

23 (2) The removal of a vehicle other than the vehicle specified by the owner or other
24 person in lawful possession of the private property.

25 (g)(1)(A) Possession of a vehicle under this section shall be deemed to arise when a
26 vehicle is removed from private property and is in transit.

27 (B) Upon the request of the owner of the vehicle or that owner's agent, the towing
28 company or its driver shall immediately and unconditionally release a vehicle that is not
29 yet removed from the private property and in transit.

30 (C) A person failing to comply with subparagraph (B) is guilty of a misdemeanor.

31 (2) If a vehicle is released to a person in compliance with subparagraph (B) of
32 paragraph (1), the vehicle owner or authorized agent shall immediately move that vehicle
33 to a lawful location.

34 (h) A towing company may impose a charge of not more than one-half of the regular
35 towing charge for the towing of a vehicle at the request of the owner, the owner's agent,
36 or the person in lawful possession of the private property pursuant to this section if the
37 owner of the vehicle or the vehicle owner's agent returns to the vehicle after the vehicle
38 is coupled to the tow truck by means of a regular hitch, coupling device, drawbar,
39 portable dolly, or is lifted off the ground by means of a conventional trailer, and before it
40 is removed from the private property. The regular towing charge may only be imposed
41 after the vehicle has been removed from the property and is in transit.

42 (i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section is
43 excessive if the charge exceeds the greater of the following:

1 (i) That which would have been charged for that towing or storage, or both, made at the
2 request of a law enforcement agency under an agreement between a towing company and
3 the law enforcement agency that exercises primary jurisdiction in the city in which is
4 located the private property from which the vehicle was, or was attempted to be,
5 removed, or if the private property is not located within a city, then the law enforcement
6 agency that exercises primary jurisdiction in the county in which the private property is
7 located.

8 (ii) That which would have been charged for that towing or storage, or both, under the
9 rate approved for that towing operator by the California Highway Patrol for the
10 jurisdiction in which the private property is located and from which the vehicle was, or
11 was attempted to be, removed.

12 (B) A towing operator shall make available for inspection and copying his or her rate
13 approved by the California Highway Patrol, if any, within 24 hours of a request without a
14 warrant to law enforcement, the Attorney General, district attorney, or city attorney.

15 (2) If a vehicle is released within 24 hours from the time the vehicle is brought into the
16 storage facility, regardless of the calendar date, the storage charge shall be for only one
17 day. Not more than one day's storage charge may be required for a vehicle released the
18 same day that it is stored.

19 (3) If a request to release a vehicle is made and the appropriate fees are tendered and
20 documentation establishing that the person requesting release is entitled to possession of
21 the vehicle, or is the owner's insurance representative, is presented within the initial 24
22 hours of storage, and the storage facility fails to comply with the request to release the
23 vehicle or is not open for business during normal business hours, then only one day's
24 storage charge may be required to be paid until after the first business day. A business
25 day is any day in which the lienholder is open for business to the public for at least eight
26 hours. If a request is made more than 24 hours after the vehicle is placed in storage,
27 charges may be imposed on a full calendar day basis for each day, or part thereof, that the
28 vehicle is in storage.

29 (j)(1) A person who charges a vehicle owner a towing, service, or storage charge at an
30 excessive rate, as described in subdivision (h) or (i), is civilly liable to the vehicle owner
31 for four times the amount charged.

32 (2) A person who knowingly charges a vehicle owner a towing, service, or storage
33 charge at an excessive rate, as described in subdivision (h) or (i), or who fails to make
34 available his or her rate as required in subparagraph (B) of paragraph (1) of subdivision
35 (i), is guilty of a misdemeanor, punishable by a fine of not more than two thousand five
36 hundred dollars (\$2,500), or by imprisonment in the county jail for not more than three
37 months, or by both that fine and imprisonment.

