

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Statutory Clarification and Simplification of CID Law

February 2010

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission may consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN July 1, 2010.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

The Law Revision Commission recommends that the existing Davis-Stirling Common Interest Development Act be repealed and replaced with a new statute that continues the substance of existing law in a more user-friendly form.

The new statute would provide the following advantages for homeowners who must read, understand, and apply the law governing CIDs:

- (1) Related provisions would be grouped together in a logical order. This would make relevant law easier to find and use. It would also provide a clear organization to guide future development of the law.
- (2) Sections that are unclear or confusing would be revised for clarity, without any change in their substantive effect.
- (3) Sections that are excessively long would be divided into shorter sections.
- (4) To the extent practical, consistent terminology would be used throughout.
- (5) Some governance procedures would be standardized so as to simplify routine matters.
- (6) Various noncontroversial substantive improvements would be made.

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

STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

BACKGROUND

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

10 There are over 46,000 CIDs in California, ranging in size from three to 27,000
11 units each.³ These developments comprise over 4.8 million total housing units.⁴
12 Most CIDs are relatively small, with over half consisting of 25 or fewer separate
13 interests.⁵

14 Homeowner associations are run by volunteer directors who may have little or
15 no prior experience in managing real property, governing a nonprofit association
16 or corporation, complying with the laws regulating CIDs, and interpreting and
17 enforcing the restrictions and rules imposed by the governing documents of an
18 association.⁶

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

- 22 • *The Corporations Code*. If an association is incorporated, it is governed by
23 the Nonprofit Mutual Benefit Corporation Law.⁷ An unincorporated
24 homeowner association is subject to both the general law on unincorporated

1. Although most CIDs are residential, a CID may also include commercial units. An entirely nonresidential CID is exempt from many of the laws that govern residential CIDs. See Civ. Code § 1373.

2. See Civ. Code § 1351.

3. Levy & Erlanger, *2008 California Community Association Statistics* 1 (2008).

4. *Id.*

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

6. Many associations contract for professional management, accounting, and legal assistance. However, most associations are small and may not be able to afford those services. See *supra* note 5.

7. Corp. Code § 7110 *et seq.*

1 associations,⁸ and specific provisions of the Nonprofit Mutual Benefit
2 Corporation Law.⁹

- 3 • *The Davis-Stirling Common Interest Development Act* (hereafter the “Davis-
4 Stirling Act”).¹⁰ That act provides a body of law specific to CIDs.

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

8 OVERVIEW OF PROPOSED LAW

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

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

- 14 (1) Related provisions would be grouped together in a logical order. This would
15 make relevant law easier to find and use. It would also provide a clear
16 organization to guide future development of the law.¹¹
- 17 (2) Sections that are unclear or confusing would be revised for clarity, without
18 any change in their substantive effect.
- 19 (3) Sections that are excessively long would be divided into shorter sections.
- 20 (4) To the extent practical, consistent terminology would be used throughout.
- 21 (5) Some governance procedures would be standardized so as to simplify
22 routine matters.
- 23 (6) Various noncontroversial substantive improvements would be made.

24 For the most part, this is a nonsubstantive reform. However, there are a number
25 of instances where minor substantive improvements are proposed. All of those
26 changes are described in this tentative recommendation.

8. Corp. Code § 18000 *et seq.*

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

10. Civ. Code §§ 1350-1378.

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

1 To simplify public review of this proposal, every section heading in the
2 proposed legislation is coded to indicate whether it is “unchanged,” “revised,” or
3 “new.” The meaning of this coding is explained below:

- 4 • An “unchanged” provision would continue existing law almost verbatim,
5 with only minor and plainly technical changes (which are identified in the
6 Comments that follow each of these sections).
- 7 • A “revised” provision contains changes in language to clarify unclear law or
8 to make a minor substantive improvement. Any changes made in these
9 sections are described in the Comments and Notes that follow these
10 sections.
- 11 • A “new” section would be an addition to the law (rather than continuing an
12 existing provision). The purpose of a new provision is explained in the Note
13 that follows the section.

14 A “disposition table” following the proposed law shows the precise relationship
15 between every provision of the existing Davis-Stirling Act and the provision of the
16 proposed law that would continue it. In a few instances, an existing provision
17 would not be continued in the proposed law because it is unnecessary. Those
18 provisions would be listed in the disposition table as “omitted.”

19 GENERAL ORGANIZATION OF PROPOSED LAW

20 The proposed law would reorganize the contents of the Davis-Stirling Act into
21 nine chapters, as follows:

- 22 Chapter 1. General Provisions
- 23 Chapter 2. Governing Documents
- 24 Chapter 3. Ownership and Transfer of Interests
- 25 Chapter 4. Property Use and Maintenance
- 26 Chapter 5. Association Governance
- 27 Chapter 6. Finances
- 28 Chapter 7. Insurance and Liability
- 29 Chapter 8. Dispute Resolution and Enforcement
- 30 Chapter 9. Construction Defect Litigation

31 Generally speaking, this organizational structure would begin with the
32 foundational provisions¹² of the Davis-Stirling Act (proposed Chapters 1-4),
33 followed by the operational provisions¹³ (proposed Chapters 5-8). The last chapter

12. I.e., the provisions that address the basic elements of the CID form of property ownership — the existence and nature of the common area, the governing documents, property ownership rights, rules for property transfer, and rules delineating maintenance obligations.

13. I.e., the provisions that address the ongoing operational duties and procedures — meeting procedures, election procedures, recordkeeping, record inspection, reporting requirements, accounting, reserve funding, assessment setting and collection, insurance requirements, dispute resolution, and enforcement of restrictions.

1 would preserve existing construction defect claim procedures essentially
2 unchanged. Those provisions are the subject of regular legislative attention.

3 **The discussion that follows identifies all of the substantive changes to**
4 **existing law that would be made by the proposed law. It is not intended as a**
5 **complete summary of common interest development law.**

6 CHAPTER 1. GENERAL PROVISIONS

7 The proposed law would include a chapter of general provisions (i.e., provisions
8 that apply to the act as a whole).¹⁴ The general provisions include (1) rules
9 governing the application of the Davis-Stirling Act, (2) procedures used to deliver
10 notices, (3) standardized rules for member approval of an action that requires
11 member approval, and (4) definitions for commonly used terms. For the most part,
12 those provisions would continue existing law. Significant changes to existing law
13 are discussed below.

14 Application of Davis-Stirling Act

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

19 The proposed law would continue those exemptions with two changes:

- 20 (1) An exemption would be added for the member election provisions of the
21 Davis-Stirling Act.¹⁶ The member protections provided by those sections are
22 not needed in a commercial association, which would instead conduct its
23 elections under the procedures provided in the Corporations Code for
24 entities of its type.¹⁷
- 25 (2) Existing law provides an emergency exception to certain assessment setting
26 procedures, but provides that the emergency exception does not apply to a
27 nonresidential CID.¹⁸ This rule does not make sense as a matter of policy.
28 The emergency exception provides necessary flexibility to address
29 unforeseen circumstances that should be available to all CIDs, regardless of
30 type. The proposed law would not exempt nonresidential CIDs from the
31 emergency provision.

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

15. Civ. Code § 1373. The Commission is currently conducting a separate study of the application of the Davis-Stirling Act to nonresidential CIDs. The changes proposed in this tentative recommendation are not intended to affect or supersede any conclusions that might be reached in that separate study.

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

17. See Corp. Code § 7510 *et seq.*

18. See Civ. Code § 1373(a)(6).

1

Notice Procedures

2 The proposed law would standardize the procedures used for the delivery of
3 various statutory notices. The standardized procedures should reduce the risk of
4 error and help to control governance costs.

5 **Method of Delivery**

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

8 (1) An “individual notice” would be delivered individually to a specific member
9 of the association.¹⁹ Individual notice is appropriate where a member’s
10 individual interests would be affected. An individual notice could be
11 delivered by first class mail or electronic delivery (with the consent of the
12 recipient).

13 (2) A “general notice” would be provided to all members and could be provided
14 by various forms of posting or publication.²⁰ General notice is appropriate
15 for matters of general interest to the membership, such as the time, place,
16 and agenda for a pending board meeting.²¹ An individual member would
17 have the right to have general notices delivered by the methods specified for
18 delivery of an individual notice.²²

19 (3) A notice that is to be “delivered to the association” would be delivered by
20 first class or certified mail, to the person designated by the association for
21 receipt of notices (or to the president or secretary of the association, if no
22 person is designated).²³ This would give greater certainty as to how to
23 communicate with the board regarding official matters.

24 **Time of Delivery**

25 The proposed law would add a “mailbox rule” to provide clarity as to the time of
26 delivery of a notice.²⁴ This will help to avoid disputes relating to delivery
27 deadlines.

28 **Minimum Font Size**

29 Two provisions of existing law specify a minimum font size for particular
30 reports that must be provided to the members of an association.²⁵ The proposed

19. See proposed Civ. Code § 4040.

20. See proposed Civ. Code § 4045.

21. See, e.g., proposed Civ. Code § 4520 (board meeting notice given by general notice, unless member requests individual notice).

22. See proposed Civ. Code § 4045(b).

23. See proposed Civ. Code § 4035.

24. See proposed Civ. Code § 4050. The proposed provision would also address notices delivered electronically.

25. See Civ. Code §§ 1365(d), 1365.1(a).

1 law would generalize and standardize those requirements so that they apply to all
2 notices and reports that an association must provide to an association member.²⁶
3 This will help to protect the rights of association members who have visual
4 impairments.

5 Terminology

6 **Consistent Terminology**

7 The terminology used in existing law is not consistent. In many cases, two or
8 more different terms are used to describe the same thing. This can lead to
9 misunderstanding and unnecessary litigation to resolve ambiguities. For example,
10 existing law uses the terms “director,” “board member,” and “member” to refer to
11 a member of an association’s board of directors. That inconsistent terminology can
12 lead to confusion (especially with respect to the term “member,” which can also
13 refer to a member of the association). To address that problem, the proposed law
14 would add a definition of the term “director”²⁷ and would revise a number of
15 provisions to use the defined term.²⁸

16 Similarly, the proposed law would standardize the terminology used to refer to
17 the board,²⁹ board meetings,³⁰ common area,³¹ the declarant,³² governing
18 documents,³³ a managing agent,³⁴ a member,³⁵ or an occupant.³⁶

19 Some definitions in existing law have expressly limited application but would be
20 proper if applied more broadly. The proposed law would generalize those
21 definitions so that they apply to the Davis-Stirling Act as a whole.³⁷ This will

26. See proposed Civ. Code § 4060.

27. See proposed Civ. Code § 4140.

28. See proposed Civ. Code §§ 4090, 4930, 5100, 5110, 5240, 5665, 5673, 5705, 5915.

29. See proposed Civ. Code §§ 4165, 4177, 4178, 4180, 4205, 4225, 4230, 4350, 4360, 4365, 4370, 4525, 4600, 4765, 4925, 4930, 4935, 4950, 5100, 5105, 5110, 5120, 5200, 5215, 5240, 5300, 5375, 5380, 5400, 5500, 5510, 5550, 5560, 5570, 5605, 5673, 5705, 5730, 5850, 5855, 5865, 5910, 5915, 6000, 6150.

30. See proposed Civ. Code §§ 4360, 4925.

31. See proposed Civ. Code §§ 4110, 4145, 4185, 4265, 4500, 4505, 4510, 4610, 4615, 4630, 4635, 4730, 4775, 4790, 5725, 5730, 5805.

32. See proposed Civ. Code §§ 4230, 4250(b),

33. See proposed Civ. Code §§ 4010, 4065, 4070, 4215, 4230, 4525, 4710, 4730, 4765, 5115, 5130, 5865, 5915, 5925

34. See proposed Civ. Code §§ 4155, 4205, 4280, 4815, 4930, 5375, 5380, 5405.

35. See proposed Civ. Code §§ 4040, 4160, 4225, 4230, 4265, 4270, 4275, 4365, 4525, 4605, 4705, 4710, 4725, 4760, 4765, 4790, 4810, 4925, 4930, 4950, 4955, 5105, 5110, 5605, 5930, 5935.

36. See proposed Civ. Code §§ 4163, 4110, 4760, 4930, 5725, 5860.

37. See proposed Civ. Code §§ 4155 (“managing agent”), 4163 (“occupant”), 4165 (“operating rule”), 4177 (“reserve accounts”), 4178 (“reserve account requirements”), 4180 (“rule change”).

1 simplify understanding of the law, lead to more uniform results, and provide a
2 settled definition for the future development of the law.

3 **“Board Meeting”**

4 Existing law defines a board meeting as a gathering of a majority of the directors
5 to consider board business (other than matters that may be considered in executive
6 session).³⁸

7 The proposed law would change the threshold for a board meeting from a
8 majority of the directors to a number of directors sufficient to establish a
9 quorum.³⁹ This would reflect the fact that in some associations the quorum for a
10 board meeting may not be a simple majority of the directors. As a matter of policy,
11 the definition of “board meeting” should be based on the number of directors
12 required to conduct board business.

13 **“Exclusive Use Common Area”**

14 The existing definition of “exclusive use common area” includes a reference to
15 “telephone wiring.”⁴⁰ The proposed law would modernize the reference by making
16 clear that (1) it applies to any communication wiring (e.g., television cable), and
17 (2) it includes nonmetallic transmission media (e.g., fiber optic cable).⁴¹ These
18 changes would reflect changes occurring within the modern communications
19 industry.

20 **“Person”**

21 The proposed law would add a definition of the term “person,” to avoid any
22 uncertainty as to whether the term includes a legal entity such as a corporation.⁴²

23 **CHAPTER 2. GOVERNING DOCUMENTS**

24 The proposed law would make various improvements to the law relating to an
25 association’s governing documents, as described below.

26 **Correction of Statute Numbers Changed by Proposed Law**

27 Because the proposed law would comprehensively reorganize the Davis-Stirling
28 Act, all of the existing code section numbers would be changed. Each substantive
29 provision continued in the proposed law would have a new number.

30 In order to simplify the transition to the new numbering scheme, and reduce the
31 costs associated with that transition, the proposed law includes a section that

38. See Civ. Code § 1363.05(j).

39. See proposed Civ. Code § 4090.

40. See Civ. Code § 1351(i)(2).

41. See proposed Civ. Code § 4145.

42. See proposed Civ. Code § 4170.

1 provides a simplified procedure for correcting any cross-references to the Davis-
2 Stirling Act in an association's governing documents, in order to reflect the new
3 numbering of the proposed law. Such changes could be made by board resolution,
4 without a vote of the membership. The amended documents could be recorded in
5 amended form.⁴³

6 **Document Authority**

7 The proposed law would provide statutory guidance on the relative authority of
8 the most common types of governing documents. The declaration would be
9 highest in authority, followed by the articles, bylaws, and operating rules.⁴⁴ This
10 will help to resolve conflicts between documents, by providing a clear hierarchy of
11 supremacy.

12 **Deletion of Unlawful Discriminatory Restriction**

13 Existing law requires that an association amend a governing document that
14 contains an unlawful discriminatory restriction, in order to delete the unlawful
15 restriction.⁴⁵

16 If the governing document is in the public record (either a recorded declaration
17 or articles of incorporation that have been filed with the Secretary of State), the
18 proposed law would require that the unlawful restriction be removed from the
19 public record by recording or filing the amended governing document.⁴⁶ This will
20 further the purpose of the existing requirement.

21 **Deletion of Declarant Provisions**

22 Existing law provides a special procedure for amendment of the association's
23 governing documents in order to delete obsolete construction and marketing
24 provisions.⁴⁷ The procedure requires a vote of the property owners and specifies a
25 quorum of more than 50 percent of the owners (excluding those who own more
26 than two separate interests within the development).⁴⁸

27 A quorum rule that is based on the number of owners, rather than the number of
28 separate interests represented, could cause problems where separate interests are
29 jointly owned. For example, in a 10-unit development where each unit is owned
30 by a single person, the quorum under existing law would be six owners. However,

43. See proposed Civ. Code § 4230.

44. See proposed Civ. Code § 4200. That provision would not apply to a stock cooperative, because stock cooperatives can differ significantly from other types of CIDs with respect to their governing documents.

45. Civ. Code § 1352.5.

46. See proposed Civ. Code § 4225(c).

47. Civ. Code § 1355.5.

48. *Id.*

1 if those 10 units were owned by married couples or domestic partners as
2 community property, there would be 20 owners and the quorum would be 11.

3 The proposed law would provide that the quorum is based on 50 percent of the
4 “voting power” in the association, rather than 50 percent of the owners.⁴⁹ This
5 would be a more appropriate rule, because it would be based on whatever measure
6 of voting power is used by each individual association. For example, if an
7 association provides one vote per separate interest, then the quorum would be
8 based on the number of separate interests. If the rule is one vote per owner, then
9 the quorum would be based on the number of owners.

10 **Content of Declaration**

11 Existing law specifies what information must be included in a CID’s recorded
12 declaration.⁵⁰ The declaration may also include any other information that the
13 “original signator of the declaration or the owners consider appropriate.”⁵¹

14 The proposed law would replace the phrase “original signator of the declaration”
15 with the defined term “declarant.”⁵² This change would permit a successor-in-
16 interest to the original signator to add material to the declaration as that person
17 deems appropriate. The Commission sees no policy reason to limit that power to
18 the original declarant.

19 **Amendment of Declaration**

20 Existing law provides similar but slightly different procedures for amendment of
21 the declaration, depending on the purpose of the amendment.⁵³ The Commission
22 found no policy justification for this procedural complexity.

23 The proposed law would provide a single procedure for amendment of the
24 declaration, regardless of the purpose of the amendment.⁵⁴

25 The proposed law would generalize an existing requirement that the members be
26 provided with the text of a proposed declaration amendment, which currently only
27 applies when amending a declaration that is silent as to whether it may be
28 amended.⁵⁵ Under the proposed law the association would be required to provide
29 the members with a copy of any proposed amendment of the declaration.⁵⁶

49. See proposed Civ. Code § 4230(d).

50. Civ. Code § 1353.

51. Civ. Code § 1353(b).

52. See proposed Civ. Code § 4250(b).

53. See Civ. Code §§ 1355(a) (general procedure), (b) (amendment of declaration that is silent as to whether it can be amended), 1357 (amendment to extend term of declaration with fixed term).

54. See proposed Civ. Code § 4270.

55. Civ. Code § 1355(b)(1).

56. See proposed Civ. Code § 5115(e).

1 **Amendment or Revocation of Condominium Plan**

2 Existing law specifies a number of persons who must sign and acknowledge a
3 certificate authorizing the recordation of an original condominium plan.⁵⁷

4 A condominium plan may be amended or revoked by recordation of an
5 instrument executed “by all of the persons” whose signatures are required on the
6 original certificate.⁵⁸ That language is somewhat ambiguous. It is not entirely clear
7 whether an instrument amending or revoking a condominium plan must be
8 executed by the *same individuals* who signed the original plan or by persons who
9 stand in the *same relationship* to the condominium project as those who were
10 required to sign the original plan.

11 For example, record owners of fee title must sign the original certificate. If the
12 condominium plan is subsequently amended, must the amendment instrument be
13 signed by the original owners, or by those who are owners at the time of the
14 amendment?

15 The proposed law would clarify that the instrument must be executed by those
16 persons who have the specified interests in the property at the time of the
17 amendment or revocation.⁵⁹ As a matter of policy, it would not make sense to
18 require the consent of those who formerly held interests in the property but no
19 longer have any interest. Those persons should have no say in what happens to the
20 condominium project after the termination of their interests in the property.

21 **CHAPTER 3. OWNERSHIP AND TRANSFER OF INTERESTS**

22 **Right of Access to Separate Interest**

23 Existing law prohibits an association (except as otherwise authorized by law)
24 from denying an owner physical access to the owner’s separate interest.⁶⁰ The
25 existing provision also appears to protect a non-owner occupant’s physical access
26 to the separate interest occupied by that person. However, the provision could be
27 clearer on that point.

28 The proposed law would revise the provision to unambiguously provide
29 protection for both owners and occupants.⁶¹

30 **Grant of Exclusive Use**

31 With a number of exceptions, existing law requires the approval of members
32 representing at least 67 percent of the association’s separate interests before the
33 board may grant an individual member exclusive use of part of the common area.⁶²

57. Civ. Code § 1351(e)(3).

58. Civ. Code § 1351(e).

59. See proposed Civ. Code § 4295.

60. Civ. Code § 1361.5.

61. See proposed Civ. Code § 4510.

1 The proposed law would make a number of minor improvements to that
2 provision, as explained below:⁶³

- 3 (1) The application of the provision would be expanded to include a grant made
4 by any authorized representative of the association, not just the board of
5 directors. In some CIDs, an entity other than the board may be authorized to
6 grant exclusive use of common area.
- 7 (2) An exception would be added for a grant that is necessary to accommodate a
8 disability.
- 9 (3) An exception would be added for a grant that is required by law.
- 10 (4) An exception would be added for the assignment of a parking space, storage
11 unit, or other amenity, that is designated in the declaration as exclusive use
12 common area but is not assigned by the declaration to a specific separate
13 interest.

14 CHAPTER 4. PROPERTY USE AND MAINTENANCE

15 **Use of Separate Interest Property**

16 Existing law includes a number of provisions that limit an association's ability
17 to restrict specified uses of a separate interest. For example, Civil Code Section
18 1353.5 protects the right to display the United States flag on separate interest
19 property.

20 The proposed law would collect these provisions together and would add a new
21 provision that cross-refers to other similar protections that exist outside of the
22 Davis-Stirling Act.⁶⁴ The new provision would provide CID property owners with
23 a more complete understanding of their property use rights.

24 **Modification of Separate Interest Property**

25 Existing law includes a provision that guarantees the right of an owner in a
26 condominium project to make changes to the owner's separate interest "unit,"
27 within specified limitations.⁶⁵ Special rules are provided for a modification
28 necessary to accommodate a disability.⁶⁶

29 The Commission finds no good policy reason to limit the benefits of the existing
30 provision to units within a condominium project. The proposed law would
31 generalize the provision so that it applies to a separate interest in any type of
32 CID.⁶⁷

62. Civ. Code § 1363.07.

63. See proposed Civ. Code § 4600.

64. See proposed Civ. Code § 4700.

65. See Civ. Code § 1360.

66. *Id.*

67. See proposed Civ. Code § 4760.

1 **Maintenance of Exclusive Use Common Area Communication Wiring**

2 Existing law guarantees a member’s access to telephone wiring in the common
3 area for the purpose of maintaining the wiring to that member’s separate interest.⁶⁸

4 The proposed law would modernize the provision by making clear that (1) any
5 type of communication wiring is governed by the provision (not just “telephone”
6 wiring) and (2) the term “wiring” is not limited to metallic media.⁶⁹

7 **CHAPTER 5. ASSOCIATION GOVERNANCE**

8 The proposed law would include a chapter on the governance of an association
9 by its board and members.⁷⁰ It would include provisions relating to board
10 meetings, member meetings, member elections, record inspection, record keeping,
11 annual reports, director conduct, managing agents, and government assistance. For
12 the most part, those provisions would continue existing law. Any significant
13 changes to existing law are discussed below.

14 **Board Meetings**

15 **Meeting with Fixed Time and Place**

16 Existing law requires notice of a board meeting, unless the time and place of the
17 meeting is fixed by the association’s bylaws.⁷¹ The proposed law would generalize
18 that exception so that it applies when the time and place of the meeting is fixed in
19 any type of governing document.⁷² This would reflect the fact that documents
20 other than the bylaws can be used to address such matters.

21 **Posted Notice of Board Meeting**

22 Existing law requires that notice of a board meeting be “posted” in a prominent
23 place in the common area, and delivered by mail to any member who has
24 requested mailed notice.⁷³ Some associations cannot comply with this requirement
25 because they do not have common area that is appropriate for the posting of
26 notices. The proposed law would delete the posting requirement and instead
27 require “general delivery”⁷⁴ of board meeting notices.⁷⁵ This would increase
28 flexibility by providing alternatives to posting (e.g., publication in a newsletter),
29 without affecting a member’s right to receive mailed notices on request.

68. See Civ. Code § 1364(f).

69. See proposed Civ. Code § 4790.

70. See proposed Civ. Code §§ 4800-5405.

71. See Civ. Code § 1363.05(f).

72. See proposed Civ. Code § 4920(a).

73. See Civ. Code § 1363.05(f).

74. See proposed Civ. Code § 4045.

75. See proposed Civ. Code § 4920.

1

Interested Director

2 Existing law provides that an association director is subject to an interested
3 director disqualification provision that governs directors in for-profit
4 corporations.⁷⁶

5 The proposed law would continue that provision with two changes: (1) it would
6 delete the existing reference to for-profit corporations law and instead refer to the
7 equivalent provisions of nonprofit corporations law,⁷⁷ and (2) it would add an
8 express list of prohibited conflicts, to provide clear guidance on common types of
9 conflicts.⁷⁸ The proposed law would make clear that the list of prohibited conflicts
10 is not intended to be exclusive.⁷⁹

11

Member Elections

12 Existing law provides a detailed procedure for conducting specified types of
13 member elections in a common interest development.⁸⁰ The proposed law would
14 continue that procedure⁸¹ with the improvements discussed below.

15 **Scope of Statutory Election Procedure**

16 Under existing law, the election procedure only applies to specified types of
17 elections.⁸² The proposed law would authorize an association to use the statutory
18 election procedure for any type of member election.⁸³ This would allow an
19 association to take advantage of the standardized election procedure, to the extent
20 appropriate to its circumstances.

21 **Text of Proposed Governing Document Amendment**

22 The proposed law would add a new requirement that an association provide
23 members with the text of a proposed amendment of the governing documents,
24 when holding an election to approve the proposed amendment.⁸⁴ This will ensure
25 that the members have the information necessary to make an informed decision on
26 a proposed governing document amendment.

76. See Civ. Code §1365.6.

77. See proposed Civ. Code § 5350(a).

78. See proposed Civ. Code § 5350(b).

79. See proposed Civ. Code § 5350(c).

80. Civ. Code §§ 1363.03, 1363.04, 1363.09.

81. See proposed Civ. Code §§ 5100-5145.

82. Civ. Code § 1363.03(b).

83. A decision to use the statutory procedure in other types of elections would need to be expressed in an operating rule. See proposed Civ. Code § 5100(b).

84. See proposed Civ. Code § 5115(e).

1 **Notification of Election Results**

2 Existing law requires that the results of a member election be “publicized” in a
3 “communication directed to all members.”⁸⁵ That ambiguous requirement would
4 be replaced with a requirement that “general notice”⁸⁶ of the election results be
5 provided.⁸⁷ This will eliminate any uncertainty as to what is required and will
6 allow an association to use standardized notice procedures.

7 **Retention of Ballots**

8 Existing law requires that the election inspector maintain custody of ballots
9 “until the time allowed by Section 7527 of the Corporations Code for challenging
10 the election has expired...”⁸⁸ That time is nine months after the election.

11 If the purpose of that provision is to require retention of ballots during the time
12 in which election results may be challenged in court, it is too short. The Davis-
13 Stirling Act provides 12 months for judicial review of a member election.⁸⁹

14 The proposed law would correct the apparent error in existing law, by requiring
15 the retention of ballots for 12 months.⁹⁰

16 **Campaign Communications**

17 Existing law restricts the use of association funds for campaign communications
18 in connection with a pending board election.⁹¹ Campaign communications are
19 defined to include any communication that features the name or photograph of a
20 candidate.⁹² That provision appears to be overbroad, because it could prohibit the
21 distribution of routine documents that happen to include the name of a candidate
22 (e.g., meeting minutes).

23 The proposed law would address that problem by adding an exception for
24 communications that are required by law.⁹³

25 **Voting Rights**

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

85. Civ. Code § 1363.03(g).

86. See proposed Civ. Code § 4045.

87. See proposed Civ. Code § 5120(b).

88. Civ. Code § 1363.03(h).

89. Civ. Code § 1363.09.

90. See proposed Civ. Code § 5125.

91. Civ. Code § 1363.04.

92. *Id.*

93. See proposed Civ. Code § 5135(b)(2).

1 The proposed law includes default rules on those issues,⁹⁴ which are drawn from
2 the Corporations Code⁹⁵ and the Department of Real Estate’s regulations.⁹⁶

3 Association Records

4 Existing law guarantees a member’s right to inspect and copy specified types of
5 association records.⁹⁷

6 The proposed law would generally continue existing law on member record
7 inspection rights, with the improvements discussed below.⁹⁸

8 **Scope of Inspection Right**

9 The proposed law would expand the scope of “association records” subject to
10 member inspection to include the governing documents of the association.⁹⁹

11 The proposed law would also clarify an existing ambiguity, by stating expressly
12 that the term “association records” includes those records defined as “enhanced
13 association records.”¹⁰⁰

14 **Duty to Retain Records**

15 Implicit in a member’s right to inspect association records for a specified period
16 of time is the association’s duty to retain those records for the specified periods.

17 The proposed law would make that duty explicit, by requiring the retention of
18 specified types of records for specified periods of time.¹⁰¹

19 The list of records that must be maintained would include all of the types of
20 records that are subject to member inspection and other types of business records
21 that should be maintained by any well-run nonprofit organization.

22 In developing the latter category, the Commission looked to common practice
23 within the nonprofit sector. There is a wide range of advice available on the topic,
24 including some that is specific to homeowner associations.¹⁰² The proposed law is
25 generally consistent with that body of advice.

26 Under the proposed law, certain types of records would be retained
27 permanently.¹⁰³ All other records that an association is required to maintain would

94. See proposed Civ. Code § 5140.

95. Corp. Code §§ 7312(d), 7611(a).

96. 10 Cal. Code Regs. § 2792.18.

97. See Civ. Code §§ 1363(f), 1365.2.

98. See proposed Civ. Code §§ 5200-5240.

99. See proposed Civ. Code § 5200(a)(11).

100. See proposed Civ. Code § 5200(a)(12).

101. See proposed Civ. Code §§ 5250 (duty to retain records), 5255 (retention periods).

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

103. See proposed Civ. Code § 5255(b).

1 be retained for at least four years.¹⁰⁴ That should satisfy retention requirements
2 imposed by other law, most of which require that a document be preserved for
3 three to four years. The four-year retention requirement would be a default rule
4 that would be expressly subordinated to any more restrictive legal requirements
5 that might apply. That subordination will put associations on notice that other
6 binding requirements may exist, and will avoid any conflict between the new
7 provision and any other legal requirements.

8 Annual Reports

9 Existing law requires that an association distribute specified information to its
10 membership on an annual basis. This information includes:

- 11 (1) A pro forma operating budget that must be delivered from 30 to 90 days
12 before the end of the fiscal year.¹⁰⁵ A number of other provisions require
13 that specified information be distributed with the budget.¹⁰⁶
- 14 (2) In an association with \$75,000 or more in annual gross income, a CPA
15 review of the association's financial statement must be distributed, within
16 120 days after the end of the fiscal year.¹⁰⁷

17 The proposed law would organize that information into three annual reports,
18 based on subject matter: (1) the annual budget report,¹⁰⁸ which would include both
19 the budget and related financial disclosures, (2) the annual financial statement
20 review, if any,¹⁰⁹ and (3) the annual policy statement, which would aggregate all
21 other informational disclosures that an association is required to make each
22 year.¹¹⁰

23 Existing law permits an association to send notice of the availability of the
24 annual budget, rather than the budget itself. Members may receive the full
25 document on request, at no cost.¹¹¹ The proposed law would preserve that option,
26 and extend it to the annual policy statement as well.¹¹²

104. See proposed Civ. Code § 5255(a).

105. Civ. Code § 1365(a).

106. See, e.g., Civ. Code §§ 1363.850 (notice of informal dispute resolution process), 1365(d) (assessment collection policy), 1365(e) (summary of insurance coverage), 1365.1 (assessment collection policy), 1365.2.5 (assessment and reserve summary), 1369.490 (notice of alternative dispute resolution requirements), 1378 (architectural review procedure).

107. Civ. Code § 1365(b).

108. See proposed Civ. Code § 5300.

109. See proposed Civ. Code § 5305.

110. See proposed Civ. Code § 5310.

111. See Civ. Code § 1365(d).

112. See proposed Civ. Code § 5320.

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CHAPTER 6. FINANCES

An association is required to impose assessments sufficient to perform its obligations. However, an assessment may not exceed the amount required to accomplish the purpose for which it is assessed.¹¹³

Assessment Increase

Under existing law, an association may not increase regular assessments unless it has either distributed a pro forma budget in compliance with Civil Code Section 1365(a) or obtained the approval of the members in a member election.¹¹⁴

In addition, the association must obtain the approval of the members before increasing regular assessments by more than 20% or imposing a special assessment that is more than 5% of the association's budgeted gross expenses for the fiscal year.¹¹⁵

The proposed law would continue those requirements, with three improvements:

- (1) The requirement that the association distribute a pro forma budget under Section 1365(a) in order to increase regular assessments without member approval would be broadened slightly. Under the proposed law, the association would instead be required to prepare and distribute the annual budget report under proposed Section 5300. That report would include some information that is not required under existing Section 1365(a).¹¹⁶
- (2) Existing law requires that the members' approval be obtained in an election conducted pursuant to specified provisions of the Corporations Code. Those provisions have been expressly superseded by the member election provisions in the Davis-Stirling Act.¹¹⁷ The proposed law would remove the superseded reference to the Corporations Code election procedure.
- (3) Existing law provides that a quorum for an election to approve an assessment increase is 50% of the "owners" of the association. Reliance on the number of owners to establish the quorum could cause problems where a single person owns more than one separate interest, or where a single separate interest is owned by more than one person. In either case, the number of "owners" may not be proportional to the voting power represented by those owners. The proposed law would correct this problem by basing the quorum on the voting power of those participating in the election, rather than the number of owners.¹¹⁸

113. See Civ. Code §§ 1366(a), 1366.1; proposed Civ. Code § 5600.

114. See Civ. Code § 1366(a).

115. See Civ. Code § 1366(b).

116. See Civ. Code § 1365(b) (summary of reserve funding plan), (f) (insurance coverage disclosures).

117. See Civ. Code § 1363.03(n).

118. See proposed Civ. Code § 5605(c).

1 **Protection of Essential Assessment Income from Creditors**

2 Under existing Civil Code Section 1366(c), assessment income that is necessary
3 to pay for essential services is shielded from execution by a judgment creditor of
4 the association. However, that protection does not apply to “any consensual
5 pledges, liens, or encumbrances that have been approved by the owners of an
6 association, constituting a quorum, casting a majority of the votes at a meeting....”

7 It is not clear from existing law whether the quorum for a member vote
8 described in Section 1366(c) is subject to the special quorum rules stated in
9 subdivisions (a) and (b) of that section.

10 The structure of Section 1366 suggests that those special quorum rules are
11 intended to only apply to a vote that is described in subdivisions (a) and (b).
12 However, the special quorum provisions state expressly that they apply to the
13 section as a whole, which would arguably include the elections described in
14 subdivision (c) (i.e., a member vote approving a consensual pledge, lien, or
15 encumbrance).

16 The proposed law would make clear that the special quorum rules do not apply
17 to the type of election described in subdivision (c).¹¹⁹ Thus, the special creditor
18 protection provided by that subdivision would not apply to any consensual pledge,
19 lien, or encumbrance that the membership approves using whatever quorum rule
20 governs the association generally.

21 **Assessment Payment and Collection Generally**

22 Assessment collection is governed by several complex and partially overlapping
23 sections.¹²⁰

24 The proposed law would regroup that material by subject matter, and present it
25 as a series of relatively short sections that roughly track the order of the procedural
26 steps involved in collecting an overdue assessment.¹²¹

27 Specific substantive improvements to existing law are discussed in detail below.

28 **Assessment Payment Priority**

29 Existing law provides that a member’s payment for assessments should be
30 applied first to the assessments owed, before being applied to any collection costs,
31 interest, or penalties.¹²² Under the existing provision, it is not clear whether the
32 payment priority rule is conditioned on the association having provided the
33 member with a written notice of delinquency as required by Civil Code Section
34 1367.1(a).

119. See proposed Civ. Code § 5620.

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

121. See proposed Civ. Code §§ 5650-5740.

122. See Civ. Code § 1367.1(b).

1 The proposed law would not continue the language giving rise to that
2 problematic interpretation. The payment priority rule would apply in all cases,
3 regardless of whether the member has received a notice of delinquency.¹²³

4 **Lien Release**

5 Under existing law, if it is discovered through alternative dispute resolution that
6 the association has recorded an assessment lien in error, the association is required
7 to release the lien and reverse all costs, fees, and interest associated with the
8 error.¹²⁴

9 There is no good policy reason to limit that rule to situations in which the error
10 is discovered through alternative dispute resolution. The proposed law would
11 continue the rule, but expand its application so that it applies whenever the
12 association has recorded an assessment lien in error, without regard for how the
13 error is discovered.¹²⁵

14 **Lien Enforcement Methods**

15 Existing Civil Code Section 1367.1(g) provides in part that, 30 days after
16 recording a lien for overdue assessment debt, “the lien may be enforced in any
17 manner permitted by law, including sale by the court, sale by the trustee
18 designated in the notice of delinquent assessment, or sale by a trustee substituted
19 pursuant to Section 2934a.” That rule is expressly subject to limitations expressed
20 in Section 1367.1(g).

21 That caveat is potentially misleading. An association’s ability to foreclose on a
22 lien is also significantly limited by other provisions of the Davis-Stirling Act,
23 beyond the limitations stated in Section 1367.1(g).¹²⁶

24 The proposed law would broaden the caveat, to encompass other existing
25 limitations on an association’s authority to enforce a lien.¹²⁷

26 **Foreclosure Limitations**

27 Existing Civil Code Section 1367.4 prohibits foreclosure to enforce a lien for
28 assessment debt that is less than \$1,800 in total or that is 12 months or less
29 overdue.

30 Those limitations do not apply “to assessments owed by developers.”¹²⁸ That
31 exception appears to be overbroad. While there is a policy argument to be made
32 for exempting assessments owed by the developer of the CID to which the

123. See proposed Civ. Code § 5655.

124. See Civ. Code § 1367.5.

125. See proposed Civ. Code § 5685.

126. See, e.g., Civ. Code § 1367.4(b) (time and amount limitations on nonjudicial foreclosure).

127. See proposed Civ. Code § 5700(a).

128. See Civ. Code § 1367.4(d).

1 assessments are owed, the existing language exempts any person who happens to
2 be a developer.

3 The Commission did not see any policy justification for this treatment of
4 developers as a class. For that reason, the proposed law would replace the existing
5 exemption with an exemption for assessments owed by the “declarant” (i.e., the
6 developer of the association to which the assessments are owed, or that person’s
7 successor in interest).¹²⁹

8 **Property Damage Liability**

9 Existing Civil Code Section 1367.1(d) provides, in part, that an association
10 member may be held liable for damage to the common area caused by the
11 member’s “guests or tenants.”

12 The policy justification for that vicarious liability would seem to also justify
13 vicarious liability for damage caused by an invitee (e.g., a child who is being cared
14 for in a member’s home day care business). The proposed law would broaden the
15 rule to include liability for damage caused by an invitee.¹³⁰

16 **Application Dates**

17 The existing assessment collection provisions have differing application dates:

- 18 • Civil Code Section 1367 applies to a lien created on or after January 1,
19 1986, but before January 1, 2003.
- 20 • With one exception, Civil Code Section 1367.1 applies to a lien created on
21 or after January 1, 2003. A requirement that the board make the decision to
22 record a lien applies on or after January 1, 2006.
- 23 • Civil Code Section 1367.4 applies to a lien created on or after January 1,
24 2006. However, Section 1367.1 is expressly “subordinate to” Section
25 1367.4. Arguably, that means that Section 1367.4 also applies to any lien
26 created on or after January 1, 2003.

27 The proposed law would restate those rules in simpler terms.¹³¹

28 CHAPTER 7. INSURANCE

29 The proposed law would contain a short chapter comprised of provisions
30 relating to insurance and liability.¹³² The proposed law would not make any
31 substantive change in those provisions.

129. See proposed Civ. Code § 5720(c)(3).

130. See proposed Civ. Code § 5725(a).

131. See proposed Civ. Code § 5740.

132. See proposed Civ. Code §§ 5800-5810.

1 CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT

2 Existing law includes a number of provisions that relate to the enforcement of
3 the governing documents and the resolution of disputes. Those provisions would
4 be continued without substantive change,¹³³ except as discussed below.

5 **Schedule of Disciplinary Penalties**

6 If an association policy authorizes the imposition of a monetary penalty for a
7 violation of the governing documents, existing law requires that the association
8 adopt a schedule of monetary penalties and deliver it to the members.¹³⁴ If the
9 penalty schedule is later amended, the amended penalty schedule must be
10 delivered to the members.¹³⁵

11 The proposed law would require that the schedule be included in the policy
12 statement that is delivered to the members annually.¹³⁶ This would eliminate the
13 need for a separate mailing and would remind members of the penalties for
14 governing document violations on an annual basis.¹³⁷

15 **Vicarious Liability for Violation of Governing Documents**

16 Existing Civil Code Section 1363(g) makes clear that a violation of the
17 governing documents includes a violation by a member's guest or invitee.

18 The policy justification for that vicarious liability would seem to also justify a
19 member's vicarious liability for a governing document violation by a tenant or
20 other occupant of a separate interest. The proposed law would recognize that
21 broader basis for vicarious liability.¹³⁸

22 **Notice and Opportunity to be Heard**

23 Before imposing a penalty on a member, the association must provide the
24 member with notice of the alleged violation and an opportunity to be heard by the
25 board.¹³⁹

26 The proposed law would broaden that due process requirement to also apply
27 when an association seeks to recover damages from a member for damage to the
28 common area.¹⁴⁰

133. See proposed Civ. Code §§ 5850-5980.

134. See Civ. Code § 1363(g).

135. *Id.*

136. See proposed Civ. Code § 5850.

137. See proposed Civ. Code § 5740.

138. See proposed Civ. Code § 5860.

139. See Civ. Code § 1363(h).

140. See proposed Civ. Code § 5855(a).

1 **Alternative Dispute Resolution**

2 Existing law requires that alternative dispute resolution (“ADR”) be offered
3 before a civil action is filed by or against an association to enforce a provision of
4 the governing documents, the Davis-Stirling Act, or a provision of the
5 Corporations Code.¹⁴¹

6 The non-filing party is not required to accept the offer. However, in an action in
7 which fees and costs may be awarded, the court may consider whether the refusal
8 of ADR was reasonable, when determining the amount of the award.¹⁴²

9 Under existing law, that rule only applies in an action to enforce the
10 association’s governing documents. The proposed law would broaden the rule, to
11 apply in any action in which fees and costs may be awarded.¹⁴³ That would further
12 the policy purpose of the section, to encourage participation in ADR where it is
13 reasonable to do so.

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

15 There are a number of existing provisions that provide for a civil action to
16 enforce a specific provision of the Davis-Stirling Act.¹⁴⁴

17 Those provisions cover much, but not all of CID statutory law. That incomplete
18 coverage may create an implication that judicial enforcement is unavailable except
19 where it is specifically authorized. For example, the Davis-Stirling Act provides
20 that an association is responsible for maintenance of the common area,¹⁴⁵ but there
21 is no specific provision authorizing a civil action to enforce that obligation. It is
22 therefore not clear whether such an action may be brought.

23 The Commission sees no policy reason to authorize judicial enforcement of the
24 specific provisions listed above, while denying judicial enforcement of other
25 important provisions of the Davis-Stirling Act (e.g., an owner’s right of access to a
26 separate interest, rulemaking procedure, architectural review procedure, etc.). The
27 proposed law would authorize a civil action to enforce any provision of the Davis-
28 Stirling Act.¹⁴⁶

29 **CHAPTER 9. CONSTRUCTION DEFECT LITIGATION**

30 Existing law includes fairly lengthy provisions setting out procedural
31 prerequisites to an association filing a construction defect lawsuit against a

141. See Civ. Code §§ 1369.510-1369.590.

142. See Civ. Code § 1369.580.

143. See proposed Civ. Code § 5960.

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

145. Civ. Code § 1364(a).

146. See proposed Civ. Code § 5980.

1 developer or builder.¹⁴⁷ The proposed law would leave those provisions unchanged
2 to the maximum extent possible. The section numbers would change and cross-
3 references would be updated, and one technical error would be corrected.¹⁴⁸

4
5 **DEFERRED OPERATION**

6 The proposed law would be given a one year deferred operative date. That
7 would give practitioners time to adjust to the new organization of the law. It would
8 also provide an opportunity for a follow-up bill to coordinate the proposed law
9 with any changes to the law that are made in the same year that the proposed law
is enacted.

10
11 **CONFORMING REVISIONS**

12 The proposed law would change the numbering of every provision of the Davis-
13 Stirling Act. If the proposed law is enacted, all existing statutory references to
14 provisions of the Davis-Stirling Act would need to be corrected to use the new
section numbers.

15 The “Conforming Revisions” portion of the proposed law includes the technical
16 amendments necessary to correct those cross-references.

17
18 **REQUEST FOR COMMENT**

19 The Commission requests that interested persons and groups carefully review
20 the proposed legislation and submit comments on the merits of the proposed
organization, nonsubstantive clarifications, and substantive improvements.

147. Civ. Code §§ 1375-1375.1.

148. See proposed Civ. Code §§ 6000-6150. The technical error is corrected in proposed Section 6000(f)(3).

PROPOSED RECODIFICATION OF DAVIS-STIRLING COMMON
INTEREST DEVELOPMENT ACT [REVISED]

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

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

(REVISED). A section with this description will continue existing law verbatim, except as specifically indicated in the Comment and “Note” that follow the section. Changes made to a “(REVISED)” section may include the rewording of ambiguous or confusing language or minor substantive improvements to existing law. Any such changes will be expressly identified.

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

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1 **Civ. Code §§ 1350-1378 (repealed). Davis-Stirling Common Interest Development Act**

2 SECTION 1. Title 6 (commencing with Section 1350) of Part 4 of Division 2 of
3 the Civil Code is repealed.

4 **Civ. Code §§ 4000-6150 (added). Davis-Stirling Common Interest Development Act**

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

7 PART 5. COMMON INTEREST DEVELOPMENTS

8 CHAPTER 1. GENERAL PROVISIONS

9 Article 1. Preliminary Provisions

10 **§ 4000 (UNCHANGED). Short title**

11 4000. This part shall be known and may be cited as the Davis-Stirling Common
12 Interest Development Act.

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

14 **§ 4005 (REVISED). Effect of headings**

15 4005. Division, part, title, chapter, article, and section headings do not in any
16 manner affect the scope, meaning, or intent of this part.

17 **Comment.** Section 4005 continues former Section 1350.5 without change, with the following
18 exceptions:

- 19 (1) “Article” has been added to the list of headings.
20 (2) The last word of the sentence is replaced with “part.”

21 Section 4005 is a standard provision found in many codes. See, e.g., Evid. Code § 5; Fam.
22 Code § 5; Prob. Code § 4.

23 **Note.** Proposed Section 4005 would add “article” to the list of headings in existing Section
24 1350.5. The omission of articles from that list appears to have been inadvertent.

25 **§ 4010 (NEW). Continuation of prior law**

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

31 (b) A reference in the governing documents, to a former provision that is
32 restated and continued in this part, is deemed to include a reference to the
33 provision of this part that restates and continues the former provision.

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

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

10 See also Section 4150 ("governing documents").

11 **Note.** This is a standard transitional provision. It clarifies that a new provision that restates
12 the substance of a former provision is to be treated as a continuation of that former provision, and
13 not as a new enactment. Thus, a reference to the former provision in a court opinion is to be
14 treated as a reference to the provision that continues the former provision.

15 Subdivision (b) would expressly extend that principle to references in an association's
16 governing documents.

17 **§ 4015 (UNCHANGED). Application of part**

18 4015. Nothing in this part may be construed to apply to a development wherein
19 there does not exist a common area as defined in Section 4095. This section is
20 declaratory of existing law.

21 **Comment.** Section 4015 continues former Section 1374 without change, with the following
22 exceptions:

- 23 (1) The term "title" is replaced with "part."
24 (2) A cross-reference is updated to reflect the new location of the referenced provision.

25 **§ 4020 (UNCHANGED). Construction of zoning ordinance**

26 4020. Unless a contrary intent is clearly expressed, a local zoning ordinance is
27 construed to treat like structures, lots, parcels, areas, or spaces in like manner
28 regardless of whether the common interest development is a community apartment
29 project, condominium project, planned development, or stock cooperative.

30 **Comment.** Section 4020 continues former Section 1372 without change.

31 See also Sections 4100 ("common interest development"), 4105 ("community apartment
32 project"), 4125 ("condominium project"), 4175 ("planned development"), 4190 ("stock
33 cooperative").

34 **§ 4025 (REVISED). Nonresidential development**

35 4025. (a) The following provisions do not apply to a common interest
36 development that is limited to industrial or commercial uses by zoning or by a
37 declaration of covenants, conditions, and restrictions that has been recorded in the
38 official records of each county in which the common interest development is
39 located:

- 40 (1) Section 4275.
41 (2) Article 5 (commencing with Section 4350) of Chapter 2.
42 (3) Article 2 (commencing with Section 4525), and Article 3 (commencing with
43 Section 4575), of Chapter 3.

- 1 (4) Section 4600.
- 2 (5) Section 4765.
- 3 (6) Sections 5300, 5305, 5565, and 5810, and paragraph (7) of subdivision (a) of
- 4 Section 5310.
- 5 (7) Sections 5500 through 5560, inclusive.
- 6 (8) Subdivision (b) of Section 5600.
- 7 (9) Subdivision (b) of Section 5605.

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

13 **Comment.** Section 4025 continues former Section 1373 without change, with the following
14 exceptions:

- 15 (1) Former Section 1373(a)(3) is superfluous and is not continued.
- 16 (2) Cross-references are updated to reflect the new location of the referenced provisions.
- 17 (3) Subdivision (a)(4) is added to continue the substance of former Section
18 1363.07(a)(3)(F).
- 19 (4) Subdivision (a)(9) refers only to Section 5605(b). It does not refer to the emergency
20 exception provisions of Section 5610, which were also part of former Section 1366(b).

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

22 **Note.** (1) Existing Section 1373(a)(3) exempts a nonresidential CID from the requirements of
23 Section 1363(b). The proposed law would not continue Section 1363(b), which requires that an
24 association comply with Sections 1365 and 1368. Section 1363(b) is unnecessary, because
25 Sections 1365 and 1368 apply to an association by their own terms. For that reason, Section
26 1363(b) would not be continued in the proposed law. Therefore, it would not be necessary to
27 continue Section 1373(a)(3).

28 (2) Proposed Section 4025(a)(4) continues the substance of existing Section 1363.07(a)(3)(F),
29 which exempts nonresidential CIDs from special rules for approving a grant of exclusive use
30 common area.

31 (3) Proposed Section 4025(a)(9) continues only part of the substance of existing Section
32 1373(a)(6). It would exempt a nonresidential CID from the member approval requirement of
33 Section 1366(b), but would not exempt a nonresidential CID from the emergency exception
34 provided in Section 1366(b).

35 That emergency exception also applies to the member approval requirement of Section
36 1366(a). For that reason, it should continue to apply to a nonresidential CID. That is the approach
37 taken in Section 4025(a)(9). The Commission invites comment on whether that substantive
38 change would cause any problems.

39 **§ 4030 (REVISED). Creation of common interest development**

40 4030. (a) This title applies and a common interest development is created
41 whenever a separate interest coupled with an interest in the common area or
42 membership in the association is, or has been, conveyed, provided all of the
43 following are recorded:

- 44 (1) A declaration.
- 45 (2) A condominium plan, if any exists.

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

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

6 **Comment.** Subdivision (a) of Section 4030 continues former Section 1352 without change.

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

9 See also Sections 4095 (“common area”), 4100 (“common interest development”), 4120
10 (“condominium plan”), 4135 (“declaration”), 4185 (“separate interest”), 4190 (“stock
11 cooperative”).

12 **Note.** Proposed Section 4030(b) is new. It preserves the application of the Davis-Stirling Act
13 to a stock cooperative in the fairly common circumstance where a cooperative lacks a recorded
14 declaration.

15 **§ 4035 (NEW). Delivered to an association**

16 4035. If a provision of this part requires that a document be delivered to an
17 association, the document shall be delivered by first-class mail, postage prepaid, or
18 by certified mail, to the person designated in the annual policy statement, prepared
19 pursuant to Section 5310, to receive documents on behalf of the association. If no
20 person has been designated to receive documents, the document shall be delivered
21 to the president or secretary of the association.

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

24 See also Section 4170 (“person”).

25 **Note.** Proposed Section 4035 is new. It would provide a clear rule for official communication
26 with the association.

27 **§ 4040 (NEW). Individual notice**

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

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

33 (2) E-mail, facsimile, or other electronic means, if the recipient has agreed to
34 that method of delivery. The agreement obtained by the association shall be
35 consistent with the conditions for obtaining consumer consent described in Section
36 20 of the Corporations Code.

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

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

1 **Comment.** Section 4040 is new. It specifies acceptable methods for delivery of a notice to an
2 individual member, as distinguished from a notice that is to be delivered to every member. See
3 Section 4045 (general notice). The methods listed in subdivision (a) are drawn from former
4 Section 1350.7(b)(2)-(3).

5 Subdivision (b) generalizes the substance of former Sections 1365.1(c) and 1367.1(k) without
6 substantive change.

7 Subdivision (c) continues former 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 Sections 4150 (“governing documents”), 4160 (“member”).

11  **Note.** Proposed Section 4040 is new. It is drawn from and generalizes much of the substance
12 of existing Section 1350.7.

13 **§ 4045 (NEW). General notice**

14 4045. (a) If a provision of this part requires “general delivery” or “general
15 notice,” the notice shall be provided by one or more of the following methods:

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

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

19 (3) Posting in a location that is accessible to all members, if the location has
20 been designated for the posting of general notices by the association in the annual
21 policy statement, prepared pursuant to Section 5310.

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

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

27 (b) Notwithstanding subdivision (a), if a member requests to receive general
28 notices by individual delivery, all general notices to that member shall be
29 delivered pursuant to Section 4040. The option provided in this subdivision shall
30 be described in the annual policy statement, prepared pursuant to Section 5310.

31 **Comment.** Section 4045 is new. It specifies acceptable methods for delivery of a notice to the
32 membership generally, as distinguished from a notice that is to be delivered to a specific member.
33 See Section 4040 (individual notice). Nothing in this section prevents an association from using
34 supplemental notice methods, such as posting on an Internet website, so long as one or more
35 methods authorized by this section are also used.

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

40 See also Section 4160 (“member”).

41  **Note.** Proposed Section 4045 is new. It would enhance efficiency by allowing an association
42 to “broadcast” notices of general interest, while reserving the right of individual members to
43 receive those notices as individual notices on request.

1 **§ 4050 (NEW). Time and proof of delivery**

2 4050. (a) This section governs the delivery of a document pursuant to this part.

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

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

7 **Comment.** Section 4050 is new. Subdivision (b) generalizes the second sentence of former
8 Section 1350.7(b)(2).

9 Subdivision (c) generalizes the second sentence of former Section 1350.7(b)(3).

10 **Note.** Proposed Section 4050 is new. It would generalize the timing rules provided in existing
11 Section 1350.7, so that they would apply to any notice delivered by the specified methods. This
12 will provide greater certainty in resolving timing disputes.

13 **§ 4060 (NEW). Minimum font size**

14 4060. In any notice, ballot, report, or other writing that the association is
15 required to prepare and deliver to a member pursuant to this part, the text shall be
16 printed in a 12 point font or larger.

17 **Comment.** Section 4060 is new. This section does not apply to an association record that was
18 not prepared for delivery to a member, merely because the record may be subject to inspection
19 under Section 5205.

20 See also Section 4160 (“member”).

21 **Note.** Proposed Section 4060 is new. It would generalize and standardize the minimum font
22 size rules provided in existing Sections 1365(d) and 1365.1(a), so that they would apply to any
23 notice or report delivered to a member pursuant to this part.

24 **§ 4065 (NEW). Approved by majority of all members**

25 4065. If a provision of this part requires that an action be approved by a majority
26 of all members, the action shall be approved or ratified by an affirmative vote of
27 members representing more than 50 percent of the total voting power of the
28 association.

29 **Comment.** Section 4065 is new. It is added for drafting convenience. This section only
30 governs an election conducted pursuant to a provision of this part (i.e., the Davis-Stirling
31 Common Interest Development Act). An election that is not required by this part would be
32 governed by the association’s governing documents.

33 See also Section 4160 (“member”).

34 **Note.** Proposed Section 4065 is new. It would add guidance on the procedure for approval of
35 a proposed action that must be approved “by a majority of all members.”

36 **§ 4070 (NEW). Approved by majority of quorum of members**

37 4070. If a provision of this part requires that an action be approved by a majority
38 of a quorum of the members, the action shall be approved or ratified by an
39 affirmative vote of members representing more than 50 percent of the votes cast in
40 an election at which a quorum is achieved.

41 **Comment.** Section 4070 is new. It is added for drafting convenience. This section only
42 governs an election conducted pursuant to a provision of this part (i.e., the Davis-Stirling

1 Common Interest Development Act). An election that is not required by this part would be
2 governed by the association’s governing documents.

3 See also Section 4160 (“member”).

4 **Note.** Proposed Section 4070 is new. It would add guidance on the procedure for approval of
5 a proposed action that must be approved “by a majority of a quorum of the members.”

6 Article 2. Definitions

7 § 4075 (REVISED). Application of definitions

8 4075. The definitions in this article govern the construction of this part.

9 **Comment.** Section 4075 restates the substance of the introductory clause of former Section
10 1351.

11 **Note.** Proposed Section 4075 recasts the introductory clause of Section 1351 to better fit
12 within the new organization, without any substantive change in its meaning.

13 § 4080 (UNCHANGED). “Association”

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

16 **Comment.** Section 4080 continues former Section 1351(a) without change.

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

18 § 4085 (NEW). “Board”

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

20 **Comment.** Section 4085 is new.

21 See also Section 4080 (“association”).

22 § 4090 (REVISED). “Board meeting”

23 4090. “Board meeting” includes any congregation at the same time and place, of
24 a sufficient number of directors to establish a quorum of the board, to hear,
25 discuss, or deliberate upon any item of business scheduled to be heard by the
26 board, except those matters that may be discussed in executive session.

27 **Comment.** Section 4090 continues former Section 1363.05(j) without change, with the
28 following exceptions:

29 (1) The term “board meeting” is used in place of the more general “meeting,” to
30 distinguish between a board meeting and a member meeting.

31 (2) The defined term “director” is used in place of “board member.” See Section 4140
32 (“director”).

33 (3) The number of directors required to establish a board meeting has been changed from a
34 majority of the members to a number constituting a quorum.

35 See also Section 4085 (“board”).

36 **Note:** Proposed Section 4090 would change the meaning of “meeting” to include any
37 congregation of a *quorum* of the directors, rather than a *majority* of the directors. The purpose of
38 the definition is to encompass a gathering of board members *at which board business might be*
39 *conducted*. For that purpose, the presence of a quorum is the more appropriate measure, because
40 in some associations the quorum may be different from a simple majority.

1 § 4095 (REVISED). “Common area”

2 4095. (a) “Common area” means the entire common interest development
3 except the separate interests therein. The estate in the common area may be a fee,
4 a life estate, an estate for years, or any combination of the foregoing.

5 (b) Notwithstanding subdivision (a), in a planned development described in
6 subdivision (b) of Section 4175, the common area may consist of mutual or
7 reciprocal easement rights appurtenant to the separate interests.

8 **Comment.** Subdivision (a) of Section 4095 continues the first sentence of former Section
9 1351(b) without change.

10 Subdivision (b) continues the substance of the second sentence of former Section 1351(b), but
11 restates it for clarity.

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

13 **Note.** Proposed Section 4095(b) would restate the second sentence of existing Section
14 1351(b), to improve its clarity without changing its meaning.

15 § 4100 (UNCHANGED). “Common interest development”

16 4100. “Common interest development” means any of the following:

- 17 (a) A community apartment project.
- 18 (b) A condominium project.
- 19 (c) A planned development.
- 20 (d) A stock cooperative.

21 **Comment.** Section 4100 continues former Section 1351(c) without change.

22 See also Sections 4105 (“community apartment project”), 4125 (“condominium project”), 4175
23 (“planned development”), 4190 (“stock cooperative”).

24 § 4105 (UNCHANGED). “Community apartment project”

25 4105. “Community apartment project” means a development in which an
26 undivided interest in land is coupled with the right of exclusive occupancy of any
27 apartment located thereon.

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

29 § 4110 (UNCHANGED). “Community service organization or similar entity”

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

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

38 **Comment.** Section 4110 continues former Section 1368(c)(3) without change, with the
39 following exceptions:

- 40 (1) It has been divided into subdivisions.

1 (2) The defined term “occupant” is used to replace “resident.” See Section 4163
2 (“occupant”).

3 (3) The reference to “common areas” is singularized.

4 See also Sections 4095 (“common area”), 4100 (“common interest development”), 4163
5 (“occupant”).

6 **§ 4120 (REVISED). “Condominium plan”**

7 4120. “Condominium plan” means a plan consisting of:

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

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

14 (c) A certificate consenting to the recordation of the condominium plan pursuant
15 to this part that is signed and acknowledged as provided in Section 4290.

16 **Comment.** Section 4120 continues the introduction of former Section 1351(e) without change,
17 with the following exceptions:

18 (1) The enumerated items are set out as subdivisions.

19 (2) A reference to “this title” has been changed to “this part.”

20 (3) The list of persons who must sign and acknowledge the certificate consenting to
21 recordation of the condominium plan has been replaced with a reference to the section
22 governing the creation and recordation of a condominium plan.

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

25 **Note.** Proposed Section 4120 would include only the definition of the term “condominium
26 plan.” Procedural provisions in Section 1351, relating to the creation or amendment of a
27 condominium plan, would be located elsewhere. See proposed Sections 4290 and 4295.

28 **§ 4125 (UNCHANGED). “Condominium project”**

29 4125. (a) “condominium project” means a development consisting of
30 condominiums.

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

42 (c) The portion or portions of the real property held in undivided interest may be
43 all of the real property, except for the separate interests, or may include a

1 particular three-dimensional portion thereof, the boundaries of which are described
2 on a recorded final map, parcel map, or condominium plan. The area within these
3 boundaries may be filled with air, earth, or water, or any combination thereof, and
4 need not be physically attached to land except by easements for access and, if
5 necessary, support.

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

8 **Comment.** Section 4125 continues former Section 1351(f), without change, except that the
9 section has been organized into subdivisions for ease of reference.

10 See also Sections 4120 (“condominium plan”), 4185 (“separate interest”).

11 **§ 4130 (UNCHANGED). “Declarant”**

12 4130. “Declarant” means the person or group of persons designated in the
13 declaration as declarant, or if no declarant is designated, the person or group of
14 persons who sign the original declaration or who succeed to special rights,
15 preferences, or privileges designated in the declaration as belonging to the signator
16 of the original declaration.

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

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

19 **§ 4135 (UNCHANGED). “Declaration”**

20 4135. “Declaration” means the document, however denominated, that contains
21 the information required by Sections 4250 and 4255.

22 **Comment.** Section 4135 continues former Section 1351(h) without change, with the following
23 exceptions:

24 (1) The word “which” has been replaced with “that.”

25 (2) The cross-reference has been updated to reflect the new location of the referenced
26 provision.

27 **§ 4140 (NEW). “Director”**

28 4140. “Director” means a natural person elected, designated, or selected to serve
29 on the board.

30 **Comment.** Section 4140 is new. It is added for drafting convenience.

31 See also Section 4085 (“board”).

32 **§ 4145 (REVISED). “Exclusive use common area”**

33 4145. (a) “Exclusive use common area” means a portion of the common area
34 designated by the declaration for the exclusive use of one or more, but fewer than
35 all, of the owners of the separate interests and which is or will be appurtenant to
36 the separate interest or interests.

37 (b) Unless the declaration otherwise provides, any shutters, awnings, window
38 boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes,
39 and hardware incident thereto, screens and windows or other fixtures designed to
40 serve a single separate interest, but located outside the boundaries of the separate

1 interest, are exclusive use common area allocated exclusively to that separate
2 interest.

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

8 **Comment.** Section 4145 continues former Section 1351(i) without change, with the following
9 exceptions:

10 (1) The term “telephone” has been replaced with “communication.”

11 (2) The last sentence of subdivision (c) is new.

12 (3) Several references to “common areas” are singularized.

13 See also Sections 4095 (“common area”), 4135 (“declaration”), 4185 (“separate interest”).

14 **Note.** (1) Proposed Section 4145(c) has been revised to refer to “communication” wiring
15 rather than “telephone” wiring. This modernization reflects the changing nature of
16 communication technology.

17 (2) The last sentence of proposed Section 4145(c) is added to include transmission media other
18 than metallic wire (e.g., fiber optic cable).

19 **§ 4150 (UNCHANGED). “Governing documents”**

20 4150. “Governing documents” means the declaration and any other documents,
21 such as bylaws, operating rules of the association, articles of incorporation, or
22 articles of association, which govern the operation of the common interest
23 development or association.

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

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

27 **§ 4155 (REVISED). “Managing agent”**

28 4155. (a) A “managing agent” is a person who, for compensation or in
29 expectation of compensation, exercises control over the assets of a common
30 interest development.

31 (b) A “managing agent” does not include any of the following:

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

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

35 (3) An attorney at law acting within the scope of the attorney’s license.

36 **Comment.** Subdivisions (a) and (b)(1)-(2) of Section 4155 continue former Section 1363.1(b)
37 without change, with the following exceptions:

38 (1) The section’s application is generalized so that it applies to the entire part.

39 (2) The phrase “or entity” is not continued. See Section 4170 (“person”).

40 Subdivision (b)(3) is added to generalize the last clause of former Section 1363.2(f). The
41 phrase “his or her” is replaced with “the attorney’s.”

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

1 **Note.** Proposed Section 4155 would generalize the definition of “managing agent” so that it
2 would apply to the entire act, rather than just former Section 1363.1. For provisions that use the
3 term without any governing definition, see Sections 1363.05, 1363.5, 1366.2, and 1368.4.

4 In addition, proposed Section 4155 would harmonize the definition of “managing agent”
5 provided in Section 1363.1(b) with the definition used in Section 1363.2(f), by adding an attorney
6 as a class of person who is not included in the definition. The staff sees no good policy reason
7 why Section 1363.1 should apply to an attorney, if Section 1363.2 does not.

8 **§ 4160 (NEW). “Member”**

9 4160. “Member” means either of the following persons:

10 (a) An owner of a separate interest.

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

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

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

19 See also Sections 4135 (“declaration”), 4170 (“person”), 4185 (“separate interest”).

20 **§ 4163 (REVISED). “Occupant”**

21 4163. “Occupant” means an owner, resident, guest, invitee, tenant, lessee,
22 sublessee, or other person in possession of a separate interest.

23 **Comment.** Section 4163 generalizes former Section 1364(e), without substantive change.

24 See also Sections 4170 (“person”), 4185 (“separate interest”).

25 **Note.** Proposed Section 4163 would generalize an existing definition of “occupant” to
26 provide guidance with respect to other provisions that use the same term.

27 **§ 4165 (REVISED). “Operating rule”**

28 4165. “Operating rule” means a regulation adopted by the board that applies
29 generally to the management and operation of the common interest development
30 or the conduct of the business and affairs of the association.

31 **Comment.** Section 4165 continues former Section 1357.100(a) without change, with the
32 following exceptions:

33 (1) The provision is generalized to apply to the entire part.

34 (2) The superfluous phrase “of the association” is not continued.

35 (3) The term “board of directors” has been replaced with the defined term “board.” See
36 Section 4085 (“board”).

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

39 **Note.** Proposed Section 4165 would generalize the definition of “operating rule,” so that it
40 would apply to the entire act. This would facilitate the drafting of provisions that make reference
41 to operating rules.

1 § 4170 (NEW). “Person”

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

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

6  **Note.** Proposed Section 4170 is new. It reflects the standard statutory definition of “person”
7 as including both natural persons and legal entities. See, e.g., Prob. Code § 56.

8 § 4175 (REVISED). “Planned development”

9 4175. “Planned development” means a development (other than a community
10 apartment project, a condominium project, or a stock cooperative) having either or
11 both of the following features:

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

15 (b) A power exists in the association to enforce an obligation of an owner of a
16 separate interest with respect to the beneficial use and enjoyment of the common
17 area by means of an assessment that may become a lien upon the separate interests
18 in accordance with Article 5 (commencing with Section 5650) of Chapter 6.

19 **Comment.** Section 4175 continues former Section 1351(k) without change with the following
20 exceptions:

- 21 (1) The cross-reference has been updated to reflect the new location of the lien provisions
22 of former Section 1367.1.
23 (2) The word “which” has been replaced with “that.”

24 See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment
25 project”), 4125 (“condominium project”), 4185 (“separate interest”), 4190 (“stock cooperative”).

26  **Note.** Proposed Section 4175(b) replaces the existing reference to “Section 1367 or 1367.1”
27 with a reference to “Article 5 (commencing with Section 5650) of Chapter 6.” That reference
28 encompasses all of the provisions of former Sections 1367 and 1367.1 under which an
29 “assessment ... may become a lien.”

30 § 4177 (REVISED). “Reserve accounts”

31 4177. “Reserve accounts” means both of the following:

32 (a) Moneys that the board has identified for use to defray the future repair or
33 replacement of, or additions to, those major components that the association is
34 obligated to maintain.

35 (b) The funds received, and not yet expended or disposed of, from either a
36 compensatory damage award or settlement to an association from any person for
37 injuries to property, real or personal, arising from any construction or design
38 defects. These funds shall be separately itemized from funds described in
39 subdivision (a).

40 **Comment.** Section 4177 continues former Section 1365.5(f) without change, with the
41 following exceptions:

- 42 (1) The definition is generalized so that it applies to the entire part.

- 1 (2) A cross-reference has been updated to reflect the new location of the referenced
2 provisions.
3 (3) The term “association’s board of directors” has been replaced with the defined term
4 “board.” See Section 4085 (“board”).
5 (4) The phrase “or entity” is not continued. See Section 4170 (“person”).
6 See also Sections 4080 (“association”), 4085 (“board”).

7 **Note.** Proposed Section 4177 would generalize a definition that currently only applies to
8 Section 1365.5.

9 **§ 4178 (REVISED). “Reserve account requirements”**

10 4178. “Reserve account requirements” means the estimated funds that the board
11 has determined are required to be available at a specified point in time to repair,
12 replace, or restore those major components that the association is obligated to
13 maintain.

14 **Comment.** Section 4178 continues former Section 1365.5(g) without change, with the
15 following exceptions:

- 16 (1) The definition is generalized so that it applies to the entire part.
17 (2) The term “association’s board of directors” has been replaced with the defined term
18 “board.” See Section 4085 (“board”).

19 **Note.** Proposed Section 4178 would generalize a definition that currently only applies to
20 Section 1365.5.

21 **§ 4180 (REVISED). “Rule change”**

22 4180. “Rule change” means the adoption, amendment, or repeal of an operating
23 rule by the board.

24 **Comment.** Section 4180 continues former Section 1357.100(b), with the following exceptions:

- 25 (1) The definition is generalized so that it applies to the entire part.
26 (2) The term “board of directors of the association” has been replaced with the defined
27 term “board.” See Section 4085 (“board”).

28 See also Section 4165 (“operating rule”).

29 **Note.** Proposed Section 4180 would generalize the definition of “rule change,” so that it
30 would apply to the entire act. This would facilitate the drafting of provisions that make reference
31 to rule changes.

32 **§ 4185 (UNCHANGED). “Separate interest”**

33 4185. (a) “Separate interest” has the following meanings:

34 (1) In a community apartment project, “separate interest” means the exclusive
35 right to occupy an apartment, as specified in Section 4105.

36 (2) In a condominium project, “separate interest” means an individual unit, as
37 specified in Section 4125.

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

40 (4) In a stock cooperative, “separate interest” means the exclusive right to
41 occupy a portion of the real property, as specified in Section 4190.

1 (b) Unless the declaration or condominium plan, if any exists, otherwise
2 provides, if walls, floors, or ceilings are designated as boundaries of a separate
3 interest, the interior surfaces of the perimeter walls, floors, ceilings, windows,
4 doors, and outlets located within the separate interest are part of the separate
5 interest and any other portions of the walls, floors, or ceilings are part of the
6 common area.

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

9 **Comment.** Section 4185 continues former Section 1351(l) without change, with the following
10 exceptions:

- 11 (1) The last two unnumbered paragraphs of former Section 1351(l) are designated as
12 subdivisions (b) and (c).
- 13 (2) Cross-references are updated to reflect the new location of referenced provisions.
- 14 (3) A reference to “common areas” is singularized.

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

18 **§ 4190 (UNCHANGED). “Stock cooperative”**

19 4190. (a) “Stock cooperative” means a development in which a corporation is
20 formed or availed of, primarily for the purpose of holding title to, either in fee
21 simple or for a term of years, improved real property, and all or substantially all of
22 the shareholders of the corporation receive a right of exclusive occupancy in a
23 portion of the real property, title to which is held by the corporation. The owners’
24 interest in the corporation, whether evidenced by a share of stock, a certificate of
25 membership, or otherwise, shall be deemed to be an interest in a common interest
26 development and a real estate development for purposes of subdivision (f) of
27 Section 25100 of the Corporations Code.

28 (b) A “stock cooperative” includes a limited equity housing cooperative which is
29 a stock cooperative that meets the criteria of Section 817.

30 **Comment.** Section 4190 continues former Section 1351(m) without change, except that the
31 unnumbered paragraphs have been designated as subdivisions.

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

33 **CHAPTER 2. GOVERNING DOCUMENTS**

34 **Article 1. General Provisions**

35 **§ 4200 (NEW). Document authority**

36 4200. (a) The articles of incorporation may not include a provision that is
37 inconsistent with the declaration. To the extent of any inconsistency between the
38 articles of incorporation and the declaration, the declaration controls.

39 (b) The bylaws may not include a provision that is inconsistent with the
40 declaration or the articles of incorporation. To the extent of any inconsistency

1 between the bylaws and the articles of incorporation or declaration, the articles of
2 incorporation or declaration control.

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

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

8 **Comment.** Subdivision (a) of Section 4200 is new.

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

11 Subdivision (c) is consistent with Section 4350(c) providing that an operating rule may not be
12 inconsistent with the declaration, articles of incorporation, or bylaws of the association.

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

15 See also Sections 4135 (“declaration”), 4165 (“operating rule”), 4190 (“stock cooperative”).

16 **Note.** Proposed Section 4200 is new. It would provide guidance in resolving conflicts
17 between different governing documents.

18 **§ 4205 (REVISED). Record notice of agent to receive payments**

19 4205. In order to facilitate the collection of regular assessments, special
20 assessments, transfer fees, and similar charges, the board is authorized to record a
21 statement or amended statement identifying relevant information for the
22 association. This statement may include any or all of the following information:

23 (a) The name of the association as shown in the conditions, covenants, and
24 restrictions or the current name of the association, if different.

25 (b) The name and address of a managing agent or treasurer of the association or
26 other individual or entity authorized to receive assessments and fees imposed by
27 the association.

28 (c) A daytime telephone number of the authorized party identified in subdivision
29 (b) if a telephone number is available.

30 (d) A list of separate interests subject to assessment by the association, showing
31 the assessor’s parcel number or legal description, or both, of the separate interests.

32 (e) The recording information identifying the declaration or declarations of
33 covenants, conditions, and restrictions governing the association.

34 (f) If an amended statement is being recorded, the recording information
35 identifying the prior statement or statements which the amendment is superseding.

36 **Comment.** Section 4205 continues former Section 1366.2(a) without change, with the
37 following exceptions:

38 (1) The superfluous phrase “of any association” is not continued.

39 (2) The term “board of directors” has been replaced with the defined term “board.” See
40 Section 4085 (“board”).

41 See also Sections 4080 (“association”), 4135 (“declaration”), 4155 (“managing agent”), 4185
42 (“separate interest”).

43 **Note.** Proposed Section 4205 would not continue Section 1366(b). That provision is
44 unnecessary, as it simply reiterates the authority of a recorder to charge for recording, using the

1 per page fee set by the recorder. In addition, it might be confusing to include that provision in this
2 section, but not in other sections that provide for document recording. See, e.g., proposed Section
3 4225.

4 **§ 4215 (UNCHANGED). Liberal construction of instruments**

5 4215. Any deed, declaration, or condominium plan for a common interest
6 development shall be liberally construed to facilitate the operation of the common
7 interest development, and its provisions shall be presumed to be independent and
8 severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of
9 Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the
10 governing documents.

11 **Comment.** Section 4215 continues former Section 1370 without change, with the following
12 exceptions:

13 (1) “This division” has been replaced with “Division 2.”

14 (2) The phrase “of a common interest development” has not been continued.

15 See also Sections 4100 (“common interest development”), 4120 (“condominium plan”), 4135
16 (“declaration”), 4150 (“governing documents”).

17 **§ 4220 (UNCHANGED). Boundaries of units**

18 4220. In interpreting deeds and condominium plans, the existing physical
19 boundaries of a unit in a condominium project, when the boundaries of the unit are
20 contained within a building, or of a unit reconstructed in substantial accordance
21 with the original plans thereof, shall be conclusively presumed to be its boundaries
22 rather than the metes and bounds expressed in the deed or condominium plan, if
23 any exists, regardless of settling or lateral movement of the building and
24 regardless of minor variance between boundaries shown on the plan or in the deed
25 and those of the building.

26 **Comment.** Section 4220 continues former Section 1371 without change.

27 See also Sections 4120 (“condominium plan”), 4125 (“condominium project”).

28  **Note.** The Commission has received comment suggesting that Section 1371 is inadequate to
29 address some situations. The Commission invites further comment on this issue and particularly
30 invites specific suggestions for how the language of proposed Section 4220 should be changed to
31 address any problems with the scope of the section.

32 **§ 4225 (REVISED). Deletion of unlawful restrictive covenants**

33 4225. (a) No declaration or other governing document shall include a restrictive
34 covenant in violation of Section 12955 of the Government Code.

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

1 (c) If the declaration is amended under this section, the board shall record the
2 restated declaration in each county in which the common interest development is
3 located. If the articles of incorporation are amended under this section, the board
4 shall file a certificate of amendment pursuant to Section 7814 of the Corporations
5 Code.

6 (d) If after providing written notice to an association (Section 4035) requesting
7 that the association delete a restrictive covenant that violates subdivision (a), and
8 the association fails to delete the restrictive covenant within 30 days of receiving
9 the notice, the Department of Fair Employment and Housing, a city or county in
10 which a common interest development is located, or any person may bring an
11 action against the association for injunctive relief to enforce subdivision (a). The
12 court may award attorney's fees to the prevailing party.

13 **Comment.** Section 4225 continues former Section 1352.5 without change, with the following
14 exceptions:

- 15 (1) Subdivision (b) is revised to replace the term "board of directors of an association"
16 with the defined term "board." See Section 4085 ("board").
- 17 (2) Subdivision (b) is revised to replace "owners" with "members." See Section 4160
18 ("member").
- 19 (3) Subdivision (c) is added.
- 20 (4) Subdivision (d) is revised to include a reference to the provision governing notice to an
21 association (Section 4035).

22 See also Sections 4080 ("association"), 4100 ("common interest development"), 4135
23 ("declaration"), 4150 ("governing documents"), 4170 ("person").

24  **Note.** Proposed Section 4225(c) is added to require that a governing document that is in the
25 public record be publicly updated to reflect an amendment made pursuant to this section.

26 **§ 4230 (REVISED). Deletion of declarant provisions in governing documents**

27 4230. (a) Notwithstanding any provision of the governing documents to the
28 contrary, the board may, after the declarant has completed construction of the
29 development, has terminated construction activities, and has terminated marketing
30 activities for the sale, lease, or other disposition of separate interests within the
31 development, adopt an amendment deleting from any of the governing documents
32 any provision which is unequivocally designed and intended, or which by its
33 nature can only have been designed or intended, to facilitate the declarant in
34 completing the construction or marketing of the development. However,
35 provisions of the governing documents relative to a particular construction or
36 marketing phase of the development may not be deleted under the authorization of
37 this subdivision until that construction or marketing phase has been completed.

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

1 (c) At least 30 days prior to taking action pursuant to subdivision (a), the board
2 shall deliver to all members, by individual delivery (Section 4040), (1) a copy of
3 all amendments to the governing documents proposed to be adopted under
4 subdivision (a), and (2) a notice of the time, date, and place the board will consider
5 adoption of the amendments. The board may consider adoption of amendments to
6 the governing documents pursuant to subdivision (a) only at a meeting that is open
7 to all members, who shall be given opportunity to make comments thereon. All
8 deliberations of the board on any action proposed under subdivision (a) shall only
9 be conducted in an open meeting.

10 (d) The board may not amend the governing documents pursuant to this section
11 without the approval of a majority of a quorum of the members (Section 4070).
12 For the purposes of this section, “quorum” means members representing more than
13 50 percent of the voting power of the association, excluding members who own
14 more than two separate interests in the development.

15 **Comment.** Section 4230 continues former Section 1355.5 without change, with the following
16 exceptions:

- 17 (1) The phrase “his or her” is not continued in subdivision (a).
- 18 (2) The phrase “of a common interest development” has not been continued in subdivision
19 (a).
- 20 (3) The terms “board of directors” and “board of directors of the association” are replaced
21 throughout with the defined term “board.” See Section 4085 (“board”).
- 22 (4) The defined term “declarant” is used throughout, in place of “developer.” See Section
23 4130 (“declarant”).
- 24 (5) Subdivision (b) has been revised to use numerals to number the listed items, rather than
25 letters.
- 26 (6) Subdivisions (c) and (d) are revised to use the defined term “member.” See Section
27 4160 (“member”).
- 28 (7) Subdivision (c) is revised to provide for individual delivery of the specified notice. See
29 Section 4040.
- 30 (8) Subdivision (c) is revised to delete the unnecessary word “such.”
- 31 (9) Subdivision (c) is revised to replace “which” with “that.”
- 32 (10) Subdivision (d) is revised to use the standard term “approval of a majority of a quorum
33 of the members.” See Section 4070.
- 34 (11) The quorum rule provided in subdivision (d) is revised to make clear that a quorum is
35 based on a majority of the voting power (excluding those who own more than two
36 units), and not on a majority of the members. This avoids uncertainty about the
37 calculation of a quorum when a single separate interest is owned by more than one
38 person.

39 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
40 documents”), 4185 (“separate interest”).

41  **Note.** The quorum rule provided in proposed Section 4230(d) is revised to make clear that a
42 quorum is based on a majority of the *voting power* (excluding those who own more than two
43 units), and not on a majority of the *owners*. This avoids uncertainty about the calculation of a
44 quorum when a single separate interest is owned by more than one person.

1 **§ 4235 (NEW). Correction of statutory cross-reference**

2 4235. (a) Notwithstanding any other provision of law or provision of the
3 governing documents, if the governing documents include a reference to a
4 provision of the Davis Stirling Common Interest Development Act that was
5 repealed and continued in a new provision by the act that added this section, the
6 board may amend the governing documents, solely to correct the cross-reference,
7 by adopting a board resolution that shows the correction.

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

12 **Comment.** Section 4235 is new. It is intended to provide a simplified method to correct
13 statutory cross-references in an association’s governing documents that are required as a result of
14 section renumbering effected by the act that added this section. No other amendment can be made
15 under this section.

16 See also Sections 4085 (“board”), 4100 (“common interest development”), 4150 (“governing
17 documents”).

18 **Note.** Proposed Section 4235 is new. It would provide a simplified method to update
19 statutory cross-references to reflect changes made by the proposed law. This would reduce the
20 transitional complications resulting from the proposed recodification of the Davis-Stirling Act.

21 **Article 2. Declaration**

22 **§ 4250 (REVISED). Content of declaration**

23 4250. (a) A declaration, recorded on or after January 1, 1986, shall contain a
24 legal description of the common interest development, and a statement that the
25 common interest development is a community apartment project, condominium
26 project, planned development, stock cooperative, or combination thereof. The
27 declaration shall additionally set forth the name of the association and the
28 restrictions on the use or enjoyment of any portion of the common interest
29 development that are intended to be enforceable equitable servitudes.

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

32 **Comment.** Subdivision (a) of Section 4250 continues the first two sentences of former Section
33 1353(a)(1) without change.

34 Subdivision (b) continues former Section 1353(b) without change, with the following
35 exceptions:

36 (1) The defined term “member” is used in place of “owner.” See Section 4160
37 (“member”).

38 (2) The defined term “declarant” is used in place of “original signator of the declaration.”
39 See Section 4130 (“declarant”).

40 See also Sections 4080 (“association”), 4100 (“common interest development”), 4105
41 (“community apartment project”), 4125 (“condominium project”), 4135 (“declaration”), 4175
42 (“planned development”), 4190 (“stock cooperative”).

1 **Note.** Proposed Section 4250(b) would use the defined term “declarant” in place of “original
2 signator of the declaration.” That would seem to be a slight substantive change, as the existing
3 language could be read to apply only to the *original* declarant (as opposed to any successor
4 declarant). However, the staff does not see any good policy reason to preclude a successor
5 declarant, who may own a large percentage of the separate interests within a CID, from having a
6 say as to what is appropriate for inclusion in the declaration. The Commission invites comment
7 on whether the proposed change would cause any problems.

8 **§ 4255 (REVISED). Special disclosures**

9 4255. (a) If a common interest development is located within an airport
10 influence area, a declaration, recorded after January 1, 2004, shall contain the
11 following statement:

12 NOTICE OF AIRPORT IN VICINITY

13 This property is presently located in the vicinity of an airport, within what
14 is known as an airport influence area. For that reason, the property may be
15 subject to some of the annoyances or inconveniences associated with
16 proximity to airport operations (for example: noise, vibration, or odors).
17 Individual sensitivities to those annoyances can vary from person to person.
18 You may wish to consider what airport annoyances, if any, are associated
19 with the property before you complete your purchase and determine whether
20 they are acceptable to you.

21 (c) For purposes of this section, an “airport influence area,” also known as an
22 “airport referral area,” is the area in which current or future airport-related noise,
23 overflight, safety, or airspace protection factors may significantly affect land uses
24 or necessitate restrictions on those uses as determined by an airport land use
25 commission.

26 (d) If a common interest development is within the San Francisco Bay
27 Conservation and Development Commission jurisdiction, as described in Section
28 66610 of the Government Code, a declaration recorded on or after January 1,
29 2006, shall contain the following notice:

30 NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
31 DEVELOPMENT COMMISSION JURISDICTION

32 This property is located within the jurisdiction of the San Francisco Bay
33 Conservation and Development Commission. Use and development of
34 property within the commission’s jurisdiction may be subject to special
35 regulations, restrictions, and permit requirements. You may wish to
36 investigate and determine whether they are acceptable to you and your
37 intended use of the property before you complete your transaction.

1 (b) The statement in a declaration acknowledging that a property is located in an
2 airport influence area or within the jurisdiction of the San Francisco Bay
3 Conservation and Development Commission does not constitute a title defect, lien,
4 or encumbrance.

5 **Comment.** Section 4255 continues all but the first two sentences of former Section 1353(a)(1)-
6 (4) without change, except that some references to “the property” have been replaced with “a
7 common interest development” to improve clarity. See also Bus. & Prof. Code § 11010
8 (disclosure of property within airport influence area); Pub. Util. Code § 21675 (designation of
9 “airport influence area” by county airport land use commission).

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

11 **Note.** The language of proposed Section 4255 differs slightly from its source, in order to
12 make the provision a stand-alone section. The changes are nonsubstantive.

13 **§ 4260 (REVISED). Amendment authorized**

14 4260. Except to the extent that a declaration provides by its express terms that it
15 is not amendable, in whole or in part, a declaration that fails to include provisions
16 permitting its amendment at all times during its existence may be amended at any
17 time.

18 **Comment.** Section 4260 continues the first sentence of former Section 1355(b) without
19 change, except “which” is replaced with “that.”

20 See also Section 4135 (“declaration”).

21 **Note.** Proposed Section 4260 continues the authority to amend a declaration that is silent as
22 to whether it may be amended, but does not continue the procedure specified for doing so.
23 Instead, the amendment would be made using the general procedure for amending a declaration,
24 which is provided in proposed Section 4270.

25 **§ 4265 (REVISED). Amendment to extend term of declaration authorized**

26 4265. (a) The Legislature finds that there are common interest developments that
27 have been created with deed restrictions which do not provide a means for the
28 members to extend the term of the declaration. The Legislature further finds that
29 covenants and restrictions, contained in the declaration, are an appropriate method
30 for protecting the common plan of developments and to provide for a mechanism
31 for financial support for the upkeep of common area including, but not limited to,
32 roofs, roads, heating systems, and recreational facilities. If declarations terminate
33 prematurely, common interest developments may deteriorate and the housing
34 supply of affordable units could be impacted adversely. The Legislature further
35 finds and declares that it is in the public interest to provide a vehicle for extending
36 the term of the declaration if members having more than 50 percent of the votes in
37 the association choose to do so.

38 (b) A declaration that specifies a termination date, but that contains no provision
39 for extension of the termination date, may be extended by the approval of
40 members pursuant to Section 4270.

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

4 **Comment.** Subdivision (a) of Section 4265 continues former Section 1357(a) without change,
5 with the following exceptions:

6 (1) The defined term “member” is used.

7 (2) A reference to “common areas” is singularized. See Section 4160 (“member”).

8 Subdivision (b) restates part of the substance of former Section 1357(b), authorizing extension
9 of the termination date of a declaration that does not provide for extension of the termination
10 date.

11 The procedure for extension of the termination date provided in former Section 1357(b)-(c) is
12 not continued. An extension would instead be made pursuant to the general procedure for
13 amendment of a declaration. See Section 4270.

14 Subdivision (c) continues former Section 1357(d) without change.

15 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
16 development”), 4135 (“declaration”).

17 **Note.** Proposed Section 4265 continues the authority to amend a declaration to extend its
18 term, but does not continue the procedure specified for doing so. Instead, the extension would be
19 made using the general procedure for amending a declaration, which is provided in proposed
20 Section 4270.

21 **§ 4270 (REVISED). Amendment procedure**

22 4270. (a) A declaration may be amended pursuant to the governing documents
23 or this part. Except as provided in Section 4275, an amendment is effective after
24 (1) the approval of the percentage of members required by the governing
25 documents has been given, (2) that fact has been certified in a writing executed
26 and acknowledged by the officer designated in the declaration or by the
27 association for that purpose, or if no one is designated, by the president of the
28 association, and (3) that writing has been recorded in each county in which a
29 portion of the common interest development is located.

30 (b) If the governing documents do not specify the percentage of members who
31 must approve an amendment of the declaration, an amendment may be approved
32 by a majority of all members (Section 4065).

33 **Comment.** Subdivision (a) of Section 4270 continues former Section 1355(a) without change,
34 with the following exceptions:

35 (1) The first word is replaced with “a.”

36 (2) The term “title” is replaced with “part.”

37 (3) The defined term “member” is used. See Section 4160 (“member”).

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

39 See also Sections 4080 (“association”), 4100 (“common interest development”), 4135
40 (“declaration”), 4150 (“governing documents”).

41 **Notes.** (1) Proposed Section 4270(b) would provide a default rule on member approval of an
42 amendment where the governing documents are silent on the matter. That rule is drawn from
43 Sections 1355(b) and 1357.

44 (2) Proposed Section 4270 would not continue rules governing notice of a proposed declaration
45 amendment. Those rules are effectively superseded by the general election procedure that applies

1 when the members must approve an amendment of the governing documents. See proposed
2 Section 5115.

3 **§ 4275 (REVISED). Judicial authorization of amendment**

4 4275. (a) If in order to amend a declaration, the declaration requires members
5 having more than 50 percent of the votes in the association, in a single class voting
6 structure, or members having more than 50 percent of the votes in more than one
7 class in a voting structure with more than one class, to vote in favor of the
8 amendment, the association, or any member, may petition the superior court of the
9 county in which the common interest development is located for an order reducing
10 the percentage of the affirmative votes necessary for such an amendment. The
11 petition shall describe the effort that has been made to solicit approval of the
12 association members in the manner provided in the declaration, the number of
13 affirmative and negative votes actually received, the number or percentage of
14 affirmative votes required to effect the amendment in accordance with the existing
15 declaration, and other matters the petitioner considers relevant to the court's
16 determination. The petition shall also contain, as exhibits thereto, copies of all of
17 the following:

18 (1) The governing documents.

19 (2) A complete text of the amendment.

20 (3) Copies of any notice and solicitation materials utilized in the solicitation of
21 member approvals.

22 (4) A short explanation of the reason for the amendment.

23 (5) Any other documentation relevant to the court's determination.

24 (b) Upon filing the petition, the court shall set the matter for hearing and issue
25 an ex parte order setting forth the manner in which notice shall be given.

26 (c) The court may, but shall not be required to, grant the petition if it finds all of
27 the following:

28 (1) The petitioner has given not less than 15 days written notice of the court
29 hearing to all members of the association, to any mortgagee of a mortgage or
30 beneficiary of a deed of trust who is entitled to notice under the terms of the
31 declaration, and to the city, county, or city and county in which the common
32 interest development is located that is entitled to notice under the terms of the
33 declaration.

34 (2) Balloting on the proposed amendment was conducted in accordance with all
35 applicable provisions of the governing documents.

36 (3) A reasonably diligent effort was made to permit all eligible members to vote
37 on the proposed amendment.

38 (4) Members having more than 50 percent of the votes, in a single class voting
39 structure, voted in favor of the amendment. In a voting structure with more than
40 one class, where the declaration requires a majority of more than one class to vote
41 in favor of the amendment, members having more than 50 percent of the votes of

1 each class required by the declaration to vote in favor of the amendment voted in
2 favor of the amendment.

3 (5) The amendment is reasonable.

4 (6) Granting the petition is not improper for any reason stated in subdivision (e).

5 (d) If the court makes the findings required by subdivision (c), any order issued
6 pursuant to this section may confirm the amendment as being validly approved on
7 the basis of the affirmative votes actually received during the balloting period or
8 the order may dispense with any requirement relating to quorums or to the number
9 or percentage of votes needed for approval of the amendment that would otherwise
10 exist under the governing documents.

11 (e) Subdivisions (a) to (d), inclusive, notwithstanding, the court shall not be
12 empowered by this section to approve any amendment to the declaration that:

13 (1) Would change provisions in the declaration requiring the approval of
14 members having more than 50 percent of the votes in more than one class to vote
15 in favor of an amendment, unless members having more than 50 percent of the
16 votes in each affected class approved the amendment.

17 (2) Would eliminate any special rights, preferences, or privileges designated in
18 the declaration as belonging to the declarant, without the consent of the declarant.

19 (3) Would impair the security interest of a mortgagee of a mortgage or the
20 beneficiary of a deed of trust without the approval of the percentage of the
21 mortgagees and beneficiaries specified in the declaration, if the declaration
22 requires the approval of a specified percentage of the mortgagees and
23 beneficiaries.

24 (f) An amendment is not effective pursuant to this section until the court order
25 and amendment have been recorded in every county in which a portion of the
26 common interest development is located. The amendment may be acknowledged
27 by, and the court order and amendment may be recorded by, any person
28 designated in the declaration or by the association for that purpose, or if no one is
29 designated for that purpose, by the president of the association. Upon recordation
30 of the amendment and court order, the declaration, as amended in accordance with
31 this section, shall have the same force and effect as if the amendment were
32 adopted in compliance with every requirement imposed by the governing
33 documents.

34 (g) Within a reasonable time after the amendment is recorded the association
35 shall deliver to each member, by individual delivery (Section 4040), a copy of the
36 amendment, together with a statement that the amendment has been recorded.

37 **Comment.** Section 4275 continues former Section 1356 without change, except that
38 subdivision (g) is revised to specify the procedure for individual delivery of notice and to use the
39 defined term “member.” See Section 4160 (“member”).

40 An incorporated association may also petition the court under Corporations Code Section 7511
41 with respect to actions governed by that provision.

42 See also Sections 4080 (“association”), 4100 (“common interest development”), 4130
43 (“declarant”), 4135 (“declaration”), 4150 (“governing documents”), 4170 (“person”).

Note. Proposed Section 4275(g) is reworded to incorporate the “individual notice” delivery method.

Article 3. Articles of Incorporation

§ 4280 (UNCHANGED). Content of articles

4280. (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, 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 of the Corporations Code shall also contain the statement specified in subdivision (a).

Comment. Section 4280 continues former Section 1363.5 without change, except that a cross-reference to the definition of “managing agent” has not been continued. See Section 4155 (“managing agent”).

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

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

Article 4. Condominium Plan

§ 4290 (REVISED). Recordation of condominium plan

4290. (a) The certificate consenting to the recordation of a condominium plan that is required by subdivision (c) of Section 4120 shall be signed and acknowledged by all of the following persons:

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

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

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

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

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

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

8 **Comment.** Section 4290 restates former Section 1351(e)(3) without substantive change, with
9 the following exceptions:

10 (1) The last paragraph of (e)(3) is not continued in this section.

11 (2) A cross-reference to Section 4120(c) is added to the first paragraph.

12 See also Sections 4105 (“community apartment project”), 4120 (“condominium plan”), 4125
13 (“condominium project”), 4170 (“person”), 4190 (“stock cooperative”).

14  **Note.** Proposed Section 4290 would restate the procedural provisions of existing Section
15 1351(e). Doing so necessitates a number of minor nonsubstantive language revisions.

16 **§ 4295 (REVISED). Amendment or revocation of condominium plan**

17 4295. A condominium plan may be amended or revoked by a recorded
18 instrument that is acknowledged and signed by all the persons who, at the time of
19 amendment or revocation, are persons whose signatures are required under Section
20 4290.

21 **Comment.** Section 4295 continues the last paragraph of former Section 1351(e) without
22 change, except that language is added to make clear that the persons whose signatures are
23 required for amendment or revocation of a condominium plan are the persons who fall within the
24 groups described in Section 4290 at the time of amendment or revocation.

25 See also Sections 4120 (“condominium plan”), 4170 (“person”).

26  **Note.** Proposed Section 4295 is revised to make its meaning more clear, as described in the
27 Comment following the section.

28 **Article 5. Operating Rules**

29 **§ 4350 (UNCHANGED). Requirements for validity and enforceability**

30 4350. An operating rule is valid and enforceable only if all of the following
31 requirements are satisfied:

32 (a) The rule is in writing.

33 (b) The rule is within the authority of the board conferred by law or by the
34 declaration, articles of incorporation or association, or bylaws of the association.

35 (c) The rule is not inconsistent with governing law and the declaration, articles
36 of incorporation or association, and bylaws of the association.

37 (d) The rule is adopted, amended, or repealed in good faith and in substantial
38 compliance with the requirements of this article.

39 (e) The rule is reasonable.

1 **Comment.** Section 4350 continues former Section 1357.110 without change, except that the
2 term “board of directors of the association” has been replaced with the defined term “board.” See
3 Section 4085 (“board”).

4 See also Sections 4080 (“association”), 4135 (“declaration”), 4165 (“operating rule”).

5 **§ 4355 (UNCHANGED). Application of rulemaking procedures**

6 4355. (a) Sections 4360 and 4365 only apply to an operating rule that relates to
7 one or more of the following subjects:

8 (1) Use of the common area or of an exclusive use common area.

9 (2) Use of a separate interest, including any aesthetic or architectural standards
10 that govern alteration of a separate interest.

11 (3) Member discipline, including any schedule of monetary penalties for
12 violation of the governing documents and any procedure for the imposition of
13 penalties.

14 (4) Any standards for delinquent assessment payment plans.

15 (5) Any procedures adopted by the association for resolution of disputes.

16 (6) Any procedures for reviewing and approving or disapproving a proposed
17 physical change to a member’s separate interest or to the common area.

18 (7) Procedures for elections.

19 (b) Sections 4360 and 4365 do not apply to the following actions by the board:

20 (1) A decision regarding maintenance of the common area.

21 (2) A decision on a specific matter that is not intended to apply generally.

22 (3) A decision setting the amount of a regular or special assessment.

23 (4) A rule change that is required by law, if the board has no discretion as to the
24 substantive effect of the rule change.

25 (5) Issuance of a document that merely repeats existing law or the governing
26 documents.

27 **Comment.** Section 4355 continues former Section 1357.120 without change, except that the
28 terms “board of directors” and “board of directors of the association” have been replaced with
29 the defined term “board.” See Section 4085 (“board”).

30 See also Sections 4080 (“association”), 4095 (“common area”), 4145 (“exclusive use common
31 area”), 4150 (“governing documents”), 4160 (“member”), 4165 (“operating rule”), 4180 (“rule
32 change”), 4185 (“separate interest”).

33 **§ 4360 (UNCHANGED). Approval of rule change by board**

34 4360. (a) The board shall provide general notice (Section 4045) of a proposed
35 rule change to the members at least 30 days before making the rule change. The
36 notice shall include the text of the proposed rule change and a description of the
37 purpose and effect of the proposed rule change. Notice is not required under this
38 subdivision if the board determines that an immediate rule change is necessary to
39 address an imminent threat to public health or safety or imminent risk of
40 substantial economic loss to the association.

41 (b) A decision on a proposed rule change shall be made at a board meeting, after
42 consideration of any comments made by association members.

1 (c) As soon as possible after making a rule change, but not more than 15 days
2 after making the rule change, the board shall deliver general notice (Section 4045)
3 of the rule change. If the rule change was an emergency rule change made under
4 subdivision (d), the notice shall include the text of the rule change, a description of
5 the purpose and effect of the rule change, and the date that the rule change expires.

6 (d) If the board determines that an immediate rule change is required to address
7 an imminent threat to public health or safety, or an imminent risk of substantial
8 economic loss to the association, it may make an emergency rule change; and no
9 notice is required, as specified in subdivision (a). An emergency rule change is
10 effective for 120 days, unless the rule change provides for a shorter effective
11 period. A rule change made under this subdivision may not be readopted under
12 this subdivision.

13 **Comment.** Section 4360 restates former Section 1357.130 without change, with the following
14 exceptions:

- 15 (1) The term “board of directors” has been replaced throughout with the defined term
16 “board.”
- 17 (2) The term “meeting of the board of directors” has been replaced with the defined term
18 “board meeting.”
- 19 (3) The reference to former Section 1357.130(e) is replaced with references to the
20 provision governing general notice. Delivery of “general notice” under Section 4045
21 preserves most of the substance of former law governing delivery of notice under this
22 section, except that Section 4045 permits the posting of notices and requires that
23 individual notice delivery methods be used for a member who has requested that form
24 of delivery. *Cf.* former Section 1350.7. See Sections 4085 (“board”), 4090 (“board
25 meeting”).

26 See also Sections 4080 (“association”), 4160 (“member”), 4180 (“rule change”).

27 **§ 4365 (REVISED). Reversal of rule change by members**

28 4365. (a) Members of an association owning five percent or more of the separate
29 interests may call a special meeting of the members to reverse a rule change.

30 (b) A special meeting of the members may be called by delivering a written
31 request to the president or secretary of the board, after which the board shall
32 deliver individual notice (Section 4040) of the meeting to the association’s
33 members and hold the meeting in conformity with Section 7511 of the
34 Corporations Code. The written request may not be delivered more than 30 days
35 after the members of the association are notified of the rule change. Members are
36 deemed to have been notified of a rule change on delivery of notice of the rule
37 change, or on enforcement of the resulting rule, whichever is sooner.

38 (c) For the purposes of Section 8330 of the Corporations Code, collection of
39 signatures to call a special meeting under this section is a purpose reasonably
40 related to the interests of the members of the association. A member request to
41 copy or inspect the membership list solely for that purpose may not be denied on
42 the grounds that the purpose is not reasonably related to the member’s interests as
43 a member.

1 (d) The rule change may be reversed by the affirmative vote of a majority of a
2 quorum of the members (Section 4070), or if the declaration or bylaws require a
3 greater proportion, by the affirmative vote or written ballot of the proportion
4 required. In lieu of calling the meeting described in this section, the board may
5 distribute a written ballot pursuant to Article 4 (commencing with Section 5100)
6 of Chapter 5.

7 (e) Unless otherwise provided in the declaration or bylaws, for the purposes of
8 this section, a member may cast one vote per separate interest owned.

9 (f) A meeting called under this section is governed by Chapter 5 (commencing
10 with Section 7510) of Part 3 of Division 2 of Title 1 of, and Sections 7612 and
11 7613 of, the Corporations Code.

12 (g) A rule change reversed under this section may not be readopted for one year
13 after the date of the meeting reversing the rule change. Nothing in this section
14 precludes the board from adopting a different rule on the same subject as the rule
15 change that has been reversed.

16 (h) As soon as possible after the close of voting, but not more than 15 days after
17 the close of voting, the board shall provide general notice (Section 4045) of the
18 results of the member vote.

19 (i) This section does not apply to an emergency rule change made under
20 subdivision (d) of Section 4360.

21 **Comment.** Section 4365 continues former Section 1357.140 without change, with the
22 following exceptions:

- 23 (1) Cross-references are updated to reflect the new location of referenced provisions.
- 24 (2) A reference to former Section 1350.7 is replaced with a reference to the provision
25 governing general notice (Section 4045).
- 26 (3) A reference to voting pursuant to Corporations Code Section 7513 has been replaced
27 with a reference to the voting provisions of this part.
- 28 (4) The term “member of the association” has been replaced with “member.”
- 29 (5) The term “board of directors” has been replaced with the defined term “board.” See
30 Sections 4085 (“board”), 4160 (“member”).

31 See also Sections 4080 (“association”), 4135 (“declaration”), 4180 (“rule change”), 4185
32 (“separate interest”).

33  **Note.** Proposed Section 4365(d) replaces a reference to the distribution of ballots under
34 Corporations Code Section 7513 with a reference to the member election provisions of this part.

35 **§ 4370 (UNCHANGED). Applicability of article to changes commenced before and after**
36 **January 1, 2004**

37 4370. (a) This article applies to a rule change commenced on or after January 1,
38 2004.

39 (b) Nothing in this article affects the validity of a rule change commenced
40 before January 1, 2004.

41 (c) For the purposes of this section, a rule change is commenced when the board
42 takes its first official action leading to adoption of the rule change.

1 **Comment.** Section 4370 continues former Section 1357.150 without change, except that the
2 term “board of directors of the association” has been replaced with the defined term “board.” See
3 Section 4085 (“board”).

4 See also Section 4180 (“rule change”).

5 CHAPTER 3. OWNERSHIP AND TRANSFER OF INTERESTS

6 Article 1. Ownership Rights and Interests

7 **§ 4500 (UNCHANGED). Ownership of common area**

8 4500. Unless the declaration otherwise provides, in a condominium project, or in
9 a planned development in which the common area is owned by the owners of the
10 separate interests, the common area is owned as tenants in common, in equal
11 shares, one for each unit or lot.

12 **Comment.** Section 4500 continues former Section 1362 without change, except that the
13 references to “common areas” are singularized.

14 See also Sections 4095 (“common area”), 4125 (“condominium project”), 4135
15 (“declaration”), 4175 (“planned development”), 4185 (“separate interest”).

16 **§ 4505 (UNCHANGED). Appurtenant rights and easements**

17 4505. Unless the declaration otherwise provides:

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

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

27 **Comment.** Section 4505 continues former Section 1361 without change, except that the
28 references to “common areas” are singularized.

29 See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment
30 project”), 4125 (“condominium project”), 4135 (“declaration”), 4175 (“planned development”),
31 4185 (“separate interest”), 4190 (“stock cooperative”).

32 **§ 4510 (REVISED). Access to separate interest property**

33 4510. Except as otherwise provided in law, an order of the court, or an order
34 pursuant to a final and binding arbitration decision, an association may not deny a
35 member or occupant physical access to the member’s or occupant’s separate
36 interest, either by restricting access through the common area to the separate
37 interest, or by restricting access solely to the separate interest.

38 **Comment.** Section 4510 continues former Section 1361.5 without change, with the following
39 exceptions:

- 1 (1) The phrase “his or her” has been replaced with “the member’s or occupant’s.”
- 2 (2) References to the “owner’s” separate interest have been revised to omit the word
3 “owner’s.” This will help to avoid any implication that the reference does not also
4 apply to an “occupant” of a separate interest.
- 5 (3) The defined term “member” is used in place of “owner” throughout. See Section 4160
6 (“member”).
- 7 (4) The references to “common areas” are singularized.

8 See also Sections 4080 (“association”), 4095 (“common area”), 4163 (“occupant”), 4185
9 (“separate interest”).

10  **Note.** Although it is clear that Section 1361.5 is intended to protect both owners and
11 occupants of separate interests, that section twice refers to the “owner’s separate interest,”
12 without any reference to an occupant. That could create the impression that the Legislature
13 intended to draw some sort of distinction between owners and occupants, which the staff does not
14 believe to be the case. Proposed Section 4510 would adjust the language of Section 1361.5 to
15 avoid that implication. Note also that the defined term “member” is used in place of “owner”
16 throughout.

17 Article 2. Transfer Disclosure

18 § 4525 (REVISED). Disclosure to prospective purchaser

19 4525. The owner of a separate interest shall provide the following documents to
20 a prospective purchaser of the separate interest, as soon as practicable before the
21 transfer of title or the execution of a real property sales contract, as defined in
22 Section 2985:

23 (1) A copy of all governing documents. If the association is not incorporated,
24 this shall include a statement in writing from an authorized representative of the
25 association that the association is not incorporated.

26 (2) If there is a restriction in the governing documents limiting the occupancy,
27 residency, or use of a separate interest on the basis of age in a manner different
28 from that provided in Section 51.3, a statement that the restriction is only
29 enforceable to the extent permitted by Section 51.3 and a statement specifying the
30 applicable provisions of Section 51.3.

31 (3) A copy of the most recent documents distributed pursuant to Article 7
32 (commencing with Section 5300) of Chapter 5.

33 (4) A true statement in writing obtained from an authorized representative of the
34 association as to the amount of the association’s current regular and special
35 assessments and fees, any assessments levied upon the owner’s interest in the
36 common interest development that are unpaid on the date of the statement, and any
37 monetary fines or penalties levied upon the owner’s interest and unpaid on the
38 date of the statement. The statement obtained from an authorized representative
39 shall also include true information on late charges, interest, and costs of collection
40 which, as of the date of the statement, are or may be made a lien upon the owner’s
41 interest in a common interest development pursuant to Article 5 (commencing
42 with Section 5650) of Chapter 6.

1 (5) A copy or a summary of any notice previously sent to the owner pursuant to
2 Section 5855 that sets forth any alleged violation of the governing documents that
3 remains unresolved at the time of the request. The notice shall not be deemed a
4 waiver of the association’s right to enforce the governing documents against the
5 owner or the prospective purchaser of the separate interest with respect to any
6 violation. This paragraph shall not be construed to require an association to inspect
7 an owner’s separate interest.

8 (6) A copy of the preliminary list of defects provided to each member pursuant
9 to Section 6000, unless the association and the builder subsequently enter into a
10 settlement agreement or otherwise resolve the matter and the association complies
11 with Section 6100. Disclosure of the preliminary list of defects pursuant to this
12 paragraph does not waive any privilege attached to the document. The preliminary
13 list of defects shall also include a statement that a final determination as to
14 whether the list of defects is accurate and complete has not been made.

15 (7) A copy of the latest information provided for in Section 6100.

16 (8) Any change in the association’s current regular and special assessments and
17 fees which have been approved by the board, but have not become due and
18 payable as of the date disclosure is provided pursuant to this subdivision.

19 (b) This section does not apply to an owner that is subject to the requirements of
20 Section 11018.6 of the Business and Professions Code.

21 **Comment.** Section 4525 restates the substance of former Section 1368(a) without change, with
22 the following exceptions:

- 23 (1) Cross-references are updated to reflect the new location of the referenced provisions.
- 24 (2) The term “association’s board of directors” has been replaced with the defined term
25 “board.” See Section 4085 (“board”).
- 26 (3) Subdivision (a)(1) is revised to make clear that all governing documents must be
27 provided. See Section 4150 (“governing documents”).
- 28 (4) The term “member” is used in place of “member of the association.” See Section 4160
29 (“member”).

30 Former Section 1368(g) has not been continued. It provided that a community association
31 manager is an agent for the purposes of general agency law. That provision was superfluous and
32 included an erroneous cross-reference. There is no need to state the application of general agency
33 law to a common interest development.