38 (k)(1) A person operating or in charge of a storage facility where vehicles are stored
39 pursuant to this section shall accept a valid bank credit card or cash for payment of
40 towing and storage by a registered owner, the legal owner, or the owner's agent claiming
41 the vehicle. A credit card shall be in the name of the person presenting the card. "Credit
42 card" means "credit card" as defined in subdivision (a) of Section 1747.02 of the Civil

1 Code, except, for the purposes of this section, credit card does not include a credit card
2 issued by a retail seller.

3 (2) A person described in paragraph (1) shall conspicuously display, in that portion of
4 the storage facility office where business is conducted with the public, a notice advising
5 that all valid credit cards and cash are acceptable means of payment.

6 (3) A person operating or in charge of a storage facility who refuses to accept a valid
7 credit card or who fails to post the required notice under paragraph (2) is guilty of a
8 misdemeanor, punishable by a fine of not more than two thousand five hundred dollars
9 (\$2,500), or by imprisonment in the county jail for not more than three months, or by
10 both that fine and imprisonment.

11 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is civilly
12 liable to the registered owner of the vehicle or the person who tendered the fees for four
13 times the amount of the towing and storage charges.

14 (5) A person operating or in charge of the storage facility shall have sufficient moneys
15 on the premises of the primary storage facility during normal business hours to
16 accommodate, and make change in, a reasonable monetary transaction.

17 (6) Credit charges for towing and storage services shall comply with Section 1748.1 of
18 the Civil Code. Law enforcement agencies may include the costs of providing for
19 payment by credit when making agreements with towing companies as described in
20 subdivision (i).

21 (l)(1)(A) A towing company shall not remove or commence the removal of a vehicle
22 from private property without first obtaining the written authorization from the property
23 owner or lessee, including an association of a common interest development, or an
24 employee or agent thereof, who shall be present at the time of removal and verify the
25 alleged violation, except that presence and verification is not required if the person
26 authorizing the tow is the property owner, or the owner's agent who is not a tow operator,
27 of a residential rental property of 15 or fewer units that does not have an onsite owner,
28 owner's agent or employee, and the tenant has verified the violation, requested the tow
29 from that tenant's assigned parking space, and provided a signed request or electronic
30 mail, or has called and provides a signed request or electronic mail within 24 hours, to the
31 property owner or owner's agent, which the owner or agent shall provide to the towing
32 company within 48 hours of authorizing the tow. The signed request or electronic mail
33 shall contain the name and address of the tenant, and the date and time the tenant
34 requested the tow. A towing company shall obtain, within 48 hours of receiving the
35 written authorization to tow, a copy of a tenant request required pursuant to this
36 subparagraph. For the purpose of this subparagraph, a person providing the written
37 authorization who is required to be present on the private property at the time of the tow
38 does not have to be physically present at the specified location of where the vehicle to be
39 removed is located on the private property.

40 (B) The written authorization under subparagraph (A) shall include all of the
41 following:

42 (i) The make, model, vehicle identification number, and license plate number of the
43 removed vehicle.

1 (ii) The name, signature, job title, residential or business address and working
2 telephone number of the person, described in subparagraph (A), authorizing the removal
3 of the vehicle.

4 (iii) The grounds for the removal of the vehicle.

5 (iv) The time when the vehicle was first observed parked at the private property.

6 (v) The time that authorization to tow the vehicle was given.

7 (C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing
8 company prior to payment of a towing or storage charge shall provide a photocopy of the
9 written authorization to the vehicle owner or the agent.

10 (ii) If the vehicle was towed from a residential property, the towing company shall
11 redact the information specified in clause (ii) of subparagraph (B) in the photocopy of the
12 written authorization provided to the vehicle owner or the agent pursuant to clause (i).

13 (iii) The towing company shall also provide to the vehicle owner or the agent a
14 separate notice that provides the telephone number of the appropriate local law
15 enforcement or prosecuting agency by stating “If you believe that you have been
16 wrongfully towed, please contact the local law enforcement or prosecuting agency at
17 [insert appropriate telephone number].” The notice shall be in English and in the most
18 populous language, other than English, that is spoken in the jurisdiction.