34 See also Sections 4080 (“association”), 4100 (“common interest development”), 4185
35 (“separate interest”).

36 **Note.** The introductory paragraph of proposed Section 4525(a) and subdivision (b) of that
37 section restate the first paragraph of Section 1368(a) to improve its clarity.

38 Subdivision (d) replaces the existing reference to “Section 1367 or 1367.1” with a reference to
39 “Article 5 (commencing with Section 5650) of Chapter 6.” That reference encompasses all of the
40 provisions of former Sections 1367 and 1367.1 under which assessment debt and related charges
41 “may be made a lien.”

42 The proposed law would not continue existing Section 1368(g). That provision is unnecessary.

1 **§ 4530 (UNCHANGED). Information to be provided by association**

2 4530. (a) Upon written request, an association shall, within 10 days of the
3 mailing or delivery of the request, provide the owner of a separate interest with a
4 copy of the requested items specified in Section 4525.

5 (b) The items required to be made available pursuant to this section may be
6 maintained in electronic form and requesting parties shall have the option of
7 receiving them by electronic transmission or machine readable storage media if
8 the association maintains these items in electronic form.

9 (c) The association may charge a reasonable fee for this service based upon the
10 association's actual cost to procure, prepare, and reproduce the requested items.

11 **Comment.** Section 4530 continues former Section 1368(b) without change, with the following
12 exceptions:

13 (1) Subdivisions are added.

14 (2) A cross-reference is updated to reflect the new location of the referenced provision.

15 See also Sections 4080 ("association"), 4185 ("separate interest").

16 **§ 4535 (UNCHANGED). Related requirements**

17 4535. In addition to the requirements of this article, an owner transferring title to
18 a separate interest shall comply with applicable requirements of Sections 1133 and
19 1134.

20 **Comment.** Section 4535 continues former Section 1368(f) without change, except that
21 "section" is replaced with "article" to reflect the fact that former Section 1368 is continued in this
22 article.

23 See also Section 4185 ("separate interest").

24 **§ 4540 (UNCHANGED). Enforcement of article**

25 4540. Any person who willfully violates this article is liable to the purchaser of
26 a separate interest that is subject to this section for actual damages occasioned
27 thereby and, in addition, shall pay a civil penalty in an amount not to exceed five
28 hundred dollars (\$500). In an action to enforce this liability, the prevailing party
29 shall be awarded reasonable attorney's fees.

30 **Comment.** Section 4540 continues former Section 1368(d) without change, with the following
31 exceptions:

32 (1) "Section" is replaced with "article."

33 (2) The phrase "or entity" is not continued. See Section 4170 ("person").

34 See also Section 4185 ("separate interest").

35 **§ 4545 (UNCHANGED). Validity of title unaffected**

36 4545. Nothing in this article affects the validity of title to real property
37 transferred in violation of this article.

38 **Comment.** Section 4545 continues former Section 1368(e) without change, except that
39 "section" is replaced with "article."

Article 3. Transfer Fee

§ 4575 (UNCHANGED). Transfer fee

4575. Subject to the provisions of Section 4580, neither an association nor a community service organization or similar entity may impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:

- (a) An amount not to exceed the association's actual costs to change its records.
- (b) An amount authorized by Section 4530.

Comment. Section 4575 continues former Section 1368(c)(1) without change, except that cross-references are updated to reflect the new location of the referenced provisions.

See also Sections 4080 ("association"), 4110 ("community service organization or similar entity").

§ 4580 (REVISED). Exemption from transfer fee limitations

4580. Section 4575 does not apply to a community service organization or similar entity of either of the following types:

- (a) An entity that satisfies both of the following conditions:

- (1) It was established before February 20, 2003.

- (2) It exists and operates, in whole or in part, to fund or perform environmental mitigation or to restore or maintain wetlands or native habitat, as required by the state or local government as an express written condition of development.

- (b) An entity that satisfies all of the following conditions:

- (1) It is not an entity described by subdivision (a).

- (2) It was established and received a transfer fee before January 1, 2004.

- (3) On and after January 1, 2006, it offers a purchaser the following payment options for the fee or charge it collects at time of transfer:

- (A) Paying the fee or charge at the time of transfer.

- (B) Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the community service organization or similar entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount owed. If the purchaser sells the separate interest before the end of the installment payment plan period, the purchaser shall pay the remaining balance before the transfer.

Comment. Section 4580 restates former Section 1368(c)(2) without substantive change.

See also Sections 4110 ("community service organization or similar entity"), 4185 ("separate interest").

 **Note.** Proposed Section 4580 would restate Section 1368(c)(2) to make it more understandable.

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Article 4. Restrictions on Transfers

§ 4600 (REVISED). Grant of exclusive use

4600. (a) Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board may grant exclusive use of any portion of the common area to a member.

(b) Subdivision (a) does not apply to the following actions:

(1) A reconveyance of all or any portion of that common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report.

(2) Any grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report or in accordance with the governing documents approved by the Real Estate Commissioner.

(3) Any grant of exclusive use that is for any of the following reasons:

(A) To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(B) To eliminate or correct encroachments due to errors in construction of any improvements.

(C) To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(D) To fulfill the requirement of a public agency.

(E) To transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the association.

(F) To accommodate a disability.

(G) To assign a parking space, storage unit, or other amenity, that is designated in the declaration as exclusive use common area but is not assigned by the declaration to a specific separate interest.

(H) To comply with governing law.

(c) Any measure placed before the members requesting that the board grant exclusive use of any portion of the common area shall specify whether the association will receive any monetary consideration for the grant and whether the association or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.

Comment. Section 4600 restates former Section 1363.07 without change, with the following exceptions:

- (1) The section is no longer limited in its application to a common area that the association owns or in which the association has an easement right. It now also applies to common area that is owned by the members as tenants in common.

- 1 (2) An introductory clause is added in subdivision (b), to introduce the list of exceptions.
- 2 (3) The substance of former subdivision (a)(3)(F) is continued in Section 4025.
- 3 (4) The term “board of directors” has been replaced throughout with the defined term
- 4 “board.” See Section 4085 (“board”).
- 5 (5) Paragraphs (b)(3)(F)-(H) are new.

6 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest

7 development”), 4135 (“declaration”), 4145 (“exclusive use common area”), 4150 (“governing

8 documents”), 4160 (“member”), 4185 (“separate interest”).

9 **Note.** Proposed Section 4600 is revised to expand its scope, improve its organization, and to

10 relocate an exemption for nonresidential CIDs (to proposed Section 4025).

11 Paragraphs (b)(3)(F)-(H) are new and would create new exceptions in the specified

12 circumstances.

13 **§ 4605 (REVISED). Civil action to enforce Section 4600**

14 4605. (a) A member of an association may bring a civil action for declaratory or

15 equitable relief for a violation of Section 4600 by the association, including, but

16 not limited to, injunctive relief, restitution, or a combination thereof, within one

17 year of the date the cause of action accrues.

18 (b) A member who prevails in a civil action to enforce the member’s rights

19 pursuant to Section 4600 shall be entitled to reasonable attorney’s fees and court

20 costs, and the court may impose a civil penalty of up to five hundred dollars

21 (\$500) for each violation, except that each identical violation shall be subject to

22 only one penalty if the violation affects each member equally. A prevailing

23 association shall not recover any costs, unless the court finds the action to be

24 frivolous, unreasonable, or without foundation.

25 **Comment.** Section 4605 restates former Section 1363.09(a)-(b) without change, with the

26 following exceptions:

- 27 (1) The phrase “an association of which he or she is a member” has been replaced with
- 28 “the association.”
- 29 (2) “This article” has been replaced with “Section 4600.”
- 30 (3) The phrase “his or her” has been replaced with “the member’s.”
- 31 (4) The second sentence of former Section 1363.09(a) has not been continued because it is
- 32 irrelevant to judicial enforcement of this article.
- 33 (5) The term “member” is used in place of “member of the association.” See Section 4160
- 34 (“member”).

35 See also Section 4080 (“association”).

36 **Note.** Proposed Section 4605 would generally continue the judicial enforcement provisions of

37 existing Section 1363.09 as they apply to existing Section 1363.07, but it would not continue

38 provisions specific to member elections (the second sentence of Section 1363.09(a), and all of

39 subdivision (c)).

40 **§ 4610 (REVISED). Partition of condominium project**

41 4610. (a) Except as provided in this section, the common area in a condominium

42 project shall remain undivided, and there shall be no judicial partition thereof.

43 Nothing in this section shall be deemed to prohibit partition of a cotenancy in a

44 condominium.

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

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

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

14 (3) The project has been in existence more than 50 years, is obsolete and
15 uneconomic, and owners of separate interests holding in the aggregate more than a
16 50-percent interest in the common area oppose repair or restoration of the project.

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

19 **Comment.** Section 4610 continues former Section 1359 without change, with the following
20 exceptions:

21 (1) References to “common areas” are singularized.

22 (2) Subdivision (b)(4) is rephrased to avoid use of “such.”

23 See also Sections 4095 (“common area”), 4125 (“condominium project”), 4135
24 (“declaration”), 4185 (“separate interest”).

25  **Note.** Proposed Section 4610(b)(4) would rephrase Section 1359(b)(4) to avoid use of the
26 word “such,” which is strongly disfavored in statutory drafting. The Commission invites
27 comment on whether the rephrasing would cause any substantive change in the meaning of the
28 provision.

29 **§ 4615 (UNCHANGED). Lien for work performed in condominium project**

30 4615. (a) In a condominium project, no labor performed or services or materials
31 furnished with the consent of, or at the request of, an owner in the condominium
32 project or the owners’ agent or contractor shall be the basis for the filing of a lien
33 against any other property of any other owner in the condominium project unless
34 that other owner has expressly consented to or requested the performance of the
35 labor or furnishing of the materials or services. However, express consent shall be
36 deemed to have been given by the owner of any condominium in the case of
37 emergency repairs thereto.

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

41 (c) The owner of any condominium may remove that owner’s condominium
42 from a lien against two or more condominiums or any part thereof by payment to

1 the holder of the lien of the fraction of the total sum secured by the lien that is
2 attributable to the owner's condominium.

3 **Comment.** Section 4615 continues former Section 1369 without change, except for the
4 following changes:

- 5 (1) Subdivisions are added.
- 6 (2) The phrase "his or her" is replaced with references to the "owner" throughout.
- 7 (3) A reference to "common areas" is singularized.
- 8 (4) The word "which" is replaced with "that" in subdivision (c).

9 See also Sections 4080 ("association"), 4095 ("common area"), 4125 ("condominium
10 project").

11 Article 5. Transfer of Separate Interest

12 § 4625 (UNCHANGED). Community apartment project

13 4625. In a community apartment project, any conveyance, judicial sale, or other
14 voluntary or involuntary transfer of the separate interest includes the undivided
15 interest in the community apartment project. Any conveyance, judicial sale, or
16 other voluntary or involuntary transfer of the owner's entire estate also includes
17 the owner's membership interest in the association.

18 **Comment.** Section 4625 continues former Section 1358(a) without change.

19 See also Sections 4080 ("association"), 4105 ("community apartment project"), 4185
20 ("separate interest").

21 § 4630 (UNCHANGED). Condominium project

22 4630. In a condominium project the common area is not subject to partition,
23 except as provided in Section 4610. Any conveyance, judicial sale, or other
24 voluntary or involuntary transfer of the separate interest includes the undivided
25 interest in the common area. Any conveyance, judicial sale, or other voluntary or
26 involuntary transfer of the owner's entire estate also includes the owner's
27 membership interest in the association.

28 **Comment.** Section 4630 continues former Section 1358(b) without change, with the following
29 exceptions:

- 30 (1) A cross-reference is updated to reflect the new location of the referenced provision.
- 31 (2) References to "common areas" are singularized.

32 See also Sections 4080 ("association"), 4095 ("common area"), 4125 ("condominium
33 project"), 4185 ("separate interest").

34 § 4635 (UNCHANGED). Planned development

35 4635. In a planned development, any conveyance, judicial sale, or other
36 voluntary or involuntary transfer of the separate interest includes the undivided
37 interest in the common area, if any exists. Any conveyance, judicial sale, or other
38 voluntary or involuntary transfer of the owner's entire estate also includes the
39 owner's membership interest in the association.

40 **Comment.** Section 4635 continues former Section 1358(c) without change, except that a
41 reference to "common areas" is singularized.

1 See also Sections 4080 (“association”), 4095 (“common area”), 4175 (“planned
2 development”), 4185 (“separate interest”).

3 **§ 4640 (UNCHANGED). Stock cooperative**

4 4640. In a stock cooperative, any conveyance, judicial sale, or other voluntary or
5 involuntary transfer of the separate interest includes the ownership interest in the
6 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary
7 or involuntary transfer of the owner’s entire estate also includes the owner’s
8 membership interest in the association.

9 **Comment.** Section 4640 continues former Section 1358(d) without change.

10 See also Sections 4080 (“association”), 4185 (“separate interest”), 4190 (“stock cooperative”).

11 **§ 4645 (UNCHANGED). Transfer of exclusive use common area**

12 4645. Nothing in this article prohibits the transfer of exclusive use areas,
13 independent of any other interest in a common interest subdivision, if
14 authorization to separately transfer exclusive use areas is expressly stated in the
15 declaration and the transfer occurs in accordance with the terms of the declaration.

16 **Comment.** Section 4645 continues the next to last paragraph of former Section 1358 without
17 change, except that “section” is replaced with “article.”

18 See also Section 4135 (“declaration”).

19 **§ 4650 (UNCHANGED). Severability of interests**

20 4650. Any restrictions upon the severability of the component interests in real
21 property which are contained in the declaration shall not be deemed conditions
22 repugnant to the interest created within the meaning of Section 711. However,
23 these restrictions shall not extend beyond the period in which the right to partition
24 a project is suspended under Section 4610.

25 **Comment.** Section 4650 continues the last paragraph of former Section 1358 without change,
26 with the following exceptions:

27 (1) A superfluous reference to the “Civil Code” is omitted.

28 (2) The cross-reference is updated to reflect the new location of the referenced provision.

29 See also Section 4135 (“declaration”).

30 **CHAPTER 4. PROPERTY USE AND MAINTENANCE**

31 **Article 1. Use of Separate Interest**

32 **§ 4700 (NEW). Application of article**

33 4700. This article includes provisions that limit the authority of an association to
34 regulate the use of a member’s separate interest. Nothing in this article is intended
35 to affect the application of any other provision that limits the authority of an
36 association to regulate the use of a member’s separate interest, including, but not
37 limited to, the following provisions:

- 1 (a) Sections 712 and 713, relating to the display of signs.
- 2 (b) Sections 714 and 714.1, relating to solar energy systems.
- 3 (c) Section 714.5, relating to structures that are constructed offsite and moved to
- 4 the property in sections or modules.
- 5 (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the
- 6 Government Code, relating to racial restrictions.
- 7 (e) Section 12927 of the Government Code, relating to the modification of
- 8 property to accommodate a disability.
- 9 (f) Section 1597.40 of the Health and Safety Code, relating to the operation of a
- 10 family day care home.

11 **Comment.** Section 4700 is new. It provides a non-exclusive list of provisions outside of this
12 part that limit the authority of an association to regulate separate interest property use.

13 See also Sections 4080 (“association”), 4160 (“member”), 4185 (“separate interest”).

14  **Note.** Proposed Section 4700 is new. It introduces the article and lists other provisions that
15 protect separate interest use rights.

16 **§ 4705 (UNCHANGED). Display of U.S. flag**

17 4705. (a) Except as required for the protection of the public health or safety, no
18 declaration or other governing document shall limit or prohibit, or be construed to
19 limit or prohibit, the display of the flag of the United States by a member on or in
20 the member’s separate interest or within the member’s exclusive use common
21 area.

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

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

29 **Comment.** Section 4705 continues former Section 1353.5 without change, with the following
30 exceptions:

- 31 (1) A superfluous cross-reference to governing definitions is omitted.
- 32 (2) The defined term “member” is used in place of “owner.” See Section 4160
33 (“member”).

34 See also Sections 4095 (“common area”), 4135 (“declaration”), 4145 (“exclusive use common
35 area”), 4185 (“separate interest”).

36 **§ 4710 (UNCHANGED). Noncommercial sign**

37 4710. (a) The governing documents may not prohibit posting or displaying of
38 noncommercial signs, posters, flags, or banners on or in a member’s separate
39 interest, except as required for the protection of public health or safety or if the
40 posting or display would violate a local, state, or federal law.

41 (b) For purposes of this section, a noncommercial sign, poster, flag, or banner
42 may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or

1 displayed from the yard, window, door, balcony, or outside wall of the separate
2 interest, but may not be made of lights, roofing, siding, paving materials, flora, or
3 balloons, or any other similar building, landscaping, or decorative component, or
4 include the painting of architectural surfaces.

5 (c) An association may prohibit noncommercial signs and posters that are more
6 than 9 square feet in size and noncommercial flags or banners that are more than
7 15 square feet in size.

8 **Comment.** Section 4710 continues former Section 1353.6 without change, with the following
9 exceptions:

10 (1) The redundant phrase “including the operating rules” is not continued.

11 (2) The defined term “member” is used in place of “owner.” See Section 4160
12 (“member”).

13 See also Sections 4080 (“association”), 4150 (“governing documents”), 4185 (“separate
14 interest”).

15 **§ 4715 (UNCHANGED). Pets**

16 4715. (a) No governing documents shall prohibit the owner of a separate interest
17 within a common interest development from keeping at least one pet within the
18 common interest development, subject to reasonable rules and regulations of the
19 association. This section may not be construed to affect any other rights provided
20 by law to an owner of a separate interest to keep a pet within the development.

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

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

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

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

35 **Comment.** Section 4715 continues former Section 1360.5 without change, except that “his or
36 her” has been replaced with “the owner’s” in subdivision (c).

37 See also Sections 4080 (“association”), 4100 (“common interest development”), 4150
38 (“governing documents”), 4185 (“separate interest”).

39 **§ 4720 (UNCHANGED). Roofing materials**

40 4720. (a) No common interest development may require a homeowner to install
41 or repair a roof in a manner that is in violation of Section 13132.7 of the Health
42 and Safety Code.

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

9 **Comment.** Section 4720 continues former Section 1353.7 without change. See also Section
10 4765(a)(3) (“Notwithstanding a contrary provision of the governing documents, a decision on a
11 proposed change may not violate any governing provision of law, including, but not limited to,
12 the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3
13 of Title 2 of the Government Code), or a building code or other applicable law governing land use
14 or public safety.”).

15 See also Sections 4100 (“common interest development”), 4150 (“governing documents”).

16 **§ 4725 (UNCHANGED). Television antenna or satellite dish**

17 4725. (a) Any covenant, condition, or restriction contained in any deed, contract,
18 security instrument, or other instrument affecting the transfer or sale of, or any
19 interest in, a common interest development that effectively prohibits or restricts
20 the installation or use of a video or television antenna, including a satellite dish, or
21 that effectively prohibits or restricts the attachment of that antenna to a structure
22 within that development where the antenna is not visible from any street or
23 common area, except as otherwise prohibited or restricted by law, is void and
24 unenforceable as to its application to the installation or use of a video or television
25 antenna that has a diameter or diagonal measurement of 36 inches or less.

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

34 (1) Requirements for application and notice to the association prior to the
35 installation.

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

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

41 (4) Requirements for installers of a video or television antenna to indemnify or
42 reimburse the association or its members for loss or damage caused by the

1 installation, maintenance, or use of a video or television antenna that has a
2 diameter or diagonal measurement of 36 inches or less.

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

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

11 **Comment.** Section 4725 restates former Section 1376 without change, except that the defined
12 term "member" is used in place of "owner." See Section 4160 ("member"). See also 47 C.F.R. §
13 1.4000.

14 See also Sections 4080 ("association"), 4095 ("common area"), 4100 ("common interest
15 development"), 4185 ("separate interest").

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

19 **§ 4730 (REVISED). Marketing restriction**

20 4730. (a) Any governing document of an association that arbitrarily or
21 unreasonably restricts an owner's ability to market the owner's interest in a
22 common interest development is void.

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

25 (1) Imposes an assessment or fee in connection with the marketing of an
26 owner's interest in an amount that exceeds the association's actual or direct costs.
27 That assessment or fee shall be deemed to violate the limitation set forth in
28 subdivision (b) of Section 5600.

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

34 (c) For purposes of this section, "market" and "marketing" mean listing,
35 advertising, or obtaining or providing access to show the owner's interest in the
36 development.

37 (d) This section does not apply to rules or regulations made pursuant to Section
38 712 or 713 regarding real estate signs.

39 **Comment.** Section 4730 continues former Section 1368.1 without change, with the following
40 exceptions:

- 41 (1) The phrase "rule or regulation" is replaced with "governing document." This broadens
42 the application of the section so that it governs any provision in the governing
43 documents and not just an operating rule.

1 (2) The phrase “his or her” is replaced with “the owner’s” in subdivision (a).

2 (3) A reference to “common areas” is singularized.

3 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
4 development”), 4185 (“separate interest”).

5 **Note.** Proposed Section 4730 would apply to any governing document, and not just to a “rule
6 or regulation” (which is unclear and may only encompass an operating rule).

7 **§ 4755 (UNCHANGED). Low water-using plants**

8 4755. (a) Notwithstanding any other law, a provision of the governing
9 documents shall be void and unenforceable if it does any of the following:

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

12 (2) Has the effect of prohibiting or restricting compliance with either of the
13 following:

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

16 (B) Any regulation or restriction on the use of water adopted pursuant to Section
17 353 or 375 of the Water Code.

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

21 **Comment.** Section 4755 continues former Section 1353.8 without change, except that surplus
22 language is not continued (i.e., the phrases “of any,” “of a common interest development,” and
23 “and regulations”). The term “governing documents” includes all governing documents of a
24 common interest development. See Section 4150 (“governing documents”).

25 See also Section 4080 (“association”).

26 **Article 2. Modification of Separate Interest**

27 **§ 4760 (REVISED). Improvements to separate interest**

28 4760. (a) Subject to the governing documents and applicable law, a member
29 may do the following:

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

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

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

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

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

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

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

14 **Comment.** Section 4760 continues former Section 1360 without change, with the following
15 exceptions:

- 16 (1) The scope of the provision is broadened to apply to any separate interest, and not just a
17 unit in a condominium project.
- 18 (2) The phrase “his or her” is not continued in subdivision (a)(2)(D).
- 19 (3) The defined term “member” is used in place of “owner” throughout. See Section 4160
20 (“member”).
- 21 (4) The defined term “occupant” is used in place of “resident.” See Section 4163
22 (“occupant”).

23 See also Section 4765 (association decision on modification of separate interest must comply
24 with Fair Employment and Housing Act); Gov’t Code § 12927 (accommodation of disability
25 under Fair Employment and Housing Act).

26 See also Sections 4080 (“association”), 4100 (“common interest development”), 4150
27 (“governing documents”), 4185 (“separate interest”).

28 **Note.** Proposed Section 4760 would broaden the scope of Section 1360 to include all CIDs,
29 and not just a separate interest that is contained within a building. Similarly, proposed Section
30 4760(a)(2) would expand existing Section 1360(a)(2), which currently only applies to a
31 condominium unit. Under the proposed law it would apply to a separate interest in any type of
32 CID. References to “units” would be replaced with references to “separate interests.” References
33 to condominium associations would be changed to refer to associations generally.

34 The Commission invites comment on whether the proposed expansion of the scope of Section
35 1360 would cause any problems.

36 **§ 4765 (UNCHANGED). Architectural review and decision making**

37 4765. (a) This section applies if the governing documents require association
38 approval before a member may make a physical change to the member’s separate
39 interest or to the common area. In reviewing and approving or disapproving a
40 proposed change, the association shall satisfy the following requirements:

- 41 (1) The association shall provide a fair, reasonable, and expeditious procedure
42 for making its decision. The procedure shall be included in the association’s
43 governing documents. The procedure shall provide for prompt deadlines. The
44 procedure shall state the maximum time for response to an application or a request
45 for reconsideration by the board.

1 (2) A decision on a proposed change shall be made in good faith and may not be
2 unreasonable, arbitrary, or capricious.

3 (3) Notwithstanding a contrary provision of the governing documents, a decision
4 on a proposed change may not violate any governing provision of law, including,
5 but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing
6 with Section 12900) of Division 3 of Title 2 of the Government Code), or a
7 building code or other applicable law governing land use or public safety.

8 (4) A decision on a proposed change shall be in writing. If a proposed change is
9 disapproved, the written decision shall include both an explanation of why the
10 proposed change is disapproved and a description of the procedure for
11 reconsideration of the decision by the board.

12 (5) If a proposed change is disapproved, the applicant is entitled to
13 reconsideration by the board that made the decision, at an open meeting of the
14 board. This paragraph does not require reconsideration of a decision that is made
15 by the board or a body that has the same membership as the board, at a meeting
16 that satisfies the requirements of Article 2 (commencing with Section 4900) of
17 Chapter 5. Reconsideration by the board does not constitute dispute resolution
18 within the meaning of Section 5905.

19 (b) Nothing in this section authorizes a physical change to the common area in a
20 manner that is inconsistent with an association's governing documents, unless the
21 change is required by law.

22 (c) An association shall annually provide its members with notice of any
23 requirements for association approval of physical changes to property. The notice
24 shall describe the types of changes that require association approval and shall
25 include a copy of the procedure used to review and approve or disapprove a
26 proposed change.

27 **Comment.** Section 4765 continues former Section 1378 without change, with the following
28 exceptions:

29 (1) The terms "board of directors" and "board of directors of the association" have been
30 replaced with the defined term "board." See Sections 4085 ("board").

31 (2) A reference to the "association's" governing documents has not been continued. See
32 Section 4150 ("governing documents").

33 (3) The defined term "member" is used in place of "owner." See Section 4160
34 ("member").

35 See also Sections 4080 ("association"), 4095 ("common area"), 4185 ("separate interest").

36 Article 3. Maintenance

37 § 4775 (UNCHANGED). Maintenance responsibility generally

38 4775. (a) Unless otherwise provided in the declaration of a common interest
39 development, the association is responsible for repairing, replacing, or maintaining
40 the common area, other than exclusive use common area, and the owner of each
41 separate interest is responsible for maintaining that separate interest and any
42 exclusive use common area appurtenant to the separate interest.

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

4 **Comment.** Subdivision (a) of Section 4775 continues former Section 1364(a) without change,
5 except that references to “common areas” are singularized.

6 Subdivision (b) continues former Section 1364(c) without change.

7 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
8 development”), 4135 (“declaration”), 4145 (“exclusive use common area”), 4185 (“separate
9 interest”).

10 **§ 4780 (REVISED). Wood-destroying pests or organisms**

11 4780. (a) In a community apartment project, condominium project, or stock
12 cooperative, unless otherwise provided in the declaration, the association is
13 responsible for the repair and maintenance of the common area occasioned by the
14 presence of wood-destroying pests or organisms.

15 (b) In a planned development, unless a different maintenance scheme is
16 provided in the declaration, each owner of a separate interest is responsible for the
17 repair and maintenance of that separate interest as may be occasioned by the
18 presence of wood-destroying pests or organisms. Upon approval of the majority of
19 all members of the association (Section 4065), that responsibility may be
20 delegated to the association, which shall be entitled to recover the cost thereof as a
21 special assessment.

22 **Comment.** Subdivision (a) of Section 4780 continues former Section 1364(b)(1) without
23 change, except that a superfluous cross-reference to governing definitions has not been continued.

24 Subdivision (b) continues former Section 1364(b)(2) without change, with the following
25 exceptions:

26 (1) A superfluous cross-reference to a governing definition has not been continued.

27 (2) A cross-reference to Section 4065 is added.

28 (3) The last sentence is revised to avoid use of the word “such.”

29 See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment
30 project”), 4125 (“condominium project”), 4135 (“declaration”), 4160 (“member”), 4175
31 (“planned development”), 4185 (“separate interest”), 4190 (“stock cooperative”).

32 **Note.** The last sentence of Section 1364(b)(2) has been restated, in proposed Section 4780(b),
33 to avoid use of the word “such.” Standard legislative drafting practice is to avoid the use of
34 “such” as a shorthand reference for a previously described thing.

35 **§ 4785 (REVISED). Temporary removal of occupant to perform treatment of wood-**
36 **destroying pests**

37 4785. (a) The association may cause the temporary, summary removal of any
38 occupant of a common interest development for such periods and at such times as
39 may be necessary for prompt, effective treatment of wood-destroying pests or
40 organisms.

41 (b) The association shall give notice of the need to temporarily vacate a separate
42 interest to the occupants and to the owners, not less than 15 days nor more than 30
43 days prior to the date of the temporary relocation. The notice shall state the reason

1 for the temporary relocation, the date and time of the beginning of treatment, the
2 anticipated date and time of termination of treatment, and that the occupants will
3 be responsible for their own accommodations during the temporary relocation.

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

5 (1) Personal delivery of a copy of the notice to the occupants, and if an occupant
6 is not the owner, individual delivery (Section 4040) of a copy of the notice to the
7 owner.

8 (2) Individual delivery (Section 4040) to the occupant at the address of the
9 separate interest, and if the occupant is not the owner, individual delivery (Section
10 4040) of a copy of the notice to the owner.

11 **Comment.** Section 4785 continues former Section 1364(d) without change, except that
12 subdivision (c) is revised to improve its clarity and to incorporate the “individual delivery” notice
13 procedure.

14 See also Sections 4080 (“association”), 4100 (“common interest development”), 4163
15 (“occupant”), 4185 (“separate interest”).

16  **Note.** Proposed Section 4785(c) is revised to improve its clarity and to incorporate the
17 “individual delivery” notice procedure.

18 **§ 4790 (REVISED). Exclusive use communication wiring**

19 4790. (a) Notwithstanding the provisions of the declaration, a member is entitled
20 to reasonable access to the common area for the purpose of maintaining the
21 internal and external communication wiring made part of the exclusive use
22 common area of the member’s separate interest pursuant to subdivision (c) of
23 Section 4145. The access shall be subject to the consent of the association, whose
24 approval shall not be unreasonably withheld, and which may include the
25 association’s approval of telephone wiring upon the exterior of the common area,
26 and other conditions as the association determines reasonable.

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

29 **Comment.** Subdivision (a) of Section 4790 continues former Section 1364(f) without change,
30 with the following exceptions:

- 31 (1) The reference to “telephone wiring” has been generalized to accommodate non-
32 telephonic communication wiring.
- 33 (2) A cross-reference is updated to reflect the new location of the referenced provision.
- 34 (3) The defined term “member” is used in place of “owner.” See Section 4160
35 (“member”).
- 36 (4) References to “common areas” are singularized.

37 Subdivision (b) is new.

38 See also Sections 4080 (“association”), 4095 (“common area”), 4135 (“declaration”), 4145
39 (“exclusive use common area”), 4185 (“separate interest”).

40  **Note.** Proposed Section 4790 would expand the scope of Section 1364(f) slightly, to include
41 non-telephonic communication wiring (e.g., Ethernet) and non-metallic lines (e.g., fiber-optic).

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CHAPTER 5. ASSOCIATION GOVERNANCE

Article 1. Association Existence and Powers

§ 4800 (UNCHANGED). Association

4800. A common interest development shall be managed by an association that may be incorporated or unincorporated. The association may be referred to as a community association.

Comment. Section 4800 continues former Section 1363(a) without change.
See also Sections 4080 (“association”), 4100 (“common interest development”).

§ 4805 (UNCHANGED). Association powers

4805. (a) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

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

Comment. Section 4805 continues former Section 1363(c) without change, with the following exceptions:

- (1) Subdivisions are added.
 - (2) The term “title” is replaced with “part.”
- See also Sections 4080 (“association”), 4150 (“governing documents”).

§ 4810 (UNCHANGED). Standing

4810. An association established to manage a common interest development has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the members, in matters pertaining to the following:

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

Comment. Section 4810 continues former Section 1368.3 without change, except that the defined term “member” is used in place of “owner.” See Section 4160 (“member”).

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

3 **§ 4815 (UNCHANGED). Comparative fault**

4 4815. (a) In an action maintained by an association pursuant to subdivision (b),
5 (c), or (d) of Section 4810, the amount of damages recovered by the association
6 shall be reduced by the amount of damages allocated to the association or its
7 managing agents in direct proportion to their percentage of fault based upon
8 principles of comparative fault. The comparative fault of the association or its
9 managing agents may be raised by way of defense, but shall not be the basis for a
10 cross-action or separate action against the association or its managing agents for
11 contribution or implied indemnity, where the only damage was sustained by the
12 association or its members. It is the intent of the Legislature in enacting this
13 subdivision to require that comparative fault be pleaded as an affirmative defense,
14 rather than a separate cause of action, where the only damage was sustained by the
15 association or its members.

16 (b) In an action involving damages described in subdivision (b), (c), or (d) of
17 Section 4810, the defendant or cross-defendant may allege and prove the
18 comparative fault of the association or its managing agents as a setoff to the
19 liability of the defendant or cross-defendant even if the association is not a party to
20 the litigation or is no longer a party whether by reason of settlement, dismissal, or
21 otherwise.

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

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

27 **Comment.** Section 4815 continues former Section 1368.4 without change.

28 See also Sections 4080 (“association”), 4155 (“managing agent”), 4160 (“member”), 4170
29 (“person”).

30 **§ 4820 (UNCHANGED). Joint neighborhood association**

31 4820. Whenever two or more associations have consolidated any of their
32 functions under a joint neighborhood association or similar organization, members
33 of each participating association shall be (1) entitled to attend all meetings of the
34 joint association other than executive sessions, (2) given reasonable opportunity
35 for participation in those meetings, and (3) entitled to the same access to the joint
36 association’s records as they are to the participating association’s records.

37 **Comment.** Section 4820 continues former Section 1363(i) without change.

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

Article 2. Board Meeting

§ 4900 (UNCHANGED). Short title

4900. This article shall be known and may be cited as the Common Interest Development Open Meeting Act.

Comment. Section 4900 continues former Section 1363.05(a) without change, except that “section” is changed to “article.”

§ 4920 (REVISED). Notice of board meeting

4920. (a) Unless the time and place of meeting is fixed by the governing documents, or unless the governing documents provide for a longer period of notice, members shall be given notice of the time and place of a board meeting, except for an emergency meeting held pursuant to Section 4923, at least four days prior to the meeting. Notice shall be given by general delivery (Section 4045). The notice shall contain the agenda for the meeting.

(b) If the association is organized as a nonprofit mutual benefit corporation, notice of a board meeting is also governed by Section 7211 of the Corporations Code.

Comment. Subdivision (a) of Section 4920 continues former Section 1363.05(f) without change, with the following exceptions:

- (1) References to the definition of “meeting” have been replaced with the defined term “board meeting.” See Section 4090 (“board meeting”).
- (2) References to “bylaws” have been replaced with references to “governing documents,” to broaden the scope of the provision.
- (3) Specific rules on delivery of notice are replaced with a functionally equivalent requirement that notice be given by “general delivery,” pursuant to Section 4045.
- (4) A reference has been added to Section 4923, which continues the emergency meeting provisions of former Section 1363.05(g).

Subdivision (b) is new.

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

Note. Proposed Section 4920 would make three minor changes to the rules governing notice of a board meeting: (1) The operation of existing Section 1363.05(f) is conditioned on whether the board meeting schedule is fixed in the association’s bylaws. Proposed Section 4920 would expand the scope of that condition, to include any governing document that fixes the board’s meeting schedule. That should better reflect the fact that documents other than the bylaws can be used to address such matters. (2) Existing Section 1363.05(f) specifies detailed procedures for delivery of notice. Those procedures are functionally equivalent to the requirements specified for general delivery of notices in proposed Section 4045. The specific details are replaced with a reference to the requirements of that section. (3) A cross-reference is added to alert readers that an incorporated association will also need to consider applicable provisions of the Corporations Code when giving notice of a board meeting.

§ 4923 (REVISED). Emergency board meeting

4923. An emergency board meeting may be called by the president of the association, or by any two directors other than the president, if there are circumstances that could not have been reasonably foreseen which require

1 immediate attention and possible action by the board, and which of necessity make
2 it impracticable to provide notice as required by Section 4920.

3 **Comment.** Section 4923 restates former Section 1363.05(g) without substantive change with
4 the following exceptions:

- 5 (1) “Board member” is replaced with the defined term “director.”
- 6 (2) The term “meeting of the board” is replaced with the defined term “board meeting.”
7 See Sections 4090 (“board meeting”), 4140 (“director”).

8 See also Section 4080 (“association”).

9  **Note.** Proposed Section 4923 would set the emergency meeting provision out as a separate
10 section, to make it easier to find. That change requires adjustment of the cross-reference to the
11 notice requirements of Section 1363.05 (in proposed Section 4920).

12 **§ 4925 (REVISED). Board meeting open**

13 4925. (a) Any member may attend board meetings, except when the board
14 adjourns to executive session.

15 (b) The board shall permit any member to speak at any meeting of the
16 association or the board, except for meetings of the board held in executive
17 session. A reasonable time limit for all members of the association to speak to the
18 board or before a meeting of the association shall be established by the board.

19 **Comment.** Subdivision (a) of Section 4925 continues part of the first sentence of former
20 Section 1363.05(b), without substantive change, with the following exceptions:

- 21 (1) The term “meetings of the board of directors of the association” has been replaced with
22 the defined term “board meetings.” See Section 4090 (“board meeting”).
- 23 (2) Subdivision (a) does not continue language specifying when a board may meet in
24 executive session. The substance of that language is continued in Section 4935.
- 25 (3) The term “member” is used in place of “member of the association.” See Section 4160
26 (“member”).

27 Subdivision (b) continues former Section 1363.05(h) without change, except that the terms
28 “board of directors” and “board of directors of the association” have been replaced with the
29 defined term “board.” See Section 4085 (“board”).

30 See also Section 4080 (“association”).

31  **Note.** Proposed Sections 4925(a) would continue only part of the substance of the first
32 sentence of existing Section 1363.05(b). The remaining substance, relating to closed sessions,
33 would be continued in proposed Section 4935.

34 **§ 4930 (REVISED). Limitation on meeting content**

35 4930. (a) Except as described in paragraphs (b) to (e), inclusive, the board may
36 not discuss or take action on any item at a nonemergency meeting unless the item
37 was placed on the agenda included in the notice that was distributed pursuant to
38 subdivision (a) of Section 4920. This subdivision does not prohibit a member or
39 occupant who is not a director from speaking on issues not on the agenda.

40 (b) Notwithstanding subdivision (a), a director, a managing agent or other agent
41 of the board, or a member of the staff of the board, may do any of the following:

- 42 (1) Briefly respond to statements made or questions posed by a person speaking
43 at a meeting as described in subdivision (b) of Section 4925.

1 (2) Ask a question for clarification, make a brief announcement, or make a brief
2 report on the person's own activities, whether in response to questions posed by a
3 member or based upon the person's own initiative.

4 (c) Notwithstanding subdivision (a), the board or a director, subject to rules or
5 procedures of the board, may do any of the following:

6 (1) Provide a reference to, or provide other resources for factual information to,
7 its managing agent or other agents or staff.

8 (2) Request its managing agent or other agents or staff to report back to the
9 board at a subsequent meeting concerning any matter, or take action to direct its
10 managing agent or other agents or staff to place a matter of business on a future
11 agenda.

12 (3) Direct its managing agent or other agents or staff to perform administrative
13 tasks that are necessary to carry out this section.

14 (d) Notwithstanding subdivision (a), the board may take action on any item of
15 business not appearing on the agenda distributed pursuant to subdivision (a) of
16 Section 4920 under any of the following conditions:

17 (1) Upon a determination made by a majority of the board present at the meeting
18 that an emergency situation exists. An emergency situation exists if there are
19 circumstances that could not have been reasonably foreseen by the board, that
20 require immediate attention and possible action by the board, and that, of
21 necessity, make it impracticable to provide notice.

22 (2) Upon a determination made by the board by a vote of two-thirds of the
23 directors present at the meeting, or, if less than two-thirds of total membership of
24 the board is present at the meeting, by a unanimous vote of the directors present,
25 that there is a need to take immediate action and that the need for action came to
26 the attention of the board after the agenda was distributed pursuant to subdivision
27 (a) of Section 4920.

28 (3) The item appeared on an agenda that was distributed pursuant to subdivision
29 (a) of Section 4920 for a prior meeting of the board that occurred not more than 30
30 calendar days before the date that action is taken on the item and, at the prior
31 meeting, action on the item was continued to the meeting at which the action is
32 taken.

33 (e) Before discussing any item pursuant to subdivision (d), the board shall
34 openly identify the item to the members in attendance at the meeting.

35 **Comment.** Section 4930 continues former Section 1363.05(i) without change, with the
36 following exceptions:

37 (1) References to "posting" of notice has been omitted throughout. Section 4920 does not
38 require that notice be "posted."

39 (2) The numbering of the paragraphs of the former provision has been simplified.

40 (3) Statutory references have been updated to reflect the new location of the referenced
41 provision.

42 (4) Subdivision (b)(2) has been revised to replace the phrase "his or her" with "the
43 person's."

- 1 (5) Subdivision (d)(2) has been revised to make clear that the “members” referenced in that
2 paragraph are members of the board.
3 (6) The term “board of directors” has been replaced throughout with the defined term
4 “board.” See Section 4085 (“board”).
5 (7) The defined term “director” is used in place of “board member” throughout. See
6 Section 4140 (“director”).
7 (8) The defined term “occupant” is used in place of “resident” in subdivision (a). See
8 Section 4163 (“occupant”).
9 (9) The term “member” is added to the second sentence of subdivision (a) to make clear
10 that the section applies to nonresident members. See Section 4160 (“member”).
11 See also Section 4155 (“managing agent”).

12  **Notes.** (1) Existing Section 1363.05 requires that meeting notice be “posted.” Proposed
13 Section 4920 would provide greater flexibility, replacing the “posting” requirement with a
14 requirement that a meeting notice be distributed pursuant to the rules governing a general notice.
15 Consistent with that minor change, proposed Section 4930(a) does not continue references to
16 “posting” of the meeting notice.

17 (2) Subdivision (d)(2) is revised to make clear that the “members” referenced in that paragraph
18 are directors. The Commission invites comment on whether that change would cause any
19 problems.

20 (3) The term “member” is added to the second sentence of subdivision (a) to make clear that
21 the section applies to nonresident members.

22 **§ 4935 (REVISED). Executive session**

23 4935. (a) The board may adjourn to executive session to consider litigation,
24 matters relating to the formation of contracts with third parties, member discipline,
25 personnel matters, or to meet with a member, upon the member’s request,
26 regarding the member’s payment of assessments, as specified in Section 5665.

27 (b) The board shall meet in executive session, if requested by a member who
28 may be subject to a fine, penalty, or other form of discipline, and the member shall
29 be entitled to attend the executive session.

30 (c) The board shall meet in executive session to discuss a payment plan pursuant
31 to Section 5665.

32 (d) The board shall meet in executive session to decide whether to foreclose on a
33 lien pursuant to subdivision (b) of Section 5705.

34 (e) Any matter discussed in executive session shall be generally noted in the
35 minutes of the immediately following meeting that is open to the entire
36 membership.

37 **Comment.** Subdivision (a) of Section 4935 continues part of the first sentence of former
38 Section 1363.05(b), without substantive change. The remainder of the former sentence is
39 continued without substantive change in Section 4925(a).

40 Subdivision (b) continues the second sentence of former Section 1363.05(b) without change,
41 except that the term “board of directors of the association” has been replaced with the defined
42 term “board.” See Section 4085 (“board”).

43 Subdivision (c) is new. It provides a cross-reference to a provision requiring that the board
44 meet in executive session when discussing a proposed payment plan.

45 Subdivision (d) is new. It provides a cross-reference to a provision requiring that the board
46 meet in executive session when deciding whether to foreclose on a lien for overdue assessments.

47 Subdivision (e) continues former Section 1363.05(c) without change.

1 See also Section 4160 (“member”).

2 **Note.** Subdivisions (c) and (d) of proposed Section 4935 are added to highlight two
3 circumstances in which an executive session is mandatory.

4 **§ 4950 (REVISED). Minutes**

5 4950. (a) The minutes, minutes proposed for adoption that are marked to
6 indicate draft status, or a summary of the minutes, of any board meeting, other
7 than an executive session, shall be available to members within 30 days of the
8 meeting. The minutes, proposed minutes, or summary minutes shall be distributed
9 to any member upon request and upon reimbursement of the association’s costs for
10 making that distribution.

11 (b) The annual policy statement, prepared pursuant to Section 5310, shall inform
12 the members of their right to obtain copies of board meeting minutes and of how
13 and where to do so.

14 **Comment.** Subdivision (a) of Section 4950 continues former Section 1363.05(d) without
15 change, with the following exceptions:

- 16 (1) The term “any meeting of the board of directors of the association” has been replaced
17 with the defined term “board meeting.”
18 (2) The term “member” is used in place of “member of the association.” See Sections 4090
19 (“board meeting”), 4160 (“member”).

20 Subdivision (b) is consistent with the substance of former Section 1363.05(e), but recasts it to
21 be consistent with the annual distribution of the policy statement pursuant to Section 5310.

22 See also Section 4080 (“association”).

23 **Note.** Subdivision (b) has been adjusted to conform to proposed Section 5310. See the Note
24 following that section.

25 **§ 4955 (REVISED). Civil action to enforce article**

26 4955. (a) A member of an association may bring a civil action for declaratory or
27 equitable relief for a violation of this article by the association, including, but not
28 limited to, injunctive relief, restitution, or a combination thereof, within one year
29 of the date the cause of action accrues.

30 (b) A member who prevails in a civil action to enforce the member’s rights
31 pursuant to this article shall be entitled to reasonable attorney’s fees and court
32 costs, and the court may impose a civil penalty of up to five hundred dollars
33 (\$500) for each violation, except that each identical violation shall be subject to
34 only one penalty if the violation affects each member equally. A prevailing
35 association shall not recover any costs, unless the court finds the action to be
36 frivolous, unreasonable, or without foundation.

37 **Comment.** Section 4955 restates former Section 1363.09(a)-(b) without change, with the
38 following exceptions:

- 39 (1) The phrase “an association of which he or she is a member” has been replaced with
40 “the association.”
41 (2) The second sentence of former Section 1363.09(a) has not been continued because it is
42 irrelevant to judicial enforcement of this article.
43 (3) The phrase “his or her” has been replaced in subdivision (b) with “the member’s.”

1 (4) The term “member” is used in place of “member of the association.” See Section 4160
2 (“member”).

3 See also Section 4080 (“association”).

4 **Note.** Proposed Section 4955 would generally continue the judicial enforcement provisions of
5 existing Section 1363.09 as they apply to the open meeting requirements, but it would not
6 continue provisions specific to member elections (the second sentence of Section 1363.09(a), and
7 all of subdivision (c)).

8 Article 3. Member Meeting

9 § 5000 (REVISED). Member meeting

10 5000. (a) Meetings of the membership of the association shall be conducted in
11 accordance with a recognized system of parliamentary procedure or any
12 parliamentary procedures the association may adopt.

13 (b) Notwithstanding any other provision of law, notice of meetings of the
14 members shall specify those matters the board intends to present for action by the
15 members, but, except as otherwise provided by law, any proper matter may be
16 presented at the meeting for action.

17 (c) If an association is organized as a nonprofit mutual benefit corporation, a
18 member meeting is also governed by Sections 7510 through 7527 of the
19 Corporations Code, inclusive.

20 **Comment.** Subdivision (a) of Section 5000 continues former Section 1363(d) without change.

21 Subdivision (b) continues former Section 1363(e) without change.

22 Subdivision (c) is new.

23 See also Sections 4080 (“association”), 4085 (“board”), 4160 (“member”).

24 **Note.** Proposed Section 5000(c) is added to alert readers that an incorporated association will
25 also need to consider applicable provisions of the Corporations Code when conducting a member
26 meeting.

27 Article 4. Member Election

28 § 5100 (REVISED). Application of article

29 5100. (a) Notwithstanding any other law or provision of the governing
30 documents, elections regarding assessments legally requiring a vote, election and
31 removal of directors, amendments to the governing documents, or the grant of
32 exclusive use of common area property pursuant to Section 4600 shall be held by
33 secret ballot in accordance with the procedures set forth in this article.

34 (b) This article also governs an election on any topic that is expressly identified
35 in the operating rules as being governed by this article.

36 (c) The provisions of this article apply to both incorporated and unincorporated
37 associations, notwithstanding any contrary provision of the governing documents.

38 (d) The procedures set forth in this article shall apply to votes cast directly by
39 the membership, but do not apply to votes cast by delegates or other elected
40 representatives.

1 (e) In the event of a conflict between this article and the provisions of the
2 Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section
3 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the
4 provisions of this article shall prevail.

5 **Comment.** Subdivision (a) of Section 5100 continues the first sentence of former Section
6 1363.03(b) without change, with the following exceptions:

- 7 (1) “Section” is replaced with “article.”
- 8 (2) A cross-reference is updated to reflect the new location of the referenced provision.
- 9 (3) “Association board of directors” is replaced with the defined term “board.” See Section
10 4085 (“board”).
- 11 (4) The defined term “director” is used in place of “board member.” See Section 4140
12 (“director”).

13 Subdivision (b) is new. It permits an association to adopt an operating rule applying the
14 requirements of this article to an election that would not otherwise be governed by this article.

15 Subdivisions (c)-(e) continue former Section 1363.03(l)-(n), respectively, without change,
16 except that “section” is replaced with “article” throughout.

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

19 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
20 documents”), 4165 (“operating rule”).

21  **Note.** Proposed Section 5100(b) is new. It would permit an association to adopt an operating
22 rule applying the requirements of this article to an election that would not otherwise be governed
23 by this article. This gives the association, acting through its operating rules, the discretion to
24 expand (but not narrow) the application of this article.

25 **§ 5105 (UNCHANGED). Election rules**

26 5105. (a) An association shall adopt rules, in accordance with the procedures
27 prescribed by Article 5 (commencing with Section 4350) of Chapter 2, that do all
28 of the following:

29 (1) Ensure that if any candidate or member advocating a point of view is
30 provided access to association media, newsletters, or Internet Web sites during a
31 campaign, for purposes that are reasonably related to that election, equal access
32 shall be provided to all candidates and members advocating a point of view,
33 including those not endorsed by the board, for purposes that are reasonably related
34 to the election. The association shall not edit or redact any content from these
35 communications, but may include a statement specifying that the candidate or
36 member, and not the association, is responsible for that content.

37 (2) Ensure access to the common area meeting space, if any exists, during a
38 campaign, at no cost, to all candidates, including those who are not incumbents,
39 and to all members advocating a point of view, including those not endorsed by
40 the board, for purposes reasonably related to the election.

41 (3) Specify the qualifications for candidates for the board and any other elected
42 position, and procedures for the nomination of candidates, consistent with the
43 governing documents. A nomination or election procedure shall not be deemed

1 reasonable if it disallows any member from nominating himself or herself for
2 election to the board.

3 (4) Specify the qualifications for voting, the voting power of each membership,
4 the authenticity, validity, and effect of proxies, and the voting period for elections,
5 including the times at which polls will open and close, consistent with the
6 governing documents.

7 (5) Specify a method of selecting one or three independent third parties as
8 inspector, or inspectors, of election utilizing one of the following methods:

9 (A) Appointment of the inspector or inspectors by the board.

10 (B) Election of the inspector or inspectors by the members of the association.

11 (C) Any other method for selecting the inspector or inspectors.

12 (6) Allow the inspector, or inspectors, to appoint and oversee additional persons
13 to verify signatures and to count and tabulate votes as the inspector or inspectors
14 deem appropriate, provided that the persons are independent third parties.

15 (b) Notwithstanding any other provision of law, the rules adopted pursuant to
16 this section may provide for the nomination of candidates from the floor of
17 membership meetings or nomination by any other manner. Those rules may permit
18 write-in candidates for ballots.

19 **Comment.** Subdivision (a) of Section 5105 continues former Section 1363.03(a) without
20 change, with the following exceptions:

21 (1) The term “board of directors” has been replaced with the defined term “board.” See
22 Section 4085 (“board”).

23 (2) The term “member” is used in place of “member of the association.” See Section 4160
24 (“member”).

25 Subdivision (b) continues former Section 1363.03(j) without change.

26 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
27 documents”).

28 **§ 5110 (REVISED). Election inspector**

29 5110. (a) The association shall select an independent third party or parties as an
30 inspector of election. The number of inspectors of election shall be one or three.

31 (b) For the purposes of this section, an independent third party includes, but is
32 not limited to, a volunteer poll worker with the county registrar of voters, a
33 licensee of the California Board of Accountancy, or a notary public. An
34 independent third party may be a member, but may not be a director or a candidate
35 for director or be related to a director or to a candidate for director. An
36 independent third party may not be a person, business entity, or subdivision of a
37 business entity who is currently employed or under contract to the association for
38 any compensable services unless expressly authorized by rules of the association
39 adopted pursuant to paragraph (5) of subdivision (a) of Section 5105.

40 (c) The inspector or inspectors of election shall do all of the following:

41 (1) Determine the number of memberships entitled to vote and the voting power
42 of each.

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

- 1 (3) Receive ballots.
- 2 (4) Hear and determine all challenges and questions in any way arising out of or
- 3 in connection with the right to vote.
- 4 (5) Count and tabulate all votes.
- 5 (6) Determine when the polls shall close, consistent with the governing
- 6 documents.
- 7 (7) Determine the tabulated results of the election.
- 8 (8) Perform any acts as may be proper to conduct the election with fairness to all
- 9 members in accordance with this article, the Corporations Code, and all applicable
- 10 rules of the association regarding the conduct of the election that are not in conflict
- 11 with this article.

12 (d) An inspector of election shall perform all duties impartially, in good faith, to

13 the best of the inspector of election’s ability, and as expeditiously as is practical. If

14 there are three inspectors of election, the decision or act of a majority shall be

15 effective in all respects as the decision or act of all. Any report made by the

16 inspector or inspectors of election is prima facie evidence of the facts stated in the

17 report.

18 **Comment.** Section 5110 continues former Section 1363.03(c) without change, with the

19 following exceptions:

- 20 (1) “Section” is replaced with “article” throughout.
- 21 (2) A cross-reference is updated to reflect the new location of the referenced provision.
- 22 (3) The phrase “his or her” has been replaced in subdivision (d).
- 23 (4) The second sentence of subdivision (b) is reworded to clarify its meaning.
- 24 (5) The term “board of directors” has been replaced with the defined term “board.” See
- 25 Section 4085 (“board”).
- 26 (6) The defined term “director” is used in place of “board member.” See Section 4140
- 27 (“director”).
- 28 (7) The term “member” is used in place of “member of the association.” See Section 4160
- 29 (“member”).

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

31 **Note.** The second sentence of proposed Section 5110(b) is revised as follows:

32 An independent third party may be a member of the association, but may not be a member of

33 the board of directors or a candidate for the board of directors or be related to a member of the

34 board of directors or to a candidate for the board of directors.

35 The Commission invites comment on whether that change would cause any problems.

36 **§ 5115 (REVISED). Voting procedure**

37 5115. (a) Ballots and two preaddressed envelopes with instructions on how to

38 return ballots shall be mailed by first-class mail or delivered by the association to

39 every member not less than 30 days prior to the deadline for voting. In order to

40 preserve confidentiality, a voter may not be identified by name, address, or lot,

41 parcel, or unit number on the ballot. The association shall use as a model those

42 procedures used by California counties for ensuring confidentiality of vote by mail

43 ballots, including all of the following:

1 (1) The ballot itself is not signed by the voter, but is inserted into an envelope
2 that is sealed. This envelope is inserted into a second envelope that is sealed. In
3 the upper left hand corner of the second envelope, the voter shall sign the voter's
4 name, indicate the voter's name, and indicate the address or separate interest
5 identifier that entitles the voter to vote.

6 (2) The second envelope is addressed to the inspector or inspectors of election,
7 who will be tallying the votes. The envelope may be mailed or delivered by hand
8 to a location specified by the inspector or inspectors of election. The member may
9 request a receipt for delivery.

10 (b) A quorum shall be required only if so stated in the governing documents or
11 other provisions of law. If a quorum is required by the governing documents, each
12 ballot received by the inspector of elections shall be treated as a member present at
13 a meeting for purposes of establishing a quorum.

14 (c) An association shall allow for cumulative voting using the secret ballot
15 procedures provided in this section, if cumulative voting is provided for in the
16 governing documents.

17 (d) Except for the meeting to count the votes required in subdivision (a) of
18 Section 5120, an election may be conducted entirely by mail unless otherwise
19 specified in the governing documents.

20 (e) In an election to approve an amendment of the governing documents, the text
21 of the proposed amendment shall be delivered to the members with the ballot.

22 **Comment.** Subdivision (a) of Section 5115 continues former Section 1363.03(e) without
23 change, except that the phrase "his or her" has been replaced throughout.

24 Subdivision (b) continues the second and third sentences of former Section 1363.03(b) without
25 change, except that the phrase "of the association" is not continued.

26 Subdivision (c) continues the fourth sentence of former Section 1363.03(b) without change.

27 Subdivision (d) continues former Section 1363.03(k) without change, except that a cross-
28 reference is updated to reflect the new location of the referenced provision.

29 Subdivision (e) is new. It generalizes part of former Section 1355(b)(1), which required
30 distribution of the text of a proposed amendment when amending the declaration.

31 See also Sections 4080 ("association"), 4150 ("governing documents"), 4160 ("member"),
32 4185 ("separate interest").

33 **Note.** Proposed Section 5115(e) would add a requirement that, in an election to amend the
34 governing documents, the text of the proposed amendment be provided to the members along
35 with the ballot.

36 **§ 5120 (REVISED). Counting ballots**

37 5120. (a) All votes shall be counted and tabulated by the inspector of election, or
38 the inspector of election's designee, in public at a properly noticed open meeting
39 of the board or members. Any candidate or other member of the association may
40 witness the counting and tabulation of the votes. No person, including a member
41 of the association or an employee of the management company, shall open or
42 otherwise review any ballot prior to the time and place at which the ballots are
43 counted and tabulated. The inspector of election, or the inspector of election's
44 designee, may verify the member's information and signature on the outer

1 envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is
2 received by the inspector of elections, it shall be irrevocable.

3 (b) The tabulated results of the election shall be promptly reported to the board
4 and shall be recorded in the minutes of the next meeting of the board and shall be
5 available for review by members of the association. Within 15 days of the
6 election, the board shall give general notice (Section 4045) of the tabulated results
7 of the election.

8 **Comment.** Section 5120 restates former Section 1363.03(f)-(g) without change, with the
9 following exceptions:

- 10 (1) The phrase “his or her designee” has been replaced with “the inspector of election’s
11 designee” throughout.
12 (2) The last sentence replaces ambiguous language requiring that election results be
13 “publicized” with a reference to the requirements for giving general notice (Section
14 4045).
15 (3) The terms “board of directors” and “board of directors of the association” have been
16 replaced with the defined term “board.” See Section 4085 (“board”).

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

18 **Note.** The last sentence of proposed Section 5120(b) would replace ambiguous language
19 requiring that election results be “publicized” with a more precise requirement that general notice
20 be given (Section 4045).

21 **§ 5125 (REVISED). Ballot custody and inspection**

22 5125. (a) The sealed ballots at all times shall be in the custody of the inspector
23 or inspectors of election or at a location designated by the inspector or inspectors
24 until after the tabulation of the vote, and until the time allowed by Section 5145
25 for challenging the election has expired, at which time custody shall be transferred
26 to the association. If there is a recount or other challenge to the election process,
27 the inspector or inspectors of election shall, upon written request, make the ballots
28 available for inspection and review by an association member or the member’s
29 authorized representative. Any recount shall be conducted in a manner that
30 preserves the confidentiality of the vote.

31 (b) After the transfer of the ballots to the association, the ballots shall be stored
32 by the association in a secure place for no less than one year after the date of the
33 election.

34 **Comment.** Section 5125 restates former Section 1363.03(h)-(i) without change, with the
35 following exceptions:

- 36 (1) The reference to the time for filing an action under Corporations Code Section 7527 is
37 replaced with a reference to the time for filing an action under Section 5145.
38 (2) The phrase “his or her” has been replaced with “the members” in subdivision (a).

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

40 **Note.** Existing Section 1363.03(h) requires that the election inspector maintain custody of
41 ballots “until the time allowed by Section 7527 of the Corporations Code for challenging the
42 election has expired....” That time is nine months after the election. By contrast, Section 1363.09
43 permits a CID election to be contested within one year after the election. If the purpose of Section
44 1363.03(h) is to require that the election inspector maintain custody of the ballots during the time

1 in which the election may be contested, then it is an error to reference the nine-month limitations
2 period in the Corporations Code. Proposed Section 5125 would correct that error, by referencing
3 the 12-month period used in the Davis-Stirling Act.

4 **§ 5130 (UNCHANGED). Proxies**

5 5130. (a) For purposes of this article, the following definitions shall apply:

6 (1) “Proxy” means a written authorization signed by a member or the authorized
7 representative of the member that gives another member or members the power to
8 vote on behalf of that member.

9 (2) “Signed” means the placing of the member’s name on the proxy (whether by
10 manual signature, typewriting, telegraphic transmission, or otherwise) by the
11 member or authorized representative of the member.

12 (b) Proxies shall not be construed or used in lieu of a ballot. An association may
13 use proxies if permitted or required by the bylaws of the association and if those
14 proxies meet the requirements of this article, other laws, and the governing
15 documents, but the association shall not be required to prepare or distribute
16 proxies pursuant to this article.

17 (c) Any instruction given in a proxy issued for an election that directs the
18 manner in which the proxyholder is to cast the vote shall be set forth on a separate
19 page of the proxy that can be detached and given to the proxyholder to retain. The
20 proxyholder shall cast the member’s vote by secret ballot. The proxy may be
21 revoked by the member prior to the receipt of the ballot by the inspector of
22 elections as described in Section 7613 of the Corporations Code.

23 **Comment.** Section 5130 continues former Section 1363.03(d) without change, with the
24 following exceptions:

25 (1) “Section” has been replaced with “article” throughout.

26 (2) A reference to the “association’s” governing documents has not been continued.

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

28 **§ 5135 (REVISED). Campaign-related information**

29 5135. (a) Association funds shall not be used for campaign purposes in
30 connection with any association board election. Funds of the association shall not
31 be used for campaign purposes in connection with any other association election
32 except to the extent necessary to comply with duties of the association imposed by
33 law.

34 (b) For the purposes of this section, “campaign purposes” includes, but is not
35 limited to, the following:

36 (1) Expressly advocating the election or defeat of any candidate that is on the
37 association election ballot.

38 (2) Including the photograph or prominently featuring the name of any candidate
39 on a communication from the association or its board, excepting the ballot, ballot
40 materials, or a communication that is legally required, within 30 days of an
41 election. This is not a campaign purpose if the communication is one for which

1 subdivision (a) of Section 5105 requires that equal access be provided to another
2 candidate or advocate.

3 **Comment.** Section 5135 continues former Section 1363.04 without change, with the following
4 exceptions:

- 5 (1) A cross-reference in former Section 1363.04(b)(2) is updated to reflect the new
6 location of the referenced provision.
- 7 (2) An exception is added to the definition of “campaign purposes” for the inclusion of a
8 candidate’s name or photograph in a communication that is legally required. For
9 example, preparation of meeting minutes would not be barred merely because the
10 minutes include the name of a candidate in a pending election. See Section 4950 (board
11 meeting minutes).

12 See also Sections 4080 (“association”), 4085 (“board”).

13  **Note.** Existing Section 1363.04 restricts the use of association funds for “campaign purposes”
14 in connection with a pending board election. “Campaign purposes” is defined to include, with
15 exceptions not relevant here, a communication that features the name or photograph of a
16 candidate. Read literally, that could preclude numerous communications that are required in
17 ordinary administration (e.g., delivery of a monthly assessment bill to a candidate). Fixing that
18 problem would require more redrafting than is consistent with the conservative approach being
19 taken in this revision of the proposed law. However, the problem can be partially fixed by
20 preserving a substantive improvement that was included in the original version of the proposed
21 law. Specifically, language has been added to proposed Section 5135(b)(2) to make clear that
22 legally required communications are not prohibited campaign communications. For example, an
23 association would not be barred from distributing board meeting minutes, merely because a
24 candidate’s name is in the minutes.

25 **§ 5140 (NEW). Voting rights**

26 5140. Unless the governing documents provide otherwise:

27 (a) A member who is entitled to vote may cast one vote for each separate
28 interest that the member owns.

29 (b) If a separate interest is owned by more than one person, each owner shall be
30 a member of the association, but their joint ownership has no effect on the number
31 of votes cast for that separate interest.

32 **Comment.** Section 5140 is drawn from 10 Cal. Code Regs. § 2792.18(a). It states default rules
33 that can be overridden by the governing documents. See also Corp. Code § 7312(d).

34 Subdivision (b) makes clear that joint owners of a separate interest share the voting rights that
35 are appurtenant to ownership of a separate interest. The law does not address how the joint
36 owners will decide how to cast their shared vote. That issue could be addressed in the
37 association’s election rules, pursuant to Section 5105.

38 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
39 4170 (“person”), 4185 (“separate interest”).

40  **Note.** Proposed Section 5140 is new. It is intended to provide useful guidance on two
41 common issues involving voting power. Because the rules are expressly subordinated to the
42 governing documents, they would serve as default rules only. An association would remain free
43 to adopt a different approach, if it chooses to do so.

1 **§ 5145 (UNCHANGED). Judicial enforcement**

2 5145. (a) A member of an association may bring a civil action for declaratory or
3 equitable relief for a violation of this article by the association, including, but not
4 limited to, injunctive relief, restitution, or a combination thereof, within one year
5 of the date the cause of action accrues. Upon a finding that the election procedures
6 of this article, or the adoption of and adherence to rules provided by Article 5
7 (commencing with Section 4350) of Chapter 2, were not followed, a court may
8 void any results of the election.

9 (b) A member who prevails in a civil action to enforce the member's rights
10 pursuant to this article shall be entitled to reasonable attorney's fees and court
11 costs, and the court may impose a civil penalty of up to five hundred dollars
12 (\$500) for each violation, except that each identical violation shall be subject to
13 only one penalty if the violation affects each member of the association equally. A
14 prevailing association shall not recover any costs, unless the court finds the action
15 to be frivolous, unreasonable, or without foundation.

16 (c) A cause of action under Sections 5100 to 5130, inclusive, with respect to
17 access to association resources by a candidate or member advocating a point of
18 view, the receipt of a ballot by a member, or the counting, tabulation, or reporting
19 of, or access to, ballots for inspection and review after tabulation may be brought
20 in small claims court if the amount of the demand does not exceed the jurisdiction
21 of that court.

22 **Comment.** Subdivision (a) of Section 5145 continues former Section 1363.09(a) without
23 change, with the following exceptions:

- 24 (1) A cross-reference is updated to reflect the new location of the referenced provision.
25 (2) The phrase "an association of which he or she is a member" has been replaced with
26 "the association."

27 Subdivision (b) continues former Section 1363.09(b) without change, except that the phrase
28 "his or her" has been replaced with "the member's."

29 Subdivision (c) continues former Section 1363.09(c) without change, except that a cross-
30 reference is updated to reflect the new location of the referenced provision.

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

32 **Article 5. Record Inspection**

33 **§ 5200 (REVISED). Definitions**

34 5200. For the purposes of this article, the following definitions shall apply:

35 (a) "Association records" means all of the following:

36 (1) Any financial document required to be provided to a member in Article 7
37 (commencing with Section 5300) or in Sections 5565 and 5810.

38 (2) Any financial document or statement required to be provided in Article 2
39 (commencing with Section 4525) of Chapter 3.

40 (3) Interim financial statements, periodic or as compiled, containing any of the
41 following:

42 (A) Balance sheet.

1 (B) Income and expense statement.

2 (C) Budget comparison.

3 (D) General ledger. A “general ledger” is a report that shows all transactions that
4 occurred in an association account over a specified period of time.

5 The records described in this paragraph shall be prepared in accordance with an
6 accrual or modified accrual basis of accounting.

7 (4) Executed contracts not otherwise privileged under law.

8 (5) Written board approval of vendor or contractor proposals or invoices.

9 (6) State and federal tax returns.

10 (7) Reserve account balances and records of payments made from reserve
11 accounts.

12 (8) Agendas and minutes of meetings of the members, the board and any
13 committees appointed by the board pursuant to Section 7212 of the Corporations
14 Code; excluding, however, agendas, minutes, and other information from
15 executive sessions of the board as described in Article 2 (commencing with
16 Section 4900).

17 (9) Membership lists, including name, property address, and mailing address.

18 (10) Check registers.

19 (11) The governing documents.

20 (12) An “enhanced association record” as defined in subdivision (b).

21 (b) “Enhanced association records” means invoices, receipts and canceled
22 checks for payments made by the association, purchase orders approved by the
23 association, credit card statements for credit cards issued in the name of the
24 association, statements for services rendered, and reimbursement requests
25 submitted to the association.

26 **Comment.** Subdivision (a) of Section 5200 continues former Section 1365.2(a)(1) without
27 change, with the following exceptions:

28 (1) “Section” is replaced with “article” in the introductory clause.

29 (2) Cross-references are updated to reflect the new location of the referenced provisions.

30 (3) Paragraphs (a)(11) and (a)(12) are new.

31 (4) Substantive limitations on access to the membership are not appropriate for inclusion in
32 a definition and have been relocated, without substantive change, to Section 5225.

33 (5) The term “board of directors” has been replaced throughout with the defined term
34 “board.” See Section 4085 (“board”).

35 Subdivision (b) continues former Section 1365.2(a)(2) without change, except that a
36 substantive rule providing that a person submitting a reimbursement request is “solely responsible
37 for removing all personal identification information from the request” is not appropriate for
38 inclusion in a definition and has been relocated, without substantive change, to Section 5205(g).

39 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
40 4177 (“reserve accounts”).

41 **Note.** Proposed Section 5200 would continue Section 1365.2(a), with two substantive
42 changes and a number of nonsubstantive changes. The nonsubstantive changes are described in
43 the Comment above. The substantive changes would be as follows:

44 (1) Proposed Section 5200(a)(11) would expand the definition of “association records” to include
45 all governing documents of the association.

(2) Proposed Section 5200(a)(12) would make clear that the general term “association records” includes the set of records defined as “enhanced association records” in proposed Section 5200(b). This change is necessary to avoid the implication that provisions that reference “association records” without also referencing “enhanced association records” do not apply to enhanced association records. See, e.g., Civ. Code § 1365.2(b)(2), (c)(1)-(4), (e)-(f), (i). That problematic implication is reinforced by Civil Code Section 1365.2(b)(1), which expressly references *both* “association records” and “enhanced association records.”

The Commission also invites input on whether proposed Section 5300(a)(3)(D) should be revised to include a reference to the association’s “journal.”

§ 5205 (REVISED). Inspection and copying of association records

5205. (a) The association shall make available association records for the time periods and within the timeframes provided in Section 5210 for inspection and copying by a member of the association, or the member’s designated representative. The association may bill the requesting member for the direct and actual cost of copying requested documents. The association shall inform the member of the amount of the copying costs before copying the requested documents.

(b) A member of the association may designate another person to inspect and copy the specified association records on the member’s behalf. The member shall make this designation in writing.

(c) The association shall make the specified association records available for inspection and copying in the association’s business office within the common interest development.

(d) If the association does not have a business office within the development, the association shall make the specified association records available for inspection and copying at a place agreed to by the requesting member and the association.

(e) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to subdivision (d) or if the requesting member submits a written request directly to the association for copies of specifically identified records, the association may satisfy the requirement to make the association records available for inspection and copying by delivering copies of the specifically identified records to the member by individual delivery (Section 4040) within the timeframes set forth in subdivision (b) of Section 5210.

(f) The association may bill the requesting member for the direct and actual cost of copying and mailing requested documents. The association shall inform the member of the amount of the copying and mailing costs, and the member shall agree to pay those costs, before copying and sending the requested documents.

(g) In addition to the direct and actual costs of copying and mailing, the association may bill the requesting member an amount not in excess of ten dollars (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written request, for the time actually and reasonably involved in redacting the enhanced association record. If the enhanced association record includes a reimbursement request, the person submitting the reimbursement request shall be solely

1 responsible for removing all personal identification information from the request.
2 The association shall inform the member of the estimated costs, and the member
3 shall agree to pay those costs, before retrieving the requested documents.

4 (h) Requesting parties shall have the option of receiving specifically identified
5 records by electronic transmission or machine-readable storage media as long as
6 those records can be transmitted in a redacted format that does not allow the
7 records to be altered. The cost of duplication shall be limited to the direct cost of
8 producing the copy of a record in that electronic format. The association may
9 deliver specifically identified records by electronic transmission or machine-
10 readable storage media as long as those records can be transmitted in a redacted
11 format that prevents the records from being altered.

12 **Comment.** Subdivisions (a) through (g) of Section 5205, inclusive, continue former Section
13 1365.2(b)-(c) without change, with the following exceptions:

- 14 (1) Cross-references are updated to reflect the new location of the referenced provisions.
- 15 (2) A superfluous reference to “enhanced association records” is not continued in
16 subdivision (a). See Section 5200(a)(12) (“association records” includes “enhanced
17 association records”).
- 18 (3) Subdivision (d) is rephrased to avoid ending the sentence with a preposition.
- 19 (4) Subdivision (e) is revised to provide for “individual delivery” of records, rather than
20 mailing. See Section 4040.
- 21 (5) The second sentence of subdivision (g) is added to restate the last clause of former
22 Section 1365.2(a)(2) without substantive change.

23 Subdivision (h) continues former Section 1365.2(h) without change.

24 See also Sections 4080 (“association”), 4100 (“common interest development”), 4160
25 (“member”).

26 **Note.** (1) The second sentence of proposed Section 5205(g) is drawn from existing Section
27 1365.2(a)(2). It states a substantive rule regarding redaction responsibility, and is better located in
28 proposed Section 5206, with other redaction rules, rather than being buried in a definition as it is
29 in existing law.

30 (2) Existing Section 1365.2(c)(5) permits the association to bill for redaction of “enhanced
31 association records as provided in paragraph (2) of subdivision (a)...” The last clause appears to
32 be a superfluous reference to the definition of the term “enhanced association records.” It is not
33 necessary to reference a definition that is generally applicable. The reference is not continued.

34 **§ 5210 (REVISED). Time periods**

35 5210. (a) Association records are subject to member inspection for the following
36 time periods:

37 (1) For the current fiscal year and for each of the previous two fiscal years.

38 (2) Notwithstanding paragraph (1), minutes of member and board meetings are
39 subject to inspection permanently. If a committee has decision making authority,
40 minutes of the meetings of that committee shall be made available commencing
41 January 1, 2007, and shall thereafter be permanently subject to inspection.

42 (b) When a member properly requests access to association records, access to
43 the requested records shall be granted within the following time periods:

44 (1) Association records prepared during the current fiscal year, within 10
45 business days following the association’s receipt of the request.

1 (2) Association records prepared during the previous two fiscal years, within 30
2 calendar days following the association’s receipt of the request.

3 (3) Any record or statement available pursuant to Article 2 (commencing with
4 Section 4525) of Chapter 3, Article 7 (commencing with Section 5300), Section
5 5565, or Section 5810, within the timeframe specified therein.

6 (4) Minutes of member and board meetings, within the timeframe specified in
7 subdivision (a) of Section 4950.

8 (5) Minutes of meetings of committees with decision making authority for
9 meetings commencing on or after January 1, 2007, within 15 calendar days
10 following approval.

11 (6) Membership list, within the timeframe specified in Section 8330 of the
12 Corporations Code.

13 (c) There shall be no liability pursuant to this article for an association that fails
14 to retain records for the periods specified in subdivision (a) that were created prior
15 to January 1, 2006.

16 **Comment.** Subdivisions (a) and (b) of Section 5210 restate former Section 1365.2(i)-(j)
17 without substantive change.

18 Subdivision (c) continues former Section 1365.2(k) without change, with the following
19 exceptions:

20 (1) “Section” is changed to “article.”

21 (2) A cross-reference is updated to reflect the new location of the referenced provision.

22 See also Sections 4080 (“association”), 4090 (“board meeting”), 4160 (“member”).

23 **Note.** Proposed Section 5210 would restate Section 1365.2(i)-(j) without making any change
24 in its substance. The restatement is necessary because existing law is potentially confusing. It
25 does not draw a clear enough distinction between the time during which records are subject to
26 inspection, and the time, after receipt of a proper inspection request, when access to the requested
27 records must be granted. The existing provision uses similar wording in framing both issues
28 (*compare* subdivision (i) (“The time periods for which specified records shall be provided is as
29 follows:”), *with* subdivision (j) (“The timeframes in which access to specified records shall be
30 provided to a requesting member are as follows:”).

31 Proposed Section 5210 would draw the distinction more clearly.

32 **§ 5215 (UNCHANGED). Withholding and redaction**

33 5215. (a) Except as provided in subdivision (b), the association may withhold or
34 redact information from the association records if any of the following are true:

35 (1) The release of the information is reasonably likely to lead to identity theft.
36 For the purposes of this section, “identity theft” means the unauthorized use of
37 another person’s personal identifying information to obtain credit, goods, services,
38 money, or property. Examples of information that may be withheld or redacted
39 pursuant to this paragraph include bank account numbers of members or vendors,
40 social security or tax identification numbers, and check, stock, and credit card
41 numbers.

42 (2) The release of the information is reasonably likely to lead to fraud in
43 connection with the association.

1 (3) The information is privileged under law. Examples include documents
2 subject to attorney-client privilege or relating to litigation in which the association
3 is or may become involved, and confidential settlement agreements.

4 (4) The release of the information is reasonably likely to compromise the
5 privacy of an individual member of the association.

6 (5) The information contains any of the following:

7 (A) Records of a-la-carte goods or services provided to individual members of
8 the association for which the association received monetary consideration other
9 than assessments.

10 (B) Records of disciplinary actions, collection activities, or payment plans of
11 members other than the member requesting the records.

12 (C) Any person's personal identification information, including, without
13 limitation, social security number, tax identification number, driver's license
14 number, credit card account numbers, bank account number, and bank routing
15 number.

16 (D) Agendas, minutes, and other information from executive sessions of the
17 board as described in Article 2 (commencing with Section 4900), except for
18 executed contracts not otherwise privileged. Privileged contracts shall not include
19 contracts for maintenance, management, or legal services.

20 (E) Personnel records other than the payroll records required to be provided
21 under subdivision (b).

22 (F) Interior architectural plans, including security features, for individual homes.

23 (b) Except as provided by the attorney-client privilege, the association may not
24 withhold or redact information concerning the compensation paid to employees,
25 vendors, or contractors. Compensation information for individual employees shall
26 be set forth by job classification or title, not by the employee's name, social
27 security number, or other personal information.

28 (c) No association, officer, director, employee, agent, or volunteer of an
29 association shall be liable for damages to a member of the association or any third
30 party as the result of identity theft or other breach of privacy because of the failure
31 to withhold or redact that member's information under this section unless the
32 failure to withhold or redact the information was intentional, willful, or negligent.

33 (d) If requested by the requesting member, an association that denies or redacts
34 records shall provide a written explanation specifying the legal basis for
35 withholding or redacting the requested records.

36 **Comment.** Section 5215 continues former Section 1365.2(d) without change, with the
37 following exceptions:

38 (1) A cross-reference is updated to reflect the new location of the referenced provision.

39 (2) The term "board of directors" has been replaced with the defined term "board." See
40 Section 4085 ("board").

41 See also Sections 4080 ("association"), 4140 ("director"), 4160 ("member").

1 **§ 5220 (UNCHANGED). Membership list opt out**

2 5220. A member of the association may opt out of the sharing of that member's
3 name, property address, and mailing address by notifying the association in
4 writing that the member prefers to be contacted via the alternative process
5 described in subdivision (c) of Section 8330 of the Corporations Code. This opt-
6 out shall remain in effect until changed by the member.

7 **Comment.** Section 5220 continues former Section 1365.2(a)(1)(I)(iii) without change, except
8 that "his or her" has been replaced with references to the "member" throughout.

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

10 **§ 5225 (UNCHANGED). Membership list request**

11 5225. A member requesting the membership list shall state the purpose for
12 which the list is requested which purpose shall be reasonably related to the
13 requester's interest as a member. If the association reasonably believes that the
14 information in the list will be used for another purpose, it may deny the member
15 access to the list. If the request is denied, in any subsequent action brought by the
16 member under Section 5235, the association shall have the burden to prove that
17 the member would have allowed use of the information for purposes unrelated to
18 the member's interest as a member.

19 **Comment.** Section 5225 continues former Section 1365.2(a)(1)(I)(ii) without change, with the
20 following exceptions:

- 21 (1) "The member requesting the list" has been replaced with "a member requesting the
22 membership list," to improve clarity.
23 (2) A cross-reference is updated to reflect the new location of the referenced provision.
24 (3) "His or her" is replaced with "the member's."

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

26 **§ 5230 (UNCHANGED). Restriction on use of records**

27 5230. (a) The association records, and any information from them, may not be
28 sold, used for a commercial purpose, or used for any other purpose not reasonably
29 related to a member's interest as a member. An association may bring an action
30 against any person who violates this article for injunctive relief and for actual
31 damages to the association caused by the violation.

32 (b) This article may not be construed to limit the right of an association to
33 damages for misuse of information obtained from the association records pursuant
34 to this article or to limit the right of an association to injunctive relief to stop the
35 misuse of this information.

36 (c) An association shall be entitled to recover reasonable costs and expenses,
37 including reasonable attorney's fees, in a successful action to enforce its rights
38 under this article.

39 **Comment.** Section 5230 continues former Section 1365.2(e) without change, with the
40 following exceptions:

- 41 (1) "The member requesting the list" has been replaced with "A member requesting the
42 membership list," to improve clarity.

- 1 (2) A cross-reference is updated to reflect the new location of the referenced provision.
- 2 (3) “His or her” is replaced with “the member’s.”
- 3 (4) “This section” has been replaced with “this article” throughout.
- 4 See also Sections 4080 (“association”), 4160 (“member”), 4170 (“person”).

5 **§ 5235 (UNCHANGED). Enforcement**

6 5235. (a) A member may bring an action to enforce that member’s right to
7 inspect and copy the association records. If a court finds that the association
8 unreasonably withheld access to the association records, the court shall award the
9 member reasonable costs and expenses, including reasonable attorney’s fees, and
10 may assess a civil penalty of up to five hundred dollars (\$500) for the denial of
11 each separate written request.

12 (b) A cause of action under this section may be brought in small claims court if
13 the amount of the demand does not exceed the jurisdiction of that court.

14 (c) A prevailing association may recover any costs if the court finds the action to
15 be frivolous, unreasonable, or without foundation.

16 **Comment.** Section 5235 continues former Section 1365.2(f) without change, with the
17 following exceptions:

- 18 (1) The provision has been divided into subdivisions for ease of reference.
- 19 (2) The term “member of an association” has been replaced with the defined term
20 “member.” See Section 4160 (“member”).

21 See also Section 4080 (“association”).

22 **§ 5240 (REVISED). Application of article**

23 5240. (a) As applied to an association and its members, the provisions of this
24 article are intended to supersede the provisions of Sections 8330 and 8333 of the
25 Corporations Code to the extent those sections are inconsistent.

26 (b) Except as provided in subdivision (a), members of the association shall have
27 access to association records, including accounting books and records and
28 membership lists, in accordance with Article 3 (commencing with Section 8330)
29 of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code.

30 (c) The provisions of this article apply to any community service organization or
31 similar entity that is related to the association, and this article shall operate to give
32 a member of the community service organization or similar entity a right to
33 inspect and copy the records of that organization or entity equivalent to that
34 granted to association members by this article.

35 (d) The provisions of this article shall not apply to any common interest
36 development in which separate interests are being offered for sale by a subdivider
37 under the authority of a public report issued by the Department of Real Estate so
38 long as the subdivider or all subdividers offering those separate interests for sale,
39 or any employees of those subdividers or any other person who receives direct or
40 indirect compensation from any of those subdividers, comprise a majority of the
41 directors. Notwithstanding the foregoing, this article shall apply to that common
42 interest development no later than 10 years after the close of escrow for the first

1 sale of a separate interest to a member of the general public pursuant to the public
2 report issued for the first phase of the development.

3 **Comment.** Subdivision (a) of Section 5240 continues former Section 1365.2(l) without
4 change, except that “section” has been changed to “article.”

5 Subdivision (b) continues the first sentence of former Section 1363(f) without change, except
6 that the introductory clause has been added to clarify the relationship between this provision and
7 subdivision (a). The second sentence of former Section 1363(f) is not continued. That provision is
8 unnecessary because its substance is subsumed within Section 5200(a)(11), which guarantees
9 access to all governing documents, and not just the operating rules.

10 Subdivision (c) continues former Section 1365.2(g) without change, with the following
11 exceptions:

- 12 (1) “Section” has been replaced with “article” throughout.
- 13 (2) A superfluous reference to the definition of “community service organization” has not
14 been continued. See Section 4110 (“community service organization”).

15 Subdivision (d) continues former Section 1365.2(m) without change, with the following
16 exceptions:

- 17 (1) “Section” has been replaced with “article” throughout.
- 18 (2) The term “board of directors of the association” has been replaced with the defined
19 term “board.” See Section 4085 (“board”).
- 20 (3) The defined term “director” is used in place of “board member.” See Section 4140
21 (“director”).

22 See also Sections 4080 (“association”), 4100 (“common interest development”), 4110
23 (“community service organization or similar entity”), 4160 (“member”), 4185 (“separate
24 interest”).

25 **Note.** (1) The first sentence of Section 1363(f) provides that association members have the
26 same access to records that is granted to members of a nonprofit mutual benefit corporation under
27 the Corporations Code. Section 1365.2(l) expressly subordinates the Corporations Code record
28 provisions to the rules provided in that section, to the extent of any inconsistency. Those
29 provisions would be continued in proposed Section 5240(a) and (b). An introductory clause
30 would be added in subdivision (b), to provide better guidance on the intended relationship
31 between the two provisions.

32 (2) The second sentence of Section 1363(f) provides for member access to an association’s
33 operating rules. That rule is subsumed in proposed Section 5200(a)(11), which would provide for
34 access to *all* of an association’s governing documents, including the operating rules. See
35 proposed Section 4150 (“governing documents”).

36 Article 6. Record Keeping

37 § 5250 (NEW). Duty to maintain records

38 5250. (a) An association shall maintain at least one copy of the following
39 association records, for the periods specified in Section 5255:

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

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

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

46 (4) A report prepared pursuant to Article 7 (commencing with Section 5300).

- 1 (5) Books and records of account.
- 2 (6) A tax return or other tax-related record.
- 3 (7) A deed or other record that relates to title of real property within the
- 4 common interest development.
- 5 (8) A record that relates to the design, construction, or physical condition of the
- 6 common interest development.
- 7 (9) A record that relates to a proposed modification of a member's separate
- 8 interest.
- 9 (10) A record that relates to litigation involving the association or legal services
- 10 provided to the association.
- 11 (11) An employment or payroll record.
- 12 (12) An insurance policy or record relating to insurance coverage or claims.
- 13 (13) A contract to which the association is a party.
- 14 (14) A loan document.
- 15 (15) A ballot, proxy, or other record that relates to an election.
- 16 (16) A reserve funding study.
- 17 (17) A record that relates to enforcement of a restriction.
- 18 (b) The association may keep a record in paper form or in any other form that
- 19 can be converted to a paper copy, provided that the paper copy accurately portrays
- 20 the content of the record. A paper copy produced from a non-paper record is
- 21 admissible in evidence and is accepted for all other purposes, to the same extent as
- 22 an original paper record of the same information.

23 **Comment.** Section 5250 is new.

24 See also Sections 4080 ("association"), 4085 ("board"), 4090 ("board meeting"), 4100
25 ("common interest development"), 4150 ("governing documents"), 4160 ("member"), 4185
26 ("separate interest").

27  **Note.** Proposed Section 5250 is new. It is intended to provide guidance on an issue that is not
28 adequately addressed by existing law. The Commission invites input on whether there are other
29 types of records that should be added to Section 5250.

30 **§ 5255 (NEW). Record retention periods**

31 5255. (a) Unless a longer period is required by law or by the governing
32 documents, an association shall retain a record listed in Section 5250 for at least
33 four years after its date of creation, except that a record with continuing legal or
34 operational effect shall be retained during the period of its effect and for at least
35 four years after the termination of its effect.

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

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

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

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

1 (4) A record that relates to the design, construction, or physical condition of the
2 common interest development.

3 (c) A ballot cast in a member election shall be retained for the period provided
4 in Section 5125.

5 (d) This section does not apply to a record that is discarded or destroyed before
6 January 1, 2013.

7 **Comment.** Section 5255 is new. Subdivision (a) states a default retention period, but makes
8 clear that other law or an association’s governing documents may impose a longer retention
9 period. A special rule is provided for records that have “continuing legal or operational effect.”
10 Such records might include a lease or other contract with a fixed term. Associations should
11 determine whether administrative agencies, such as the Franchise Tax Board or Internal Revenue
12 Service, impose longer retention requirements for some records.

13 Subdivision (c) reflects the rule provided in Section 5125 (ballot custody).

14 Subdivision (d) provides that the requirements of this section only apply to a record held by an
15 association at the time that the section became operative. Note that other record retention
16 requirements may govern documents that were held by the association before that date. See, e.g.,
17 Section 5210 (period during which records must be made available for member inspection); 22
18 Cal. Code Regs. § 1085-2 (four-year period for retention of employment records); 26 C.F.R. §
19 1.6001-1 (retention of federal tax records while material to assessment or collection of tax); 29
20 C.F.R. § 516.5 (three-year period for retention of payroll records).

21 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100
22 (“common interest development”), 4150 (“governing documents”), 4160 (“member”).

23  **Note.** Proposed Section 5255 is new. It is intended to provide guidance on an issue that is not
24 adequately addressed by existing law. The Commission invites input on whether any of the
25 retention periods specified in Section 5255 should be changed or eliminated.

26 Article 7. Annual Reports

27 § 5300 (REVISED). Annual budget report

28 5300. (a) Notwithstanding a contrary provision in the governing documents, an
29 association shall prepare and distribute an annual budget report, 30 to 90 days
30 before the end of its fiscal year.

31 (b) Unless the governing documents impose more stringent standards, the annual
32 budget report shall include all of the following information:

33 (1) A pro forma operating budget, showing the estimated revenue and expenses
34 on an accrual basis.

35 (2) A summary of the association’s reserves, prepared pursuant to Section 5565.

36 (3) A summary of the reserve funding plan adopted by the board, as specified in
37 paragraph (5) of subdivision (b) of Section 5550. The summary shall include
38 notice to members that the full reserve study plan is available upon request, and
39 the association shall provide the full reserve plan to any member upon request.

40 (4) A statement as to whether the board has determined to defer or not undertake
41 repairs or replacement of any major component with a remaining life of 30 years
42 or less, including a justification for the deferral or decision not to undertake the
43 repairs or replacement.

1 (5) A statement as to whether the board, consistent with the reserve funding plan
2 adopted pursuant to Section 5560 has determined or anticipates that the levy of
3 one or more special assessments will be required to repair, replace, or restore any
4 major component or to provide adequate reserves therefor. If so, the statement
5 shall also set out the estimated amount, commencement date, and duration of the
6 assessment.

7 (6) A statement as to the mechanism or mechanisms by which the board will
8 fund reserves to repair or replace major components, including assessments,
9 borrowing, use of other assets, deferral of selected replacements or repairs, or
10 alternative mechanisms.

11 (7) A general statement addressing the procedures used for the calculation and
12 establishment of those reserves to defray the future repair, replacement, or
13 additions to those major components that the association is obligated to maintain.
14 The report shall include, but need not be limited to, reserve calculations made
15 using the formula described in paragraph (4) of subdivision (b) of Section 5570,
16 and may not assume a rate of return on cash reserves in excess of 2 percent above
17 the discount rate published by the Federal Reserve Bank of San Francisco at the
18 time the calculation was made.

19 (8) A statement as to whether the association has any outstanding loans with an
20 original term of more than one year, including the payee, interest rate, amount
21 outstanding, annual payment, and when the loan is scheduled to be retired.

22 (9) A summary of the association's property, general liability, earthquake, flood,
23 and fidelity insurance policies. For each policy, the summary shall include the
24 name of the insurer, the type of insurance, the policy limit, and the amount of the
25 deductible, if any. To the extent that any of the required information is specified in
26 the insurance policy declaration page, the association may meet its obligation to
27 disclose that information by making copies of that page and distributing it with the
28 annual budget report. The summary distributed pursuant to this paragraph shall
29 contain, in at least 10-point boldface type, the following statement:

30 "This summary of the association's policies of insurance provides only certain
31 information, as required by Section 5300 of the Civil Code, and should not be
32 considered a substitute for the complete policy terms and conditions contained in
33 the actual policies of insurance. Any association member may, upon request and
34 provision of reasonable notice, review the association's insurance policies and,
35 upon request and payment of reasonable duplication charges, obtain copies of
36 those policies. Although the association maintains the policies of insurance
37 specified in this summary, the association's policies of insurance may not cover
38 your property, including personal property or real property improvements to or
39 around your dwelling, or personal injuries or other losses that occur within or
40 around your dwelling. Even if a loss is covered, you may nevertheless be
41 responsible for paying all or a portion of any deductible that applies. Association

1 members should consult with their individual insurance broker or agent for
2 appropriate additional coverage.”

3 (c) The annual budget report shall be made available to the members pursuant to
4 Section 5320.

5 (d) The summary of the association’s reserves disclosed pursuant to paragraph
6 (2) of subdivision (b) shall not be admissible in evidence to show improper
7 financial management of an association, provided that other relevant and
8 competent evidence of the financial condition of the association is not made
9 inadmissible by this provision.

10 (e) The Assessment and Reserve Funding Disclosure Summary form, prepared
11 pursuant to Section 5570, shall accompany each annual budget report or summary
12 of the annual budget report that is delivered pursuant to this article.

13 **Comment.** Subdivision (a) of Section 5300 continues the last paragraph of former Section
14 1365(a) without substantive change.

15 Subdivision (b)(1) continues former Section 1365(a)(1) without substantive change.

16 Subdivision (b)(2) continues the introduction of former Section 1365(a)(2) without substantive
17 change. The remainder of former Section 1365(a)(2) is continued in Section 5565.

18 Subdivision (b)(3) continues former Section 1365(b) without change, with the following
19 exceptions:

- 20 (1) The commencement date of that requirement (January 1, 2009) is not continued.
- 21 (2) An erroneous cross-reference to former Section 1365.5(e)(4) has been revised to refer
22 to Section 5560(b)(5), which continues former Section 1365.5(e)(5).
- 23 (3) The term “board of directors of the association” has been replaced with the defined
24 term “board.” See Section 4085 (“board”).

25 Subdivision (b)(4) continues former Section 1365(a)(3)(A) without change, with the following
26 exceptions:

- 27 (1) The introductory clause has been added.
- 28 (2) The term “board of directors of the association” has been replaced with the defined
29 term “board.” See Section 4085 (“board”).

30 Subdivision (b)(5) continues former Section 1365(a)(3)(B) without change, with the following
31 exceptions:

- 32 (1) The introductory clause has been added.
- 33 (2) The term “board of directors of the association” has been replaced with the defined
34 term “board.” See Section 4085 (“board”).

35 Subdivision (b)(6) continues former Section 1365(a)(3)(C) without change, with the following
36 exceptions:

- 37 (1) The introductory clause has been added.
- 38 (2) The term “board of directors of the association” has been replaced with the defined
39 term “board.” See Section 4085 (“board”).

40 Subdivision (b)(7) continues the first paragraph of former Section 1365(a)(4) without change,
41 except that a cross-reference is updated to reflect the new location of the referenced provision.

42 Subdivision (b)(8) continues former Section 1365(a)(3)(D) without change, except that the
43 introductory clause has been added.

44 Subdivision (b)(9) continues former Section 1365(f)(1), (3)-(4) without change, with the
45 following exceptions:

- 46 (1) The redundant word “any” is replaced with “the.”
- 47 (2) An extraneous comma is deleted from the statutory notice text.

1 Subdivision (c) is consistent with former Section 1365(d).
2 Subdivision (d) continues the second paragraph of former Section 1365(a)(4) without change,
3 except that a cross-reference is updated to reflect the new location of the referenced provision.
4 Subdivision (e) restates former Section 1365.2.5(b)(3) without substantive change.
5 See also Sections 4080 (“association”), 4135 (“declaration”), 4150 (“governing documents”),
6 4160 (“member”).

7 **Note.** The annual budget report would continue much of the substance of existing Section
8 1365, but would make the following organizational changes, to simplify compliance:

9 (1) Non-budgetary information that is currently required to be distributed annually would not
10 be part of the annual budget report. Instead, it would be collected into an annual “policy
11 statement,” and distributed pursuant to proposed Section 5310. This would not result in any
12 change in the information provided to the membership, but it would organize it into two
13 documents rather than one. That would make it easier for members to request the information of
14 interest to them, and would create an opportunity for cost reduction.

15 (2) Provisions of Section 1365(a)(2) that describe the required *content* of the “summary of
16 association reserves” would be relocated to proposed Section 5565 (in proximity to the other
17 reserve study and planning provisions).

18 (3) The requirement that a review of the financial statement be distributed to the members,
19 pursuant to Section 1365(c), is relocated to proposed Section 5305. That provision requires
20 distribution of information *after* the end of the fiscal year, and so it cannot be included with the
21 annual budget report, which is distributed *before* the end of the fiscal year.

22 (4) In proposed Section 5300(b)(3), a cross-reference to former Section 1365.5(e)(4) appears to
23 be erroneous. It has been revised to refer to the substance of former Section 1365.5(e)(5)
24 (continued in proposed Section 5550(b)(5)). The Commission invites comment on whether that
25 change would cause any problems.

26 **§ 5305 (REVISED). Review of financial statement**

27 5305. A review of the financial statement of the association shall be prepared in
28 accordance with generally accepted accounting principles by a licensee of the
29 California Board of Accountancy for any fiscal year in which the gross income to
30 the association exceeds seventy-five thousand dollars (\$75,000). A copy of the
31 review of the financial statement shall be distributed within 120 days after the
32 close of each fiscal year, by individual delivery (Section 4040).

33 **Comment.** Section 5305 continues former Section 1365(c) without change, except that
34 language has been added to specify the method of delivery.

35 See also Section 4080 (“association”).

36 **Note.** Proposed Section 5305 would specify the method by which the review of the
37 association’s financial statement is to be delivered (by “individual notice”).

38 **§ 5310 (NEW). Policy statement**

39 5310. (a) Within 120 days after the end of the fiscal year, the board shall prepare
40 and distribute an annual policy statement that provides the members with
41 information about association policies. The annual policy statement shall include
42 all of the following information:

43 (1) The name and address of the person designated to receive official
44 communications to the association, pursuant to Section 4035.

1 (2) A statement explaining that a member may submit a request to have notices
2 sent to up to two different specified addresses, pursuant to subdivision (b) of
3 Section 4040 and subdivision (f) of Section 5675.

4 (3) The location, if any, designated for posting of a general notice, pursuant to
5 paragraph (3) of subdivision (a) of Section 4045.

6 (4) Notice of a member's option to receive general notices by individual
7 delivery, pursuant to subdivision (b) of Section 4045.

8 (5) Notice of a member's right to receive copies of meeting minutes, pursuant to
9 subdivision (b) of Section 4950.

10 (6) The statement of assessment collection policies required by Section 5730.

11 (7) A statement describing the association's policies and practices in enforcing
12 lien rights or other legal remedies for default in the payment of assessments.

13 (8) A statement describing the association's discipline policy, if any, including
14 any schedule of penalties for violations of the governing documents pursuant to
15 Section 5850.

16 (9) A summary of alternative dispute resolution procedures, pursuant to Sections
17 5920 and 5965.

18 (10) A summary of any requirements for association approval of a physical
19 change to property, pursuant to Section 4765.

20 (11) The mailing address for overnight payment of assessments, pursuant to
21 Section 5655.

22 (12) Any other information that is required by law or the governing documents
23 or that the board determines to be appropriate for inclusion.

24 (b) The board shall promptly deliver a copy of the most recent annual policy
25 statement to any new member, at no cost to the member.

26 (c) The annual policy statement shall be made available to the members pursuant
27 to Section 5320.

28 **Comment.** Section 5310 is new. It aggregates the annual non-budgetary disclosures that are
29 required under various provisions of this part.

30 Subdivision (a)(7) continues the substance of former Section 1365(e).

31 See also Sections 4080 ("association"), 4085 ("board"), 4150 ("governing documents"), 4160
32 ("member").

33 **Note.** (1) See the first Note following proposed Section 5300.

34 (2) Proposed Section 5310(c) would extend the existing "summary" distribution option, which
35 currently applies to the annual budget report, so that it would *also* apply to distribution of the
36 annual policy statement. See proposed Section 5320.

37 **§ 5320 (REVISED). Notice of availability**

38 5320. (a) When a report is prepared pursuant to Section 5300 or 5310, the
39 association shall deliver one of the following documents to all members, by
40 individual delivery (Section 4040):

41 (1) The full report.

42 (2) A summary of the report. The summary shall include a general description of
43 the content of the report. Instructions on how to request a complete copy of the

1 report at no cost to the member shall be printed in boldface type on the first page
2 of the summary.

3 (b) Notwithstanding subdivision (a), if a member has requested to receive all
4 reports in full, the association shall deliver the full report to that member, rather
5 than a summary of the report.

6 **Comment.** Subdivision (a) of Section 5320 generalizes former Section 1365(d), so that the
7 former optional “summary” approach to distributing the annual pro forma budget is extended to
8 the annual policy statement. Nothing in this section would prevent an association from combining
9 multiple reports or summaries of reports in a single mailing.

10 Subdivision (b) is new.

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

12 **Note.** Proposed Section 5320 generalizes the existing rule that governs distribution of the
13 annual pro forma budget, so that it also applies to distribution of the annual policy statement. This
14 provides an *optional* alternative approach that could help some associations to reduce costs.
15 Proposed subdivision (b) would improve on the existing approach, by allowing a member who
16 wishes to receive all reports in full to make that request once (rather than requiring the member to
17 make the same request every year, as would seem to be required under Section 1365(d)).

18 Article 8. Conflict of Interest

19 § 5350 (REVISED). Interested director

20 5350. (a) Notwithstanding any other law, and regardless of whether an
21 association is incorporated or unincorporated, the provisions of Sections 7223 and
22 7224 of the Corporations Code shall apply to any contract or other transaction
23 authorized, approved, or ratified by the board or a committee of the board.

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

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

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

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

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

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

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

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

38 **Comment.** Subdivision (a) of Section 5350 continues former Section 1365.6 without
39 substantive change, except that the reference to Corporations Code Section 310, which governs
40 for-profit corporations, has been replaced with a reference to Corporations Code Sections 7233
41 and 7234, which state equivalent rules for nonprofit mutual benefit corporations.

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

1 See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4140
2 (“director”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4185
3 (“separate interest”).

4 **Note.** (1) Proposed Section 5350(a) would correct an apparently erroneous reference to
5 Corporations Code Section 310, which governs for-profit corporations. The reference would be
6 replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent
7 rules for nonprofit mutual benefit corporations.

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

11 Article 9. Managing Agent

12 § 5375 (UNCHANGED). Prospective managing agent disclosure

13 5375. A prospective managing agent of a common interest development shall
14 provide a written statement to the board as soon as practicable, but in no event
15 more than 90 days, before entering into a management agreement which shall
16 contain all of the following information concerning the managing agent:

17 (a) The names and business addresses of the owners or general partners of the
18 managing agent. If the managing agent is a corporation, the written statement shall
19 include the names and business addresses of the directors and officers and
20 shareholders holding greater than 10 percent of the shares of the corporation.

21 (b) Whether or not any relevant licenses such as architectural design,
22 construction, engineering, real estate, or accounting have been issued by this state
23 and are currently held by the persons specified in subdivision (a). If a license is
24 currently held by any of those persons, the statement shall contain the following
25 information:

26 (1) What license is held.

27 (2) The dates the license is valid.

28 (3) The name of the licensee appearing on that license.

29 (c) Whether or not any relevant professional certifications or designations such
30 as architectural design, construction, engineering, real property management, or
31 accounting are currently held by any of the persons specified in subdivision (a),
32 including, but not limited to, a professional common interest development
33 manager. If any certification or designation is held, the statement shall include the
34 following information:

35 (1) What the certification or designation is and what entity issued it.

36 (2) The dates the certification or designation is valid.

37 (3) The names in which the certification or designation is held.

38 **Comment.** Section 5375 continues former Section 1363.1(a) without change, with the
39 following exceptions:

40 (1) The superfluous phrase “of a common interest development” is not continued.

41 (2) The term “board of directors of the association” has been replaced with the defined
42 term “board.” See Section 4085 (“board”).

1 See also Sections 4100 (“common interest development”), 4140 (“director”), 4155 (“managing
2 agent”).

3 **§ 5380 (UNCHANGED). Trust fund account**

4 5380. (a) A managing agent of a common interest development who accepts or
5 receives funds belonging to the association shall deposit those funds that are not
6 placed into an escrow account with a bank, savings association, or credit union or
7 into an account under the control of the association, into a trust fund account
8 maintained by the managing agent in a bank, savings association, or credit union
9 in this state. All funds deposited by the managing agent in the trust fund account
10 shall be kept in this state in a financial institution, as defined in Section 31041 of
11 the Financial Code, which is insured by the federal government, and shall be
12 maintained there until disbursed in accordance with written instructions from the
13 association entitled to the funds.

14 (b) At the written request of the board, the funds the managing agent accepts or
15 receives on behalf of the association shall be deposited into an interest-bearing
16 account in a bank, savings association, or credit union in this state, provided all of
17 the following requirements are met:

18 (1) The account is in the name of the managing agent as trustee for the
19 association or in the name of the association.

20 (2) All of the funds in the account are covered by insurance provided by an
21 agency of the federal government.

22 (3) The funds in the account are kept separate, distinct, and apart from the funds
23 belonging to the managing agent or to any other person for whom the managing
24 agent holds funds in trust except that the funds of various associations may be
25 commingled as permitted pursuant to subdivision (d).

26 (4) The managing agent discloses to the board the nature of the account, how
27 interest will be calculated and paid, whether service charges will be paid to the
28 depository and by whom, and any notice requirements or penalties for withdrawal
29 of funds from the account.

30 (5) No interest earned on funds in the account shall inure directly or indirectly to
31 the benefit of the managing agent or the managing agent’s employees.

32 (c) The managing agent shall maintain a separate record of the receipt and
33 disposition of all funds described in this section, including any interest earned on
34 the funds.

35 (d) The managing agent shall not commingle the funds of the association with
36 the managing agent’s own money or with the money of others that the managing
37 agent receives or accepts, unless all of the following requirements are met:

38 (1) The managing agent commingled the funds of various associations on or
39 before February 26, 1990, and has obtained a written agreement with the board of
40 each association that the managing agent will maintain a fidelity and surety bond
41 in an amount that provides adequate protection to the associations as agreed upon
42 by the managing agent and the board of each association.

1 (2) The managing agent discloses in the written agreement whether the
2 managing agent is deriving benefits from the commingled account or the bank,
3 credit union, or savings institution where the moneys will be on deposit.

4 (3) The written agreement provided pursuant to this subdivision includes, but is
5 not limited to, the name and address of the bonding companies, the amount of the
6 bonds, and the expiration dates of the bonds.

7 (4) If there are any changes in the bond coverage or the companies providing the
8 coverage, the managing agent discloses that fact to the board of each affected
9 association as soon as practical, but in no event more than 10 days after the
10 change.

11 (5) The bonds assure the protection of the association and provide the
12 association at least 10 days' notice prior to cancellation.

13 (6) Completed payments on the behalf of the association are deposited within 24
14 hours or the next business day and do not remain commingled for more than 10
15 calendar days.

16 (e) The prevailing party in an action to enforce this section shall be entitled to
17 recover reasonable legal fees and court costs.

18 (f) As used in this section, "completed payment" means funds received that
19 clearly identify the account to which the funds are to be credited.

20 **Comment.** Subdivision (a) of Section 5380 continues former Section 1363.2(a) without
21 change, except that "all such" is replaced with "those" to conform to standard legislative drafting
22 practice.

23 Subdivisions (b) and (c) continue former Section 1363.2(b)-(c) without change, except that the
24 phrase "his or her" has been replaced with "the managing agent's," the phrase "or entity is not
25 continued (see Section 4170 ("person"), and the term "board of directors" has been replaced with
26 the defined term "board." See Section 4085 ("board").

27 Subdivision (d) continues former Section 1363.2(d) without change, with the following
28 exceptions:

29 (1) "He or she" and "his or her" have been replaced with "the managing agent" or "the
30 managing agent's" throughout.

31 (2) The term "board of directors" has been replaced with the defined term "board." See
32 Section 4085 ("board").

33 Subdivision (e) continues former Section 1363.2(e) without change.

34 Subdivision (f) continues former Section 1363.2(g) without change, except "which" is replaced
35 with "that."

36 See also Sections 4080 ("association"), 4100 ("common interest development"), 4155
37 ("managing agent").

38 Article 10. Government Assistance

39 § 5400 (UNCHANGED). Director training course

40 5400. To the extent existing funds are available, the Department of Consumer
41 Affairs and the Department of Real Estate shall develop an on-line education
42 course for the board regarding the role, duties, laws, and responsibilities of
43 directors and prospective directors, and the nonjudicial foreclosure process.

1 **Comment.** Section 5400 continues former Section 1363.001 without substantive change, with
2 the following exceptions:

- 3 (1) The term “board of directors” has been replaced with the defined term “board.” See
4 Section 4085 (“board”).
5 (2) The term “board member” has been replaced with the defined term “director.” See
6 Section 4140 (“director”).

7 **§ 5405 (UNCHANGED). State registry**

8 5405. (a) To assist with the identification of common interest developments,
9 each association, whether incorporated or unincorporated, shall submit to the
10 Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that
11 the Secretary of State shall prescribe, the following information concerning the
12 association and the development that it manages:

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

15 (2) The name of the association.

16 (3) The street address of the association’s onsite office, or, if none, of the
17 responsible officer or managing agent of the association.

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

21 (5) The name, street address, and daytime telephone number of the association’s
22 managing agent, if any.

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

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

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

30 (9) The type of common interest development managed by the association.

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

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

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

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

41 (c) The association shall notify the Secretary of State of any change in the street
42 address of the association’s onsite office or of the responsible officer or managing

1 agent of the association in the form and for a fee prescribed by the Secretary of
2 State, within 60 days of the change.

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

8 (e) The Secretary of State shall make the information submitted pursuant to
9 paragraph (4) of subdivision (a) available only for governmental purposes and
10 only to Members of the Legislature and the Business, Transportation and Housing
11 Agency, upon written request. All other information submitted pursuant to this
12 section shall be subject to public inspection pursuant to the California Public
13 Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title
14 1 of the Government Code. The information submitted pursuant to this section
15 shall be made available for governmental or public inspection.

16 **Comment.** Section 5405 continues former Section 1363.6 without change, with the following
17 exceptions:

- 18 (1) Cross-references are updated to reflect the new location of the referenced provisions.
- 19 (2) The redundant phrase "of the association" is omitted in subdivision (a)(4).
- 20 (3) Superfluous references to definition sections are not continued.
- 21 (4) Obsolete transitional dates are omitted in subdivisions (d) and (e).

22 See also Sections 4080 ("association"), 4100 ("common interest development"), 4155
23 ("managing agent").

24 CHAPTER 6. FINANCES

25 Article 1. Accounting

26 § 5500 (UNCHANGED). Board review

27 5500. Unless the governing documents impose more stringent standards, the
28 board shall do all of the following:

29 (a) Review a current reconciliation of the association's operating accounts on at
30 least a quarterly basis.

31 (b) Review a current reconciliation of the association's reserve accounts on at
32 least a quarterly basis.

33 (c) Review, on at least a quarterly basis, the current year's actual reserve
34 revenues and expenses compared to the current year's budget.

35 (d) Review the latest account statements prepared by the financial institutions
36 where the association has its operating and reserve accounts.

37 (e) Review an income and expense statement for the association's operating and
38 reserve accounts on at least a quarterly basis.

1 **Comment.** Section 5500 continues former Section 1365.5(a) without change, except that the
2 term “board of directors of the association” has been replaced with the defined term “board.” See
3 Section 4085 (“board”).