19 (D) A towing company shall not remove or commence the removal of a vehicle from
20 private property described in subdivision (a) of Section 22953 unless the towing company
21 has made a good faith inquiry to determine that the owner or the property owner’s agent
22 complied with Section 22953.

23 (E)(i) General authorization to remove or commence removal of a vehicle at the towing
24 company’s discretion shall not be delegated to a towing company or its affiliates except
25 in the case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane,
26 or in a manner which interferes with an entrance to, or exit from, the private property.

27 (ii) In those cases in which general authorization is granted to a towing company or its
28 affiliate to undertake the removal or commence the removal of a vehicle that is
29 unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that interferes with
30 an entrance to, or exit from, private property, the towing company and the property
31 owner, or owner’s agent, or person in lawful possession of the private property shall have
32 a written agreement granting that general authorization.

33 (2) If a towing company removes a vehicle under a general authorization described in
34 subparagraph (E) of paragraph (1) and that vehicle is unlawfully parked within 15 feet of
35 a fire hydrant or in a fire lane, or in a manner that interferes with an entrance to, or exit
36 from, the private property, the towing company shall take, prior to the removal of that
37 vehicle, a photograph of the vehicle that clearly indicates that parking violation. Prior to
38 accepting payment, the towing company shall keep one copy of the photograph taken
39 pursuant to this paragraph, and shall present that photograph and provide, without charge,
40 a photocopy to the owner or an agent of the owner, when that person claims the vehicle.

41 (3) A towing company shall maintain the original written authorization, or the general
42 authorization described in subparagraph (E) of paragraph (1) and the photograph of the
43 violation, required pursuant to this section, and any written requests from a tenant to the

1 property owner or owner’s agent required by subparagraph (A) of paragraph (1), for a
2 period of three years and shall make them available for inspection and copying within 24
3 hours of a request without a warrant to law enforcement, the Attorney General, district
4 attorney, or city attorney.

5 (4) A person who violates this subdivision is guilty of a misdemeanor, punishable by a
6 fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in
7 the county jail for not more than three months, or by both that fine and imprisonment.

8 (5) A person who violates this subdivision is civilly liable to the owner of the vehicle
9 or his or her agent for four times the amount of the towing and storage charges.

10 (m)(1) A towing company that removes a vehicle from private property under this
11 section shall notify the local law enforcement agency of that tow after the vehicle is
12 removed from the private property and is in transit.

13 (2) A towing company is guilty of a misdemeanor if the towing company fails to
14 provide the notification required under paragraph (1) within 60 minutes after the vehicle
15 is removed from the private property and is in transit or 15 minutes after arriving at the
16 storage facility, whichever time is less.

17 (3) A towing company that does not provide the notification under paragraph (1) within
18 30 minutes after the vehicle is removed from the private property and is in transit is
19 civilly liable to the registered owner of the vehicle, or the person who tenders the fees, for
20 three times the amount of the towing and storage charges.

21 (4) If notification is impracticable, the times for notification, as required pursuant to
22 paragraphs (2) and (3), shall be tolled for the time period that notification is
23 impracticable. This paragraph is an affirmative defense.

24 (n) A vehicle removed from private property pursuant to this section shall be stored in
25 a facility that meets all of the following requirements:

26 (1)(A) Is located within a 10-mile radius of the property from where the vehicle was
27 removed.

28 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a towing
29 company has prior general written approval from the law enforcement agency that
30 exercises primary jurisdiction in the city in which is located the private property from
31 which the vehicle was removed, or if the private property is not located within a city, then
32 the law enforcement agency that exercises primary jurisdiction in the county in which is
33 located the private property.

34 (2)(A) Remains open during normal business hours and releases vehicles after normal
35 business hours.

36 (B) A gate fee may be charged for releasing a vehicle after normal business hours,
37 weekends, and state holidays. However, the maximum hourly charge for releasing a
38 vehicle after normal business hours shall be one-half of the hourly tow rate charged for
39 initially towing the vehicle, or less.