4 See also Sections 4080 (“association”), 4150 (“governing documents”), 4177 (“reserve
5 accounts”).

6 Article 2. Use of Reserve Funds

7 § 5510 (UNCHANGED). Use of reserve funds

8 5510. (a) The signatures of at least two persons, who shall be directors, or one
9 officer who is not a director and a director, shall be required for the withdrawal of
10 moneys from the association’s reserve accounts.

11 (b) The board shall not expend funds designated as reserve funds for any
12 purpose other than the repair, restoration, replacement, or maintenance of, or
13 litigation involving the repair, restoration, replacement, or maintenance of, major
14 components that the association is obligated to repair, restore, replace, or maintain
15 and for which the reserve fund was established.

16 **Comment.** Subdivision (a) of Section 5510 continues former Section 1365.5(b) without
17 change, with the following exceptions:

18 (1) The term “board of directors” has been replaced with the defined term “board.” See
19 Section 4085 (“board”).

20 (2) The term “board member” has been replaced with the defined term “director.” See
21 Section 4140 (“director”).

22 Subdivision (b) continues former Section 1365.5(c)(1) without change, except that the term
23 “board of directors” has been replaced with the defined term “board.” See Section 4085
24 (“board”).

25 See also Sections 4080 (“association”), 4177 (“reserve accounts”).

26 § 5515 (REVISED). Temporary transfer of reserve funds

27 5515. (a) Notwithstanding Section 5510, the board may authorize the temporary
28 transfer of moneys from a reserve fund to the association’s general operating fund
29 to meet short-term cashflow requirements or other expenses, if the board has
30 provided notice of the intent to consider the transfer in a board meeting notice
31 provided pursuant to Section 4920.

32 (b) The notice shall include the reasons the transfer is needed, some of the
33 options for repayment, and whether a special assessment may be considered.

34 (c) If the board authorizes the transfer, the board shall issue a written finding,
35 recorded in the board’s minutes, explaining the reasons that the transfer is needed,
36 and describing when and how the moneys will be repaid to the reserve fund.

37 (d) The transferred funds shall be restored to the reserve fund within one year of
38 the date of the initial transfer, except that the board may, after giving the same
39 notice required for considering a transfer, and, upon making a finding supported
40 by documentation that a temporary delay would be in the best interests of the
41 common interest development, temporarily delay the restoration.

1 (e) The board shall exercise prudent fiscal management in maintaining the
2 integrity of the reserve account, and shall, if necessary, levy a special assessment
3 to recover the full amount of the expended funds within the time limits required by
4 this section. This special assessment is subject to the limitation imposed by
5 Section 5605. The board may, at its discretion, extend the date the payment on the
6 special assessment is due. Any extension shall not prevent the board from
7 pursuing any legal remedy to enforce the collection of an unpaid special
8 assessment.

9 **Comment.** Section 5515 continues former Section 1365.5(c)(2) without change, with the
10 following exceptions:

- 11 (1) Subdivisions are added.
- 12 (2) Cross-references are updated to reflect the new location of the referenced provisions.
- 13 (3) The introductory word “however” is replaced with “Notwithstanding Section 5510.”
- 14 (4) The last clause of subdivision (a) is rephrased for clarity.

15 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100
16 (“common interest development”).

17 **Note.** Proposed Section 5515 would make minor changes to improve the organization and
18 clarity of existing Section 1365.5(c)(2), as described in the Comment above.

19 **§ 5520 (REVISED). Use of reserve funds for litigation**

20 5520. (a) When the decision is made to use reserve funds or to temporarily
21 transfer moneys from the reserve fund to pay for litigation, the association shall
22 provide general notice (Section 4045) of that decision, and of the availability of an
23 accounting of those expenses.

24 (b) Unless the governing documents impose more stringent standards, the
25 association shall make an accounting of expenses related to the litigation on at
26 least a quarterly basis. The accounting shall be made available for inspection by
27 members of the association at the association’s office.

28 **Comment.** Section 5520 continues former Section 1365.5(d) without change, with the
29 following exceptions:

- 30 (1) Subdivisions are added.
- 31 (2) A reference to notice pursuant to Corporations Code Section 5016 has been replaced
32 with a requirement of general notice pursuant to Section 4045.

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

35 **Note.** Section 1365.5(d) requires notice pursuant to Corporations Code Section 5016, which
36 requires notice in a “newsletter, magazine or other organ regularly sent to members....” Not all
37 associations distribute periodicals of those types. Proposed Section 5520 would replace that
38 requirement with a requirement of general notice under Section 4045.

Article 3. Reserve Planning

§ 5550 (UNCHANGED). Visual inspection of major components and reserve study

5550. (a) At least once every three years, the board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association, excluding the association's reserve account for that period. The board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.

(b) The study required by this section shall at a minimum include:

(1) Identification of the major components that the association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1).

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(5) A reserve funding plan that indicates how the association plans to fund the contribution identified in paragraph (4) to meet the association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired.

Comment. Section 5550 continues former Section 1365.5(e)(1)-(4) and the first sentence of (e)(5) without change, except that the term "board of directors" has been replaced with the defined term "board." See Section 4085 ("board").

See also Sections 4080 ("association"), 4100 ("common interest development").

§ 5560 (REVISED). Reserve funding plan

5560. (a) The reserve funding plan required by Section 5550 shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan.

(b) The plan shall be adopted by the board at an open meeting before the membership of the association as described in Article 2 (commencing with Section 4900) of Chapter 5.

1 (c) If the board determines that an assessment increase is necessary to fund the
2 reserve funding plan, any increase shall be approved in a separate action of the
3 board that is consistent with the procedure described in Section 5605.

4 **Comment.** Section 5560 continues the second, third, and fourth sentences of former Section
5 1365.5(e)(5) without change, with the following exceptions:

- 6 (1) The introductory clause has been restated, without substantive change.
- 7 (2) Cross-references are updated to reflect the new location of the referenced provisions.
- 8 (3) The term “board of directors” has been replaced with the defined term “board.” See
9 Section 4085 (“board”).

10 See also Section 4080 (“association”).

11 **Note.** The introductory clause of Section 1365.5(e)(5) has been restated without substantive
12 change in proposed Section 5560(a), to reflect the separation of this provision from the first
13 sentence of Section 1365.5(e)(5).

14 **§ 5565 (REVISED). Summary of association reserves**

15 5565. The summary of the association’s reserves required by paragraph (2) of
16 subdivision (b) of Section 5300 shall be based on the most recent review or study
17 conducted pursuant to Section 5550, shall be based only on assets held in cash or
18 cash equivalents, shall be printed in boldface type and shall include all of the
19 following:

20 (a) The current estimated replacement cost, estimated remaining life, and
21 estimated useful life of each major component.

22 (b) As of the end of the fiscal year for which the study is prepared:

23 (1) The current estimate of the amount of cash reserves necessary to repair,
24 replace, restore, or maintain the major components.

25 (2) The current amount of accumulated cash reserves actually set aside to repair,
26 replace, restore, or maintain major components.

27 (3) If applicable, the amount of funds received from either a compensatory
28 damage award or settlement to an association from any person for injuries to
29 property, real or personal, arising out of any construction or design defects, and
30 the expenditure or disposition of funds, including the amounts expended for the
31 direct and indirect costs of repair of construction or design defects. These amounts
32 shall be reported at the end of the fiscal year for which the study is prepared as
33 separate line items under cash reserves pursuant to paragraph (2). Instead of
34 complying with the requirements set forth in this paragraph, an association that is
35 obligated to issue a review of their financial statement pursuant to Section 5305
36 may include in the review a statement containing all of the information required
37 by this paragraph.

38 (c) The percentage that the amount determined for purposes of paragraph (2) of
39 subdivision (b) equals the amount determined for purposes of paragraph (1) of
40 subdivision (b).

41 (d) The current deficiency in reserve funding expressed on a per unit basis. The
42 figure shall be calculated by subtracting the amount determined for purposes of

1 paragraph (2) of subdivision (b) from the amount determined for purposes of
2 paragraph (1) of subdivision (b) and then dividing the result by the number of
3 separate interests within the association, except that if assessments vary by the size
4 or type of ownership interest, then the association shall calculate the current
5 deficiency in a manner that reflects the variation.

6 **Comment.** Section 5565 continues former Section 1365(a)(2) without change, with the
7 following exceptions:

- 8 (1) The introductory clause is revised to reflect the organization of this provision as a
9 separate section and to make minor grammatical improvements.
- 10 (2) Subdivision (b)(3) corrects an erroneous cross-reference (to the financial statement
11 required under Section 5305).
- 12 (3) Subdivision (b)(3) does not continue the phrase “or entity.” See Section 4170
13 (“person”).
- 14 (4) Cross-references are updated to reflect the new location of the referenced provisions.

15 See also Sections 4080 (“association”), 4185 (“separate interest”).

16 **Note.** Proposed Section 5565 would continue former Section 1365(a)(2), which describes the
17 required content of the “summary of association reserves” that must be included in the annual
18 budget distributed to the members. In addition to making minor changes to reflect the
19 organization of the provision as a separate section and to update cross-references, the proposed
20 section would correct an erroneous cross-reference.

21 Existing Section 1365(a)(2)(B)(iii) refers to the financial statement prepared “pursuant to
22 subdivision (b).” That cross-reference used to be correct, but in 2006 a bill was enacted that
23 inserted a new subdivision (b) and renumbered the financial statement provision as subdivision
24 (c). See 2006 Cal. Stat. ch. 181, § 1. The cross-reference should have been corrected at that time,
25 but was apparently overlooked. Proposed Section 5565 would correct that error.

26 **§ 5570 (UNCHANGED). Assessment and reserve funding disclosure summary**

27 5570. (a) The disclosures required by this article with regard to an association or
28 a property shall be summarized on the following form:

29 ASSESSMENT AND RESERVE FUNDING DISCLOSURE SUMMARY FOR THE
30 FISCAL YEAR ENDING _____

31 (1) The regular assessment per ownership interest is \$_____ per _____. Note: If
32 assessments vary by the size or type of ownership interest, the assessment
33 applicable to this ownership interest may be found on page _____ of the attached
34 summary.

35 (2) Additional regular or special assessments that have already been scheduled
36 to be imposed or charged, regardless of the purpose, if they have been approved by
37 the board and/or members:

Date assessment will be due:	Amount per ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

1

2 Note: If assessments vary by the size or type of ownership interest, the
3 assessment applicable to this ownership interest may be found on page ____ of the
4 attached report.

5 (3) Based upon the most recent reserve study and other information available to
6 the board, will currently projected reserve account balances be sufficient at the end
7 of each year to meet the association’s obligation for repair and/or replacement of
8 major components during the next 30 years?

9 Yes ____ No ____

10 (4) If the answer to (3) is no, what additional assessments or other contributions
11 to reserves would be necessary to ensure that sufficient reserve funds will be
12 available each year during the next 30 years that have not yet been approved by
13 the board or the members?

14

Approximate date assessments will be due:	Amount per ownership interest per month or year:
	Total:

15

16 (5) All major components are included in the reserve study and are included in
17 its calculations.

18 (6) Based on the method of calculation in paragraph (4) of subdivision (b) of
19 Section 5570, the estimated amount required in the reserve fund at the end of the
20 current fiscal year is \$____, based in whole or in part on the last reserve study or
21 update prepared by ____ as of ____ (month), ____ (year). The projected reserve
22 fund cash balance at the end of the current fiscal year is \$____, resulting in
23 reserves being ____ percent funded at this date.

1 If an alternate, but generally accepted, method of calculation is also used, the
2 required reserve amount is \$_____. (See attached explanation)

3 (7) Based on the method of calculation in paragraph (4) of subdivision (b) of
4 Section 5570 of the Civil Code, the estimated amount required in the reserve fund
5 at the end of each of the next five budget years is \$_____, and the projected
6 reserve fund cash balance in each of those years, taking into account only
7 assessments already approved and other known revenues, is \$_____, leaving the
8 reserve at _____ percent funding. If the reserve funding plan approved by the
9 association is implemented, the projected reserve fund cash balance in each of
10 those years will be \$_____, leaving the reserve at _____ percent funding.

11 Note: The financial representations set forth in this summary are based on the
12 best estimates of the preparer at that time. The estimates are subject to change. At
13 the time this summary was prepared, the assumed long-term before-tax interest
14 rate earned on reserve funds was _____ percent per year, and the assumed long-
15 term inflation rate to be applied to major component repair and replacement costs
16 was _____ percent per year.

17 (b) For the purposes of preparing a summary pursuant to this section:

18 (1) “Estimated remaining useful life” means the time reasonably calculated to
19 remain before a major component will require replacement.

20 (2) “Major component” has the meaning used in Section 5550. Components with
21 an estimated remaining useful life of more than 30 years may be included in a
22 study as a capital asset or disregarded from the reserve calculation, so long as the
23 decision is revealed in the reserve study report and reported in the Assessment and
24 Reserve Funding Disclosure Summary.

25 (3) The form set out in subdivision (a) shall accompany each annual budget
26 report or summary thereof that is delivered pursuant to Section 5300. The form
27 may be supplemented or modified to clarify the information delivered, so long as
28 the minimum information set out in subdivision (a) is provided.

29 (4) For the purpose of the report and summary, the amount of reserves needed
30 to be accumulated for a component at a given time shall be computed as the
31 current cost of replacement or repair multiplied by the number of years the
32 component has been in service divided by the useful life of the component. This
33 shall not be construed to require the board to fund reserves in accordance with this
34 calculation.

35 **Comment.** Section 5570 continues former Section 1365.2.5 without change, except that a
36 reference to distribution of the pro forma operating budget has been changed to refer to the annual
37 budget report distributed pursuant to Section 5300 and the term “board of directors” has been
38 replaced with the defined term “board.” See Section 4085 (“board”).

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

40 **§ 5580 (REVISED). Community service organization report**

41 5580. (a) Unless the governing documents impose more stringent standards, any
42 community service organization whose funding from the association or its
43 members exceeds 10 percent of the organization’s annual budget shall prepare and

1 distribute to the association a report that meets the requirements of Section 5012
2 of the Corporations Code, and that describes in detail administrative costs and
3 identifies the payees of those costs in a manner consistent with the provisions of
4 Article 5 (commencing with Section 5200).

5 (b) If the community service organization does not comply with the standards,
6 the report shall disclose the noncompliance in detail. If a community service
7 organization is responsible for the maintenance of major components for which an
8 association would otherwise be responsible, the community service organization
9 shall supply to the association the information regarding those components that the
10 association would use to complete disclosures and reserve reports required under
11 this article and Section 5300. An association may rely upon information received
12 from a community service organization, and shall provide access to the
13 information pursuant to the provisions of Article 5 (commencing with Section
14 5200).

15 **Comment.** Section 5580 restates former Section 1365.3 without change, with the following
16 exceptions:

- 17 (1) Cross-references are updated to reflect the new location of the referenced provisions.
- 18 (2) The section is divided into subdivisions for ease of reference.
- 19 (3) A superfluous cross-reference to the definition of “community service organization” is
20 not continued.

21 See also Sections 4080 (“association”), 4110 (“community service organization or similar
22 entity”), 4150 (“governing documents”), 4160 (“member”).

23  **Note.** Proposed Section 5580 uses the exact language of Section 1365.3 (except as indicated
24 in the Comment above). That language includes some significant ambiguities that are left
25 unaddressed because the staff does not understand the intended meaning. The staff invites public
26 comment on the following questions:

- 27 (1) What is meant by the requirement that the payees of administrative costs be identified “in a
28 manner consistent with the provisions of Section 1365.2?”
- 29 (2) What is meant by “If the community service organization does not comply with the
30 standards, the report shall disclose the noncompliance in detail”? What standards are being
31 referenced here?

32 Article 4. Assessment Setting

33 § 5600 (UNCHANGED). Levy of assessment

34 5600. (a) Except as provided in Section 5605, the association shall levy regular
35 and special assessments sufficient to perform its obligations under the governing
36 documents and this title.

37 (b) An association shall not impose or collect an assessment or fee that exceeds
38 the amount necessary to defray the costs for which it is levied.

39 **Comment.** Subdivision (a) of Section 5600 continues the first sentence of former Section
40 1366(a) without substantive change, except that a cross-reference is updated to reflect the new
41 location of the referenced provision.

42 Subdivision (b) continues former Section 1366.1 without substantive change.

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

1 **§ 5605 (REVISED). Assessment approval requirements**

2 5605. (a) Annual increases in regular assessments for any fiscal year shall not be
3 imposed unless the board has complied with Section 5300 with respect to that
4 fiscal year, or has obtained the approval of a majority of a quorum of members
5 (Section 4070) at a member meeting or election.

6 (b) Notwithstanding more restrictive limitations placed on the board by the
7 governing documents, the board may not impose a regular assessment that is more
8 than 20 percent greater than the regular assessment for the association’s preceding
9 fiscal year or impose special assessments which in the aggregate exceed 5 percent
10 of the budgeted gross expenses of the association for that fiscal year without the
11 approval of a majority of a quorum of members (Section 4070) at a member
12 meeting or election.

13 (c) For the purposes of this section, “quorum” means members representing
14 more than 50 percent of the voting power of the association.

15 **Comment.** Subdivision (a) of Section 5605 continues the second sentence of former Section
16 1366(a) without change, with the following exceptions:

- 17 (1) Language requiring approval of a majority of members casting a vote at a meeting at
18 which a quorum is established has been replaced with a reference to the standard
19 provision on approval by a majority of a quorum of members (Section 4070).
- 20 (2) A reference to an assessment increase “as authorized by subdivision (b)” is superfluous
21 and potentially confusing, and is not continued.
- 22 (3) Language requiring that a meeting or election be conducted pursuant to the
23 Corporations Code is inconsistent with former Section 1363.03 and is not continued.
- 24 (4) A cross-reference to former Section 1366(a) has been replaced with a cross-reference to
25 Section 5300, which continues former Section 1366(a)-(b), and (f).

26 Subdivision (b) continues the first sentence of former Section 1366(b) without change, with the
27 following exceptions:

- 28 (1) Language requiring approval of a majority of members casting a vote at a meeting at
29 which a quorum is established has been replaced with a reference to the standard
30 provision on approval by a majority of a quorum of members (Section 4070).
- 31 (2) Language requiring that a meeting or election be conducted pursuant to the
32 Corporations Code is inconsistent with former Section 1363.03 and is not continued.
- 33 (3) The term “board of directors” has been replaced with the defined term “board.” See
34 Section 4085 (“board”).

35 Subdivision (c) restates the last sentence of former Section 1366(a) and the second sentence of
36 former Section 1366(b). The provision makes clear that a quorum is based on a majority of the
37 voting power, and not on a majority of the owners. This avoids uncertainty about the calculation
38 of a quorum when a single separate interest is owned by more than one person.

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

40 **Notes:** (1) Section 1366(a) and (b) require that member approval of an assessment increase
41 be obtained “at a meeting or election of the association conducted in accordance with Chapter 5
42 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and
43 Section 7613 of the Corporations Code.” That requirement is plainly contradicted by Section
44 1363.03, which expressly supersedes the Corporations Code election provisions. That error would
45 be corrected in proposed Section 5605, which would not continue the references to the election or
46 meeting requirements of the Corporations Code.

1 (2) Existing Section 1366(a) requires member approval of an assessment increase if the board
2 has not complied with Section 1365(a) for the fiscal year. Section 1365(a) requires the
3 distribution of the annual pro forma budget.

4 In proposed Section 5605, the reporting requirement is broadened slightly, to simplify its
5 application. It would require member approval of an assessment increase if the board does not
6 distribute the “annual budget report” pursuant to proposed Section 5300. That report includes all
7 of the elements of the existing pro forma budget, plus two related items that are currently not
8 within the scope of Section 1366(a): the reserve funding plan distributed pursuant to Section
9 1366(b) and the insurance coverage notice distributed pursuant to Section 1366(f).

10 (3) The quorum rule provided in proposed Section 4230(d) is revised to make clear that a
11 quorum is based on a majority of the *voting power* (excluding those who own more than two
12 units), and not on a majority of the *owners*. This avoids uncertainty about the calculation of a
13 quorum when a single separate interest is owned by more than one person.

14 **§ 5610 (UNCHANGED). Emergency exception to assessment approval requirements**

15 5610. Section 5605 does not limit assessment increases necessary for emergency
16 situations. For purposes of this section, an emergency situation is any one of the
17 following:

18 (a) An extraordinary expense required by an order of a court.

19 (b) An extraordinary expense necessary to repair or maintain the common
20 interest development or any part of it for which the association is responsible
21 where a threat to personal safety on the property is discovered.

22 (c) An extraordinary expense necessary to repair or maintain the common
23 interest development or any part of it for which the association is responsible that
24 could not have been reasonably foreseen by the board in preparing and distributing
25 the annual budget report under Section 5300. However, prior to the imposition or
26 collection of an assessment under this subdivision, the board shall pass a
27 resolution containing written findings as to the necessity of the extraordinary
28 expense involved and why the expense was not or could not have been reasonably
29 foreseen in the budgeting process, and the resolution shall be distributed to the
30 members with the notice of assessment.

31 **Comment.** Section 5610 continues the third and fourth sentences and paragraphs (1) to (3),
32 inclusive, of former Section 1366(b), without change, with the following exceptions:

33 (1) A reference to the “pro forma operating budget” has been replaced with a reference to
34 the “annual budget report.”

35 (2) Cross-references are updated to reflect the new location of the referenced provisions.

36 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest
37 development”), 4160 (“member”).

38 **§ 5615 (REVISED). Notice of assessment increase**

39 5615. The association shall provide individual notice (Section 4040) to the
40 members of any increase in the regular or special assessments of the association,
41 not less than 30 nor more than 60 days prior to the increased assessment becoming
42 due.

43 **Comment.** Proposed Section 5615 continues former Section 1366(d) without change, with the
44 following exceptions:

- 1 (1) A requirement of delivery by first class mail has been replaced with a requirement of
2 “individual notice.”
3 (2) The defined term “member” is used in place of “owner.” See Section 4160
4 (“member”).
5 See also Section 4080 (“association”).

6 **Note.** Proposed Section 5615 would replace the existing first class mail delivery requirement
7 in Section 1366(d) with the more flexible rule for delivery of individual notice under Section
8 4040.

9 **§ 5620 (REVISED). Exemption from execution**

10 5620. (a) Regular assessments imposed or collected to perform the obligations
11 of an association under the governing documents or this title shall be exempt from
12 execution by a judgment creditor of the association only to the extent necessary
13 for the association to perform essential services, such as paying for utilities and
14 insurance. In determining the appropriateness of an exemption, a court shall
15 ensure that only essential services are protected under this subdivision.

16 (b) This exemption shall not apply to any consensual pledges, liens, or
17 encumbrances that have been approved by a majority of a quorum of members
18 (Section 4070) at a member meeting or election, or to any state tax lien, or to any
19 lien for labor or materials supplied to the common area.

20 **Comment.** Section 5620 continues former Section 1366(c) without change, with the following
21 exceptions:

- 22 (1) Subdivisions are added.
23 (2) A reference to approval of a majority of members casting a vote at a meeting at which a
24 quorum is established has been replaced with a reference to the standard provision on
25 approval by a majority of a quorum of members (Section 4070).
26 (3) Quorum-related language from former Section 1366(b)-(c) is not continued.

27 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
28 documents”), 4160 (“member”).

29 **Note.** Both Section 1366(a) and (b) contain the following sentence: “For the purposes of this
30 section, ‘quorum’ means more than 50 percent of the owners of an association.” Although those
31 provisions purport to apply to the “section” as a whole, the fact that the sentence is repeated in
32 subdivisions (a) and (b) suggests that the intention may have been to limit the application of the
33 sentence to just those subdivisions. If so, then the special quorum rule would not apply to the
34 reference in Section 1366(c) to “any consensual pledges, liens, or encumbrances that have been
35 approved by the owners of an association, *constituting a quorum*, casting a majority of the votes
36 at a meeting or election of the association...” (Emphasis added.) Proposed Section 5620 is
37 drafted on the basis of that interpretation, and does not include the special quorum rule.

38 **§ 5625 (UNCHANGED). Property tax value as basis for assessments**

39 5625. (a) Except as provided in subdivision (b), notwithstanding any provision
40 of this part or the governing documents to the contrary, an association shall not
41 levy assessments on separate interests within the common interest development
42 based on the taxable value of the separate interests unless the association, on or
43 before December 31, 2009, in accordance with its governing documents, levied

1 assessments on those separate interests based on their taxable value, as determined
2 by the tax assessor of the county in which the separate interests are located.

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

7 **Comment.** Proposed Section 5625 continues former Section 1366.4 without change, except
8 that “title” is changed to “part.”

9 See also Sections 4080 (“association”), 4100 (“common interest development”), 4150
10 (“governing documents”), 4185 (“separate interest”).

11 Article 5. Assessment Payment and Delinquency

12 § 5650 (UNCHANGED). Assessment debt and delinquency

13 5650. (a) A regular or special assessment and any late charges, reasonable fees
14 and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as
15 determined in accordance with subdivision (b), shall be a debt of the owner of the
16 separate interest at the time the assessment or other sums are levied.

17 (b) Regular and special assessments levied pursuant to the governing documents
18 are delinquent 15 days after they become due, unless the declaration provides a
19 longer time period, in which case the longer time period shall apply. If an
20 assessment is delinquent the association may recover all of the following:

21 (1) Reasonable costs incurred in collecting the delinquent assessment, including
22 reasonable attorney’s fees.

23 (2) A late charge not exceeding 10 percent of the delinquent assessment or ten
24 dollars (\$10), whichever is greater, unless the declaration specifies a late charge in
25 a smaller amount, in which case any late charge imposed shall not exceed the
26 amount specified in the declaration.

27 (3) Interest on all sums imposed in accordance with this section, including the
28 delinquent assessments, reasonable fees and costs of collection, and reasonable
29 attorney’s fees, at an annual interest rate not to exceed 12 percent, commencing 30
30 days after the assessment becomes due, unless the declaration specifies the
31 recovery of interest at a rate of a lesser amount, in which case the lesser rate of
32 interest shall apply.

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

35 **Comment.** Subdivision (a) of Section 5650 continues the first sentence of former Section
36 1367.1(a) without change, except that a cross-reference is updated to reflect the new location of
37 the referenced provision.

38 Subdivision (b) continues former Section 1366(e) without change.

39 Subdivision (c) continues former Section 1366(f) without change.

40 See also Sections 4080 (“association”), 4135 (“declaration”), 4150 (“governing documents”),
41 4185 (“separate interest”).

1 **§ 5655 (REVISED). Payments**

2 5655. (a) Any payments made by the owner of a separate interest toward
3 assessments shall first be applied to the assessments owed, and, only after the
4 assessments owed are paid in full shall the payments be applied to the fees and
5 costs of collection, attorney’s fees, late charges, or interest.

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

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

11 **Comment.** Section 5655 continues former Section 1367.1(b) without substantive change, with
12 the following exceptions:

- 13 (1) A reference to assessment debt “set forth, as required in subdivision (a)” is not
14 continued.
15 (2) Subdivisions are added.

16 See also Sections 4080 (“association”), 4185 (“separate interest”).

17  **Note.** Existing Section 1367.1(b) refers to payments made toward “the debt set forth, as
18 required in subdivision (a)...” The purpose of that language is unclear and it is potentially
19 problematic. It could be understood as limiting the right established in Section 1367.1(b) to debts
20 that have been properly noticed, pursuant to Section 1367.1(a). In other words, if the association
21 makes a technical mistake in describing the debt, the member’s right to pay off the principal first
22 might not apply. The staff sees no policy reason for such a result. The limiting language would
23 not be continued in proposed Section 5655.

24 **§ 5658 (UNCHANGED). Payment under protest**

25 5658. (a) If a dispute exists between the owner of a separate interest and the
26 association regarding any disputed charge or sum levied by the association,
27 including, but not limited to, an assessment, fine, penalty, late fee, collection cost,
28 or monetary penalty imposed as a disciplinary measure, and the amount in dispute
29 does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of
30 the Code of Civil Procedure, the owner of the separate interest may, in addition to
31 pursuing dispute resolution pursuant to Article 3 (commencing with Section 5925)
32 of Chapter 8, pay under protest the disputed amount and all other amounts levied,
33 including any fees and reasonable costs of collection, reasonable attorney’s fees,
34 late charges, and interest, if any, pursuant to subdivision (b) of Section 5650, and
35 commence an action in small claims court pursuant to Chapter 5.5 (commencing
36 with Section 116.110) of Title 1 of the Code of Civil Procedure.

37 (b) Nothing in this section shall impede an association’s ability to collect
38 delinquent assessments as provided in this article or Article 6 (commencing with
39 Section 5700).

40 **Comment.** Section 5658 continues former Section 1367.6 without change, except that cross-
41 references are updated to reflect the new location of the referenced provisions.

42 See also Sections 4080 (“association”), 4185 (“separate interest”).

1 **§ 5660 (REVISED). Pre-lien notice**

2 5660. At least 30 days prior to recording a lien upon the separate interest of the
3 owner of record to collect a debt that is past due under Section 5650, the
4 association shall notify the owner of record in writing by certified mail of the
5 following:

6 (a) A general description of the collection and lien enforcement procedures of
7 the association and the method of calculation of the amount, a statement that the
8 owner of the separate interest has the right to inspect the association records
9 pursuant to Section 5205, and the following statement in 14-point boldface type, if
10 printed, or in capital letters, if typed:

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

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

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

21 (d) The right to request a meeting with the board as provided by Section 5665.

22 (e) The right to dispute the assessment debt by submitting a written request for
23 dispute resolution to the association pursuant to the association’s “meet and
24 confer” program required in Article 2 (commencing with Section 5900) of Chapter
25 8.

26 (f) The right to request alternative dispute resolution with a neutral third party
27 pursuant to Article 3 (commencing with Section 5925) of Chapter 8 before the
28 association may initiate foreclosure against the owner’s separate interest, except
29 that binding arbitration shall not be available if the association intends to initiate a
30 judicial foreclosure.

31 **Comment.** Section 5660 continues the second sentence of former Section 1367.1(a), and
32 paragraphs (1) to (6) of that provision, inclusive, without change, with the following exceptions:

- 33 (1) The reference to inspection of records under Corporations Code Section 8333 is
34 replaced with a reference to inspection of records under Section 5205.
35 (2) Cross-references are updated to reflect the new location of the referenced provisions.

36 See also Sections 4080 (“association”), 4085 (“board”), 4185 (“separate interest”).

37 **Note.** The notice required under Section 1367.1(a) includes notice of the right to inspect
38 records under Corporations Code Section 8333. That right has been superseded by the broader
39 inspection rights conferred by Section 1365.2. Proposed Section 5660 would refer to the latter
40 provision, rather than the Corporations Code.

1 **§ 5665 (UNCHANGED). Payment plan**

2 5665. (a) An owner, other than an owner of any interest that is described in
3 Section 11212 of the Business and Professions Code that is not otherwise exempt
4 from this section pursuant to subdivision (a) of Section 11211.7 of the Business
5 and Professions Code, may submit a written request to meet with the board to
6 discuss a payment plan for the debt noticed pursuant to Section 5660. The
7 association shall provide the owners the standards for payment plans, if any exist.

8 (b) The board shall meet with the owner in executive session within 45 days of
9 the postmark of the request, if the request is mailed within 15 days of the date of
10 the postmark of the notice, unless there is no regularly scheduled board meeting
11 within that period, in which case the board may designate a committee of one or
12 more directors to meet with the owner.

13 (c) Payment plans may incorporate any assessments that accrue during the
14 payment plan period. Additional late fees shall not accrue during the payment plan
15 period if the owner is in compliance with the terms of the payment plan.

16 (d) Payment plans shall not impede an association's ability to record a lien on
17 the owner's separate interest to secure payment of delinquent assessments.

18 (e) In the event of a default on any payment plan, the association may resume its
19 efforts to collect the delinquent assessments from the time prior to entering into
20 the payment plan.

21 **Comment.** Section 5665 continues former Section 1367.1(c)(3) without change, with the
22 following exceptions:

- 23 (1) Cross-references are updated to reflect the new location of the referenced provisions.
- 24 (2) Subdivisions are added.
- 25 (3) The defined term "director" is used in place of "board member." See Section 4140
26 ("director").
- 27 (4) In subdivision (a), the cross-reference is revised to refer to the Business and
28 Professions Code.

29 See also Sections 4080 ("association"), 4085 ("board"), 4090 ("board meeting"), 4185
30 ("separate interest").

31 **§ 5670 (UNCHANGED). Pre-lien dispute resolution**

32 5670. Prior to recording a lien for delinquent assessments, an association shall
33 offer the owner and, if so requested by the owner, participate in dispute resolution
34 pursuant to the association's "meet and confer" program required in Article 2
35 (commencing with Section 5900) of Chapter 8.

36 **Comment.** Section 5670 continues former Section 1367.1(c)(1)(A) without change, except that
37 a cross-reference is updated to reflect the new location of the referenced provision.

38 See also Section 4080 ("association").

39 **§ 5673 (UNCHANGED). Decision to lien**

40 5673. For liens recorded on or after January 1, 2006, the decision to record a lien
41 for delinquent assessments shall be made only by the board and may not be
42 delegated to an agent of the association. The board shall approve the decision by a

1 majority vote of the directors in an open meeting. The board shall record the vote
2 in the minutes of that meeting.

3 **Comment.** Section 5673 continues former Section 1367.1(c)(2) without change, with the
4 following exceptions:

5 (1) The term “board of directors of the association” has been replaced with the defined
6 term “board.” See Section 4085 (“board”).

7 (2) The term “board member” has been replaced with the defined term “director.” See
8 Section 4140 (“director”).

9 See also Section 4080 (“association”).

10 **§ 5675 (UNCHANGED). Notice of delinquent assessment**

11 5675. (a) The amount of the assessment, plus any costs of collection, late
12 charges, and interest assessed in accordance with subdivision (b) of Section 5650,
13 shall be a lien on the owner’s separate interest in the common interest
14 development from and after the time the association causes to be recorded with the
15 county recorder of the county in which the separate interest is located, a notice of
16 delinquent assessment, which shall state the amount of the assessment and other
17 sums imposed in accordance with subdivision (b) of Section 5650, a legal
18 description of the owner’s separate interest in the common interest development
19 against which the assessment and other sums are levied, and the name of the
20 record owner of the separate interest in the common interest development against
21 which the lien is imposed.

22 (b) The itemized statement of the charges owed by the owner described in
23 subdivision (b) of Section 5660 shall be recorded together with the notice of
24 delinquent assessment.

25 (c) In order for the lien to be enforced by nonjudicial foreclosure as provided in
26 Sections 5700 through 5710, inclusive, the notice of delinquent assessment shall
27 state the name and address of the trustee authorized by the association to enforce
28 the lien by sale.

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

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

36 (f) Upon receipt of a written request by an owner identifying a secondary
37 address for purposes of collection notices, the association shall send additional
38 copies of any notices required by this section to the secondary address provided.
39 The association shall notify owners of their right to submit secondary addresses to
40 the association, in the annual policy statement prepared pursuant to Section 5310.
41 The owner’s request shall be in writing and shall be mailed to the association in a
42 manner that shall indicate the association has received it. The owner may identify

1 or change a secondary address at any time, provided that, if a secondary address is
2 identified or changed during the collection process, the association shall only be
3 required to send notices to the indicated secondary address from the point the
4 association receives the request.

5 (g) An association that fails to comply with the procedures set forth in this
6 section shall, prior to recording a lien, recommence the required notice process.
7 Any costs associated with recommencing the notice process shall be borne by the
8 association and not by the owner of a separate interest.

9 **Comment.** Subdivisions (a)-(e) of Section 5675 continue the first five sentences of former
10 Section 1367.1(d) without change, except that cross-references are updated to reflect the new
11 location of the referenced provisions.

12 Subdivision (f) continues former Section 1367.1(k) without change, except that a reference to
13 the annual budget has been replaced with a reference to the annual policy statement distributed
14 pursuant to Section 5310.

15 Subdivision (g) continues former Section 1367.1(l) without change.

16 See also Sections 4080 (“association”), 4100 (“common interest development”), 4135
17 (“declaration”), 4170 (“person”), 4185 (“separate interest”).

18 **§ 5680 (REVISED). Lien priority**

19 5680. A lien created pursuant to Section 5675 shall be prior to all other liens
20 recorded subsequent to the notice of delinquent assessment, except that the
21 declaration may provide for the subordination thereof to any other liens and
22 encumbrances.

23 **Comment.** Section 5680 continues former Section 1367.1(f) without change, with the
24 following exceptions:

25 (1) The phrase “notice of assessment” is replaced with the more specific “notice of
26 delinquent assessment.”

27 (2) A cross-reference is updated to reflect the new location of the referenced provision.

28 See also Section 4135 (“declaration”).

29 **Note.** Section 1367.1(f) refers to the “notice of assessment.” It appears that the intention was
30 to refer to the “notice of delinquent assessment” specified in Section 1367.1(d). In order to avoid
31 any ambiguity, proposed Section 5680 uses the more specific term.

32 **§ 5685 (REVISED). Lien release**

33 5685. (a) Within 21 days of the payment of the sums specified in the notice of
34 delinquent assessment, the association shall record or cause to be recorded in the
35 office of the county recorder in which the notice of delinquent assessment is
36 recorded a lien release or notice of rescission and provide the owner of the
37 separate interest a copy of the lien release or notice that the delinquent assessment
38 has been satisfied.

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

1 lien filing or recording was in error and a copy of the lien release or notice of
2 rescission.

3 (c) If it is determined that an association has recorded a lien for a delinquent
4 assessment in error, the association shall promptly reverse all late charges, fees,
5 interest, attorney’s fees, costs of collection, costs imposed for the notice prescribed
6 in Section 5660, and costs of recordation and release of the lien authorized under
7 subdivision (b) of Section 5720, and pay all costs related to any related dispute
8 resolution or alternative dispute resolution.

9 **Comment.** Subdivision (a) of Section 5685 continues the sixth sentence of former Section
10 1367.1(d) without change.

11 Subdivision (b) continues former Section 1367.1(i) without change.

12 Subdivision (c) continues former Section 1367.5 without change, with the following
13 exceptions:

14 (1) The requirement that the error be discovered as a result of alternative dispute resolution
15 is not continued.

16 (2) Cross-references are updated to reflect the new location of the referenced provisions.

17 See also Sections 4080 (“association”), 4135 (“declaration”), 4185 (“separate interest”).

18  **Note.** Section 1367.5 provides for a reversal of costs if it is determined, through specified
19 forms of alternative dispute resolution, that a lien for delinquent assessments is recorded in error.
20 There is no obvious policy reason why reversal of costs should be limited to errors discovered
21 through ADR (thereby omitting errors discovered in any other context). Proposed Section 5685(c)
22 would not continue the ADR-discovery limitation.

23 Article 6. Assessment Collection

24 **§ 5700 (REVISED). Collection generally**

25 5700. (a) Except as otherwise provided in this article, after the expiration of 30
26 days following the recording of a lien created pursuant to Section 5675, the lien
27 may be enforced in any manner permitted by law, including sale by the court, sale
28 by the trustee designated in the notice of delinquent assessment, or sale by a
29 trustee substituted pursuant to Section 2934a.

30 (b) Nothing in Article 5 (commencing with Section 5650) or in subdivision (a)
31 of Section 726 of the Code of Civil Procedure prohibits actions against the owner
32 of a separate interest to recover sums for which a lien is created pursuant to Article
33 5 (commencing with Section 5650) or prohibits an association from taking a deed
34 in lieu of foreclosure.

35 **Comment.** Subdivision (a) of Section 5700 continues the second sentence of former Section
36 1367.1(g), with the following exceptions:

37 (1) The introductory clause has been broadened to recognize the application of all
38 restrictions on collection that are provided in this article. See, e.g., Sections 5720
39 (limitation on foreclosure), 5735 (limitation on assignment).

40 (2) Cross-references are updated to reflect the new location of the referenced provisions.

41 Subdivision (b) continues former Section 1367.1(h) without change, except that cross-
42 references are updated to reflect the new location of the referenced provisions.

43 See also Sections 4080 (“association”), 4185 (“separate interest”).

1 **Note.** The rule stated in the second sentence of Section 1367.1(g) is limited by an express
2 caveat, recognizing the “limitations of this subdivision” (i.e., of Section 1367.1(g)). That caveat
3 appears to be too narrow. It does not recognize the substantive limitations on foreclosure imposed
4 by Section 1367.4. For that reason, the introductory clause of proposed Section 5700(a) is
5 broadened to encompass any exceptions stated in “this article,” which would include the
6 exceptions provided in Section 1367.4.

7 **§ 5705 (UNCHANGED). Decision to foreclose**

8 5705. (a) Notwithstanding any law or any provisions of the governing
9 documents to the contrary, this section shall apply to debts for assessments that
10 arise on and after January 1, 2006.

11 (b) Prior to initiating a foreclosure on an owner’s separate interest, the
12 association shall offer the owner and, if so requested by the owner, participate in
13 dispute resolution pursuant to the association’s “meet and confer” program
14 required in Article 2 (commencing with Section 5900) of Chapter 8 or alternative
15 dispute resolution as set forth in Article 3 (commencing with Section 5925) of
16 Chapter 8. The decision to pursue dispute resolution or a particular type of
17 alternative dispute resolution shall be the choice of the owner, except that binding
18 arbitration shall not be available if the association intends to initiate a judicial
19 foreclosure.

20 (c) The decision to initiate foreclosure of a lien for delinquent assessments that
21 has been validly recorded shall be made only by the board and may not be
22 delegated to an agent of the association. The board shall approve the decision by a
23 majority vote of the directors in an executive session. The board shall record the
24 vote in the minutes of the next meeting of the board open to all members. The
25 board shall maintain the confidentiality of the owner or owners of the separate
26 interest by identifying the matter in the minutes by the parcel number of the
27 property, rather than the name of the owner or owners. A board vote to approve
28 foreclosure of a lien shall take place at least 30 days prior to any public sale.

29 (d) The board shall provide notice by personal service in accordance with the
30 manner of service of summons in Article 3 (commencing with Section 415.10) of
31 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an owner of a
32 separate interest who occupies the separate interest or to the owner’s legal
33 representative, if the board votes to foreclose upon the separate interest. The board
34 shall provide written notice to an owner of a separate interest who does not occupy
35 the separate interest by first-class mail, postage prepaid, at the most current
36 address shown on the books of the association. In the absence of written
37 notification by the owner to the association, the address of the owner’s separate
38 interest may be treated as the owner’s mailing address.

39 **Comment.** Subdivision (a) of Section 5705 continues former Section 1367.4(a), as it related to
40 the substance of this section, without change.

41 Subdivision (b) continues former Section 1367.4(c)(1) without change, except that cross-
42 references are updated to reflect the new location of the referenced provisions. Subdivision (b) is
43 also consistent with former Section 1367.1(c)(1)(B).

1 Subdivision (c) continues former Section 1367.4(c)(2) without change, with the following
2 exceptions:

- 3 (1) The term “board of directors of the association” has been replaced with the defined
4 term “board.” See Section 4085 (“board”).
- 5 (2) The term “board member” has been replaced with the defined term “director.” See
6 Section 4140 (“director”).

7 Subdivision (d) continues former Section 1367.4(c)(3) without change.
8 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
9 4185 (“separate interest”).

10 **§ 5710 (UNCHANGED). Foreclosure**

11 5710. (a) Any sale by the trustee shall be conducted in accordance with Sections
12 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages
13 and deeds of trust.

14 (b) In addition to the requirements of Section 2924, a notice of default shall be
15 served by the association on the owner’s legal representative in accordance with
16 the manner of service of summons in Article 3 (commencing with Section 415.10)
17 of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The owner’s legal
18 representative shall be the person whose name is shown as the owner of a separate
19 interest in the association’s records, unless another person has been previously
20 designated by the owner as his or her legal representative in writing and mailed to
21 the association in a manner that indicates that the association has received it.

22 (c) The fees of a trustee may not exceed the amounts prescribed in Sections
23 2924c and 2924d, plus the cost of service for either of the following:

- 24 (1) The notice of default pursuant to subdivision (b).
- 25 (2) The decision of the board to foreclose upon the separate interest of an owner
26 as described in subdivision (d) of Section 5705.

27 **Comment.** Subdivision (a) of Section 5710 continues the third sentence of former Section
28 1367.1(g) without change.

29 Subdivision (b) continues former Section 1367.1(j) without change.

30 Subdivision (c) continues the fourth sentence, and paragraphs (1) and (2), of former Section
31 1367.1(g) without change, except that cross-references are updated to reflect the new location of
32 the referenced provisions.

33 See also Sections 4080 (“association”), 4085 (“board”), 4185 (“separate interest”).

34 **§ 5715 (UNCHANGED). Right of redemption after trustee sale**

35 5715. (a) Notwithstanding any law or any provisions of the governing
36 documents to the contrary, this section shall apply to debts for assessments that
37 arise on and after January 1, 2006.

38 (b) A nonjudicial foreclosure by an association to collect upon a debt for
39 delinquent assessments shall be subject to a right of redemption. The redemption
40 period within which the separate interest may be redeemed from a foreclosure sale
41 under this paragraph ends 90 days after the sale. In addition to the requirements of
42 Section 2924f, a notice of sale in connection with an association’s foreclosure of a

1 separate interest in a common interest development shall include a statement that
2 the property is being sold subject to the right of redemption created in this section.

3 **Comment.** Subdivision (a) of Section 5715 continues former Section 1367.4(a), as it related to
4 the substance of this section, without change.

5 Subdivision (b) continues former Section 1367.4(c)(4) without change, except that “this
6 paragraph” is replaced with “this section.”

7 See also Sections 4080 (“association”), 4100 (“common interest development”), 4150
8 (“governing documents”), 4185 (“separate interest”).

9 **§ 5720 (REVISED). Limitation on foreclosure**

10 5720. (a) Notwithstanding any law or any provisions of the governing
11 documents to the contrary, this section shall apply to debts for assessments that
12 arise on and after January 1, 2006.

13 (b) An association that seeks to collect delinquent regular or special assessments
14 of an amount less than one thousand eight hundred dollars (\$1,800), not including
15 any accelerated assessments, late charges, fees and costs of collection, attorney’s
16 fees, or interest, may not collect that debt through judicial or nonjudicial
17 foreclosure, but may attempt to collect or secure that debt in any of the following
18 ways:

19 (1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing
20 with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure. An
21 association that chooses to proceed by an action in small claims court, and
22 prevails, may enforce the judgment as permitted under Article 8 (commencing
23 with Section 116.810) of Chapter 5.5 of Title 1 of Part 1 of the Code of Civil
24 Procedure. The amount that may be recovered in small claims court to collect
25 upon a debt for delinquent assessments may not exceed the jurisdictional limits of
26 the small claims court and shall be the sum of the following:

27 (A) The amount owed as of the date of filing the complaint in the small claims
28 court proceeding.

29 (B) In the discretion of the court, an additional amount to that described in
30 subparagraph (A) equal to the amount owed for the period from the date the
31 complaint is filed until satisfaction of the judgment, which total amount may
32 include accruing unpaid assessments and any reasonable late charges, fees and
33 costs of collection, attorney’s fees, and interest, up to the jurisdictional limits of
34 the small claims court.

35 (2) By recording a lien on the owner’s separate interest upon which the
36 association may not foreclose until the amount of the delinquent assessments
37 secured by the lien, exclusive of any accelerated assessments, late charges, fees
38 and costs of collection, attorney’s fees, or interest, equals or exceeds one thousand
39 eight hundred dollars (\$1,800) or the assessments secured by the lien are more
40 than 12 months delinquent. An association that chooses to record a lien under
41 these provisions, prior to recording the lien, shall offer the owner and, if so
42 requested by the owner, participate in dispute resolution as set forth in Article 2
43 (commencing with Section 5900) of Chapter 8.

1 (3) Any other manner provided by law, except for judicial or nonjudicial
2 foreclosure.

3 (c) The limitation on foreclosure of assessment liens for amounts under the
4 stated minimum in this section does not apply to any of the following:

5 (1) Assessments secured by a lien that are more than 12 months delinquent.

6 (2) Assessments owed by owners of separate interests in timeshare estates, as
7 defined in subdivision (x) of Section 11212 of the Business and Professions Code.

8 (3) Assessments owed by the declarant.

9 **Comment.** Subdivision (a) of Section 5720 continues former Section 1367.4(a), as it related to
10 the substance of this section, without change.

11 Subdivision (b) continues former Section 1367.4(b) without change, with the following
12 exceptions:

13 (1) A cross-reference is updated to reflect the new location of the referenced provision.

14 (2) Incomplete cross-references in paragraph (1) are corrected.

15 Subdivision (c) continues former Section 1367.4(d) without change, with the following
16 exceptions:

17 (1) The first paragraph is added to reflect the rule in former Section 1367.4(c).

18 (2) The second paragraph replaces an erroneous cross-reference to Business and
19 Professions Code Section 11112(x) with a cross-reference to Business and Professions
20 Code Section 11212(x).

21 (3) The defined term “declarant” is used in place of “developer” in the third paragraph. See
22 Section 4130 (“declarant”).

23 See also Sections 4080 (“association”), 4150 (“governing documents”), 4185 (“separate
24 interest”).

25 **Note.** (1) Section 1367.4(b) prohibits foreclosure to collect assessments that total less than
26 \$1,800. However, Section 1367.4(c) expressly authorizes foreclosure to collect assessments if the
27 amount owed is \$1,800 or more *or if the assessments secured by the lien are more than 12*
28 *months delinquent*. The latter provision was intended as an exception to the prohibition on
29 foreclosure for amounts less than \$1,800 (i.e., an association can foreclose on any amount, so
30 long as the assessments are more than 12 months overdue). See Assembly Floor Analysis of SB
31 137 (Sept. 1, 2005), p. 4 (“foreclosure remains an option in all cases where a homeowner is more
32 than 12 months delinquent in paying any assessment amount.”).

33 It is potentially confusing to have an unqualified prohibition on foreclosure for amounts less
34 than \$1,800 in Section 1367.4(b), with the 12-month delinquency exception stated indirectly in
35 Section 1367.4(c). In order to improve understanding of these rules, proposed Section 5720(c)(1)
36 would state the 12-month delinquency rule directly, as an express exception to the prohibition on
37 foreclosure for small amounts.

38 (2) The existing reference to Business and Professions Code Section 11112(x) is incorrect.
39 Proposed Section 5720(c)(2) would correct the error.

40 (3) Read literally, Section 1367.4(d) would exempt assessments paid by any person who is a
41 developer. It seems likely that the intent was to exempt only the developer of the CID seeking to
42 collect the assessment. Proposed Section 5720(c)(3) would use the term “the declarant” to avoid
43 any ambiguity on this point.

44 **§ 5725 (REVISED). Property damage and fines**

45 5725. (a) A monetary charge imposed by the association as a means of
46 reimbursing the association for costs incurred by the association in the repair of
47 damage to common area and facilities caused by a member, an occupant of the

1 member's separate interest, or the member's guest, invitee, or tenant may become
2 a lien against the member's separate interest enforceable by the sale of the interest
3 under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is
4 set forth in the governing documents. It is the intent of the Legislature not to
5 contravene Section 2792.26 of Title 10 of the California Code of Regulations, as
6 that section appeared on January 1, 1996, for associations of subdivisions that are
7 being sold under authority of a subdivision public report, pursuant to Part 2
8 (commencing with Section 11000) of Division 4 of the Business and Professions
9 Code.

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

15 **Comment.** Subdivision (a) of Section 5725 continues the seventh and eighth sentences of
16 former Section 1367.1(d) without change, with the following exceptions:

- 17 (1) The section makes clear that a member may be liable for damage caused by an
18 occupant of the member's separate interest or an invitee.
- 19 (2) A reference to "common areas" is singularized.

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

22 2792.26. (a) The Association cannot be empowered to cause a forfeiture or abridgement of
23 an owner's right to the full use and enjoyment of his individually-owned subdivision interest
24 on account of the failure by the owner to comply with provisions of the governing
25 instruments or of duly-enacted rules of operation for common areas and facilities except by
26 judgment of a court or a decision arising out of an arbitration or on account of a foreclosure
27 or sale under a power of sale for failure of the owner to pay assessments duly levied by the
28 Association.

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

35 (c) A monetary penalty imposed by the Association as a disciplinary measure for failure of
36 a member to comply with the governing instruments or as a means of reimbursing the
37 Association for costs incurred by the Association in the repair of damage to common areas
38 and facilities for which the member was allegedly responsible or in bringing the member and
39 his subdivision interest into compliance with the governing instruments may not be
40 characterized nor treated in the governing instruments as an assessment which may become a
41 lien against the member's subdivision interest enforceable by a sale of the interest in
42 accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

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

47 Subdivision (b) continues former Section 1367.1(e) without change, with the following
48 exceptions:

- 1 (1) The introductory clause “except as indicated in subdivision (d)” is not continued.
- 2 (2) The undefined term “governing instruments” is replaced with the defined term
- 3 “governing documents.”
- 4 (3) The undefined term “subdivision separate interest” is replaced with the defined term
- 5 “separate interest.”

6 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
7 documents”), 4160 (“member”), 4163 (“occupant”), 4185 (“separate interest”).

8 **Note.** (1) Proposed Section 5725(a) would expand the scope of the existing rule governing
9 reimbursement of costs incurred for damage caused by an owner or the owner’s guest or tenant,
10 to also include damage caused by an owner’s invitee or a resident of the owner’s separate interest.

11 (2) Proposed Section 5725(b) would omit the introductory clause of Section 1367.1(e): “Except
12 as indicated in subdivision (d)...” The staff sees nothing in Section 1367.1(d) that would operate
13 as an exception to the rule stated in Section 1367.1(e).

14 (3) Proposed Section 5725(b) would substitute the defined term “governing documents” for the
15 undefined term “governing instruments.”

16 (4) Proposed Section 5725(b) would substitute the defined term “separate interest” for the
17 undefined term “subdivision separate interest.”

18 **§ 5730 (REVISED). Statement of collection procedure**

19 5730. (a) The annual policy statement, prepared pursuant to Section 5310, shall
20 include the following notice:

21 “NOTICE ASSESSMENTS AND FORECLOSURE

22 This notice outlines some of the rights and responsibilities of owners of property
23 in common interest developments and the associations that manage them. Please
24 refer to the sections of the Civil Code indicated for further information. A portion
25 of the information in this notice applies only to liens recorded on or after January
26 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

27 ASSESSMENTS AND FORECLOSURE

28 Assessments become delinquent 15 days after they are due, unless the governing
29 documents provide for a longer time. The failure to pay association assessments
30 may result in the loss of an owner’s property through foreclosure. Foreclosure may
31 occur either as a result of a court action, known as judicial foreclosure or without
32 court action, often referred to as nonjudicial foreclosure. For liens recorded on and
33 after January 1, 2006, an association may not use judicial or nonjudicial
34 foreclosure to enforce that lien if the amount of the delinquent assessments or
35 dues, exclusive of any accelerated assessments, late charges, fees, attorney’s fees,
36 interest, and costs of collection, is less than one thousand eight hundred dollars
37 (\$1,800). For delinquent assessments or dues in excess of one thousand eight
38 hundred dollars (\$1,800) or more than 12 months delinquent, an association may
39 use judicial or nonjudicial foreclosure subject to the conditions set forth in Article
40 6 (commencing with Section 5700) of Chapter 6 of Part 5 of Division 4 of the
41 Civil Code. When using judicial or nonjudicial foreclosure, the association records

1 a lien on the owner's property. The owner's property may be sold to satisfy the
2 lien if the amounts secured by the lien are not paid. (Sections 5700 through 5720
3 of the Civil Code, inclusive)

4 In a judicial or nonjudicial foreclosure, the association may recover assessments,
5 reasonable costs of collection, reasonable attorney's fees, late charges, and
6 interest. The association may not use nonjudicial foreclosure to collect fines or
7 penalties, except for costs to repair common area damaged by a member or a
8 member's guests, if the governing documents provide for this. (Section 5725 of
9 the Civil Code)

10 The association must comply with the requirements of Article 5 (commencing
11 with Section 5650) of Chapter 6 of Part 5 of Division 4 of the Civil Code when
12 collecting delinquent assessments. If the association fails to follow these
13 requirements, it may not record a lien on the owner's property until it has satisfied
14 those requirements. Any additional costs that result from satisfying the
15 requirements are the responsibility of the association. (Section 5675 of the Civil
16 Code)

17 At least 30 days prior to recording a lien on an owner's separate interest, the
18 association must provide the owner of record with certain documents by certified
19 mail, including a description of its collection and lien enforcement procedures and
20 the method of calculating the amount. It must also provide an itemized statement
21 of the charges owed by the owner. An owner has a right to review the
22 association's records to verify the debt. (Section 5660 of the Civil Code)

23 If a lien is recorded against an owner's property in error, the person who
24 recorded the lien is required to record a lien release within 21 days, and to provide
25 an owner certain documents in this regard. (Section 5685 of the Civil Code)

26 The collection practices of the association may be governed by state and federal
27 laws regarding fair debt collection. Penalties can be imposed for debt collection
28 practices that violate these laws.

29 PAYMENTS

30 When an owner makes a payment, he or she may request a receipt, and the
31 association is required to provide it. On the receipt, the association must indicate
32 the date of payment and the person who received it. The association must inform
33 owners of a mailing address for overnight payments. (Section 5655 of the Civil
34 Code)

35 An owner may, but is not obligated to, pay under protest any disputed charge or
36 sum levied by the association, including, but not limited to, an assessment, fine,
37 penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary
38 measure, and by so doing, specifically reserve the right to contest the disputed
39 charge or sum in court or otherwise.

40 An owner may dispute an assessment debt by submitting a written request for
41 dispute resolution to the association as set forth in Article 2 (commencing with

1 Section 5900) of Chapter 8 of Part 5 of Division 4 of the Civil Code. In addition,
2 an association may not initiate a foreclosure without participating in alternative
3 dispute resolution with a neutral third party as set forth in Article 3 (commencing
4 with Section 5925) of Chapter 8 of Part 5 of Division 4 of the Civil Code, if so
5 requested by the owner. Binding arbitration shall not be available if the association
6 intends to initiate a judicial foreclosure.

7 An owner is not liable for charges, interest, and costs of collection, if it is
8 established that the assessment was paid properly on time. (Section 5685 of the
9 Civil Code)

10 MEETINGS AND PAYMENT PLANS

11 An owner of a separate interest that is not a timeshare may request the
12 association to consider a payment plan to satisfy a delinquent assessment. The
13 association must inform owners of the standards for payment plans, if any exist.
14 (Section 5665 of the Civil Code)

15 The board must meet with an owner who makes a proper written request for a
16 meeting to discuss a payment plan when the owner has received a notice of a
17 delinquent assessment. These payment plans must conform with the payment plan
18 standards of the association, if they exist. (Section 5665 of the Civil Code)”

19 (b) An association distributing the notice required by this section to an owner of
20 an interest that is described in Section 11212 of the Business and Professions Code
21 that is not otherwise exempt from this section pursuant to subdivision (a) of
22 Section 11211.7 of the Business and Professions Code may delete from the notice
23 described in subdivision (a) the portion regarding meetings and payment plans.

24 **Comment.** Section 5730 continues former Section 1365.1 without change, with the following
25 exceptions:

- 26 (1) The introductory clause is revised to reflect distribution of this notice as part of the
27 annual policy statement.
- 28 (2) A limited exception for units in time shares is moved to subdivision (b), without any
29 substantive change.
- 30 (3) The substance of former Section 1365.1(c) is generalized in Section 4040(b).
- 31 (4) Erroneous references to “Division 2 of the Civil Code” have been corrected. The
32 references should have been to “Part 2 of Division 2 of the Civil Code.”
- 33 (5) An erroneous reference to former Section 1368.810 has been corrected. It should have
34 referred to former Section 1363.810.
- 35 (6) An erroneous reference to former Section 1367.1 in the last paragraph under the
36 heading “Payments” has been corrected. The reference should have been to former
37 Section 1367.5.
- 38 (7) Cross-references are adjusted throughout to reflect the new location of the referenced
39 provisions.
- 40 (8) The term “board of directors” has been replaced with the defined term “board.” See
41 Section 4085 (“board”).
- 42 (9) A reference to “common areas” is singularized.

43 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
44 documents”), 4160 (“member”).

1 **Note.** Proposed Section 5730 would make minor changes to the language and organization of
2 Section 1365.1, and correct a number of erroneous cross-references, as indicated in the Comment
3 above.

4 **§ 5735 (REVISED). Assignment or pledge**

5 5735. (a) An association may not voluntarily assign or pledge the association's
6 right to collect payments or assessments, or to enforce or foreclose a lien to a third
7 party, except when the assignment or pledge is made to a financial institution or
8 lender chartered or licensed under federal or state law, when acting within the
9 scope of that charter or license, as security for a loan obtained by the association.

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

13 **Comment.** Section 5735 continues the first sentence of former Section 1367.1(g) without
14 change, with the following exceptions:

15 (1) The provision is divided into subdivisions.

16 (2) An introductory clause is added in subdivision (b) to make the relationship between the
17 two provisions clearer.

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

19 **Note.** Proposed Section 5735 would break the first sentence of Section 1367.1(g) into two
20 subdivisions and add an introductory clause in the second provision, to better define their
21 relationship. (In existing law the two provisions are joined by a semi-colon and the ambiguous
22 conjunction "however.").

23 **§ 5740 (NEW). Application of article**

24 5740. (a) Except as otherwise provided, this article applies to a lien created on or
25 after January 1, 2003.

26 (b) A lien created before January 1, 2003, is governed by the law in existence at
27 the time the lien was created.

28 **Comment.** Section 5740 is new. A lien created on or after January 1, 1986, and before January
29 1, 2003, is governed by former Section 1367. See 2002 Cal. Stat. ch. 111, § 7.

30 **Note.** Under existing law, Section 1367 governs liens recorded on or after January 1, 1986,
31 but before January 1, 2003. Liens that are recorded on or after January 1, 2003, are governed by
32 Section 1367.1 (except that inconsistent provisions of Section 1367.4 govern debts for
33 assessments that arise on or after January 1, 2006). The overlap between these rules is
34 complicated and confusing.

35 The proposed law would simplify the application scheme, as follows:

36 (1) Section 1367 would be omitted as largely obsolete (but still applicable to older liens,
37 pursuant to proposed Section 5740(b)).

38 (2) Section 1367.1 would be continued in the proposed law, subject to the limitations provided
39 in proposed Section 5740(a).

40 (3) The provisions continuing Section 1367.4 would be expressly limited to debts for
41 assessments that arise on or after January 1, 2006. See proposed Sections 5705, 5715 & 5720.

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CHAPTER 7. INSURANCE AND LIABILITY

§ 5800 (UNCHANGED). Limitation of director and officer liability

5800. (a) A volunteer officer or volunteer director of an association that manages a common interest development that is exclusively residential, shall not be personally liable in excess of the coverage of insurance specified in paragraph (4) to any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of the tortious act or omission of the volunteer officer or volunteer director if all of the following criteria are met:

(1) The act or omission was performed within the scope of the officer's or director's association duties.

(2) The act or omission was performed in good faith.

(3) The act or omission was not willful, wanton, or grossly negligent.

(4) The association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance that shall include coverage for (A) general liability of the association and (B) individual liability of officers and directors of the association for negligent acts or omissions in that capacity; provided, that both types of coverage are in the following minimum amount:

(A) At least five hundred thousand dollars (\$500,000) if the common interest development consists of 100 or fewer separate interests.

(B) At least one million dollars (\$1,000,000) if the common interest development consists of more than 100 separate interests.

(b) The payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the director's or officer's status as a volunteer within the meaning of this section.

(c) An officer or director who at the time of the act or omission was a declarant, or who received either direct or indirect compensation as an employee from the declarant, or from a financial institution that purchased a separate interest at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property, is not a volunteer for the purposes of this section.

(d) Nothing in this section shall be construed to limit the liability of the association for its negligent act or omission or for any negligent act or omission of an officer or director of the association.

(e) This section shall only apply to a volunteer officer or director who is a tenant of a separate interest in the common interest development or is an owner of no more than two separate interests in the common interest development.

(f)(1) For purposes of paragraph (1) of subdivision (a), the scope of the officer's or director's association duties shall include, but shall not be limited to, both of the following decisions:

1 (A) Whether to conduct an investigation of the common interest development
2 for latent deficiencies prior to the expiration of the applicable statute of
3 limitations.

4 (B) Whether to commence a civil action against the builder for defects in design
5 or construction.

6 (2) It is the intent of the Legislature that this section clarify the scope of
7 association duties to which the protections against personal liability in this section
8 apply. It is not the intent of the Legislature that these clarifications be construed to
9 expand, or limit, the fiduciary duties owed by the directors or officers.

10 **Comment.** Section 5800 continues former Section 1365.7 without change, with the following
11 exceptions:

12 (1) Superfluous cross-references to governing definitions are not continued.

13 (2) Subdivision (a) is revised in two places to replace “which” with “that.”

14 See also Corp. Code § 7231 (standard of care and liability of director of nonprofit mutual
15 benefit corporation).

16 See also Sections 4080 (“association”), 4100 (“common interest development”), 4130
17 (“declarant”), 4140 (“director”), 4170 (“person”), 4185 (“separate interest”).

18 **§ 5805 (UNCHANGED). Limitation of member liability**

19 5805. (a) It is the intent of the Legislature to offer civil liability protection to
20 owners of the separate interests in a common interest development that have
21 common area owned in tenancy-in-common if the association carries a certain
22 level of prescribed insurance that covers a cause of action in tort.

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

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

31 (2) The coverage described in paragraph (1) is in the following minimum
32 amounts:

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

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

37 **Comment.** Section 5805 continues former Section 1365.9 without change, with the following
38 exceptions:

39 (1) A superfluous cross-reference to a governing definition is not continued.

40 (2) A reference to “common areas” is singularized.

41 (3) Subdivision (b)(1) is revised to replace “which” with “that.”

42 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
43 development”), 4185 (“separate interest”).

1 **§ 5810 (REVISED). Notice of change in coverage**

2 5810. The association shall, as soon as reasonably practicable, provide
3 individual notice (Section 4040) to all members if any of the policies described in
4 the annual budget report pursuant to Section 5300 have lapsed, been canceled, and
5 are not immediately renewed, restored, or replaced, or if there is a significant
6 change, such as a reduction in coverage or limits or an increase in the deductible,
7 as to any of those policies. If the association receives any notice of nonrenewal of
8 a policy described in the annual budget report pursuant to Section 5300, the
9 association shall immediately notify its members if replacement coverage will not
10 be in effect by the date the existing coverage will lapse.

11 **Comment.** Section 5810 continues former Section 1365(f)(2) without change, with the
12 following exceptions:

- 13 (1) The reference to delivery by first-class mail has been replaced with a reference to
14 individual delivery pursuant to Section 4040.
15 (2) Cross-references are updated to reflect the new location of the referenced provisions.

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

17  **Note.** Proposed Section 5810 would revised Section 1365(f)(2) to require “individual
18 delivery” of the specified notice, rather than delivery by first class mail. This would permit
19 electronic delivery of notice where a recipient has assented to electronic delivery.

20 **CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT**

21 **Article 1. Disciplinary Action**

22 **§ 5850 (REVISED). Schedule of monetary penalties**

23 5850. If an association adopts or has adopted a policy imposing any monetary
24 penalty, including any fee, on any association member for a violation of the
25 governing documents, the board shall adopt and distribute to each member, in the
26 annual policy statement prepared pursuant to Section 5310, a schedule of the
27 monetary penalties that may be assessed for those violations, which shall be in
28 accordance with authorization for member discipline contained in the governing
29 documents.

30 **Comment.** Section 5850 continues the first sentence of former Section 1363(g) without
31 change, with the following exceptions:

- 32 (1) A reference to the “rules of the association” is superfluous and is not continued. The
33 term “governing documents” encompasses rules. See Section 4150.
34 (2) A reference to delivery by personal delivery or first class mail has been changed to
35 refer to delivery by inclusion in the annual policy statement prepared pursuant to
36 Section 5310.
37 (3) A clause making clear that a violation of the governing documents can include a
38 violation by a member’s guest or invitee is not continued in this section. The substance
39 of that clause is continued in Section 5860.
40 (4) The term “board of directors” has been replaced with the defined term “board.” See
41 Section 4085 (“board”).

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

1 **Note.** (1) Proposed Section 5850 would incorporate any “schedule of monetary penalties”
2 into the annual policy statement prepared pursuant to proposed Section 5310. The second
3 sentence of Section 1363(g), providing that the schedule only be distributed once (unless it is
4 amended) is not continued. It would be best if the membership were provided with the schedule
5 annually. The cost of incorporating it into the annual policy statement should be minimal.

6 (2) Existing Section 1363(g) makes clear that a violation of the governing documents includes
7 a violation by a member’s guest or invitee. That principle would be generalized, to include a
8 tenant or other resident of a member’s separate interest, in proposed Section 5860.

9 **§ 5855 (REVISED). Disciplinary process**

10 5855. (a) When the board is to meet to consider or impose discipline upon a
11 member, or to assess costs for damage to the common area, the board shall notify
12 the member in writing, by either personal delivery or individual delivery (Section
13 4040), at least 10 days prior to the meeting.

14 (b) The notification shall contain, at a minimum, the date, time, and place of the
15 meeting, the nature of the alleged violation for which a member may be
16 disciplined or the nature of the damage to the common area for which the member
17 may be assessed, and a statement that the member has a right to attend and may
18 address the board at the meeting. The board shall meet in executive session if
19 requested by the member being disciplined or assessed costs.

20 (c) If the board imposes discipline on a member or assesses the member for
21 damage to the common area, the board shall provide the member a written
22 notification of the decision, by either personal delivery or individual delivery
23 (Section 4040), within 15 days following the action.

24 (d) A disciplinary action or assessment of costs for damage to the common area
25 shall not be effective against a member unless the board fulfills the requirements
26 of this section.

27 **Comment.** Section 5855 continues former Section 1363(h) without change, with the following
28 exceptions:

- 29 (1) Subdivisions are added.
30 (2) The scope of the provision is expanded to include an action to assess a member for
31 costs for damage to the common area.
32 (3) “Subdivision” is changed to “section.”
33 (4) The terms “board of directors” and “board of directors of the association” have been
34 replaced with the defined term “board.” See Section 4085 (“board”).
35 (5) “Individual delivery” is substituted for first class mailing. See Section 4040.

36 See also Sections 4095 (“common area”), 4160 (“member”).

37 **Note.** Proposed Section 5855 would expand the scope of the existing disciplinary process to
38 also encompass board action to assess a member for damage to the common area. In each case,
39 the member should have an opportunity to address the board and rebut any charges against the
40 member.

41 **§ 5860 (NEW). Responsibility for guest, invitee, tenant, or resident**

42 5860. For the purposes of this article, a member may be held responsible for a
43 violation of the governing documents or damage to the common area caused by

1 the member's guest, invitee, or tenant, or occupant of the member's separate
2 interest.

3 **Comment.** Section 5860 is new. It generalizes a clause of former Section 1363(g), which
4 provided that a member may be liable for a violation of the governing documents by the
5 member's guest or invitee.

6 See also Sections 4095 ("common area"), 4150 ("governing documents"), 4160 ("member"),
7 4163 ("occupant"), 4185 ("separate interest").

8 **Note.** Proposed Section 5860 would fill a gap in existing law, which recognizes a member's
9 vicarious liability for conduct of a guest or invitee, but not for a tenant or other occupant of the
10 member's separate interest.

11 **§ 5865 (REVISED). No effect on authority of board**

12 5865. Nothing in Sections 5850 or 5855 shall be construed to create, expand, or
13 reduce the authority of the board to impose monetary penalties on a member for a
14 violation of the governing documents.

15 **Comment.** Section 5865 continues former Section 1363(j) without substantive change, with
16 the following exceptions:

- 17 (1) The term "board of directors of the association" has been replaced with the defined
18 term "board."
- 19 (2) The phrase "or rules of the association" has not been continued.
- 20 (3) The phrase "an association member" has been replaced with the defined term
21 "member."
- 22 (4) The reference to Sections 5850 and 5855 is narrower than the reference in former
23 Section 1363(j), which encompassed the entirety of former Section 1363.

24 See also Sections 4085 ("board"), 4150 ("governing documents" includes the operating rules of
25 the association), 4160 ("member").

26 **Note.** Existing Section 1363(j) refers to the entirety of Section 1363. Proposed Section 5865
27 would only refer to the provisions of Section 1363 that relate to member discipline.

28 **Article 2. Internal Dispute Resolution**

29 **§ 5900 (UNCHANGED). Application of article**

30 5900. (a) This article applies to a dispute between an association and a member
31 involving their rights, duties, or liabilities under this part, under the Nonprofit
32 Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of
33 Division 2 of Title 1 of the Corporations Code), or under the governing documents
34 of the common interest development or association.

35 (b) This article supplements, and does not replace, Article 3 (commencing with
36 Section 5925), relating to alternative dispute resolution as a prerequisite to an
37 enforcement action.

38 **Comment.** Section 5900 continues former Section 1363.810 without change, except that cross-
39 references are updated to reflect the new location of the referenced provisions.

40 See also Sections 4080 ("association"), 4100 ("common interest development"), 4150
41 ("governing documents"), 4160 ("member").

1 **§ 5905 (UNCHANGED). Fair, reasonable, and expeditious dispute resolution procedure**
2 **required**

3 5905. (a) An association shall provide a fair, reasonable, and expeditious
4 procedure for resolving a dispute within the scope of this article.

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

10 (c) If an association does not provide a fair, reasonable, and expeditious
11 procedure for resolving a dispute within the scope of this article, the procedure
12 provided in Section 5915 applies and satisfies the requirement of subdivision (a).

13 **Comment.** Section 5905 continues former Section 1363.820 without change, except that a
14 cross-reference is updated to reflect the new location of the referenced provision.

15 See also Section 4080 (“association”).

16 **§ 5910 (UNCHANGED). Minimum requirements of association procedure**

17 5910. A fair, reasonable, and expeditious dispute resolution procedure shall at a
18 minimum satisfy all of the following requirements:

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

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

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

25 (d) If the procedure is invoked by the association, the member may elect not to
26 participate in the procedure. If the member participates but the dispute is resolved
27 other than by agreement of the member, the member shall have a right of appeal to
28 the board.

29 (e) A resolution of a dispute pursuant to the procedure, which is not in conflict
30 with the law or the governing documents, binds the association and is judicially
31 enforceable. An agreement reached pursuant to the procedure, which is not in
32 conflict with the law or the governing documents, binds the parties and is
33 judicially enforceable.

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

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

38 **Comment.** Section 5910 continues former Section 1363.830 without change, with the
39 following exceptions:

40 (1) Subdivision (e) is revised to replace “that” with “which.”

41 (2) The term “association’s board of directors” has been replaced with the defined term
42 “board.” See Section 4085 (“board”).

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

1 **§ 5915 (UNCHANGED). Default meet and confer procedure**

2 5915. (a) This section applies to an association that does not otherwise provide a
3 fair, reasonable, and expeditious dispute resolution procedure. The procedure
4 provided in this section is fair, reasonable, and expeditious, within the meaning of
5 this article.

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

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

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

12 (3) The board shall designate a director to meet and confer.

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

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

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

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

23 (2) The agreement is either consistent with the authority granted by the board to
24 its designee or the agreement is ratified by the board.

25 (d) A member may not be charged a fee to participate in the process.

26 **Comment.** Section 5915 continues former Section 1363.840 without change, with the
27 following exceptions:

28 (1) The phrase “in an association” is changed to “to an association.”

29 (2) The term “association’s board of directors” has been replaced with the defined term
30 “board.”

31 (3) The superfluous phrases “of the association” and “of the common interest development
32 or association” are not continued.

33 (4) The defined term “director” is used in place of “board member.”

34 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest
35 development”), 4140 (“director”), 4160 (“member”), 4150 (“governing documents”).

36 **§ 5920 (REVISED). Notice in policy statement**

37 5920. The annual policy statement prepared pursuant to Section 5310 shall
38 include a description of the internal dispute resolution process provided pursuant
39 to this article.

40 **Comment.** Section 5920 continues former Section 1363.850 without change, except that a
41 reference to a notice delivered pursuant to former Section 1369.590 has been changed to refer to
42 distribution as part of the annual policy statement prepared pursuant to Section 5310.

Note. Proposed Section 5920 would provide for distribution of notice of the internal dispute resolution process as part of the annual policy statement distributed pursuant to proposed Section 5310.

Article 3. Alternative Dispute Resolution Prerequisite to Civil Action

§ 5925 (UNCHANGED). Definitions

5925. As used in this article:

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

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

(1) Enforcement of this title.

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

(3) Enforcement of the governing documents.

Comment. Section 5925 continues former Section 1369.510 without change, except the phrase “of a common interest development” is not continued in subdivision (b)(3).

See also Section 4150 (“governing documents”).

§ 5930 (UNCHANGED). ADR prerequisite to enforcement action

5930. (a) An association or a member may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.

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

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

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

Comment. Section 5930 continues former Section 1369.520 without change, with the following exceptions:

(1) The superfluous phrase “of a common interest development” is not continued.

(2) The defined term “member” is used in place of “owner.” See Section 4160 (“member”).

See also Section 4080 (“association”).

1 **§ 5935 (UNCHANGED). Request for resolution**

2 5935. (a) Any party to a dispute may initiate the process required by Section
3 5930 by serving on all other parties to the dispute a Request for Resolution. The
4 Request for Resolution shall include all of the following:

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

6 (2) A request for alternative dispute resolution.

7 (3) A notice that the party receiving the Request for Resolution is required to
8 respond within 30 days of receipt or the request will be deemed rejected.

9 (4) If the party on whom the request is served is the member, a copy of this
10 article.

11 (b) Service of the Request for Resolution shall be by personal delivery, first-
12 class mail, express mail, facsimile transmission, or other means reasonably
13 calculated to provide the party on whom the request is served actual notice of the
14 request.

15 (c) A party on whom a Request for Resolution is served has 30 days following
16 service to accept or reject the request. If a party does not accept the request within
17 that period, the request is deemed rejected by the party.

18 **Comment.** Section 5935 continues former Section 1369.530 without change, except that the
19 defined term “member” is used in place of “owner.” See Section 4160 (“member”).

20 **§ 5940 (UNCHANGED). ADR process**

21 5940. (a) If the party on whom a Request for Resolution is served accepts the
22 request, the parties shall complete the alternative dispute resolution within 90 days
23 after the party initiating the request receives the acceptance, unless this period is
24 extended by written stipulation signed by both parties.

25 (b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence
26 Code applies to any form of alternative dispute resolution initiated by a Request
27 for Resolution under this article, other than arbitration.

28 (c) The costs of the alternative dispute resolution shall be borne by the parties.

29 **Comment.** Section 5940 continues former Section 1369.540 without change.

30 **§ 5945 (UNCHANGED). Tolling of statute of limitations**

31 5945. If a Request for Resolution is served before the end of the applicable time
32 limitation for commencing an enforcement action, the time limitation is tolled
33 during the following periods:

34 (a) The period provided in Section 5935 for response to a Request for
35 Resolution.

36 (b) If the Request for Resolution is accepted, the period provided by Section
37 5940 for completion of alternative dispute resolution, including any extension of
38 time stipulated to by the parties pursuant to Section 5940.

39 **Comment.** Section 5945 continues former Section 1369.550 without change, except that cross-
40 references are updated to reflect the new location of the referenced provisions.

1 **§ 5950 (UNCHANGED). Certification of efforts to resolve dispute**

2 5950. (a) At the time of commencement of an enforcement action, the party
3 commencing the action shall file with the initial pleading a certificate stating that
4 one or more of the following conditions is satisfied:

5 (1) Alternative dispute resolution has been completed in compliance with this
6 article.

7 (2) One of the other parties to the dispute did not accept the terms offered for
8 alternative dispute resolution.

9 (3) Preliminary or temporary injunctive relief is necessary.

10 (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a
11 demurrer or a motion to strike unless the court finds that dismissal of the action for
12 failure to comply with this article would result in substantial prejudice to one of
13 the parties.

14 **Comment.** Section 5950 continues former Section 1369.560 without change.

15 **§ 5955 (UNCHANGED). Stay of litigation for dispute resolution**

16 5955. (a) After an enforcement action is commenced, on written stipulation of
17 the parties, the matter may be referred to alternative dispute resolution. The
18 referred action is stayed. During the stay, the action is not subject to the rules
19 implementing subdivision (c) of Section 68603 of the Government Code.

20 (b) The costs of the alternative dispute resolution shall be borne by the parties.

21 **Comment.** Section 5955 continues former Section 1369.570 without change.

22 **§ 5960 (REVISED). Attorney's fees**

23 5960. In an enforcement action in which fees and costs may be awarded, the
24 court, in determining the amount of the award, may consider whether a party's
25 refusal to participate in alternative dispute resolution before commencement of the
26 action was reasonable.

27 **Comment.** Section 5960 generalizes former Section 1369.580 so that it applies to any
28 enforcement action in which fees and costs may be awarded and not just to an action to enforce
29 the governing documents.

30 **Note.** Existing Section 1369.580 authorizes the court to consider refusal to participate in
31 ADR in determining the amount of a fee or cost award, but only in an action under existing
32 Section 1354(a) (enforcement of covenants and restrictions in declaration). Proposed Section
33 5960 would expand the court's authority to consider ADR nonparticipation in setting a fee or cost
34 award, so that it would apply to any enforcement action in which fees or costs may be awarded.

35 **§ 5965 (REVISED). Notice in annual policy statement**

36 5965. (a) An association shall annually provide its members a summary of the
37 provisions of this article that specifically references this article. The summary
38 shall include the following language:

39 "Failure of a member of the association to comply with the alternative dispute
40 resolution requirements of Section 5930 of the Civil Code may result in the loss of

1 the member’s right to sue the association or another member of the association
2 regarding enforcement of the governing documents or the applicable law.”

3 (b) The summary shall be included in the annual policy statement prepared
4 pursuant to Section 5310.

5 **Comment.** Subdivision (a) of Section 5965 continues former Section 1369.590(a) without
6 change, with the following exceptions:

- 7 (1) A cross-reference is updated to reflect the new location of the referenced provision.
- 8 (2) The pronoun “your” is replaced with “the member’s” to improve the clarity of the
9 notice.

10 Subdivision (b) is similar to the first sentence of former Section 1369.590(b).

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

12 **Note.** Proposed Section 5965 would supersede the first sentence of Section 1369.590(b),
13 which provided: “The summary shall be provided either at the time the pro forma budget required
14 by Section 1365 is distributed or in the manner prescribed in Section 5016 of the Corporations
15 Code.” The substance of the second sentence of Section 1369.590(b) would be continued in
16 proposed Section 5920.

17 Article 4. Civil Actions

18 § 5975 (UNCHANGED). Enforcement of governing documents

19 5975. (a) The covenants and restrictions in the declaration shall be enforceable
20 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind
21 all owners of separate interests in the development. Unless the declaration states
22 otherwise, these servitudes may be enforced by any owner of a separate interest or
23 by the association, or by both.

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

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

29 **Comment.** Section 5975 continues former Section 1354 without change.

30 See also Sections 4080 (“association”), 4135 (“declaration”), 4150 (“governing documents”),
31 4185 (“separate interest”).

32 § 5980 (NEW). Enforcement of this part

33 5980. In addition to any other remedy provided by law, a member may bring an
34 action in superior court to enforce a provision of this part.

35 **Comment.** Section 5980 is new. Relief under this section may include a writ of mandate, an
36 injunction, or other appropriate relief.

37 See also Section 4160 (“member”).

38 **Note.** Proposed Section 5980 would make clear that a member may bring a civil action to
39 enforce any requirement of the Davis-Stirling Act.

CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

§ 6000 (REVISED). Actions for damages

6000. (a) Before an association files a complaint for damages against a builder, developer, or general contractor (“respondent”) of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of this section shall be satisfied with respect to the builder, developer, or general contractor.

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

(c). The notice shall include all of the following:

(1) The name and location of the project.

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

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

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

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

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

(d) Within 25 days of the date the association serves the Notice of Commencement of Legal Proceedings, the respondent may request in writing to

1 meet and confer with the board. Unless the respondent and the association
2 otherwise agree, there shall be not more than one meeting, which shall take place
3 no later than 10 days from the date of the respondent's written request, at a
4 mutually agreeable time and place. The meeting shall be subject to subdivision (a)
5 of Section 4925 and subdivisions (a) and (b) of Section 4935. The discussions at
6 the meeting are privileged communications and are not admissible in evidence in
7 any civil action, unless the association and the respondent consent in writing to
8 their admission.

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

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

25 (2) The respondent shall provide written notice by certified mail to all
26 subcontractors, design professionals, their insurers, and the insurers of any
27 additional insured whose identities are known to the respondent or readily
28 ascertainable by review of the project files or other similar sources and whose
29 potential responsibility appears on the face of the notice. This notice to
30 subcontractors, design professionals, and insurers shall include a copy of the
31 Notice of Commencement of Legal Proceedings, and shall specify the date and
32 manner by which the parties shall meet and confer to select a dispute resolution
33 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its
34 obligation to participate in the meet and confer or serve a written acknowledgment
35 of receipt regarding this notice, advise the recipient that it will waive any
36 challenge to selection of the dispute resolution facilitator if it elects not to
37 participate in the meet and confer, advise the recipient that it may be bound by any
38 settlement reached pursuant to subdivision (d) of Section 6050, advise the
39 recipient that it may be deemed to have waived rights to conduct inspection and
40 testing pursuant to subdivision (c) of Section 6050, advise the recipient that it may
41 seek the assistance of an attorney, and advise the recipient that it should contact its
42 insurer, if any. Any subcontractor or design professional, or insurer for that
43 subcontractor, design professional, or additional insured, who receives written

1 notice from the respondent regarding the meet and confer shall, prior to the meet
2 and confer, serve on the respondent a written acknowledgment of receipt. That
3 subcontractor or design professional shall, within 10 days of service of the written
4 acknowledgment of receipt, provide to the association and the respondent a
5 Statement of Insurance that includes both of the following:

6 (A) The names, addresses, and contact persons, if known, of all insurance
7 carriers, whether primary or excess and regardless of whether a deductible or self-
8 insured retention applies, whose policies were in effect from the commencement
9 of construction of the subject project to the present and which potentially cover the
10 subject claims.

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

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

28 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of
29 subdivision (e), the association, respondent, subcontractors, design professionals,
30 and their insurers who have been sent a notice as described in paragraph (2) of
31 subdivision (e) shall meet and confer in an effort to select a dispute resolution
32 facilitator to preside over the mandatory dispute resolution process prescribed by
33 this section. Any subcontractor or design professional who has been given timely
34 notice of this meeting but who does not participate, waives any challenge he or she
35 may have as to the selection of the dispute resolution facilitator. The role of the
36 dispute resolution facilitator is to attempt to resolve the conflict in a fair manner.
37 The dispute resolution facilitator shall be sufficiently knowledgeable in the subject
38 matter and be able to devote sufficient time to the case. The dispute resolution
39 facilitator shall not be required to reside in or have an office in the county in which
40 the project is located. The dispute resolution facilitator and the participating
41 parties shall agree to a date, time, and location to hold a case management meeting
42 of all parties and the dispute resolution facilitator, to discuss the claims being
43 asserted and the scheduling of events under this section. The case management

1 meeting with the dispute resolution facilitator shall be held within 100 days of
2 service of the Notice of Commencement of Legal Proceedings at a location in the
3 county where the project is located. Written notice of the case management
4 meeting with the dispute resolution facilitator shall be sent by the respondent to
5 the association, subcontractors and design professionals, and their insurers who are
6 known to the respondent to be on notice of the claim, no later than 10 days prior to
7 the case management meeting, and shall specify its date, time, and location. The
8 dispute resolution facilitator in consultation with the respondent shall maintain a
9 contact list of the participating parties.

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

22 (3) A dispute resolution facilitator shall be disqualified by the court if he or she
23 fails to comply with this ~~paragraph~~ subdivision and any party to the dispute
24 resolution process serves a notice of disqualification prior to the case management
25 meeting. If the dispute resolution facilitator complies with this ~~paragraph~~
26 subdivision, he or she shall be disqualified by the court on the basis of the
27 disclosure if any party to the dispute resolution process serves a notice of
28 disqualification prior to the case management meeting.

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

35 (5) Any subcontractor or design professional who receives notice of the
36 association's claim without having previously received timely notice of the meet
37 and confer to select the dispute resolution facilitator shall be notified by the
38 respondent regarding the name, address, and telephone number of the dispute
39 resolution facilitator. Any such subcontractor or design professional may serve
40 upon the parties and the dispute resolution facilitator a written objection to the
41 dispute resolution facilitator within 15 days of receiving notice of the claim.
42 Within seven days after service of this objection, the subcontractor or design
43 professional may petition the superior court to replace the dispute resolution

1 facilitator. The court may replace the dispute resolution facilitator only upon a
2 showing of good cause, liberally construed. Failure to satisfy the deadlines set
3 forth in this subdivision shall constitute a waiver of the right to challenge the
4 dispute resolution facilitator.

5 (6) The costs of the dispute resolution facilitator shall be apportioned in the
6 following manner: one-third to be paid by the association; one-third to be paid by
7 the respondent; and one-third to be paid by the subcontractors and design
8 professionals, as allocated among them by the dispute resolution facilitator. The
9 costs of the dispute resolution facilitator shall be recoverable by the prevailing
10 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil
11 Procedure, provided however that any nonsettling party may, prior to the filing of
12 the complaint, petition the facilitator to reallocate the costs of the dispute
13 resolution facilitator as they apply to any nonsettling party. The determination of
14 the dispute resolution facilitator with respect to the allocation of these costs shall
15 be binding in any subsequent litigation. The dispute resolution facilitator shall take
16 into account all relevant factors and equities between all parties in the dispute
17 resolution process when reallocating costs.

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

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

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

26 (A) The scope of the work performed by each potentially responsible
27 subcontractor.

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

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

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

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

42 (1) Establishment of a document depository, located in the county where the
43 project is located, for deposit of documents, defect lists, demands, and other

1 information provided for under this section. All documents exchanged by the
2 parties and all documents created pursuant to this subdivision shall be deposited in
3 the document depository, which shall be available to all parties throughout the
4 pre-filing dispute resolution process and in any subsequent litigation. When any
5 document is deposited in the document depository, the party depositing the
6 document shall provide written notice identifying the document to all other parties.
7 The costs of maintaining the document depository shall be apportioned among the
8 parties in the same manner as the costs of the dispute resolution facilitator.

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

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

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

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

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

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

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

42 (i) In addition to the foregoing elements of the case management statement
43 described in subdivision (h), upon mutual agreement of the parties, the dispute

1 resolution facilitator may include any or all of the following elements in a case
2 management statement: the exchange of consultant or expert photographs; expert
3 presentations; expert meetings; or any other mechanism deemed appropriate by the
4 parties in the interest of resolving the dispute.

5 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the
6 time the case management statement is established, set deadlines for the
7 occurrence of each event set forth in the case management statement, taking into
8 account such factors as the size and complexity of the case, and the requirement of
9 this section that this dispute resolution process not exceed 180 days absent
10 agreement of the parties to an extension of time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (I) Except for the purpose of in camera review as provided in subdivision (c) of
11 Section 6050, all defect lists and demands, communications, negotiations, and
12 settlement offers made in the course of the prelitigation dispute resolution process
13 provided by this section shall be inadmissible pursuant to Sections 1119 to 1124,
14 inclusive, of the Evidence Code and all applicable decisional law. This
15 inadmissibility shall not be extended to any other documents or communications
16 which would not otherwise be deemed inadmissible.

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

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

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

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

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

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

1 (5) To seek a determination that a settlement is a good faith settlement pursuant
2 to Section 877.6 of the Code of Civil Procedure and all related authorities. The
3 page limitations and meet and confer requirements specified in this section shall
4 not apply to these motions, which may be made on shortened notice. Instead, these
5 motions shall be subject to other applicable state law, rules of court, and local
6 rules. A determination made by the court pursuant to this motion shall have the
7 same force and effect as the determination of a postfiling application or motion for
8 good faith settlement.

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

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

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

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

24 (p) As used in this section:

25 (1) “Association” shall have the same meaning as defined in Section 4080.

26 (2) “Builder” means the declarant, as defined in Section 4130.

27 (3) “Common interest development” shall have the same meaning as in Section
28 4100, except that it shall not include developments or projects with less than 20
29 units.

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

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

35 (s) This section shall become inoperative on July 1, 2017, and, as of January 1,
36 2018, is repealed, unless a later enacted statute, that becomes operative on or
37 before January 1, 2018, deletes or extends the dates on which it becomes
38 inoperative and is repealed.

39 **Comment.** Section 6000 continues former Section 1375 without change, with the following
40 exceptions:

41 (1) Cross-references are updated to reflect the new location of the referenced provisions.

42 (2) The terms “board of directors” and “board of directors of the association” have been
43 replaced throughout with the defined term “board.” See Section 4085 (“board”).

1 (3) Subdivision (f)(3) is revised to correct erroneous references to “this paragraph.” The
2 revised provision refers to “this subdivision.”

3 See also Sections 4080 (“association”), 4100 (“common interest development”), 4160
4 (“member”), 4170 (“person”).

5 **☞ Staff Note.** Section 1375(f)(3) includes two references to “this paragraph.” It seems plain that
6 this is an error and that the references should instead be to all of subdivision (f) (i.e., “this
7 subdivision.”) Proposed Section 6000 corrects that apparent error. The Commission invites
8 comment on whether this would cause any problems.

9 **§ 6050 (UNCHANGED). Action following pre-filing dispute resolution**

10 6050. (a) Upon the completion of the mandatory pre-filing dispute resolution
11 process described in Section 6000, if the parties have not settled the matter, the
12 association or its assignee may file a complaint in the superior court in the county
13 in which the project is located. Those matters shall be given trial priority.

14 (b) In assigning trial priority, the court shall assign the earliest possible trial
15 date, taking into consideration the pretrial preparation completed pursuant to
16 Section 6000, and shall deem the complaint to have been filed on the date of
17 service of the Notice of Commencement of Legal Proceedings described under
18 Section 6000.

19 (c) Any respondent, subcontractor, or design professional who received timely
20 prior notice of the inspections and testing conducted under Section 6000 shall be
21 prohibited from engaging in additional inspection or testing, except if all of the
22 following specific conditions are met, upon motion to the court:

23 (1) There is an insurer for a subcontractor or design professional, that did not
24 have timely notice that legal proceedings were commenced under Section 6000 at
25 least 30 days prior to the commencement of inspections or testing pursuant to
26 paragraph (6) of subdivision (h) of Section 6000.

27 (2) The insurer’s insured did not participate in any inspections or testing
28 conducted under the provisions of paragraph (6) of subdivision (h) of Section
29 6000.

30 (3) The insurer has, after receiving notice of a complaint filed in superior court
31 under subdivision (a), retained separate counsel, who did not participate in the
32 Section 6000 dispute resolution process, to defend its insured as to the allegations
33 in the complaint.

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

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

38 If the court permits additional inspections or testing upon finding that these
39 requirements are met, any additional inspections or testing shall be limited to the
40 extent reasonably necessary to avoid the likelihood of prejudice and shall be
41 coordinated among all similarly situated parties to ensure that they occur without
42 unnecessary duplication. For purposes of providing notice to an insurer prior to
43 inspections or testing under paragraph (6) of subdivision (h) of Section 6000, if

1 notice of the proceedings was not provided by the insurer's insured, notice may be
2 made via certified mail either by the subcontractor, design professional,
3 association, or respondent to the address specified in the Statement of Insurance
4 provided under paragraph (2) of subdivision (e) of Section 6000. Nothing herein
5 shall affect the rights of an intervenor who files a complaint in intervention. If the
6 association alleges defects that were not specified in the prefiling dispute
7 resolution process under Section 6000, the respondent, subcontractor, and design
8 professionals shall be permitted to engage in testing or inspection necessary to
9 respond to the additional claims. A party who seeks additional inspections or
10 testing based upon the amendment of claims shall apply to the court for leave to
11 conduct those inspections or that testing. If the court determines that it must
12 review the defect claims alleged by the association in the prefiling dispute
13 resolution process in order to determine whether the association alleges new or
14 additional defects, this review shall be conducted in camera. Upon objection of
15 any party, the court shall refer the matter to a judge other than the assigned trial
16 judge to determine if the claim has been amended in a way that requires additional
17 testing or inspection.

18 (d) Any subcontractor or design professional who had notice of the facilitated
19 dispute resolution conducted under Section 6000 but failed to attend, or attended
20 without settlement authority, shall be bound by the amount of any settlement
21 reached in the facilitated dispute resolution in any subsequent trial, although the
22 affected party may introduce evidence as to the allocation of the settlement. Any
23 party who failed to participate in the facilitated dispute resolution because the
24 party did not receive timely notice of the mediation shall be relieved of any
25 obligation to participate in the settlement. Notwithstanding any privilege
26 applicable to the prefiling dispute resolution process provided by Section 6000,
27 evidence may be introduced by any party to show whether a subcontractor or
28 design professional failed to attend or attended without settlement authority. The
29 binding effect of this subdivision shall in no way diminish or reduce a nonsettling
30 subcontractor or design professional's right to defend itself or assert all available
31 defenses relevant to its liability in any subsequent trial. For purposes of this
32 subdivision, a subcontractor or design professional shall not be deemed to have
33 attended without settlement authority because it asserted defenses to its potential
34 liability.

35 (e) Notice of the facilitated dispute resolution conducted under Section 6000
36 must be mailed by the respondent no later than 20 days prior to the date of the first
37 facilitated dispute resolution session to all parties. Notice shall also be mailed to
38 each of these parties' known insurance carriers. Mailing of this notice shall be by
39 certified mail. Any subsequent facilitated dispute resolution notices shall be served
40 by any means reasonably calculated to provide those parties actual notice.

41 (f) As to the complaint, the order of discovery shall, at the request of any
42 defendant, except upon a showing of good cause, permit the association's expert
43 witnesses to be deposed prior to any percipient party depositions. The depositions

1 shall, at the request of the association, be followed immediately by the defendant’s
2 experts and then by the subcontractors’ and design professionals’ experts, except
3 on a showing of good cause. For purposes of this section, in determining what
4 constitutes “good cause,” the court shall consider, among other things, the goal of
5 early disclosure of defects and whether the expert is prepared to render a final
6 opinion, except that the court may modify the scope of any expert’s deposition to
7 address those concerns.

8 (g)(1) The only method of seeking judicial relief for the failure of the
9 association or the respondent to complete the dispute resolution process under
10 Section 6000 shall be the assertion, as provided for in this subdivision, of a
11 procedural deficiency to an action for damages by the association against the
12 respondent after that action has been filed. A verified application asserting a
13 procedural deficiency shall be filed with the court no later than 90 days after the
14 answer to the plaintiff’s complaint has been served, unless the court finds that
15 extraordinary conditions exist.

16 (2) Upon the verified application of the association or the respondent alleging
17 substantial noncompliance with Section 6000, the court shall schedule a hearing
18 within 21 days of the application to determine whether the association or
19 respondent has substantially complied with this section. The issue may be
20 determined upon affidavits or upon oral testimony, in the discretion of the court.

21 (3)(A) If the court finds that the association or the respondent did not
22 substantially comply with this paragraph, the court shall stay the action for up to
23 90 days to allow the noncomplying party to establish substantial compliance. The
24 court shall set a hearing within 90 days to determine substantial compliance. At
25 any time, the court may, for good cause shown, extend the period of the stay upon
26 application of the noncomplying party.

27 (B) If, within the time set by the court pursuant to this paragraph, the association
28 or the respondent has not established that it has substantially complied with this
29 section, the court shall determine if, in the interest of justice, the action should be
30 dismissed without prejudice, or if another remedy should be fashioned. Under no
31 circumstances shall the court dismiss the action with prejudice as a result of the
32 association’s failure to substantially comply with this section. In determining the
33 appropriate remedy, the court shall consider the extent to which the respondent has
34 complied with this section.

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

37 (i) This section shall become inoperative on July 1, 2010, and, as of January 1,
38 2011, is repealed, unless a later enacted statute that is enacted before January 1,
39 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

40 **Comment.** Section 6050 continues former Section 1375.05 without change, except that cross-
41 references are updated to reflect the new location of the referenced provisions.

42 See also Section 4080 (“association”).

1 **§ 6100 (UNCHANGED). Notice of resolution**

2 6100. (a) As soon as is reasonably practicable after the association and the
3 builder have entered into a settlement agreement or the matter has otherwise been
4 resolved regarding alleged defects in the common areas, alleged defects in the
5 separate interests that the association is obligated to maintain or repair, or alleged
6 defects in the separate interests that arise out of, or are integrally related to, defects
7 in the common areas or separate interests that the association is obligated to
8 maintain or repair, where the defects giving rise to the dispute have not been
9 corrected, the association shall, in writing, inform only the members of the
10 association whose names appear on the records of the association that the matter
11 has been resolved, by settlement agreement or other means, and disclose all of the
12 following:

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

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

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

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

26 (c) Disclosure of the information required pursuant to subdivision (a) or
27 authorized by subdivision (b) shall not waive any privilege attached to the
28 information.

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

31 **Comment.** Section 6100 continues former Section 1375.1 without change.

32 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
33 development”), 4160 (“member”), 4185 (“separate interest”).

34 **§ 6150 (UNCHANGED). Notice of civil action**

35 6150. (a) Not later than 30 days prior to the filing of any civil action by the
36 association against the declarant or other developer of a common interest
37 development for alleged damage to the common areas, alleged damage to the
38 separate interests that the association is obligated to maintain or repair, or alleged
39 damage to the separate interests that arises out of, or is integrally related to,
40 damage to the common areas or separate interests that the association is obligated
41 to maintain or repair, the board shall provide a written notice to each member of

1 the association who appears on the records of the association when the notice is
2 provided. This notice shall specify all of the following:

3 (1) That a meeting will take place to discuss problems that may lead to the filing
4 of a civil action.

5 (2) The options, including civil actions, that are available to address the
6 problems.

7 (3) The time and place of this meeting.

8 (b) Notwithstanding subdivision (a), if the association has reason to believe that
9 the applicable statute of limitations will expire before the association files the civil
10 action, the association may give the notice, as described above, within 30 days
11 after the filing of the action.

12 **Comment.** Section 6150 continues former Section 1368.5 without change, except that the term
13 “board of directors of the association” has been replaced with the defined term “board.” See
14 Section 4085 (“board”).

15 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
16 development”), 4130 (“declarant”), 4160 (“member”), 4185 (“separate interest”).

17 **Uncodified (added). Operative date**

18 This act becomes operative on January 1, 2013.

DISPOSITION OF FORMER LAW

The table below shows the relationship between each provision of the existing Davis-Stirling Common Interest Development Act and the corresponding provision of the proposed law.

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1350.....	4000	1357.140.....	4365
1350.5.....	4005	1357.150.....	4370
1350.7.....	omitted, but see 4040, 4045, 4050	1358(a).....	4625
1351 (intro.).....	4075	1358(b).....	4630
1351(a).....	4080	1358(c).....	4635
1351(b).....	4095	1358(d).....	4640
1351(c).....	4100	1358 (last ¶).....	4650
1351(d).....	4105	1358 (next to last ¶).....	4645
1351(e)(1)-(2).....	4120	1359.....	4610
1351(e)(3) (except last ¶).....	4290	1360.....	4760
1351(e)(3) (last ¶).....	4295	1360.5.....	4715
1351(f).....	4125	1361.....	4505
1351(g).....	4130	1361.5.....	4510
1351(h).....	4135	1362.....	4500
1351(i).....	4145	1363(a).....	4800
1351(j).....	4150	1363(b).....	omitted
1351(k).....	4175	1363(c).....	4805
1351(l).....	4185	1363(d).....	5000(a)
1351(m).....	4190	1363(e).....	5000(b)
1352.....	4030(a)	1363(f) (1st sent.).....	5240(b)
1352.5.....	4225(a)-(b), (d)	1363(f) (2d sent.).....	omitted
1353(a)(1) (1st & 2d sent.).....	4250(a)	1363(g) (1st sent.).....	5850
1353(a)(1)-(4) (except 1st & 2d sent.).....	4255	1363(g) (2d sent.).....	omitted
1353(b).....	4250(b)	1363(h).....	5855
1353.5.....	4705	1363(i).....	4820
1353.6.....	4710	1363(j).....	5865
1353.7.....	4720	1363.001.....	5400
1353.8.....	4755	1363.005.....	omitted
1354.....	5975	1363.03(a).....	5105(a)
1355(a).....	4270(a)	1363.03(b) (1st sent.).....	5100(a)
1355(b) (1st sent.).....	4260	1363.03(b) (2d & 3d sents.).....	5115(b)
1355(b)(1).....	5115(e)	1363.03(b) (4th sent.).....	5115(c)
1355(b)(2).....	4270(b)	1363.03(c).....	5110
1355(b)(3).....	4270(a)(3)	1363.03(d).....	5130
1355.5.....	4230	1363.03(e).....	5115(a)
1356.....	4275	1363.03(f).....	5120(a)
1357(a).....	4265(a)	1363.03(g).....	5120(b)
1357(b) (except part of 1st sent.).....	omitted	1363.03(h).....	5125(a)
1357(b) (part of 1st sent.).....	4265(b)	1363.03(i).....	5125(b)
1357(c).....	omitted	1363.03(j).....	5105(b)
1357(d).....	4265(c)	1363.03(k).....	5115(d)
1357.100(a).....	4165	1363.03(l).....	5100(c)
1357.100(b).....	4180	1363.03(m).....	5100(d)
1357.110.....	4350	1363.03(n).....	5100(e)
1357.120.....	4355	1363.03(o).....	omitted
1357.130.....	4360	1363.04.....	5135

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1363.05(a).....	4900	1365.2(a)(2) (except last cl.)	5200(b)
1363.05(b) (1st part of 1st sent.)	4925(a)	1365.2(a)(2) (last cl.)	5205(g) (2d sent.)
1363.05(b) (2d part of 1st sent.)	4935(a)	1365.2(b)	5205(a)-(b)
1363.05(b) (2d sent.)	4935(b)	1365.2(c)(1)-(4)	5205(c)-(f)
1363.05(c)	4935(e)	1365.2(c)(5).....	5205(g) (1st & 3d sents.)
1363.05(d).....	4950(a)	1365.2(d)	5215
1363.05(e)	4950(b)	1365.2(e)	5230
1363.05(f)	4920(a)	1365.2(f)	5235
1363.05(g).....	4923	1365.2(g)	5240(c)
1363.05(h).....	4925(b)	1365.2(h)	5205(h)
1363.05(i).....	4930	1365.2(i)-(j)	5210(a)-(b)
1363.05(j).....	4090	1365.2(k)	5210(c)
1363.07 (except (a)(3)(f))	4600	1365.2(l)	5240(a)
1363.07(a)(3)(F).....	4025(a)(4)	1365.2(m)	5240(d)
1363.09 (re elections).....	5145	1365.2(n)	omitted
1363.09(a)-(b) (re exclusive use grant).....	4605	1365.2.5	5570
1363.09(a)-(b) (re open meetings)	4955	1365.2.5(b)(3)	5300(e)
1363.1(a).....	5375	1365.3	5580
1363.1(b).....	4155(a), (b)(1)-(2)	1365.5(a)	5500
1363.2(a)-(e).....	5380(a)-(e)	1365.5(b)	5510(a)
1363.2(f)	4155	1365.5(c)(1).....	5510(b)
1363.2(g).....	5380(f)	1365.5(c)(2).....	5515
1363.5.....	4280	1365.5(d)	5520
1363.6.....	5405	1365.5(e) (1)-(4), (5) (1st sent.)	5550
1363.810	5900(a)-(b)	1365.5(e)(5) (except 1st sent.)	5560
1363.820	5905	1365.5(f).....	4177
1363.830	5910	1365.5(g)	4178
1363.840	5915	1365.5(h)	omitted
1363.850	5920	1365.6	5350(a)
1364(a)	4775(a)	1365.7	5800
1364(b).....	4780	1365.9	5805
1364(c)	4775(b)	1366(a) (1st sent.)	5600(a)
1364(d)-(e).....	4785	1366(a) (2d sent.)	5605(a)
1364(f).....	4790	1366(a) (3d sent.)	5605(c)
1365(a)(1)	5300(b)(1)	1366(b) (1st sent.)	5605(b)
1365(a)(2) (intro. cl.)	5300(b)(2)	1366(b) (2d sent.).....	5605(c)
1365(a)(2)(A)-(D)	5565	1366(b) (3d & 4th sent.)	5610 (intro.)
1365(a)(3)(A)	5300(b)(4)	1366(b)(1)-(3)	5610(a)-(c)
1365(a)(3)(B).....	5300(b)(5)	1366(c).....	5620
1365(a)(3)(C).....	5300(b)(6)	1366(d)	5615
1365(a)(3)(D)	5300(b)(8)	1366(e).....	5650(b)
1365(a)(4) (1st ¶).....	5300(b)(7)	1366(f).....	5650(c)
1365(a)(4) (2d ¶)	5300(d)	1366.1	5600(b)
1365(a)(4) (3d ¶)	5300(a)	1366.2(a)	4205
1365(b).....	5300(b)(3)	1366.2(b)	omitted
1365(c)	5305(a)	1366.4	5625
1365(d).....	5320	1367	omitted, but see 5740
1365(e)	5310(a)(7)	1367.1(a) (1st sent.)	5650(a)
1365(f)(1).....	5300(b)(9) (1st & 2d sent.)	1367.1(a) (2d sent.).....	5660 (intro.)
1365(f)(2).....	5810	1367.1(a)(1)-(6)	5660(a)-(f)
1365(f)(3).....	5300(b)(8) (3d sent.)	1367.1(b)	5655
1365(f)(4).....	5300(b)(8) (4th sent. & 2d ¶)	1367.1(c)(1)(A).....	5670
1365.1.....	5730	1367.1(c)(1)(B)	omitted, but see 5705(b)
1365.2(a)(1) (except (I)(ii)-(iii))	5200(a)	1367.1(c)(2).....	5673
1365.2(a)(1)(I)(ii)	5225	1367.1(c)(3).....	5665
1365.2(a)(1)(I)(iii).....	5220	1367.1(d) (1st - 5th sent.)	5675(a)-(e)

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1367.1(d) (6th sent.)	5685(a)	1368(c)(3)	4110
1367.1(d) (7th & 8th sent.)	5725(a)	1368(d)	4540
1367.1(e)	5725(b)	1368(e)	4545
1367.1(f)	5680	1368(f)	4535
1367.1(g) (1st sent.)	5735	1368(g)	omitted
1367.1(g) (2d sent.)	5700(a)	1368.1	4730
1367.1(g) (3d sent.)	5710(a)	1368.3	4810
1367.1(g) (4th sent.)	5710(c) (intro.)	1368.4	4815
1367.1(g)(1)-(2)	5710(c)(1)-(2)	1368.5	6150
1367.1(h)	5700(b)	1369	4615
1367.1(i)	5685(b)	1369.510	5925
1367.1(j)	5710(b)	1369.520	5930
1367.1(k)	5675(f)	1369.530	5935
1367.1(l)	5675(g)	1369.540	5940
1367.1(m)	omitted, but see 5740	1369.550	5945
1367.1(n)	omitted	1369.560	5950
1367.4(a)	5705(a), 5715(a), 5720(a)	1369.570	5955
1367.4(b)	5720(b)	1369.580	5960
1367.4(c) (intro.)	omitted, but see 5705, 5715	1369.590	5965
1367.4(c)(1)	5705(b)	1370	4215
1367.4(c)(2)	5705(c)	1371	4220
1367.4(c)(3)	5705(d)	1372	4020
1367.4(c)(4)	5715(b)	1373	4025
1367.4(d)	5720(c)(2)-(3)	1374	4015
1367.5	5685(c)	1375	6000
1367.6	5658	1375.05	6050
1368(a)	4525(a)-(h)	1375.1	6100
1368(b)	4530	1376	4725
1368(c)(1)	4575	1378	4765
1368(c)(2)	4580		

CONFORMING REVISIONS

1 **Bus. & Prof. Code § 10131.01. Exceptions to application of Section 10131**

2 SEC. ____ . Section 10131.01 of the Business and Professions Code is amended
3 to read:

4 10131.01. (a) Subdivision (b) of Section 10131 does not apply to (1) the
5 manager of a hotel, motel, auto and trailer park, to the resident manager of an
6 apartment building, apartment complex, or court, or to the employees of that
7 manager, or (2) any person or entity, including a person employed by a real estate
8 broker, who, on behalf of another or others, solicits or arranges, or accepts
9 reservations or money, or both, for transient occupancies described in paragraphs
10 (1) and (2) of subdivision (b) of Section 1940 of the Civil Code, in a dwelling unit
11 in a common interest development, as defined in Section ~~1351~~ 4100 of the Civil
12 Code, in a dwelling unit in an apartment building or complex, or in a single-family
13 home, or (3) any person other than the resident manager or employees of that
14 manager, performing the following functions who is the employee of the property
15 management firm retained to manage a residential apartment building or complex
16 or court and who is performing under the supervision and control of a broker of
17 record who is an employee of that property management firm or a salesperson
18 licensed to the broker who meets certain minimum requirements as specified in a
19 regulation issued by the commissioner:

20 (A) Showing rental units and common areas to prospective tenants.