40 (C) Notwithstanding any other provision of law and for purposes of this paragraph,
41 “normal business hours” are Monday to Friday, inclusive, from 8 a.m. to 5 p.m.,
42 inclusive, except state holidays.

1 (3) Has a public pay telephone in the office area that is open and accessible to the
2 public.

3 (o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to assist
4 vehicle owners or their agents by, among other things, allowing payment by credit cards
5 for towing and storage services, thereby expediting the recovery of towed vehicles and
6 concurrently promoting the safety and welfare of the public.

7 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further the
8 safety of the general public by ensuring that a private property owner or lessee has
9 provided his or her authorization for the removal of a vehicle from his or her property,
10 thereby promoting the safety of those persons involved in ordering the removal of the
11 vehicle as well as those persons removing, towing, and storing the vehicle.

12 (3) It is the intent of the Legislature in the adoption of subdivision (g) to promote the
13 safety of the general public by requiring towing companies to unconditionally release a
14 vehicle that is not lawfully in their possession, thereby avoiding the likelihood of
15 dangerous and violent confrontation and physical injury to vehicle owners and towing
16 operators, the stranding of vehicle owners and their passengers at a dangerous time and
17 location, and impeding expedited vehicle recovery, without wasting law enforcement's
18 limited resources.

19 (p) The remedies, sanctions, restrictions, and procedures provided in this section are
20 not exclusive and are in addition to other remedies, sanctions, restrictions, or procedures
21 that may be provided in other provisions of law, including, but not limited to, those that
22 are provided in Sections 12110 and 34660.

23 (q) A vehicle removed and stored pursuant to this section shall be released by the law
24 enforcement agency, impounding agency, or person in possession of the vehicle, or any
25 person acting on behalf of them, to the legal owner or the legal owner's agent upon
26 presentation of the assignment, as defined in subdivision (b) of Section 7500.1 of the
27 Business and Professions Code; a release from the one responsible governmental agency,
28 only if required by the agency; a government-issued photographic identification card; and
29 any one of the following as determined by the legal owner or the legal owner's agent: a
30 certificate of repossession for the vehicle, a security agreement for the vehicle, or title,
31 whether paper or electronic, showing proof of legal ownership for the vehicle. Any
32 documents presented may be originals, photocopies, or facsimile copies, or may be
33 transmitted electronically. The storage facility shall not require any documents to be
34 notarized. The storage facility may require the agent of the legal owner to produce a
35 photocopy or facsimile copy of its repossession agency license or registration issued
36 pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business
37 and Professions Code, or to demonstrate, to the satisfaction of the storage facility, that the
38 agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and
39 Professions Code.

40 **Comment.** Subdivision (a) of Section 22658 is amended to add cross-references to Civil Code
41 Section 6528 and 6534, reflecting the enactment of the Commercial and Industrial Common
42 Interest Development Act (Civ. Code §§ 6500-6876).

WATER CODE

1 **Water Code § 13553 (amended). Recycled water**

2 SEC. ____ . Section 13553 of the Water Code is amended to read:

3 13553. (a) The Legislature hereby finds and declares that the use of potable domestic
4 water for toilet and urinal flushing in structures is a waste or an unreasonable use of water
5 within the meaning of Section 2 of Article X of the California Constitution if recycled
6 water, for these uses, is available to the user and meets the requirements set forth in
7 Section 13550, as determined by the state board after notice and a hearing.

8 (b) The state board may require a public agency or person subject to this section to
9 furnish any information that may be relevant to making the determination required in
10 subdivision (a).

11 (c) For purposes of this section and Section 13554, “structure” or “structures” means
12 commercial, retail, and office buildings, theaters, auditoriums, condominium projects,
13 schools, hotels, apartments, barracks, dormitories, jails, prisons, and reformatories, and
14 other structures as determined by the State Department of Public Health.