21 (B) Providing or accepting preprinted rental applications, or responding to
22 inquiries from a prospective tenant concerning the completion of the application.

23 (C) Accepting deposits or fees for credit checks or administrative costs and
24 accepting security deposits and rents.

25 (D) Providing information about rental rates and other terms and provisions of a
26 lease or rental agreement, as set out in a schedule provided by an employer.

27 (E) Accepting signed leases and rental agreements from prospective tenants.

28 (b) A broker or salesperson shall exercise reasonable supervision and control
29 over the activities of nonlicensed persons acting under paragraph (3) of
30 subdivision (a).

31 (c) A broker employing nonlicensed persons to act under paragraph (3) of
32 subdivision (a) shall comply with Section 10163 for each apartment building or
33 complex or court where the nonlicensed persons are employed.

34 **Comment.** Section 10131.01 is amended to correct a cross-reference to former Civil Code
35 Section 1351(c).

36 **Bus. & Prof. Code § 10153.2. Course requirements for real estate broker license**

37 SEC. ____ . Section 10153.2 of the Business and Professions Code is amended to
38 read:

1 10153.2. (a) An applicant to take the examination for an original real estate
2 broker license shall also submit evidence, satisfactory to the commissioner, of
3 successful completion, at an accredited institution, of:

4 (1) A three-semester unit course, or the quarter equivalent thereof, in each of the
5 following:

6 (A) Real estate practice.

7 (B) Legal aspects of real estate.

8 (C) Real estate appraisal.

9 (D) Real estate financing.

10 (E) Real estate economics or accounting.

11 (2) A three-semester unit course, or the quarter equivalent thereof, in three of the
12 following:

13 (A) Advanced legal aspects of real estate.

14 (B) Advanced real estate finance.

15 (C) Advanced real estate appraisal.

16 (D) Business law.

17 (E) Escrows.

18 (F) Real estate principles.

19 (G) Property management.

20 (H) Real estate office administration.

21 (I) Mortgage loan brokering and lending.

22 (J) Computer applications in real estate.

23 (K) On and after July 1, 2004, California law that relates to common interest
24 developments, including, but not limited to, topics addressed in the Davis-Stirling
25 Common Interest Development Act (~~Title 6 (commencing with Section 1350) of~~
26 ~~Part 4 of Division 2~~ Part 5 (commencing with Section 4000) of Division 4 of the
27 Civil Code).

28 (b) The commissioner shall waive the requirements of this section for an
29 applicant who is a member of the State Bar of California and shall waive the
30 requirements for which an applicant has successfully completed an equivalent
31 course of study as determined under Section 10153.5.

32 (c) The commissioner shall extend credit under this section for any course
33 completed to satisfy requirements of Section 10153.3 or 10153.4.

34 **Comment.** Section 10153.2 is amended to correct a cross-reference to former Civil Code
35 Sections 1350-1378.

36 **Bus. & Prof. Code § 10177. Suspension, revocation, or denial of real estate license**

37 SEC. _____. Section 10177 of the Business and Professions Code is amended to
38 read:

39 10177. The commissioner may suspend or revoke the license of a real estate
40 licensee, or may deny the issuance of a license to an applicant, who has done any
41 of the following, or may suspend or revoke the license of a corporation, or deny
42 the issuance of a license to a corporation, if an officer, director, or person owning

1 or controlling 10 percent or more of the corporation's stock has done any of the
2 following:

3 (a) Procured, or attempted to procure, a real estate license or license renewal, for
4 himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by
5 making a material misstatement of fact in an application for a real estate license,
6 license renewal, or reinstatement.

7 (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or
8 been convicted of, a felony, or a crime substantially related to the qualifications,
9 functions, or duties of a real estate licensee, and the time for appeal has elapsed or
10 the judgment of conviction has been affirmed on appeal, irrespective of an order
11 granting probation following that conviction, suspending the imposition of
12 sentence, or of a subsequent order under Section 1203.4 of the Penal Code
13 allowing that licensee to withdraw his or her plea of guilty and to enter a plea of
14 not guilty, or dismissing the accusation or information.

15 (c) Knowingly authorized, directed, connived at, or aided in the publication,
16 advertisement, distribution, or circulation of a material false statement or
17 representation concerning his or her designation or certification of special
18 education, credential, trade organization membership, or business, or concerning a
19 business opportunity or a land or subdivision, as defined in Chapter 1
20 (commencing with Section 11000) of Part 2, offered for sale.

21 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing
22 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or
23 the rules and regulations of the commissioner for the administration and
24 enforcement of the Real Estate Law and Chapter 1 (commencing with Section
25 11000) of Part 2.

26 (e) Willfully used the term "realtor" or a trade name or insignia of membership
27 in a real estate organization of which the licensee is not a member.

28 (f) Acted or conducted himself or herself in a manner that would have warranted
29 the denial of his or her application for a real estate license, or has either had a
30 license denied or had a license issued by another agency of this state, another state,
31 or the federal government revoked or suspended for acts that, if done by a real
32 estate licensee, would be grounds for the suspension or revocation of a California
33 real estate license, if the action of denial, revocation, or suspension by the other
34 agency or entity was taken only after giving the licensee or applicant fair notice of
35 the charges, an opportunity for a hearing, and other due process protections
36 comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with
37 Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5
38 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
39 Government Code), and only upon an express finding of a violation of law by the
40 agency or entity.

41 (g) Demonstrated negligence or incompetence in performing an act for which he
42 or she is required to hold a license.

1 (h) As a broker licensee, failed to exercise reasonable supervision over the
2 activities of his or her salespersons, or, as the officer designated by a corporate
3 broker licensee, failed to exercise reasonable supervision and control of the
4 activities of the corporation for which a real estate license is required.

5 (i) Has used his or her employment by a governmental agency in a capacity
6 giving access to records, other than public records, in a manner that violates the
7 confidential nature of the records.

8 (j) Engaged in any other conduct, whether of the same or a different character
9 than specified in this section, which constitutes fraud or dishonest dealing.

10 (k) Violated any of the terms, conditions, restrictions, and limitations contained
11 in an order granting a restricted license.

12 (l)(1) Solicited or induced the sale, lease, or listing for sale or lease of residential
13 property on the ground, wholly or in part, of loss of value, increase in crime, or
14 decline of the quality of the schools due to the present or prospective entry into the
15 neighborhood of a person or persons having a characteristic listed in subdivision
16 (a) or (d) of Section 12955 of the Government Code, as those characteristics are
17 defined in Sections 12926, 12926.1, subdivision (m), and paragraph (1) of
18 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

19 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
20 shall not be construed to apply to housing for older persons, as defined in Section
21 12955.9 of the Government Code. With respect to familial status, nothing in
22 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
23 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
24 of Section 51 and Section ~~4360~~ 4760 of the Civil Code and subdivisions (n), (o),
25 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

26 (m) Violated the Franchise Investment Law (Division 5 (commencing with
27 Section 31000) of Title 4 of the Corporations Code) or regulations of the
28 Commissioner of Corporations pertaining thereto.

29 (n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing
30 with Section 25000) of Title 4 of the Corporations Code) or the regulations of the
31 Commissioner of Corporations pertaining thereto.

32 (o) Failed to disclose to the buyer of real property, in a transaction in which the
33 licensee is an agent for the buyer, the nature and extent of a licensee's direct or
34 indirect ownership interest in that real property. The direct or indirect ownership
35 interest in the property by a person related to the licensee by blood or marriage, by
36 an entity in which the licensee has an ownership interest, or by any other person
37 with whom the licensee has a special relationship shall be disclosed to the buyer.

38 (p) Violated Article 6 (commencing with Section 10237).

39 If a real estate broker that is a corporation has not done any of the foregoing
40 acts, either directly or through its employees, agents, officers, directors, or persons
41 owning or controlling 10 percent or more of the corporation's stock, the
42 commissioner may not deny the issuance of a real estate license to, or suspend or
43 revoke the real estate license of, the corporation, provided that any offending

1 officer, director, or stockholder, who has done any of the foregoing acts
2 individually and not on behalf of the corporation, has been completely
3 disassociated from any affiliation or ownership in the corporation.

4 **Comment.** Section 10177 is amended to correct a cross-reference to former Civil Code Section
5 1360.

6 **Bus. & Prof. Code § 11003. “Planned development”**

7 SEC. _____. Section 11003 of the Business and Professions Code is amended to
8 read:

9 11003. “Planned development” has the same meaning as specified in
10 ~~subdivision (k) of Section 1351~~ Section 4175 of the Civil Code.

11 **Comment.** Section 11003 is amended to correct a cross-reference to former Civil Code Section
12 1351(k).

13 **Bus. & Prof. Code § 11003.2. “Stock cooperative”**

14 SEC. _____. Section 11003.2 of the Business and Professions Code is amended to
15 read:

16 11003.2. “Stock cooperative” has the same meaning as specified in ~~subdivision~~
17 ~~(m) of Section 1351~~ Section 4190 of the Civil Code, except that, as used in this
18 chapter, a “stock cooperative” does not include a limited-equity housing
19 cooperative.

20 **Comment.** Section 11003.2 is amended to correct a cross-reference to former Civil Code
21 Section 1351(m).

22 **Bus. & Prof. Code § 11004. “Community apartment project”**

23 SEC. _____. Section 11004 of the Business and Professions Code is amended to
24 read:

25 11004. “Community apartment project” has the same meaning as specified in
26 ~~subdivision (d) of Section 1351~~ Section 4105 of the Civil Code.

27 **Comment.** Section 11004 is amended to correct a cross-reference to former Civil Code Section
28 1351(d).

29 **Bus. & Prof. Code § 11004.5. Further definition of “subdivided lands” and “subdivision”**

30 SEC. _____. Section 11004.5 of the Business and Professions Code is amended to
31 read:

32 11004.5. In addition to any provisions of Section 11000, the reference in this
33 code to “subdivided lands” and “subdivision” shall include all of the following:

34 (a) Any planned development, as defined in Section 11003, containing five or
35 more lots.

36 (b) Any community apartment project, as defined by Section 11004, containing
37 five or more apartments.

38 (c) Any condominium project containing five or more condominiums, as defined
39 in Section 783 of the Civil Code.

1 (d) Any stock cooperative as defined in Section 11003.2, including any legal or
2 beneficial interests therein, having or intended to have five or more shareholders.

3 (e) Any limited-equity housing cooperative, as defined in Section 11003.4.

4 (f) In addition, the following interests shall be subject to this chapter and the
5 regulations of the commissioner adopted pursuant thereto:

6 (1) Any accompanying memberships or other rights or privileges created in, or
7 in connection with, any of the forms of development referred to in subdivision (a),
8 (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments,
9 declarations of restrictions, articles of incorporation, bylaws, or contracts
10 applicable thereto.

11 (2) Any interests or memberships in any owners' association as defined in
12 Section ~~1351~~ 4080 of the Civil Code, created in connection with any of the forms
13 of the development referred to in subdivision (a), (b), (c), (d), or (e).

14 (g) Notwithstanding this section, time-share plans, exchange programs,
15 incidental benefits, and short-term product subject to Chapter 2 (commencing with
16 Section 11210) are not "subdivisions" or "subdivided lands" subject to this
17 chapter.

18 **Comment.** Section 11004.5 is amended to correct a cross-reference to former Civil Code
19 Section 1351(a).

20 **Bus. & Prof. Code § 11010.10. Application for review of declaration**

21 SEC. _____. Section 11010.10 of the Business and Professions Code is amended
22 to read:

23 11010.10. A person who plans to offer for sale or lease lots or other interests in a
24 subdivision which sale or lease (a) is not subject to the provisions of this chapter,
25 (b) does not require the submission of a notice of intention as provided in Section
26 11010, or (c) is subject to this chapter and for which the local jurisdiction requires
27 review and approval of the declaration, as defined in ~~subdivision (h) of Section~~
28 ~~1351~~ Section 4135 of the Civil Code, prior to or concurrently with the recordation
29 of the subdivision map and prior to the approval of the declaration pursuant to a
30 notice of intention for a public report, may submit an application requesting
31 review of the declaration, along with any required supporting documentation, to
32 the commissioner, without the filing of a notice of intention for the subdivision for
33 which the declaration is being prepared. Upon approval, the commissioner shall
34 give notice to the applicant that the declaration shall be approved for a subsequent
35 notice of intent filing for any public report for the subdivision identified in the
36 application, provided that the subdivision setup is substantially the same as that
37 originally described in the application for review of the declaration.

38 **Comment.** Section 11010.10 is amended to correct a cross-reference to former Civil Code
39 Section 1351(h).

1 **Bus. & Prof. Code § 11018.1. Furnishing or posting of public report**

2 SEC. _____. Section 11018.1 of the Business and Professions Code is amended to
3 read:

4 11018.1. (a) A copy of the public report of the commissioner, when issued, shall
5 be given to the prospective purchaser by the owner, subdivider or agent prior to
6 the execution of a binding contract or agreement for the sale or lease of any lot or
7 parcel in a subdivision. The requirement of this section extends to lots or parcels
8 offered by the subdivider after repossession. A receipt shall be taken from the
9 prospective purchaser in a form and manner as set forth in regulations of the Real
10 Estate Commissioner.

11 (b) A copy of the public report shall be given by the owner, subdivider or agent
12 at any time, upon oral or written request, to any member of the public. A copy of
13 the public report and a statement advising that a copy of the public report may be
14 obtained from the owner, subdivider or agent at any time, upon oral or written
15 request, shall be posted in a conspicuous place at any office where sales or leases
16 or offers to sell or lease lots within the subdivision are regularly made.

17 (c) At the same time that a public report is required to be given by the owner,
18 subdivider, or agent pursuant to subdivision (a) with respect to a common interest
19 development, as defined, in ~~subdivision (c) of Section 1351~~ Section 4100 of the
20 Civil Code, the owner, subdivider, or agent shall give the prospective purchaser a
21 copy of the following statement:

22
23 **“COMMON INTEREST DEVELOPMENT GENERAL INFORMATION**

24 The project described in the attached Subdivision Public Report is known as a
25 common-interest development. Read the public report carefully for more
26 information about the type of development. The development includes common
27 areas and facilities which will be owned or operated by an owners’ association.
28 Purchase of a lot or unit automatically entitles and obligates you as a member of
29 the association and, in most cases, includes a beneficial interest in the areas and
30 facilities. Since membership in the association is mandatory, you should be aware
31 of the following information before you purchase:

32 Your ownership in this development and your rights and remedies as a member
33 of its association will be controlled by governing instruments which generally
34 include a Declaration of Restrictions (also known as CC&R’s), Articles of
35 Incorporation (or association) and bylaws. The provisions of these documents are
36 intended to be, and in most cases are, enforceable in a court of law. Study these
37 documents carefully before entering into a contract to purchase a subdivision
38 interest.

39 In order to provide funds for operation and maintenance of the common
40 facilities, the association will levy assessments against your lot or unit. If you are
41 delinquent in the payment of assessments, the association may enforce payment
42 through court proceedings or your lot or unit may be liened and sold through the
43 exercise of a power of sale. The anticipated income and expenses of the

1 association, including the amount that you may expect to pay through assessments,
2 are outlined in the proposed budget. Ask to see a copy of the budget if the
3 subdivider has not already made it available for your examination.

4 A homeowner association provides a vehicle for the ownership and use of
5 recreational and other common facilities which were designed to attract you to buy
6 in this development. The association also provides a means to accomplish
7 architectural control and to provide a base for homeowner interaction on a variety
8 of issues. The purchaser of an interest in a common-interest development should
9 contemplate active participation in the affairs of the association. He or she should
10 be willing to serve on the board of directors or on committees created by the
11 board. In short, “they” in a common interest development is “you.” Unless you
12 serve as a member of the governing board or on a committee appointed by the
13 board, your control of the operation of the common areas and facilities is limited
14 to your vote as a member of the association. There are actions that can be taken by
15 the governing body without a vote of the members of the association which can
16 have a significant impact upon the quality of life for association members.

17 Until there is a sufficient number of purchasers of lots or units in a common
18 interest development to elect a majority of the governing body, it is likely that the
19 subdivider will effectively control the affairs of the association. It is frequently
20 necessary and equitable that the subdivider do so during the early stages of
21 development. It is vitally important to the owners of individual subdivision
22 interests that the transition from subdivider to resident-owner control be
23 accomplished in an orderly manner and in a spirit of cooperation.

24 When contemplating the purchase of a dwelling in a common interest
25 development, you should consider factors beyond the attractiveness of the
26 dwelling units themselves. Study the governing instruments and give careful
27 thought to whether you will be able to exist happily in an atmosphere of
28 cooperative living where the interests of the group must be taken into account as
29 well as the interests of the individual. Remember that managing a common interest
30 development is very much like governing a small community ... the management
31 can serve you well, but you will have to work for its success.”

32
33 Failure to provide the statement in accordance with this subdivision shall not be
34 deemed a violation subject to Section 10185.

35 **Comment.** Subdivision (c) of Section 11018.1 is amended to correct a cross-reference to
36 former Civil Code Section 1351(c).

37 **Bus. & Prof. Code § 11018.12. Conditional public report for subdivision**

38 SEC. _____. Section 11018.12 of the Business and Professions Code is amended
39 to read:

40 11018.12. (a) The commissioner may issue a conditional public report for a
41 subdivision specified in Section 11004.5 if the requirements of subdivision (e) are
42 met, all deficiencies and substantive inadequacies in the documents that are

1 required to make an application for a final public report for the subdivision
2 substantially complete have been corrected, the material elements of the setup of
3 the offering to be made under the authority of the conditional public report have
4 been established, and all requirements for the issuance of a public report set forth
5 in the regulations of the commissioner have been satisfied, except for one or more
6 of the following requirements, as applicable:

7 (1) A final map has not been recorded.

8 (2) A condominium plan pursuant to ~~subdivision (e) of Section 1351~~ Section
9 4120 of the Civil Code has not been recorded.

10 (3) A declaration of covenants, conditions, and restrictions pursuant to ~~Section~~
11 1353 Sections 4250 and 4255 of the Civil Code has not been recorded.

12 (4) A declaration of annexation has not been recorded.

13 (5) A recorded subordination of existing liens to the declaration of covenants,
14 conditions, and restrictions or declaration of annexation, or escrow instructions to
15 effect recordation prior to the first sale, are lacking.

16 (6) Filed articles of incorporation are lacking.

17 (7) A current preliminary report of a licensed title insurance company issued
18 after filing of the final map and recording of the declaration covering all
19 subdivision interests to be included in the public report has not been provided.

20 (8) Other requirements the commissioner determines are likely to be timely
21 satisfied by the applicant, notwithstanding the fact that the failure to meet these
22 requirements makes the application qualitatively incomplete.

23 (b) The commissioner may issue a conditional public report for a subdivision not
24 referred to or specified in Section 11000.1 or 11004.5 if the requirements of
25 subdivision (e) are met, all deficiencies and substantive inadequacies in the
26 documents that are required to make an application for a final public report for the
27 subdivision substantially complete have been corrected, the material elements of
28 the setup of the offering to be made under the authority of the conditional public
29 report have been established, and all requirements for issuance of a public report
30 set forth in the regulations of the commissioner have been satisfied, except for one
31 or more of the following requirements, as applicable:

32 (1) A final map has not been recorded.

33 (2) A declaration of covenants, conditions, and restrictions has not been
34 recorded.

35 (3) A current preliminary report of a licensed title insurance company issued
36 after filing of the final map and recording of the declaration covering all
37 subdivision interests to be included in the public report has not been provided.

38 (4) Other requirements the commissioner determines are likely to be timely
39 satisfied by the applicant, notwithstanding the fact that the failure to meet these
40 requirements makes the application qualitatively incomplete.

41 (c) A decision by the commissioner to not issue a conditional public report shall
42 be noticed in writing to the applicant within five business days and that notice
43 shall specifically state the reasons why the report is not being issued.

1 (d) Notwithstanding the provisions of Section 11018.2, a person may sell or
2 lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a
3 conditional public report if, as a condition of the sale or lease or offer for sale or
4 lease, delivery of legal title or other interest contracted for will not take place until
5 issuance of a public report and provided that the requirements of subdivision (e)
6 are met.

7 (e)(1) Evidence shall be supplied that all purchase money will be deposited in
8 compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section
9 11013.4, and in the case of a subdivision referred to in subdivision (a) of this
10 section, evidence shall be given of compliance with paragraphs (1) and (2) of
11 subdivision (a) of Section 11018.5.

12 (2) A description of the nature of the transaction shall be supplied.

13 (3) Provision shall be made for the return of the entire sum of money paid or
14 advanced by the purchaser if a subdivision public report has not been issued
15 during the term of the conditional public report, or as extended, or the purchaser is
16 dissatisfied with the public report because of a change pursuant to Section 11012.

17 (f) A subdivider, principal, or his or her agent shall provide a prospective
18 purchaser a copy of the conditional public report and a written statement including
19 all of the following:

20 (1) Specification of the information required for issuance of a public report.

21 (2) Specification of the information required in the public report that is not
22 available in the conditional public report, along with a statement of the reasons
23 why that information is not available at the time of issuance of the conditional
24 public report.

25 (3) A statement that no person acting as a principal or agent shall sell or lease, or
26 offer for sale or lease, lots or parcels in a subdivision for which a conditional
27 public report has been issued except as provided in this article.

28 (4) Specification of the requirements of subdivision (e).

29 (g) The prospective purchaser shall sign a receipt that he or she has received and
30 has read the conditional public report and the written statement provided pursuant
31 to subdivision (f).

32 (h) The term of a conditional public report shall not exceed six months, and may
33 be renewed for one additional term of six months if the commissioner determines
34 that the requirements for issuance of a public report are likely to be satisfied
35 during the renewal term.

36 (i) The term of a conditional public report for attached residential condominium
37 units, as defined pursuant to Section 783 of the Civil Code, consisting of 25 units
38 or more as specified on the approved tentative tract map, shall not exceed 30
39 months and may be renewed for one additional term of six months if the
40 commissioner determines that the requirements for issuance of a public report are
41 likely to be satisfied during the renewal term.

42 **Comment.** Subdivision (a) of Section 11018.12 is amended to correct cross-references to
43 former Civil Code Sections 1351(e) and 1353.

1 **Bus. & Prof. Code § 11018.6. Documents to be provided to prospective purchaser or lessee**

2 SEC. _____. Section 11018.6 of the Business and Professions Code is amended to
3 read:

4 11018.6. Any person offering to sell or lease any interest subject to the
5 requirements of subdivision (a) of Section 11018.1 in a subdivision described in
6 Section 11004.5 shall make a copy of each of the following documents available
7 for examination by a prospective purchaser or lessee before the execution of an
8 offer to purchase or lease and shall give a copy thereof to each purchaser or lessee
9 as soon as practicable before transfer of the interest being acquired by the
10 purchaser or lessee:

11 (a) The declaration of covenants, conditions, and restrictions for the subdivision.

12 (b) Articles of incorporation or association for the subdivision owners
13 association.

14 (c) Bylaws for the subdivision owners association.

15 (d) Any other instrument which establishes or defines the common, mutual, and
16 reciprocal rights, and responsibilities of the owners or lessees of interests in the
17 subdivision as shareholders or members of the subdivision owners association or
18 otherwise.

19 (e) To the extent available, the current financial information and related
20 statements as specified in ~~subdivision (a) of Section 1365~~ Sections 5300 and 5565
21 of the Civil Code, for subdivisions subject to those provisions.

22 (f) A statement prepared by the governing body of the association setting forth
23 the outstanding delinquent assessments and related charges levied by the
24 association against the subdivision interests in question under authority of the
25 governing instruments for the subdivision and association.

26 **Comment.** Section 11018.6 is amended to correct and broaden a cross-reference to former
27 Civil Code Section 1365(a). As amended, the reference also includes the information provided
28 under former Section 1365(b) (summary of reserve funding plan).

29 **Staff Note.** The proposed amendment to Business and Professions Code Section 11018.6
30 would slightly broaden the scope of the existing provision, by requiring disclosure of the
31 association's summary of its reserve funding plan (pursuant to a new requirement that took effect
32 in 2009). See Civ. Code § 1365(b). This change would further the policy purpose of Section
33 11018.6, without imposing a significant new burden.

34 **Bus. & Prof. Code § 11211.7. Application of Davis-Stirling Common Interest Development**
35 **Act to Time-Share Plan**

36 SEC. _____. Section 11211.7 of the Business and Professions Code is amended to
37 read:

38 11211.7. (a) Any time-share plan registered pursuant to this chapter to which the
39 Davis-Stirling Common Interest Development Act (~~Chapter 1 (commencing with~~
40 ~~Section 1350) of Part 4 of Division 2~~ Part 5 (commencing with Section 4000) of
41 Division 4 of the Civil Code) might otherwise apply is exempt from that act,
42 except for Sections ~~1354, 1355, 1355.5, 1356, 1357, 1358, 1361, 1361.5, 1362,~~
43 ~~1363.05, 1364, 1365.5, 1370, and 1371~~ 4090, 4177, 4178, 4215, 4220, 4230, 4260

1 to 4275, inclusive, 4500 to 4510, inclusive, 4625 to 4650, inclusive, 4775 to 4790,
2 inclusive, 4900 to 4950, inclusive, 5500 to 5560, inclusive, and 5975 of the Civil
3 Code.

4 (b)(1) To the extent that a single site time-share plan or component site of a
5 multisite time-share plan located in the state is structured as a condominium or
6 other common interest development, and there is any inconsistency between the
7 applicable provisions of this chapter and the Davis-Stirling Common Interest
8 Development Act, the applicable provisions of this chapter shall control.

9 (2) To the extent that a time-share plan is part of a mixed use project where the
10 time-share plan comprises a portion of a condominium or other common interest
11 development, the applicable provisions of this chapter shall apply to that portion
12 of the project uniquely comprising the time-share plan, and the Davis-Stirling
13 Common Interest Development Act shall apply to the project as a whole.

14 (c)(1) The offering of any time-share plan, exchange program, incidental
15 benefit, or short term product in this state that is subject to the provisions of this
16 chapter shall be exempt from Sections 1689.5 to 1689.14, inclusive, of the Civil
17 Code (Home Solicitation Sales), Sections 1689.20 to 1689.24, inclusive, of the
18 Civil Code (Seminar Sales), and Sections 1812.100 to 1812.129, inclusive, of the
19 Civil Code (Contracts for Discount Buying Services).

20 (2) A developer or exchange company that, in connection with a time-share
21 sales presentation or offer to arrange an exchange, offers a purchaser the
22 opportunity to utilize the services of an affiliate, subsidiary, or third-party entity in
23 connection with wholesale or retail air or sea transportation, shall not, in and of
24 itself, cause the developer or exchange company to be considered a seller of travel
25 subject to Sections 17550 to 17550.34, inclusive, of the Business and Professions
26 Code, so long as the entity that actually provides or arranges the air or sea
27 transportation is registered as a seller of travel with the California Attorney
28 General's office or is otherwise exempt under those sections.

29 (d) To the extent certain sections in this chapter require information and
30 disclosure that by their terms only apply to real property time-share plans, those
31 requirements shall not apply to personal property time-share plans.

32 **Comment.** Subdivision (a) of Section 11211.7 is amended to correct cross-references to former
33 provisions of the Davis-Stirling Common Interest Development Act (former Civil Code Sections
34 1350-1378).

35 **Bus. & Prof. Code § 11500 (to be repealed January 1, 2012). Definitions**

36 SEC. ____ . Section 11500 of the Business and Professions Code is amended to
37 read:

38 11500. For purposes of this chapter, the following definitions apply:

39 (a) "Common interest development" means a residential development identified
40 in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code.

41 (b) "Association" has the same meaning as defined in ~~subdivision (a) of Section~~
42 ~~1351~~ Section 4080 of the Civil Code.

1 (c) “Financial services” means acts performed or offered to be performed, for
2 compensation, for an association, including, but not limited to, the preparation of
3 internal unaudited financial statements, internal accounting and bookkeeping
4 functions, billing of assessments, and related services.

5 (d) “Management services” means acts performed or offered to be performed in
6 an advisory capacity for an association including, but not limited to, the following:

7 (1) Administering or supervising the collection, reporting, and archiving of the
8 financial or common area assets of an association or common interest
9 development, at the direction of the association’s board of directors.

10 (2) Implementing resolutions and directives of the board of directors of the
11 association elected to oversee the operation of a common interest development.

12 (3) Implementing provisions of governing documents, as defined in Section
13 ~~1351~~ 4150 of the Civil Code, that govern the operation of the common interest
14 development.

15 (4) Administering association contracts, including insurance contracts, within
16 the scope of the association’s duties or with other common interest development
17 managers, vendors, contractors, and other third-party providers of goods and
18 services to an association or common interest development.

19 (e) “Professional association for common interest development managers”
20 means an organization that meets all of the following:

21 (1) Has at least 200 members or certificants who are common interest
22 development managers in California.

23 (2) Has been in existence for at least five years.

24 (3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

25 (4) Certifies that a common interest development manager has met the criteria
26 set forth in Section 11502 without requiring membership in the association.

27 (5) Requires adherence to a code of professional ethics and standards of practice
28 for certified common interest development managers.

29 **Comment.** Section 11500 is amended to correct cross-references to subdivisions (a), (c), and
30 (i) of former Civil Code Section 1351.

31 **Staff Note.** Section 11500 will be repealed by operation of law on January 1, 2012, unless
32 that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as
33 scheduled, it will not need to be revised because it would be repealed before the proposed law
34 takes effect. However, there is a possibility that the sunset date will be eliminated or extended.
35 For that reason, Section 11500 is included in the current draft of the proposed law.

36 **Bus. & Prof. Code § 11502 (to be repealed January 1, 2012). Qualifications**

37 SEC. _____. Section 11502 of the Business and Professions Code is amended to
38 read:

39 11502. In order to be called a “certified common interest development
40 manager,” a person shall meet one of the following requirements:

41 (a) Prior to July 1, 2003, has passed a knowledge, skills, and aptitude
42 examination as specified in Section 11502.5 or has been granted a certification or

1 a designation by a professional association for common interest development
2 managers, and who has, within five years prior to July 1, 2004, received
3 instruction in California law pursuant to paragraph (1) of subdivision (b).

4 (b) On or after July 1, 2003, has successfully completed an educational
5 curriculum that shall be no less than a combined 30 hours in coursework described
6 in this subdivision and passed an examination or examinations that test
7 competence in common interest development management in the following areas:

8 (1) The law that relates to the management of common interest developments,
9 including, but not limited to, the following courses of study:

10 (A) Topics covered by the Davis-Stirling Common Interest Development Act,
11 contained in ~~Title 6 (commencing with Section 1350) of Part 4 of Division 2~~ Part
12 5 (commencing with Section 4000) of Division 4 of the Civil Code, including, but
13 not limited to, the types of California common interest developments, disclosure
14 requirements pertaining to common interest developments, meeting requirements,
15 financial reporting requirements, and member access to association records.

16 (B) Personnel issues, including, but not limited to, general matters related to
17 independent contractor or employee status, the laws on harassment, the Unruh
18 Civil Rights Act, the California Fair Employment and Housing Act, and the
19 Americans with Disabilities Act.

20 (C) Risk management, including, but not limited to, insurance coverage,
21 maintenance, operations, and emergency preparedness.

22 (D) Property protection for associations, including, but not limited to, pertinent
23 matters relating to environmental hazards such as asbestos, radon gas, and lead-
24 based paint, the Vehicle Code, local and municipal regulations, family day care
25 facilities, energy conservation, Federal Communications Commission rules and
26 regulations, and solar energy systems.

27 (E) Business affairs of associations, including, but not limited to, necessary
28 compliance with federal, state, and local law.

29 (F) Basic understanding of governing documents, codes, and regulations relating
30 to the activities and affairs of associations and common interest developments.

31 (2) Instruction in general management that is related to the managerial and
32 business skills needed for management of a common interest development,
33 including, but not limited to, the following:

34 (A) Finance issues, including, but not limited to, budget preparation;
35 management; administration or supervision of the collection, reporting, and
36 archiving of the financial or common area assets of an association or common
37 interest development; bankruptcy laws; and assessment collection .

38 (B) Contract negotiation and administration.

39 (C) Supervision of employees and staff.

40 (D) Management of maintenance programs.

41 (E) Management and administration of rules, regulations, and parliamentary
42 procedures.

43 (F) Management and administration of architectural standards.

1 (G) Management and administration of the association's recreational programs
2 and facilities.

3 (H) Management and administration of owner and resident communications.

4 (I) Training and strategic planning for the association's board of directors and its
5 committees.

6 (J) Implementation of association policies and procedures.

7 (K) Ethics, professional conduct, and standards of practice for common interest
8 development managers.

9 (L) Current issues relating to common interest developments.

10 (M) Conflict avoidance and resolution mechanisms.

11 **Comment.** Section 11502 is amended to correct a cross-reference to former Civil Code
12 Sections 1350-1378.

13  **Staff Note.** Section 11502 will be repealed by operation of law on January 1, 2012, unless
14 that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as
15 scheduled, it will not need to be revised because it would be repealed before the proposed law
16 takes effect. However, there is a possibility that the sunset date will be eliminated or extended.
17 For that reason, Section 11502 is included in the current draft of the proposed law.

18 **Bus. & Prof. Code § 11504 (to be repealed January 1, 2012). Annual disclosure**

19 SEC. _____. Section 11504 of the Business and Professions Code is amended to
20 read:

21 11504. On or before September 1, 2003, and annually thereafter, a person who
22 either provides or contemplates providing the services of a common interest
23 development manager to an association shall disclose to the board of directors of
24 the association the following information:

25 (a) Whether or not the common interest development manager has met the
26 requirements of Section 11502 so he or she may be called a certified common
27 interest development manager.

28 (b) The name, address, and telephone number of the professional association
29 that certified the common interest development manager, the date the manager was
30 certified, and the status of the certification.

31 (c) The location of his or her primary office.

32 (d) Prior to entering into or renewing a contract with an association, the common
33 interest development manager shall disclose to the board of directors of the
34 association or common interest development whether the fidelity insurance of the
35 common interest development manager or his or her employer covers the current
36 year's operating and reserve funds of the association. This requirement shall not
37 be construed to compel an association to require a common interest development
38 manager to obtain or maintain fidelity insurance.

39 (e) Whether the common interest development manager possesses an active real
40 estate license.

1 This section may not preclude a common interest development manager from
2 disclosing information as required in ~~Section 1363.1~~ Section 5375 of the Civil
3 Code.

4 **Comment.** Section 11504 is amended to correct a cross-reference to the disclosure
5 requirements of former Civil Code Section 1363.1.

6 **Staff Note.** Section 11504 will be repealed by operation of law on January 1, 2012, unless
7 that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as
8 scheduled, it will not need to be revised because it would be repealed before the proposed law
9 takes effect. However, there is a possibility that the sunset date will be eliminated or extended.
10 For that reason, Section 11504 is included in the current draft of the proposed law.

11 **Bus. & Prof. Code § 11505 (to be repealed January 1, 2012). Prohibited activities**

12 SEC. _____. Section 11505 of the Business and Professions Code is amended to
13 read:

14 11505. It is an unfair business practice for a common interest development
15 manager, a company that employs the common interest development manager, or
16 a company that is controlled by a company that also has a financial interest in a
17 company employing that manager, to do any of the following:

18 (a) On or after July 1, 2003, to hold oneself out or use the title of “certified
19 common interest development manager” or any other term that implies or suggests
20 that the person is certified as a common interest development manager without
21 meeting the requirements of Section 11502.

22 (b) To state or advertise that he or she is certified, registered, or licensed by a
23 governmental agency to perform the functions of a certified common interest
24 development manager.

25 (c) To state or advertise a registration or license number, unless the license or
26 registration is specified by a statute, regulation, or ordinance.

27 (d) To fail to comply with any item to be disclosed in Section 11504 of this
28 code, or ~~Section 1363.1~~ Section 5375 of the Civil Code.

29 **Comment.** Section 11505 is amended to correct a cross-reference to the disclosure
30 requirements of former Civil Code Section 1363.1.

31 **Staff Note.** Section 11505 will be repealed by operation of law on January 1, 2012, unless
32 that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as
33 scheduled, it will not need to be revised because it would be repealed before the proposed law
34 takes effect. However, there is a possibility that the sunset date will be eliminated or extended.
35 For that reason, Section 11505 is included in the current draft of the proposed law.

36 **Bus. & Prof. Code § 23426.5. Tennis club**

37 SEC. _____. Section 23426.5 of the Business and Professions Code is amended to
38 read:

39 23426.5. (a) For purposes of this article, “club” also means any tennis club that
40 maintains not less than four regulation tennis courts, together with the necessary
41 facilities and clubhouse, has members paying regular monthly dues, has been in
42 existence for not less than 45 years, and is not associated with a common interest

1 development as defined in Section ~~1351~~ 4100 of the Civil Code, a community
2 apartment project as defined in Section 11004 of this code, a project consisting of
3 condominiums as defined in Section 783 of the Civil Code, or a mobilehome park
4 as defined in Section 18214 of the Health and Safety Code.

5 (b) It shall be unlawful for any club licensed pursuant to this section to make
6 any discrimination, distinction, or restriction against any person on account of age
7 or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the
8 Civil Code.

9 **Comment.** Section 23426.5 is amended to correct a cross-reference to former Civil Code
10 Section 1351(c).

11 **Bus. & Prof. Code § 23428.20. Further definition of “club”**

12 SEC. _____. Section 23428.20 of the Business and Professions Code is amended
13 to read:

14 23428.20. (a) For the purposes of this article, “club” also means any bona fide
15 nonprofit corporation that has been in existence for not less than nine years, has
16 more than 8,500 memberships issued and outstanding to owners of condominiums
17 and owners of memberships in stock cooperatives, and owns, leases, operates, or
18 maintains recreational facilities for its members.

19 (b) For the purposes of this article, “club” also means any bona fide nonprofit
20 corporation that was formed as a condominium homeowners’ association, has at
21 least 250 members, has served daily meals to its members and guests for a period
22 of not less than 12 years, owns or leases, operates, and maintains a clubroom or
23 rooms for its membership, has an annual fee of not less than nine hundred dollars
24 (\$900) per year per member, and has as a condition of membership that one
25 member of each household be at least 54 years old.

26 (c) Section 23399 and the numerical limitation of Section 23430 shall not apply
27 to a club defined in this section.

28 (d) No license shall be issued pursuant to this section to any club that withholds
29 membership or denies facilities or services to any person on account of any basis
30 listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those
31 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
32 of subdivision (p) of Section 12955, and Section 12955.2 of the Government
33 Code.

34 (e) Notwithstanding subdivision (d), with respect to familial status, subdivision
35 (d) shall not be construed to apply to housing for older persons, as defined in
36 Section 12955.9 of the Government Code. With respect to familial status, nothing
37 in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
38 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
39 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
40 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
41 apply to subdivision (d).

1 **Comment.** Section 23428.20 is amended to correct a cross-reference to former Civil Code
2 Section 1360.

3 **Civ. Code § 51.11. Special living environments for senior citizens**

4 SEC. ____ . Section 51.11 of the Civil Code is amended to read:

5 51.11. (a) The Legislature finds and declares that this section is essential to
6 establish and preserve housing for senior citizens. There are senior citizens who
7 need special living environments, and find that there is an inadequate supply of
8 this type of housing in the state.

9 (b) For the purposes of this section, the following definitions apply:

10 (1) “Qualifying resident” or “senior citizen” means a person 62 years of age or
11 older, or 55 years of age or older in a senior citizen housing development.

12 (2) “Qualified permanent resident” means a person who meets both of the
13 following requirements:

14 (A) Was residing with the qualifying resident or senior citizen prior to the death,
15 hospitalization, or other prolonged absence of, or the dissolution of marriage with,
16 the qualifying resident or senior citizen.

17 (B) Was 45 years of age or older, or was a spouse, cohabitant, or person
18 providing primary physical or economic support to the qualifying resident or
19 senior citizen.

20 (3) “Qualified permanent resident” also means a disabled person or person with
21 a disabling illness or injury who is a child or grandchild of the senior citizen or a
22 qualified permanent resident as defined in paragraph (2) who needs to live with
23 the senior citizen or qualified permanent resident because of the disabling
24 condition, illness, or injury. For purposes of this section, “disabled” means a
25 person who has a disability as defined in subdivision (b) of Section 54. A
26 “disabling injury or illness” means an illness or injury which results in a condition
27 meeting the definition of disability set forth in subdivision (b) of Section 54.

28 (A) For any person who is a qualified permanent resident under paragraph (3)
29 whose disabling condition ends, the owner, board of directors, or other governing
30 body may require the formerly disabled resident to cease residing in the
31 development upon receipt of six months’ written notice; provided, however, that
32 the owner, board of directors, or other governing body may allow the person to
33 remain a resident for up to one year, after the disabling condition ends.

34 (B) The owner, board of directors, or other governing body of the senior citizen
35 housing development may take action to prohibit or terminate occupancy by a
36 person who is a qualified permanent resident under paragraph (3) if the owner,
37 board of directors, or other governing body finds, based on credible and objective
38 evidence, that the person is likely to pose a significant threat to the health or safety
39 of others that cannot be ameliorated by means of a reasonable accommodation;
40 provided, however, that action to prohibit or terminate the occupancy may be
41 taken only after doing both of the following:

1 (i) Providing reasonable notice to and an opportunity to be heard for the disabled
2 person whose occupancy is being challenged, and reasonable notice to the
3 coresident parent or grandparent of that person.

4 (ii) Giving due consideration to the relevant, credible, and objective information
5 provided in that hearing. The evidence shall be taken and held in a confidential
6 manner, pursuant to a closed session, by the owner, board of directors, or other
7 governing body in order to preserve the privacy of the affected persons.

8 The affected persons shall be entitled to have present at the hearing an attorney
9 or any other person authorized by them to speak on their behalf or to assist them in
10 the matter.

11 (4) “Senior citizen housing development” means a residential development
12 developed with more than 20 units as a senior community by its developer and
13 zoned as a senior community by a local governmental entity, or characterized as a
14 senior community in its governing documents, as these are defined in Section
15 ~~1354~~ 4150, or qualified as a senior community under the federal Fair Housing
16 Amendments Act of 1988, as amended. Any senior citizen housing development
17 which is required to obtain a public report under Section 11010 of the Business
18 and Professions Code and which submits its application for a public report after
19 July 1, 2001, shall be required to have been issued a public report as a senior
20 citizen housing development under Section 11010.05 of the Business and
21 Professions Code.

22 (5) “Dwelling unit” or “housing” means any residential accommodation other
23 than a mobilehome.

24 (6) “Cohabitant” refers to persons who live together as husband and wife, or
25 persons who are domestic partners within the meaning of Section 297 of the
26 Family Code.

27 (7) “Permitted health care resident” means a person hired to provide live-in,
28 long-term, or terminal health care to a qualifying resident, or a family member of
29 the qualifying resident providing that care. For the purposes of this section, the
30 care provided by a permitted health care resident must be substantial in nature and
31 must provide either assistance with necessary daily activities or medical treatment,
32 or both.

33 A permitted health care resident shall be entitled to continue his or her
34 occupancy, residency, or use of the dwelling unit as a permitted resident in the
35 absence of the senior citizen from the dwelling unit only if both of the following
36 are applicable:

37 (A) The senior citizen became absent from the dwelling due to hospitalization or
38 other necessary medical treatment and expects to return to his or her residence
39 within 90 days from the date the absence began.

40 (B) The absent senior citizen or an authorized person acting for the senior
41 citizen submits a written request to the owner, board of directors, or governing
42 board stating that the senior citizen desires that the permitted health care resident

1 be allowed to remain in order to be present when the senior citizen returns to
2 reside in the development.

3 Upon written request by the senior citizen or an authorized person acting for the
4 senior citizen, the owner, board of directors, or governing board shall have the
5 discretion to allow a permitted health care resident to remain for a time period
6 longer than 90 days from the date that the senior citizen's absence began, if it
7 appears that the senior citizen will return within a period of time not to exceed an
8 additional 90 days.

9 (c) The covenants, conditions, and restrictions and other documents or written
10 policy shall set forth the limitations on occupancy, residency, or use on the basis
11 of age. Any ~~such~~ limitation shall not be more exclusive than to require that one
12 person in residence in each dwelling unit may be required to be a senior citizen
13 and that each other resident in the same dwelling unit may be required to be a
14 qualified permanent resident, a permitted health care resident, or a person under 55
15 years of age whose occupancy is permitted under subdivision (g) of this section or
16 subdivision (b) of Section 51.12. That limitation may be less exclusive, but shall at
17 least require that the persons commencing any occupancy of a dwelling unit
18 include a senior citizen who intends to reside in the unit as his or her primary
19 residence on a permanent basis. The application of the rules set forth in this
20 subdivision regarding limitations on occupancy may result in less than all of the
21 dwellings being actually occupied by a senior citizen.

22 (d) The covenants, conditions, and restrictions or other documents or written
23 policy shall permit temporary residency, as a guest of a senior citizen or qualified
24 permanent resident, by a person of less than 55 years of age for periods of time,
25 not more than 60 days in any year, that are specified in the covenants, conditions,
26 and restrictions or other documents or written policy.

27 (e) Upon the death or dissolution of marriage, or upon hospitalization, or other
28 prolonged absence of the qualifying resident, any qualified permanent resident
29 shall be entitled to continue his or her occupancy, residency, or use of the dwelling
30 unit as a permitted resident. This subdivision shall not apply to a permitted health
31 care resident.

32 (f) The covenants, conditions, and restrictions or other documents or written
33 policies applicable to any condominium, stock cooperative, limited-equity housing
34 cooperative, planned development, or multiple-family residential property that
35 contained age restrictions on January 1, 1984, shall be enforceable only to the
36 extent permitted by this section, notwithstanding lower age restrictions contained
37 in those documents or policies.

38 (g) Any person who has the right to reside in, occupy, or use the housing or an
39 unimproved lot subject to this section on or after January 1, 1985, shall not be
40 deprived of the right to continue that residency, occupancy, or use as the result of
41 the enactment of this section by Chapter 1147 of the Statutes of 1996.

42 (h) A housing development may qualify as a senior citizen housing development
43 under this section even though, as of January 1, 1997, it does not meet the

1 definition of a senior citizen housing development specified in subdivision (b), if
2 the development complies with that definition for every unit that becomes
3 occupied after January 1, 1997, and if the development was once within that
4 definition, and then became noncompliant with the definition as the result of any
5 one of the following:

6 (1) The development was ordered by a court or a local, state, or federal
7 enforcement agency to allow persons other than qualifying residents, qualified
8 permanent residents, or permitted health care residents to reside in the
9 development.

10 (2) The development received a notice of a pending or proposed action in, or by,
11 a court, or a local, state, or federal enforcement agency, which action could have
12 resulted in the development being ordered by a court or a state or federal
13 enforcement agency to allow persons other than qualifying residents, qualified
14 permanent residents, or permitted health care residents to reside in the
15 development.

16 (3) The development agreed to allow persons other than qualifying residents,
17 qualified permanent residents, or permitted health care residents to reside in the
18 development by entering into a stipulation, conciliation agreement, or settlement
19 agreement with a local, state, or federal enforcement agency or with a private
20 party who had filed, or indicated an intent to file, a complaint against the
21 development with a local, state, or federal enforcement agency, or file an action in
22 a court.

23 (4) The development allowed persons other than qualifying residents, qualified
24 permanent residents, or permitted health care residents to reside in the
25 development on the advice of counsel in order to prevent the possibility of an
26 action being filed by a private party or by a local, state, or federal enforcement
27 agency.

28 (i) The covenants, conditions, and restrictions or other documents or written
29 policy of the senior citizen housing development shall permit the occupancy of a
30 dwelling unit by a permitted health care resident during any period that the person
31 is actually providing live-in, long-term, or hospice health care to a qualifying
32 resident for compensation.

33 (j) This section shall only apply to the County of Riverside.

34 **Comment.** Subdivision (b)(4) of Section 51.11 is amended to correct a cross-reference to
35 former Section 1351(j).

36 Subdivision (c) is amended to make a stylistic revision.

37 **Civ. Code § 714. Unenforceability of restrictions on use of solar energy system**

38 SEC. ____ . Section 714 of the Civil Code is amended to read:

39 714. (a) Any covenant, restriction, or condition contained in any deed, contract,
40 security instrument, or other instrument affecting the transfer or sale of, or any
41 interest in, real property, and any provision of a governing document, as defined in

1 ~~subdivision (j)~~ of Section ~~1351~~ 4150, that effectively prohibits or restricts the
2 installation or use of a solar energy system is void and unenforceable.

3 (b) This section does not apply to provisions that impose reasonable restrictions
4 on solar energy systems. However, it is the policy of the state to promote and
5 encourage the use of solar energy systems and to remove obstacles thereto.
6 Accordingly, reasonable restrictions on a solar energy system are those restrictions
7 that do not significantly increase the cost of the system or significantly decrease its
8 efficiency or specified performance, or that allow for an alternative system of
9 comparable cost, efficiency, and energy conservation benefits.

10 (c)(1) A solar energy system shall meet applicable health and safety standards
11 and requirements imposed by state and local permitting authorities.

12 (2) A solar energy system for heating water shall be certified by the Solar Rating
13 Certification Corporation (SRCC) or other nationally recognized certification
14 agencies. SRCC is a nonprofit third party supported by the United States
15 Department of Energy. The certification shall be for the entire solar energy system
16 and installation.

17 (3) A solar energy system for producing electricity shall also meet all applicable
18 safety and performance standards established by the National Electrical Code, the
19 Institute of Electrical and Electronics Engineers, and accredited testing
20 laboratories such as Underwriters Laboratories and, where applicable, rules of the
21 Public Utilities Commission regarding safety and reliability.

22 (d) For the purposes of this section:

23 (1)(A) For solar domestic water heating systems or solar swimming pool heating
24 systems that comply with state and federal law, “significantly” means an amount
25 exceeding 20 percent of the cost of the system or decreasing the efficiency of the
26 solar energy system by an amount exceeding 20 percent, as originally specified
27 and proposed.

28 (B) For photovoltaic systems that comply with state and federal law,
29 “significantly” means an amount not to exceed two thousand dollars (\$2,000) over
30 the system cost as originally specified and proposed, or a decrease in system
31 efficiency of an amount exceeding 20 percent as originally specified and proposed.

32 (2) “Solar energy system” has the same meaning as defined in paragraphs (1)
33 and (2) of subdivision (a) of Section 801.5.

34 (e)(1) Whenever approval is required for the installation or use of a solar energy
35 system, the application for approval shall be processed and approved by the
36 appropriate approving entity in the same manner as an application for approval of
37 an architectural modification to the property, and shall not be willfully avoided or
38 delayed.

39 (2) For an approving entity that is a homeowners’ association, as defined in
40 ~~subdivision (a)~~ of Section ~~1351~~ 4080, and that is not a public entity, both of the
41 following shall apply:

42 (A) The approval or denial of an application shall be in writing.

1 (B) If an application is not denied in writing within 60 days from the date of
2 receipt of the application, the application shall be deemed approved, unless that
3 delay is the result of a reasonable request for additional information.

4 (f) Any entity, other than a public entity, that willfully violates this section shall
5 be liable to the applicant or other party for actual damages occasioned thereby, and
6 shall pay a civil penalty to the applicant or other party in an amount not to exceed
7 one thousand dollars (\$1,000).

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

10 (h)(1) A public entity that fails to comply with this section may not receive
11 funds from a state-sponsored grant or loan program for solar energy. A public
12 entity shall certify its compliance with the requirements of this section when
13 applying for funds from a state-sponsored grant or loan program.

14 (2) A local public entity may not exempt residents in its jurisdiction from the
15 requirements of this section.

16 **Comment.** Section 714 is amended to correct cross-references to former Section 1351(a), (j).

17 **Civ. Code § 714.1. Permissible restrictions by common interest development association**

18 SEC. ____ . Section 714.1 of the Civil Code is amended to read:

19 714.1. Notwithstanding Section 714, any association, as defined in Section ~~1351~~
20 4080, may impose reasonable provisions which:

21 (a) Restrict the installation of solar energy systems installed in common areas, as
22 defined in Section ~~1351~~ 4095, to those systems approved by the association.

23 (b) Require the owner of a separate interest, as defined in Section ~~1351~~ 4185, to
24 obtain the approval of the association for the installation of a solar energy system
25 in a separate interest owned by another.

26 (c) Provide for the maintenance, repair, or replacement of roofs or other building
27 components.

28 (d) Require installers of solar energy systems to indemnify or reimburse the
29 association or its members for loss or damage caused by the installation,
30 maintenance, or use of the solar energy system.

31 **Comment.** Section 714.1 is amended to correct cross-references to former Section 1351(a),
32 (b), (l).

33 **Civ. Code § 782. Discriminatory provision in deed of real property**

34 SEC. ____ . Section 782 of the Civil Code is amended to read:

35 782. (a) Any provision in any deed of real property in California, whether
36 executed before or after the effective date of this section, that purports to restrict
37 the right of any persons to sell, lease, rent, use or occupy the property to persons
38 having any characteristic listed in subdivision (a) or (d) of Section 12955 of the
39 Government Code, as those bases are defined in Sections 12926, 12926.1,
40 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section

1 12955.2 of the Government Code, by providing for payment of a penalty,
2 forfeiture, reverter, or otherwise, is void.

3 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
4 (a) shall not be construed to apply to housing for older persons, as defined in
5 Section 12955.9 of the Government Code. With respect to familial status, nothing
6 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
7 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
8 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section
9 12955 of the Government Code shall apply to subdivision (a).

10 **Comment.** Section 782 is amended to correct a cross-reference to former Section 1360.

11 **Civ. Code § 782.5. Revision of instrument to omit provision that restricts rights based on**
12 **race or color**

13 SEC. _____. Section 782.5 of the Civil Code is amended to read:

14 782.5. (a) Any deed or other written instrument that relates to title to real
15 property, or any written covenant, condition, or restriction annexed or made a part
16 of, by reference or otherwise, any ~~such~~ deed or instrument that relates to title to
17 real property, that which contains any provision that purports to forbid, restrict, or
18 condition the right of any person or persons to sell, buy, lease, rent, use, or occupy
19 the property on account of any basis listed in subdivision (a) or (d) of Section
20 12955 of the Government Code, as those bases are defined in Sections 12926,
21 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
22 and Section 12955.2 of the Government Code, with respect to any person or
23 persons, shall be deemed to be revised to omit that provision.

24 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
25 (a) shall not be construed to apply to housing for older persons, as defined in
26 Section 12955.9 of the Government Code. With respect to familial status, nothing
27 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
28 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
29 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section
30 12955 of the Government Code shall apply to subdivision (a).

31 (c) This section shall not be construed to limit or expand the powers of a court to
32 reform a deed or other written instrument.

33 **Comment.** Subdivision (a) of Section 782.5 is amended to make stylistic revisions.

34 Subdivision (b) is amended to correct a cross-reference to former Section 1360.

35 **Civ. Code § 783. “Condominium”**

36 SEC. _____. Section 783 of the Civil Code is amended to read:

37 783. A condominium is an estate in real property described in subdivision (f) of
38 Section ~~1354~~ 4125. A condominium may, with respect to the duration of its
39 enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate
40 for life, (3) an estate for years, such as a leasehold or a subleasehold, or (4) any
41 combination of the foregoing.

1 **Comment.** Section 783 is amended to correct a cross-reference to former Section 1351(f).

2 **Civ. Code § 783.1. Separate and correlative interests as interests in real property**

3 SEC. ____ . Section 783.1 of the Civil Code is amended to read:

4 783.1. In a stock cooperative, as defined in ~~subdivision (m) of Section 1351~~
5 4190, both the separate interest, as defined in paragraph (4) of subdivision ~~(A)~~ (a)
6 of Section ~~1351~~ 4185, and the correlative interest in the stock cooperative
7 corporation, however designated, are interests in real property.