15 (d) Recycled water may be used in condominium projects, as defined in Section 1351
16 or 6542 of the Civil Code, subject to all of the following conditions:

17 (1) Prior to the indoor use of recycled water in any condominium project, the agency
18 delivering the recycled water to the condominium project shall file a report with, and
19 receive written approval of the report from, the State Department of Public Health. The
20 report shall be consistent with the provisions of Title 22 of the California Code of
21 Regulations generally applicable to dual-plumbed structures and shall include all the
22 following:

23 (A) That potable water service to each condominium project will be provided with a
24 backflow protection device approved by the State Department of Public Health to protect
25 the agency’s public water system, as defined in Section 116275 of the Health and Safety
26 Code. The backflow protection device approved by the State Department of Public
27 Health shall be inspected and tested annually by a person certified in the inspection of
28 backflow prevention devices.

29 (B) That any plumbing modifications in the condominium unit or any physical
30 alteration of the structure will be done in compliance with state and local plumbing
31 codes.

32 (C) That each condominium project will be tested by the recycled water agency or the
33 responsible local agency at least once every four years to ensure that there are no
34 indications of a possible cross connection between the condominium’s potable and
35 nonpotable systems.

36 (D) That recycled water lines will be color coded consistent with current statutes and
37 regulations.

38 (2) The recycled water agency or the responsible local agency shall maintain records of
39 all tests and annual inspections conducted.

40 (3) The condominium’s declaration, as defined in Section 1351 or 6546 of the Civil
41 Code, shall provide that the laws and regulations governing recycled water apply, shall

1 not permit any exceptions to those laws and regulations, shall incorporate the report
2 described in paragraph (1), and shall contain the following statement:

3 “NOTICE OF USE OF RECYCLED WATER

4 This property is approved by the State Department of Public Health for the use of
5 recycled water for toilet and urinal flushing. This water is not potable, is not suitable for
6 indoor purposes other than toilet and urinal flushing purposes, and requires dual
7 plumbing. Alterations and modifications to the plumbing system require a permit and are
8 prohibited without first consulting with the appropriate local building code enforcement
9 agency and your property management company or ~~homeowners~~ owners’ association to
10 ensure that the recycled water is not mixed with the drinking water.”

11 (e) The State Department of Public Health may adopt regulations as necessary to assist
12 in the implementation of this section.

13 (f) This section shall only apply to condominium projects that are created, within the
14 meaning of Section 1352 or 6580 of the Civil Code, on or after January 1, 2008.

15 (g) This section and Section 13554 do not apply to a pilot program adopted pursuant to
16 Section 13553.1.

17 **Comment.** Subdivision (d) of Section 13553 is amended to add cross-references to Civil Code
18 Sections 6542 and 6546, and to make a terminological change, reflecting the enactment of the
19 Commercial and Industrial Common Interest Development Act (Civ. Code §§ 6500-6876).

20 Subdivision (f) is amended to add a cross-reference to Civil Code Section 6580, for the same
21 reason.

DISPOSITION OF EXISTING LAW

The table below shows the disposition of each provision of the existing Davis-Stirling Common Interest Development Act in the proposed law.

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1350	not continued	1357(d)	6618(c)
1350.5	6502	1357.100	not continued
1350.7	not continued	1357.110	not continued
1351 (intro.)	6526	1357.120	not continued
1351(a)	6528	1357.130	not continued
1351(b)	6532	1357.140	not continued
1351(c)	6534	1357.150	not continued
1351(d)	not continued	1358(a)	not continued
1351(e)(1), (2)	6624	1358(b)	6662
1351(e)(3)	6624, 6626(a)	1358(c)	6664
1351(e) (next to last ¶)	6626(b)-(c)	1358(d)	6666
1351(e) (last ¶)	6628	1358 (next to last ¶)	6668
1351(f)	6542	1358 (last ¶)	6670
1351(g)	6544	1359	6656
1351(h)	6546	1360	6714
1351(i)	6550	1360.2	not continued
1351(j)	6552	1360.5	6706
1351(k)	6562	1361	6652
1351(l)	6564	1361.5	6654
1351(m)	6566	1362	6650
1352	6580	1363(a)	6750
1352.5	6606(a)-(b), (d)	1363(b)	not continued
1353(a)(1) (1st & 2d sent.)	6614(a)	1363(c)	6752
1353(a)(1) (except 1st & 2d sent.)-(a)(4)	not continued	1363(d)	not continued
1353(b)	6614(b)	1363(e)	not continued
1353.5	6702	1363(f) (1st sent.)	6850
1353.6	6704	1363(f) (2nd sent.)	not continued
1353.7	not continued (but see 6600(a))	1363(g)	not continued
1353.8	6712	1363(h)	not continued
1353.9	6713	1363(i)	6854
1354(a)-(b)	6856	1363.001	not continued
1354(c)	not continued	1363.005	not continued
1355(a) (1st sent.)	6620(a) (1st sent.)	1363.03	not continued
1355(a)(1)	6620(a)(2)	1363.04	not continued
1355(a)(2)	6620(a)(3)	1363.05	not continued
1355(a)(3)	6620(a)(4)	1363.07	not continued
1355(b) (1st sent.)	6616	1363.09	not continued
1355(b)(1)	6620(a)(1)	1363.1	not continued
1355(b)(2)	6620(a)(2), 6620(b)	1363.2	not continued
1355(b)(3)	6620(a)(3)	1363.5	6622
1355(b) (last sent.)	not continued	1363.6	6760
1355.5	6608	1363.810	not continued
1356	not continued	1363.820	not continued
1357(a)	6618(a)	1363.830	not continued
1357(b) (1st sent.)	6618(b), 6620	1363.840	not continued
1357(b) (2nd sent.)	not continued	1363.850	not continued
1357(c)	not continued	1364(a)	6716(a)
		1364(b)	6718

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1364(c)	6716(b)	1367.1(g) (3d sent.)	6822(a)
1364(d)-(e)	6720	1367.1(g) (4th sent.)	6822(c) (intro.)
1364(f)	6722	1367.1(g)(1)-(2)	6822(c)(1)-(2)
1365	not continued	1367.1(h)	6820(b)
1365.1	not continued	1367.1(i)	6818(b)
1365.2	not continued	1367.1(j)	6822(b)
1365.2.5	not continued	1367.1(k)	not continued
1365.3	not continued	1367.1(l)	6819
1365.5	not continued	1367.1(m)	not continued (but see 6828)
1365.6	6758(a)	1367.1(n)	not continued
1365.7	not continued	1367.4	not continued
1365.9	6840	1367.5	not continued
1366(a) (1st sent.)	6800	1367.6	not continued
1366(a) (except 1st sent.)	not continued	1368	not continued
1366(b)	not continued	1368.1	6710
1366(c)	6804	1368.2	not continued
1366(d)	not continued	1368.3	6858
1366(e)	not continued	1368.4	6860
1366(f)	6808(b)	1368.5	6876
1366.1	not continued	1369	6658
1366.2	not continued	1369.510	not continued
1366.4	not continued	1369.520	not continued
1367	not continued (but see 6828)	1369.530	not continued
1367.1(a) (1st sent.)	6808(a)	1369.540	not continued
1367.1(a) (2d sent.)	6812 (intro.)	1369.550	not continued
1367.1(a)(1)-(3)	6812(a)-(c)	1369.560	not continued
1367.1(a)(4)-(6)	not continued	1369.570	not continued
1367.1(b) (1st sent.)	not continued	1369.580	not continued
1367.1(b) (2nd - 4th sent.)	6810	1369.590	not continued
1367.1(c)	not continued	1370	6602
1367.1(d) (1st - 5th sent.)	6814(a)-(e)	1371	6604
1367.1(d) (6th sent.)	6818(a)	1372	6510
1367.1(d) (7th sent.)	6824(a)	1373	6582(a), 6531
1367.1(d) (8th sent.)	not continued	1374	6582(b)
1367.1(e)	6824(b)	1375	6870
1367.1(f)	6816	1375.1	6874
1367.1(g) (1st sent.)	6826	1376	6708
1367.1(g) (2d sent.)	6820(a)	1378	not continued