8 **Comment.** Section 783.1 is amended to correct cross-references to former Section 1351(d)(4),
9 (m).

10 **Civ. Code § 798.20. Discrimination prohibited**

11 SEC. ____ . Section 798.20 of the Civil Code is amended to read:

12 798.20. (a) Membership in any private club or organization that is a condition
13 for tenancy in a park shall not be denied on any basis listed in subdivision (a) or
14 (d) of Section 12955 of the Government Code, as those bases are defined in
15 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
16 Section 12955, and Section 12955.2 of the Government Code.

17 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
18 (a) shall not be construed to apply to housing for older persons, as defined in
19 Section 12955.9 of the Government Code. With respect to familial status, nothing
20 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
21 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
22 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section
23 12955 of the Government Code shall apply to subdivision (a).

24 **Comment.** Section 798.20 is amended to correct a cross-reference to former Section 1360.

25 **Civ. Code § 800.25. Nondiscrimination in private club membership**

26 SEC. ____ . Section 800.25 of the Civil Code is amended to read:

27 800.25. (a) Membership in any private club or organization that is a condition
28 for tenancy in a floating home marina shall not be denied on any basis listed in
29 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
30 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
31 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

32 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
33 (a) shall not be construed to apply to housing for older persons, as defined in
34 Section 12955.9 of the Government Code. With respect to familial status, nothing
35 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
36 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
37 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section
38 12955 of the Government Code shall apply to subdivision (a).

39 **Comment.** Section 800.25 is amended to correct a cross-reference to former Section 1360.

1 **Civ. Code § 895. Definitions**

2 SEC. _____. Section 895 of the Civil Code is amended to read:

3 895. (a) “Structure” means any residential dwelling, other building, or
4 improvement located upon a lot or within a common area.

5 (b) “Designed moisture barrier” means an installed moisture barrier specified in
6 the plans and specifications, contract documents, or manufacturer’s
7 recommendations.

8 (c) “Actual moisture barrier” means any component or material, actually
9 installed, that serves to any degree as a barrier against moisture, whether or not
10 intended as such a barrier against moisture.

11 (d) “Unintended water” means water that passes beyond, around, or through a
12 component or the material that is designed to prevent that passage.

13 (e) “Close of escrow” means the date of the close of escrow between the builder
14 and the original homeowner. With respect to claims by an association, as defined
15 in ~~subdivision (a) of Section 1351~~ 4080, “close of escrow” means the date of
16 substantial completion, as defined in Section 337.15 of the Code of Civil
17 Procedure, or the date the builder relinquishes control over the association’s ability
18 to decide whether to initiate a claim under this title, whichever is later.

19 (f) “Claimant” or “homeowner” includes the individual owners of single-family
20 homes, individual unit owners of attached dwellings and, in the case of a common
21 interest development, any association as defined in ~~subdivision (a) of Section 1351~~
22 4760.

23 **Comment.** Subdivision (c) of Section 895 is amended to make a stylistic revision.

24 Subdivisions (e) and (f) are amended to correct cross-references to former Section 1351(a).

25 **Civ. Code § 935. Similar requirements of Section 6000**

26 SEC. _____. Section 935 of the Civil Code is amended to read:

27 935. To the extent that provisions of this chapter are enforced and those
28 provisions are substantially similar to provisions in ~~Section 1375 of the Civil Code~~
29 6000, but an action is subsequently commenced under ~~Section 1375 of the Civil~~
30 ~~Code 6000~~, the parties are excused from performing the substantially similar
31 requirements under ~~Section 1375 of the Civil Code~~ 6000.

32 **Comment.** Section 935 is amended to correct cross-references to former Section 1375.

33 **Civ. Code § 945. Binding effect on original purchaser or successor-in-interest**

34 SEC. _____. Section 945 of the Civil Code is amended to read:

35 945. The provisions, standards, rights, and obligations set forth in this title are
36 binding upon all original purchasers and their successors-in-interest. For purposes
37 of this title, associations and others having the rights set forth in ~~Sections 1368.3~~
38 4810 and ~~1368.4~~ 4815 shall be considered to be original purchasers and shall have
39 standing to enforce the provisions, standards, rights, and obligations set forth in
40 this title.

1 **Comment.** Section 945 is amended to correct cross-references to former Sections 1368.3 and
2 1368.4.

3 **Civ. Code § 1098. Transfer fee defined**

4 SEC. ____ . Section 1098 of the Civil Code is amended to read:

5 1098. A “transfer fee” is any fee payment requirement imposed within a
6 covenant, restriction, or condition contained in any deed, contract, security
7 instrument, or other document affecting the transfer or sale of, or any interest in,
8 real property that requires a fee be paid upon transfer of the real property. A
9 transfer fee does not include any of the following:

10 (a) Fees or taxes imposed by a governmental entity.

11 (b) Fees pursuant to mechanics’ liens.

12 (c) Fees pursuant to court-ordered transfers, payments, or judgments.

13 (d) Fees pursuant to property agreements in connection with a legal separation
14 or dissolution of marriage.

15 (e) Fees, charges, or payments in connection with the administration of estates
16 or trusts pursuant to Division 7 (commencing with Section 7000), Division 8
17 (commencing with Section 13000), or Division 9 (commencing with Section
18 15000) of the Probate Code.

19 (f) Fees, charges, or payments imposed by lenders or purchasers of loans, as
20 these entities are described in subdivision (c) of Section 10232 of the Business and
21 Professions Code.

22 (g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling
23 Common Interest Development Act (~~Title 6 (commencing with Section 1350) of~~
24 ~~Part 4 of Division 2~~ Part 5 (commencing with Section 4000) of Division 4).

25 (h) Fees, charges, or payments for failing to comply with, or for transferring the
26 real property prior to satisfying, an obligation to construct residential
27 improvements on the real property.

28 (i) Any fee reflected in a document recorded against the property on or before
29 December 31, 2007, that is separate from any covenants, conditions, and
30 restrictions, and that substantially complies with subdivision (a) of Section 1098.5
31 by providing a prospective transferee notice of the following:

32 (1) Payment of a transfer fee is required.

33 (2) The amount or method of calculation of the fee.

34 (3) The date or circumstances under which the transfer fee payment requirement
35 expires, if any.

36 (4) The entity to which the fee will be paid.

37 (5) The general purposes for which the fee will be used.

38 **Comment.** Section 1098 is amended to correct a cross-reference to former Sections 1350-
39 1378.

40 **Civ. Code § 1102.6a. Additional disclosures**

41 SEC. ____ . Section 1102.6a of the Civil Code is amended to read:

1 1102.6a. (a) On and after July 1, 1990, any city or county may elect to require
2 disclosures on the form set forth in subdivision (b) in addition to those disclosures
3 required by Section 1102.6. However, this section does not affect or limit the
4 authority of a city or county to require disclosures on a different disclosure form in
5 connection with transactions subject to this article pursuant to an ordinance
6 adopted prior to July 1, 1990. ~~Such an~~ An ordinance like this adopted prior to July
7 1, 1990, may be amended thereafter to revise the disclosure requirements of the
8 ordinance, in the discretion of the city council or county board of supervisors.

9 (b) Disclosures required pursuant to this section pertaining to the property
10 proposed to be transferred, shall be set forth in, and shall be made on a copy of,
11 the following disclosure form:

12 (c) This section does not preclude the use of addenda to the form specified in
13 subdivision (b) to facilitate the required disclosures. This section does not preclude
14 a city or county from using the disclosure form specified in subdivision (b) for a
15 purpose other than that specified in this section.

16 (d)(1) On and after January 1, 2005, if a city or county adopts a different or
17 additional disclosure form pursuant to this section regarding the proximity or
18 effects of an airport, the statement in that form shall contain, at a minimum, the
19 information in the statement “Notice of Airport in Vicinity” found in Section
20 11010 of the Business and Professions Code, or Section 1103.4 or ~~1353~~ 4255.

21 (2) On and after January 1, 2006, if a city or county does not adopt a different or
22 additional disclosure form pursuant to this section, then the provision of an
23 “airport influence area” disclosure pursuant to Section 11010 of the Business and
24 Professions Code, or Section 1103.4 or ~~1353~~ 4255, or if there is not a current
25 airport influence map, a written disclosure of an airport within two statute miles,
26 shall be deemed to satisfy any city or county requirements for the disclosure of
27 airports in connection with transfers of real property.

28 **Comment.** Subdivision (a) of Section 1102.6a is amended to make stylistic revisions.

29 Subdivision (d) is amended to correct cross-references to the airport disclosure provisions of
30 former Section 1353.

31 **Civ. Code § 1102.6d. Manufactured home and mobilehome transfer disclosure statement**

32 SEC. ____. Section 1102.6d of the Civil Code is amended to read:

33 1102.6d. Except for manufactured homes and mobilehomes located in a
34 common interest development governed by ~~Title 6 (commencing with Section~~
35 ~~1351)~~ Part 5 (commencing with Section 4000) of Division 4, the disclosures
36 applicable to the resale of a manufactured home or mobilehome pursuant to
37 subdivision (b) of Section 1102 are set forth in, and shall be made on a copy of,
38 the following disclosure form:

39 **Comment.** Section 1102.6d is amended to correct a cross-reference to former Sections 1350-
40 1378.

1 **Civ. Code § 1133. Sale or lease of subdivision lot subject to blanket encumbrance**

2 SEC. ____ . Section 1133 of the Civil Code is amended to read:

3 1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket
4 encumbrance, as defined in Section 11013 of the Business and Professions Code,
5 but is exempt from a requirement of compliance with Section 11013.2 of the
6 Business and Professions Code, the subdivider, his or her agent, or representative,
7 shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor
8 cause it to be sold, or leased for a term exceeding five years, until the prospective
9 purchaser or lessee of the lot, parcel, or unit has been furnished with and has
10 signed a true copy of the following notice:

11 (b) “Subdivision,” as used in subdivision (a), means improved or unimproved
12 land that is divided or proposed to be divided for the purpose of sale, lease, or
13 financing, whether immediate or future, into two or more lots, parcels, or units and
14 includes a condominium project, as defined in ~~subdivision (f) of Section 1351~~
15 4125, a community apartment project, as defined in ~~subdivision (d) of Section~~
16 1351 4105, a stock cooperative, as defined in ~~subdivision (m) of Section 1351~~
17 4190, and a limited equity housing cooperative, as defined in ~~subdivision (m) of~~
18 Section 1351 4190.

19 (c) The failure of the buyer or lessee to sign the notice shall not invalidate any
20 grant, conveyance, lease, or encumbrance.

21 (d) Any person or entity who willfully violates the provisions of this section
22 shall be liable to the purchaser of a lot or unit which is subject to the provisions of
23 this section, for actual damages, and in addition thereto, shall be guilty of a public
24 offense punishable by a fine in an amount not to exceed five hundred dollars
25 (\$500). In an action to enforce ~~such~~ the liability or fine, the prevailing party shall
26 be awarded reasonable attorney’s fees.

27 **Comment.** Subdivision (b) of Section 1133 is amended to correct cross-references to former
28 Section 1351(d), (f), (m).

29 Subdivision (d) is amended to make a stylistic revision.

30 **Civ. Code § 1633.3. Transactions governed by title**

31 SEC. ____ . Section 1633.3 of the Civil Code is amended to read:

32 1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title
33 applies to electronic records and electronic signatures relating to a transaction.

34 (b) This title does not apply to transactions subject to the following laws:

35 (1) A law governing the creation and execution of wills, codicils, or
36 testamentary trusts.

37 (2) Division 1 (commencing with Section 1101) of the Uniform Commercial
38 Code, except Sections 1107 and 1206.

39 (3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section
40 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9
41 (commencing with Section 9101), and 11 (commencing with Section 11101) of the
42 Uniform Commercial Code.

1 (4) A law that requires that specifically identifiable text or disclosures in a
2 record or a portion of a record be separately signed, including initialed, from the
3 record. However, this paragraph does not apply to Section 1677 or 1678 of this
4 code or Section 1298 of the Code of Civil Procedure.

5 (c) This title does not apply to any specific transaction described in Section
6 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14,
7 1133, or 1134 of, ~~Sections 1350 to 1376, inclusive, of~~, Section 1689.6, 1689.7, or
8 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of
9 Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of,
10 Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of,
11 Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b,
12 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with
13 Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or
14 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with
15 Section 2985.7) of Title 14 of Part 4 of Division 3 of, ~~or~~ Section 3071.5 of, or Part
16 4 (commencing with Section 4000) of Division 4 of, the Civil Code, subdivision
17 (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15,
18 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section
19 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7,
20 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4,
21 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or
22 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code.
23 An electronic record may not be substituted for any notice that is required to be
24 sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this
25 subdivision shall be construed to prohibit the recordation of any document with a
26 county recorder by electronic means.

27 (d) This title applies to an electronic record or electronic signature otherwise
28 excluded from the application of this title under subdivision (b) when used for a
29 transaction subject to a law other than those specified in subdivision (b).

30 (e) A transaction subject to this title is also subject to other applicable
31 substantive law.

32 (f) The exclusion of a transaction from the application of this title under
33 subdivision (b) or (c) shall be construed only to exclude the transaction from the
34 application of this title, but shall not be construed to prohibit the transaction from
35 being conducted by electronic means if the transaction may be conducted by
36 electronic means under any other applicable law.

37 **Comment.** Section 1633.3 is amended to correct a cross-reference to former Sections 1350-
38 1376. It also adds a reference to former Section 1378.

39 **Staff Notes.** (1) When it was added, Section 1633.3 referred to the entirety of the Davis-
40 Stirling Act. Section 1378 was added as the last section of the Davis-Stirling Act *after* the
41 enactment of Section 1633.3. See 1999 Cal. Stat. ch. 428; 2004 Cal. Stat. ch. 346.

42 The staff sees no reason for Section 1633.3 to omit Section 1378 from its reference to the
43 Davis-Stirling Act. The proposed amendment would include Section 1378 within the reference.

1 (2) The text of this section reflects the changes made by 2009 Cal. Stat. ch. 433 (AB 328
2 (Calderon)).

3 **Civ. Code § 1864. Duties of person or entity arranging for transient occupancies on behalf**
4 **of others**

5 SEC. _____. Section 1864 of the Civil Code is amended to read:

6 1864. Any person or entity, including a person employed by a real estate broker,
7 who, on behalf of another or others, solicits or arranges, or accepts reservations or
8 money, or both, for transient occupancies described in paragraphs (1) and (2) of
9 subdivision (b) of Section 1940, in a dwelling unit in a common interest
10 development, as defined in Section ~~1354~~ 4100, in a dwelling unit in an apartment
11 building or complex, or in a single-family home, shall do each of the following:

12 (a) Prepare and maintain, in accordance with a written agreement with the
13 owner, complete and accurate records and books of account, kept in accordance
14 with generally accepted accounting principles, of all reservations made and money
15 received and spent with respect to each dwelling unit. All money received shall be
16 kept in a trust account maintained for the benefit of owners of the dwelling units.

17 (b) Render, monthly, to each owner of the dwelling unit, or to that owner's
18 designee, an accounting for each month in which there are any deposits or
19 disbursements on behalf of that owner, however, in no event shall this accounting
20 be rendered any less frequently than quarterly.

21 (c) Make all records and books of account with respect to a dwelling unit
22 available, upon reasonable advance notice, for inspection and copying by the
23 dwelling unit's owner. The records shall be maintained for a period of at least
24 three years.

25 (d) Comply fully with all collection, payment, and recordkeeping requirements
26 of a transient occupancy tax ordinance, if any, applicable to the occupancy.

27 (e) In no event shall any activities described in this section subject the person or
28 entity performing those activities in any manner to Part 1 (commencing with
29 Section 10000) of Division 4 of the Business and Professions Code. However, a
30 real estate licensee subject to this section may satisfy the requirements of this
31 section by compliance with the Real Estate Law.

32 **Comment.** Section 1864 is amended to correct a cross-reference to former Section 1351(c).

33 **Civ. Code § 2079.3. Inspection of unit in planned development, condominium, or stock**
34 **cooperative**

35 SEC. _____. Section 2079.3 of the Civil Code is amended to read:

36 2079.3. The inspection to be performed pursuant to this article does not include
37 or involve an inspection of areas that are reasonably and normally inaccessible to
38 ~~such an~~ this type of inspection, nor an affirmative inspection of areas off the site of
39 the subject property or public records or permits concerning the title or use of the
40 property, and, if the property comprises a unit in a planned development as
41 defined in Section 11003 of the Business and Professions Code, a condominium as

1 defined in Section 783, or a stock cooperative as defined in Section 11003.2 of the
2 Business and Professions Code, does not include an inspection of more than the
3 unit offered for sale, if the seller or the broker complies with the provisions of
4 ~~Section 1368~~ Sections 4525 to 4580, inclusive.

5 **Comment.** Section 2079.3 is amended to correct a cross-reference to former Section 1368.
6 The section is also amended to make a stylistic revision.

7 **Civ. Code § 2924b. Request for copy of notice of default or sale**

8 SEC. _____. Section 2924b of the Civil Code is amended to read:

9 2924b. (a) Any person desiring a copy of any notice of default and of any notice
10 of sale under any deed of trust or mortgage with power of sale upon real property
11 or an estate for years therein, as to which deed of trust or mortgage the power of
12 sale cannot be exercised until these notices are given for the time and in the
13 manner provided in Section 2924 may, at any time subsequent to recordation of
14 the deed of trust or mortgage and prior to recordation of notice of default
15 thereunder, cause to be filed for record in the office of the recorder of any county
16 in which any part or parcel of the real property is situated, a duly acknowledged
17 request for a copy of the notice of default and of sale. This request shall be signed
18 and acknowledged by the person making the request, specifying the name and
19 address of the person to whom the notice is to be mailed, shall identify the deed of
20 trust or mortgage by stating the names of the parties thereto, the date of
21 recordation thereof, and the book and page where the deed of trust or mortgage is
22 recorded or the recorder's number, and shall be in substantially the following
23 form:
24

25  **Staff note.** A table has been omitted to conserve resources.

26
27 Upon the filing for record of the request, the recorder shall index in the general
28 index of grantors the names of the trustors (or mortgagor) recited therein and the
29 names of persons requesting copies.

30 (b) The mortgagee, trustee, or other person authorized to record the notice of
31 default or the notice of sale shall do each of the following:

32 (1) Within 10 business days following recordation of the notice of default,
33 deposit or cause to be deposited in the United States mail an envelope, sent by
34 registered or certified mail with postage prepaid, containing a copy of the notice
35 with the recording date shown thereon, addressed to each person whose name and
36 address are set forth in a duly recorded request therefor, directed to the address
37 designated in the request and to each trustor or mortgagor at his or her last known
38 address if different than the address specified in the deed of trust or mortgage with
39 power of sale.

40 (2) At least 20 days before the date of sale, deposit or cause to be deposited in
41 the United States mail an envelope, sent by registered or certified mail with
42 postage prepaid, containing a copy of the notice of the time and place of sale,

1 addressed to each person whose name and address are set forth in a duly recorded
2 request therefor, directed to the address designated in the request and to each
3 trustor or mortgagor at his or her last known address if different than the address
4 specified in the deed of trust or mortgage with power of sale.

5 (3) As used in paragraphs (1) and (2), the “last known address” of each trustor or
6 mortgagor means the last business or residence physical address actually known
7 by the mortgagee, beneficiary, trustee, or other person authorized to record the
8 notice of default. For the purposes of this subdivision, an address is “actually
9 known” if it is contained in the original deed of trust or mortgage, or in any
10 subsequent written notification of a change of physical address from the trustor or
11 mortgagor pursuant to the deed of trust or mortgage. For the purposes of this
12 subdivision, “physical address” does not include an e-mail or any form of
13 electronic address for a trustor or mortgagor. The beneficiary shall inform the
14 trustee of the trustor’s last address actually known by the beneficiary. However,
15 the trustee shall incur no liability for failing to send any notice to the last address
16 unless the trustee has actual knowledge of it.

17 (4) A “person authorized to record the notice of default or the notice of sale”
18 shall include an agent for the mortgagee or beneficiary, an agent of the named
19 trustee, any person designated in an executed substitution of trustee, or an agent of
20 that substituted trustee.

21 (c) The mortgagee, trustee, or other person authorized to record the notice of
22 default or the notice of sale shall do the following:

23 (1) Within one month following recordation of the notice of default, deposit or
24 cause to be deposited in the United States mail an envelope, sent by registered or
25 certified mail with postage prepaid, containing a copy of the notice with the
26 recording date shown thereon, addressed to each person set forth in paragraph (2),
27 provided that the estate or interest of any person entitled to receive notice under
28 this subdivision is acquired by an instrument sufficient to impart constructive
29 notice of the estate or interest in the land or portion thereof that is subject to the
30 deed of trust or mortgage being foreclosed, and provided the instrument is
31 recorded in the office of the county recorder so as to impart that constructive
32 notice prior to the recording date of the notice of default and provided the
33 instrument as so recorded sets forth a mailing address that the county recorder
34 shall use, as instructed within the instrument, for the return of the instrument after
35 recording, and which address shall be the address used for the purposes of mailing
36 notices herein.

37 (2) The persons to whom notice shall be mailed under this subdivision are:

38 (A) The successor in interest, as of the recording date of the notice of default, of
39 the estate or interest or any portion thereof of the trustor or mortgagor of the deed
40 of trust or mortgage being foreclosed.

41 (B) The beneficiary or mortgagee of any deed of trust or mortgage recorded
42 subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to
43 or concurrently with the deed of trust or mortgage being foreclosed but subject to a

1 recorded agreement or a recorded statement of subordination to the deed of trust or
2 mortgage being foreclosed.

3 (C) The assignee of any interest of the beneficiary or mortgagee described in
4 subparagraph (B), as of the recording date of the notice of default.

5 (D) The vendee of any contract of sale, or the lessee of any lease, of the estate or
6 interest being foreclosed that is recorded subsequent to the deed of trust or
7 mortgage being foreclosed, or recorded prior to or concurrently with the deed of
8 trust or mortgage being foreclosed but subject to a recorded agreement or
9 statement of subordination to the deed of trust or mortgage being foreclosed.

10 (E) The successor in interest to the vendee or lessee described in subparagraph
11 (D), as of the recording date of the notice of default.

12 (F) The office of the Controller, Sacramento, California, where, as of the
13 recording date of the notice of default, a “Notice of Lien for Postponed Property
14 Taxes” has been recorded against the real property to which the notice of default
15 applies.

16 (3) At least 20 days before the date of sale, deposit or cause to be deposited in
17 the United States mail an envelope, sent by registered or certified mail with
18 postage prepaid, containing a copy of the notice of the time and place of sale
19 addressed to each person to whom a copy of the notice of default is to be mailed as
20 provided in paragraphs (1) and (2), and addressed to the office of any state taxing
21 agency, Sacramento, California, that has recorded, subsequent to the deed of trust
22 or mortgage being foreclosed, a notice of tax lien prior to the recording date of the
23 notice of default against the real property to which the notice of default applies.

24 (4) Provide a copy of the notice of sale to the Internal Revenue Service, in
25 accordance with Section 7425 of the Internal Revenue Code and any applicable
26 federal regulation, if a “Notice of Federal Tax Lien under Internal Revenue Laws”
27 has been recorded, subsequent to the deed of trust or mortgage being foreclosed,
28 against the real property to which the notice of sale applies. The failure to provide
29 the Internal Revenue Service with a copy of the notice of sale pursuant to this
30 paragraph shall be sufficient cause to rescind the trustee’s sale and invalidate the
31 trustee’s deed, at the option of either the successful bidder at the trustee’s sale or
32 the trustee, and in either case with the consent of the beneficiary. Any option to
33 rescind the trustee’s sale pursuant to this paragraph shall be exercised prior to any
34 transfer of the property by the successful bidder to a bona fide purchaser for value.
35 A recision of the trustee’s sale pursuant to this paragraph may be recorded in a
36 notice of recision pursuant to Section 1058.5.

37 (5) The mailing of notices in the manner set forth in paragraph (1) shall not
38 impose upon any licensed attorney, agent, or employee of any person entitled to
39 receive notices as herein set forth any duty to communicate the notice to the
40 entitled person from the fact that the mailing address used by the county recorder
41 is the address of the attorney, agent, or employee.

42 (d) Any deed of trust or mortgage with power of sale hereafter executed upon
43 real property or an estate for years therein may contain a request that a copy of any

1 notice of default and a copy of any notice of sale thereunder shall be mailed to any
2 person or party thereto at the address of the person given therein, and a copy of
3 any notice of default and of any notice of sale shall be mailed to each of these at
4 the same time and in the same manner required as though a separate request
5 therefor had been filed by each of these persons as herein authorized. If any deed
6 of trust or mortgage with power of sale executed after September 19, 1939, except
7 a deed of trust or mortgage of any of the classes excepted from the provisions of
8 Section 2924, does not contain a mailing address of the trustor or mortgagor
9 therein named, and if no request for special notice by the trustor or mortgagor in
10 substantially the form set forth in this section has subsequently been recorded, a
11 copy of the notice of default shall be published once a week for at least four weeks
12 in a newspaper of general circulation in the county in which the property is
13 situated, the publication to commence within 10 business days after the filing of
14 the notice of default. In lieu of publication, a copy of the notice of default may be
15 delivered personally to the trustor or mortgagor within the 10 business days or at
16 any time before publication is completed, or by posting the notice of default in a
17 conspicuous place on the property and mailing the notice to the last known address
18 of the trustor or mortgagor.

19 (e) Any person required to mail a copy of a notice of default or notice of sale to
20 each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or
21 certified mail shall simultaneously cause to be deposited in the United States mail,
22 with postage prepaid and mailed by first-class mail, an envelope containing an
23 additional copy of the required notice addressed to each trustor or mortgagor at the
24 same address to which the notice is sent by registered or certified mail pursuant to
25 subdivision (b) or (c). The person shall execute and retain an affidavit identifying
26 the notice mailed, showing the name and residence or business address of that
27 person, that he or she is over the age of 18 years, the date of deposit in the mail,
28 the name and address of the trustor or mortgagor to whom sent, and that the
29 envelope was sealed and deposited in the mail with postage fully prepaid. In the
30 absence of fraud, the affidavit required by this subdivision shall establish a
31 conclusive presumption of mailing.

32 (f) With respect to separate interests governed by an association, as defined in
33 ~~subdivision (a) of Section 1351~~ 4080, the association may cause to be filed in the
34 office of the recorder in the county in which the separate interests are situated a
35 request that a mortgagee, trustee, or other person authorized to record a notice of
36 default regarding any of those separate interests mail to the association a copy of
37 any trustee's deed upon sale concerning a separate interest. The request shall
38 include a legal description or the assessor's parcel number of the separate
39 interests. A request recorded pursuant to this subdivision shall include the name
40 and address of the association and a statement that it is a homeowners' association.
41 Subsequent requests of an association shall supersede prior requests. A request
42 pursuant to this subdivision shall be recorded before the filing of a notice of
43 default. The mortgagee, trustee, or other authorized person shall mail the requested

1 information to the association within 15 business days following the date the
2 trustee's deed is recorded. Failure to mail the request, pursuant to this subdivision,
3 shall not affect the title to real property.

4 (g) No request for a copy of any notice filed for record pursuant to this section,
5 no statement or allegation in the request, and no record thereof shall affect the title
6 to real property or be deemed notice to any person that any person requesting
7 copies of notice has or claims any right, title, or interest in, or lien or charge upon
8 the property described in the deed of trust or mortgage referred to therein.

9 (h) "Business day," as used in this section, has the meaning specified in Section
10 9.

11 **Comment.** Section 2924b is amended to correct a cross-reference to former Section 1351(a).

12 **Civ. Code § 2929.5. Secured lender's right of entry and inspection**

13 SEC. _____. Section 2929.5 of the Civil Code is amended to read:

14 2929.5. (a) A secured lender may enter and inspect the real property security for
15 the purpose of determining the existence, location, nature, and magnitude of any
16 past or present release or threatened release of any hazardous substance into, onto,
17 beneath, or from the real property security on either of the following:

18 (1) Upon reasonable belief of the existence of a past or present release or
19 threatened release of any hazardous substance into, onto, beneath, or from the real
20 property security not previously disclosed in writing to the secured lender in
21 conjunction with the making, renewal, or modification of a loan, extension of
22 credit, guaranty, or other obligation involving the borrower.

23 (2) After the commencement of nonjudicial or judicial foreclosure proceedings
24 against the real property security.

25 (b) The secured lender shall not abuse the right of entry and inspection or use it
26 to harass the borrower or tenant of the property. Except in case of an emergency,
27 when the borrower or tenant of the property has abandoned the premises, or if it is
28 impracticable to do so, the secured lender shall give the borrower or tenant of the
29 property reasonable notice of the secured lender's intent to enter, and enter only
30 during the borrower's or tenant's normal business hours. Twenty-four hours'
31 notice shall be presumed to be reasonable notice in the absence of evidence to the
32 contrary.

33 (c) The secured lender shall reimburse the borrower for the cost of repair of any
34 physical injury to the real property security caused by the entry and inspection.

35 (d) If a secured lender is refused the right of entry and inspection by the
36 borrower or tenant of the property, or is otherwise unable to enter and inspect the
37 property without a breach of the peace, the secured lender may, upon petition,
38 obtain an order from a court of competent jurisdiction to exercise the secured
39 lender's rights under subdivision (a), and that action shall not constitute an action
40 within the meaning of subdivision (a) of Section 726 of the Code of Civil
41 Procedure.

42 (e) For purposes of this section:

1 (1) “Borrower” means the trustor under a deed of trust, or a mortgagor under a
2 mortgage, where the deed of trust or mortgage encumbers real property security
3 and secures the performance of the trustor or mortgagor under a loan, extension of
4 credit, guaranty, or other obligation. The term includes any successor-in-interest of
5 the trustor or mortgagor to the real property security before the deed of trust or
6 mortgage has been discharged, reconveyed, or foreclosed upon.

7 (2) “Hazardous substance” includes all of the following:

8 (A) Any “hazardous substance” as defined in subdivision (h) of Section 25281
9 of the Health and Safety Code.

10 (B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water
11 Code.

12 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
13 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
14 thereof.

15 (3) “Real property security” means any real property and improvements, other
16 than a separate interest and any related interest in the common area of a residential
17 common interest development, as the terms “separate interest,” “common area,”
18 and “common interest development” are defined in ~~Section 1351~~ Sections 4095,
19 4100, and 4185, or real property consisting of one acre or less which contains 1 to
20 15 dwelling units.

21 (4) “Release” means any spilling, leaking, pumping, pouring, emitting,
22 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
23 the environment, including continuing migration, of hazardous substances into,
24 onto, or through soil, surface water, or groundwater.

25 (5) “Secured lender” means the beneficiary under a deed of trust against the real
26 property security, or the mortgagee under a mortgage against the real property
27 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
28 of trust or mortgage.

29 **Comment.** Section 2929.5 is amended to correct cross-references to former Section 1351(a),
30 (b), and (l).

31 **Civ. Code § 2955.1. Disclosures regarding earthquake insurance requirements**

32 SEC. _____. Section 2955.1 of the Civil Code is amended to read:

33 2955.1. (a) Any lender originating a loan secured by the borrower’s separate
34 interest in a condominium project, as defined in ~~subdivision (f) of Section 1351~~
35 4125, which requires earthquake insurance or imposes a fee or any other condition
36 in lieu thereof pursuant to an underwriting requirement imposed by an institutional
37 third-party purchaser shall disclose all of the following to the potential borrower:

38 (1) That the lender or the institutional third party in question requires earthquake
39 insurance or imposes a fee or any other condition in lieu thereof pursuant to an
40 underwriting requirement imposed by an institutional third party purchaser.

1 (2) That not all lenders or institutional third parties require earthquake insurance
2 or impose a fee or any other condition in lieu thereof pursuant to an underwriting
3 requirement imposed by an institutional third party purchaser.

4 (3) Earthquake insurance may be required on the entire condominium project.

5 (4) That lenders or institutional third parties may also require that a
6 condominium project maintain, or demonstrate an ability to maintain, financial
7 reserves in the amount of the earthquake insurance deductible.

8 (b) For the purposes of this section, “institutional third party” means the Federal
9 Home Loan Mortgage Corporation, the Federal National Mortgage Association,
10 the Government National Mortgage Association, and other substantially similar
11 institutions, whether public or private.

12 (c) The disclosure required by this section shall be made in writing by the lender
13 as soon as reasonably practicable.

14 **Comment.** Section 2955.1 is amended to correct a cross-reference to former Section 1351(f).

15 **Code Civ. Proc. § 86. Specific cases and proceedings that are limited civil cases**

16 SEC. ____ . Section 86 of the Code of Civil Procedure is amended to read:

17 86. (a) The following civil cases and proceedings are limited civil cases:

18 (1) Cases at law in which the demand, exclusive of interest, or the value of the
19 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less.
20 This paragraph does not apply to cases that involve the legality of any tax, impost,
21 assessment, toll, or municipal fine, except actions to enforce payment of
22 delinquent unsecured personal property taxes if the legality of the tax is not
23 contested by the defendant.

24 (2) Actions for dissolution of partnership where the total assets of the
25 partnership do not exceed twenty-five thousand dollars (\$25,000); actions of
26 interpleader where the amount of money or the value of the property involved
27 does not exceed twenty-five thousand dollars (\$25,000).

28 (3) Actions to cancel or rescind a contract when the relief is sought in
29 connection with an action to recover money not exceeding twenty-five thousand
30 dollars (\$25,000) or property of a value not exceeding twenty-five thousand
31 dollars (\$25,000), paid or delivered under, or in consideration of, the contract;
32 actions to revise a contract where the relief is sought in an action upon the contract
33 if the action otherwise is a limited civil case.

34 (4) Proceedings in forcible entry or forcible or unlawful detainer where the
35 whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or
36 less.

37 (5) Actions to enforce and foreclose liens on personal property where the
38 amount of the liens is twenty-five thousand dollars (\$25,000) or less.

39 (6) Actions to enforce and foreclose, or petitions to release, liens of mechanics,
40 materialmen, artisans, laborers, and of all other persons to whom liens are given
41 under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of
42 Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment

1 lien on a common interest development as defined in Section ~~1354~~ 4100 of the
2 Civil Code, where the amount of the liens is twenty-five thousand dollars
3 (\$25,000) or less. However, where an action to enforce the lien affects property
4 that is also affected by a similar pending action that is not a limited civil case, or
5 where the total amount of the liens sought to be foreclosed against the same
6 property aggregates an amount in excess of twenty-five thousand dollars
7 (\$25,000), the action is not a limited civil case.

8 (7) Actions for declaratory relief when brought pursuant to either of the
9 following:

10 (A) By way of cross-complaint as to a right of indemnity with respect to the
11 relief demanded in the complaint or a cross-complaint in an action or proceeding
12 that is otherwise a limited civil case.

13 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
14 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
15 Division 3 of the Business and Professions Code, where the amount in controversy
16 is twenty-five thousand dollars (\$25,000) or less.

17 (8) Actions to issue temporary restraining orders and preliminary injunctions,
18 and to take accounts, where necessary to preserve the property or rights of any
19 party to a limited civil case; to make any order or perform any act, pursuant to
20 Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments)
21 in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited
22 civil case; to determine title to personal property seized in a limited civil case.

23 (9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of
24 Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property
25 or to enforce the liability of the debtor of a judgment debtor where the interest
26 claimed adversely is of a value not exceeding twenty-five thousand dollars
27 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars
28 (\$25,000).

29 (10) Arbitration-related petitions filed pursuant to either of the following:

30 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
31 except for uninsured motorist arbitration proceedings in accordance with Section
32 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
33 becomes final and the matter to be resolved by arbitration is a limited civil case
34 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
35 after the arbitration award becomes final and the amount of the award and all other
36 rulings, pronouncements, and decisions made in the award are within paragraphs
37 (1) to (9), inclusive, of subdivision (a).

38 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
39 and client that is binding or has become binding, pursuant to Article 13
40 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
41 Professions Code, where the arbitration award is twenty-five thousand dollars
42 (\$25,000) or less.

43 (b) The following cases in equity are limited civil cases:

1 (1) Cases to try title to personal property when the amount involved is not more
2 than twenty-five thousand dollars (\$25,000).

3 (2) Cases when equity is pleaded as a defensive matter in any case that is
4 otherwise a limited civil case.

5 (3) Cases to vacate a judgment or order of the court obtained in a limited civil
6 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

7 **Comment.** Section 86 is amended to correct a cross-reference to former Civil Code Section
8 1351(c).

9 **Code Civ. Proc. § 116.540. Participation by individuals other than plaintiff and defendant**

10 SEC. _____. Section 116.540 of the Code of Civil Procedure is amended to read:

11 116.540. (a) Except as permitted by this section, no individual other than the
12 plaintiff and the defendant may take part in the conduct or defense of a small
13 claims action.

14 (b) Except as additionally provided in subdivision (i), a corporation may appear
15 and participate in a small claims action only through a regular employee, or a duly
16 appointed or elected officer or director, who is employed, appointed, or elected for
17 purposes other than solely representing the corporation in small claims court.

18 (c) A party who is not a corporation or a natural person may appear and
19 participate in a small claims action only through a regular employee, or a duly
20 appointed or elected officer or director, or in the case of a partnership, a partner,
21 engaged for purposes other than solely representing the party in small claims
22 court.

23 (d) If a party is an individual doing business as a sole proprietorship, the party
24 may appear and participate in a small claims action by a representative and
25 without personally appearing if both of the following conditions are met:

26 (1) The claim can be proved or disputed by evidence of an account that
27 constitutes a business record as defined in Section 1271 of the Evidence Code, and
28 there is no other issue of fact in the case.

29 (2) The representative is a regular employee of the party for purposes other than
30 solely representing the party in small claims actions and is qualified to testify to
31 the identity and mode of preparation of the business record.

32 (e) A plaintiff is not required to personally appear, and may submit declarations
33 to serve as evidence supporting his or her claim or allow another individual to
34 appear and participate on his or her behalf, if (1) the plaintiff is serving on active
35 duty in the United States Armed Forces outside this state, (2) the plaintiff was
36 assigned to his or her duty station after his or her claim arose, (3) the assignment is
37 for more than six months, (4) the representative is serving without compensation,
38 and (5) the representative has appeared in small claims actions on behalf of others
39 no more than four times during the calendar year. The defendant may file a claim
40 in the same action in an amount not to exceed the jurisdictional limits stated in
41 Sections 116.220, 116.221, and 116.231.

1 (f) A party incarcerated in a county jail, a Department of Corrections and
2 Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to
3 personally appear, and may submit declarations to serve as evidence supporting
4 his or her claim, or may authorize another individual to appear and participate on
5 his or her behalf if that individual is serving without compensation and has
6 appeared in small claims actions on behalf of others no more than four times
7 during the calendar year.

8 (g) A defendant who is a nonresident owner of real property may defend against
9 a claim relating to that property without personally appearing by (1) submitting
10 written declarations to serve as evidence supporting his or her defense, (2)
11 allowing another individual to appear and participate on his or her behalf if that
12 individual is serving without compensation and has appeared in small claims
13 actions on behalf of others no more than four times during the calendar year, or (3)
14 taking the action described in both (1) and (2).

15 (h) A party who is an owner of rental real property may appear and participate in
16 a small claims action through a property agent under contract with the owner to
17 manage the rental of that property, if (1) the owner has retained the property agent
18 principally to manage the rental of that property and not principally to represent
19 the owner in small claims court, and (2) the claim relates to the rental property.

20 (i) A party that is an association created to manage a common interest
21 development, as defined in Section ~~1354~~ 4100 of the Civil Code, may appear and
22 participate in a small claims action through an agent, a management company
23 representative, or bookkeeper who appears on behalf of that association.

24 (j) At the hearing of a small claims action, the court shall require any individual
25 who is appearing as a representative of a party under subdivisions (b) to (i),
26 inclusive, to file a declaration stating (1) that the individual is authorized to appear
27 for the party, and (2) the basis for that authorization. If the representative is
28 appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state
29 that the individual is not employed solely to represent the party in small claims
30 court. If the representative is appearing under subdivision (e), (f), or (g), the
31 declaration also shall state that the representative is serving without compensation,
32 and has appeared in small claims actions on behalf of others no more than four
33 times during the calendar year.

34 (k) A husband or wife who sues or who is sued with his or her spouse may
35 appear and participate on behalf of his or her spouse if (1) the claim is a joint
36 claim, (2) the represented spouse has given his or her consent, and (3) the court
37 determines that the interests of justice would be served.

38 (l) If the court determines that a party cannot properly present his or her claim or
39 defense and needs assistance, the court may in its discretion allow another
40 individual to assist that party.

41 (m) Nothing in this section shall operate or be construed to authorize an attorney
42 to participate in a small claims action except as expressly provided in Section
43 116.530.

1 **Comment.** Section 116.540 is amended to correct a cross-reference to former Civil Code
2 Section 1351(c).

3 **Code Civ. Proc. § 564. Cases in which appointment of receiver is authorized**

4 SEC. ____ . Section 564 of the Code of Civil Procedure is amended to read:

5 564. (a) A receiver may be appointed, in the manner provided in this chapter, by
6 the court in which an action or proceeding is pending in any case in which the
7 court is empowered by law to appoint a receiver.

8 (b) A receiver may be appointed by the court in which an action or proceeding is
9 pending, or by a judge thereof, in the following cases:

10 (1) In an action by a vendor to vacate a fraudulent purchase of property, or by a
11 creditor to subject any property or fund to the creditor's claim, or between partners
12 or others jointly owning or interested in any property or fund, on the application of
13 the plaintiff, or of any party whose right to or interest in the property or fund, or
14 the proceeds thereof, is probable, and where it is shown that the property or fund is
15 in danger of being lost, removed, or materially injured.

16 (2) In an action by a secured lender for the foreclosure of a deed of trust or
17 mortgage and sale of property upon which there is a lien under a deed of trust or
18 mortgage, where it appears that the property is in danger of being lost, removed, or
19 materially injured, or that the condition of the deed of trust or mortgage has not
20 been performed, and that the property is probably insufficient to discharge the
21 deed of trust or mortgage debt.

22 (3) After judgment, to carry the judgment into effect.

23 (4) After judgment, to dispose of the property according to the judgment, or to
24 preserve it during the pendency of an appeal, or pursuant to the Enforcement of
25 Judgments Law Title 9 (commencing with Section 680.010), or after sale of real
26 property pursuant to a decree of foreclosure, during the redemption period, to
27 collect, expend, and disburse rents as directed by the court or otherwise provided
28 by law.

29 (5) Where a corporation has been dissolved, as provided in Section 565.

30 (6) Where a corporation is insolvent, or in imminent danger of insolvency, or
31 has forfeited its corporate rights.

32 (7) In an action of unlawful detainer.

33 (8) At the request of the Public Utilities Commission pursuant to Section 855 or
34 5259.5 of the Public Utilities Code.

35 (9) In all other cases where necessary to preserve the property or rights of any
36 party.

37 (10) At the request of the Office of Statewide Health Planning and
38 Development, or the Attorney General, pursuant to Section 129173 of the Health
39 and Safety Code.

40 (11) In an action by a secured lender for specific performance of an assignment
41 of rents provision in a deed of trust, mortgage, or separate assignment document.
42 The appointment may be continued after entry of a judgment for specific

1 performance if appropriate to protect, operate, or maintain real property
2 encumbered by a deed of trust or mortgage or to collect rents therefrom while a
3 pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage
4 is being completed.

5 (12) In a case brought by an assignee under an assignment of leases, rents,
6 issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

7 (c) A receiver may be appointed, in the manner provided in this chapter,
8 including, but not limited to, Section 566, by the superior court in an action
9 brought by a secured lender to enforce the rights provided in Section 2929.5 of the
10 Civil Code, to enable the secured lender to enter and inspect the real property
11 security for the purpose of determining the existence, location, nature, and
12 magnitude of any past or present release or threatened release of any hazardous
13 substance into, onto, beneath, or from the real property security. The secured
14 lender shall not abuse the right of entry and inspection or use it to harass the
15 borrower or tenant of the property. Except in case of an emergency, when the
16 borrower or tenant of the property has abandoned the premises, or if it is
17 impracticable to do so, the secured lender shall give the borrower or tenant of the
18 property reasonable notice of the secured lender's intent to enter and shall enter
19 only during the borrower's or tenant's normal business hours. Twenty-four hours'
20 notice shall be presumed to be reasonable notice in the absence of evidence to the
21 contrary.

22 (d) Any action by a secured lender to appoint a receiver pursuant to this section
23 shall not constitute an action within the meaning of subdivision (a) of Section 726.

24 (e) For purposes of this section:

25 (1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
26 mortgage, where the deed of trust or mortgage encumbers real property security
27 and secures the performance of the trustor or mortgagor under a loan, extension of
28 credit, guaranty, or other obligation. The term includes any successor in interest of
29 the trustor or mortgagor to the real property security before the deed of trust or
30 mortgage has been discharged, reconveyed, or foreclosed upon.

31 (2) "Hazardous substance" means any of the following:

32 (A) Any "hazardous substance" as defined in subdivision (h) of Section 25281
33 of the Health and Safety Code.

34 (B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water
35 Code.

36 (C) Petroleum including crude oil or any fraction thereof, natural gas, natural
37 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
38 thereof.

39 (3) "Real property security" means any real property and improvements, other
40 than a separate interest and any related interest in the common area of a residential
41 common interest development, as the terms "separate interest," "common area,"
42 and "common interest development" are defined in ~~Section 1351~~ Sections 4095,

1 4100, and 4185 of the Civil Code, or real property consisting of one acre or less
2 that contains 1 to 15 dwelling units.

3 (4) “Release” means any spilling, leaking, pumping, pouring, emitting,
4 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
5 the environment, including continuing migration, of hazardous substances into,
6 onto, or through soil, surface water, or groundwater.

7 (5) “Secured lender” means the beneficiary under a deed of trust against the real
8 property security, or the mortgagee under a mortgage against the real property
9 security, and any successor in interest of the beneficiary or mortgagee to the deed
10 of trust or mortgage.

11 **Comment.** Section 564 is amended to correct cross-references to former Civil Code Section
12 1351(b), (c), (l).

13 **Code Civ. Proc. § 726.5. Election between waiver of lien and exercise of specified rights and**
14 **remedies**

15 SEC. ____ . Section 726.5 of the Code of Civil Procedure is amended to read:

16 726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision
17 of law, except subdivision (d) of this section, a secured lender may elect between
18 the following where the real property security is environmentally impaired and the
19 borrower’s obligations to the secured lender are in default:

20 (1)(A) Waiver of its lien against (i) any parcel of real property security that is
21 environmentally impaired or is an affected parcel, and (ii) all or any portion of the
22 fixtures and personal property attached to the parcels; and

23 (B) Exercise of (i) the rights and remedies of an unsecured creditor, including
24 reduction of its claim against the borrower to judgment, and (ii) any other rights
25 and remedies permitted by law.

26 (2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust
27 or mortgage and, if applicable, a lien against fixtures or personal property attached
28 to the real property security, and (ii) any other rights and remedies permitted by
29 law.

30 (b) Before the secured lender may waive its lien against any parcel of real
31 property security pursuant to paragraph (1) of subdivision (a) on the basis of the
32 environmental impairment contemplated by paragraph (3) of subdivision (e), (i)
33 the secured lender shall provide written notice of the default to the borrower, and
34 (ii) the value of the subject real property security shall be established and its
35 environmentally impaired status shall be confirmed by an order of a court of
36 competent jurisdiction in an action brought by the secured lender against the
37 borrower. The complaint for a valuation and confirmation action may include
38 causes of action for a money judgment for all or part of the secured obligation, in
39 which case the waiver of the secured lender’s liens under paragraph (1) of
40 subdivision (a) shall result only if and when a final money judgment is obtained
41 against the borrower.

1 (c) If a secured lender elects the rights and remedies permitted by paragraph (1)
2 of subdivision (a) and the borrower's obligations are also secured by other real
3 property security, fixtures, or personal property, the secured lender shall first
4 foreclose against the additional collateral to the extent required by applicable law
5 in which case the amount of the judgment of the secured lender pursuant to
6 paragraph (1) of subdivision (a) shall be limited to the extent Section 580a or
7 580d, or subdivision (b) of Section 726 apply to the foreclosures of additional real
8 property security. The borrower may waive or modify the foreclosure
9 requirements of this subdivision provided that the waiver or modification is in
10 writing and signed by the borrower after default.

11 (d) Subdivision (a) shall be inapplicable if all of the following are true:

12 (1) The release or threatened release was not knowingly or negligently caused or
13 contributed to, or knowingly or willfully permitted or acquiesced to, by any of the
14 following:

15 (A) The borrower or any related party.

16 (B) Any affiliate or agent of the borrower or any related party.

17 (2) In conjunction with the making, renewal, or modification of the loan,
18 extension of credit, guaranty, or other obligation secured by the real property
19 security, neither the borrower, any related party, nor any affiliate or agent of either
20 the borrower or any related party had actual knowledge or notice of the release or
21 threatened release, or if a person had knowledge or notice of the release or
22 threatened release, the borrower made written disclosure thereof to the secured
23 lender after the secured lender's written request for information concerning the
24 environmental condition of the real property security, or the secured lender
25 otherwise obtained actual knowledge thereof, prior to the making, renewal, or
26 modification of the obligation.

27 (e) For purposes of this section:

28 (1) "Affected parcel" means any portion of a parcel of real property security that
29 is (A) contiguous to the environmentally impaired parcel, even if separated by
30 roads, streets, utility easements, or railroad rights-of-way, (B) part of an approved
31 or proposed subdivision within the meaning of Section 66424 of the Government
32 Code, of which the environmentally impaired parcel is also a part, or (C) within
33 2,000 feet of the environmentally impaired parcel.

34 (2) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
35 mortgage, where the deed of trust or mortgage encumbers real property security
36 and secures the performance of the trustor or mortgagor under a loan, extension of
37 credit, guaranty, or other obligation. The term includes any successor-in-interest of
38 the trustor or mortgagor to the real property security before the deed of trust or
39 mortgage has been discharged, reconveyed, or foreclosed upon.

40 (3) "Environmentally impaired" means that the estimated costs to clean up and
41 remediate a past or present release or threatened release of any hazardous
42 substance into, onto, beneath, or from the real property security, not disclosed in
43 writing to, or otherwise actually known by, the secured lender prior to the making

1 of the loan or extension of credit secured by the real property security, exceeds 25
2 percent of the higher of the aggregate fair market value of all security for the loan
3 or extension of credit (A) at the time of the making of the loan or extension of
4 credit, or (B) at the time of the discovery of the release or threatened release by the
5 secured lender. For the purposes of this definition, the estimated cost to clean up
6 and remediate the contamination caused by the release or threatened release shall
7 include only those costs that would be incurred reasonably and in good faith, and
8 fair market value shall be determined without giving consideration to the release
9 or threatened release, and shall be exclusive of the amount of all liens and
10 encumbrances against the security that are senior in priority to the lien of the
11 secured lender. Notwithstanding the foregoing, the real property security for any
12 loan or extension of credit secured by a single parcel of real property which is
13 included in the National Priorities List pursuant to Section 9605 of Title 42 of the
14 United States Code, or in any list published by the Department of Toxic
15 Substances Control pursuant to subdivision (b) of Section 25356 of the Health and
16 Safety Code, shall be deemed to be environmentally impaired.

17 (4) “Hazardous substance” means any of the following:

18 (A) Any “hazardous substance” as defined in subdivision (h) of Section 25281
19 of the Health and Safety Code.

20 (B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water
21 Code.

22 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
23 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
24 thereof.

25 (5) “Real property security” means any real property and improvements, other
26 than a separate interest and any related interest in the common area of a residential
27 common interest development, as the terms “separate interest,” “common area,”
28 and “common interest development” are defined in ~~Section 1351~~ Sections 4095,
29 4100, and 4185 of the Civil Code, or real property which contains only 1 to 15
30 dwelling units, which in either case (A) is solely used (i) for residential purposes,
31 or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage,
32 for residential purposes as well as limited agricultural or commercial purposes
33 incidental thereto, and (B) is the subject of an issued certificate of occupancy
34 unless the dwelling is to be owned and occupied by the borrower.

35 (6) “Related party” means any person who shares an ownership interest with the
36 borrower in the real property security, or is a partner or joint venturer with the
37 borrower in a partnership or joint venture, the business of which includes the
38 acquisition, development, use, lease, or sale of the real property security.

39 (7) “Release” means any spilling, leaking, pumping, pouring, emitting,
40 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
41 the environment, including continuing migration, of hazardous substances into,
42 onto, or through soil, surface water, or groundwater. The term does not include

1 actions directly relating to the incorporation in a lawful manner of building
2 materials into a permanent improvement to the real property security.

3 (8) “Secured lender” means the beneficiary under a deed of trust against the real
4 property security, or the mortgagee under a mortgage against the real property
5 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
6 of trust or mortgage.

7 (f) This section shall not be construed to invalidate or otherwise affect in any
8 manner any rights or obligations arising under contract in connection with a loan
9 or extension of credit, including, without limitation, provisions limiting recourse.

10 (g) This section shall only apply to loans, extensions of credit, guaranties, or
11 other obligations secured by real property security made, renewed, or modified on
12 or after January 1, 1992.

13 **Comment.** Section 726.5 is amended to correct cross-references to former Civil Code Section
14 1351(b), (c), (l).

15 **Code Civ. Proc. § 729.035. Right of redemption on sale of separate interest in common**
16 **interest development**

17 SEC. _____. Section 729.035 of the Code of Civil Procedure is amended to read:

18 729.035. Notwithstanding any provision of law to the contrary, the sale of a
19 separate interest in a common interest development is subject to the right of
20 redemption within 90 days after the sale if the sale arises from a foreclosure by the
21 association of a common interest development pursuant to ~~subdivision (g) of~~
22 ~~Section 1367.4~~ Sections 5700, 5710, and 5735 of the Civil Code, subject to the
23 conditions of ~~Section 1367.4~~ Sections 5705, 5715, and 5720 of the Civil Code.

24 **Comment.** Section 729.035 is amended to correct cross-references to former Civil Code
25 Sections 1367.1 and 1367.4.

26 **Gov’t Code § 12191. 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
30 Code:

31 (1) Filing the statement and designation upon the qualification of a foreign
32 association pursuant to Section 2105 of the Corporations Code: One hundred
33 dollars (\$100).

34 (2) Filing an amended statement and designation by a foreign association
35 pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

36 (3) Filing a certificate showing the surrender of the right of a foreign association
37 to transact intrastate business pursuant to Section 2112 of the Corporations Code:
38 No fee.

39 (b) Unincorporated Associations:

1 (1) Filing a statement in accordance with Section 24003 of the Corporations
2 Code as to principal place of office or place for sending notices or designating
3 agent for service: Twenty-five dollars (\$25).

4 (2) Insignia Registrations: Ten dollars (\$10).

5 (c) Community Associations and Common Interest Developments:

6 (1) Filing a statement by a community association in accordance with Section
7 ~~1363.6~~ 5405 of the Civil Code to register the common interest development that it
8 manages: An amount not to exceed thirty dollars (\$30).

9 (2) Filing an amended statement by a community association in accordance with
10 Section ~~1363.6~~ 5405 of the Civil Code: No fee.

11 **Comment.** Section 12191 is amended to correct cross-references to former Civil Code Section
12 1363.6.

13 **Gov't Code § 12956.1. Restrictive covenant based on discriminatory grounds**

14 SEC. _____. Section 12956.1 of the Government Code is amended to read:

15 12956.1. (a) As used in this section, “association,” “governing documents,” and
16 “declaration” have the same meanings as set forth in ~~Section 1351~~ Sections 4080,
17 4135, and 4150 of the Civil Code.

18 (b)(1) A county recorder, title insurance company, escrow company, real estate
19 broker, real estate agent, or association that provides a copy of a declaration,
20 governing document, or deed to any person shall place a cover page or stamp on
21 the first page of the previously recorded document or documents stating, in at least
22 14-point boldface type, the following:

23 “If this document contains any restriction based on race, color, religion, sex,
24 sexual orientation, familial status, marital status, disability, national origin, source
25 of income as defined in subdivision (p) of Section 12955, or ancestry, that
26 restriction violates state and federal fair housing laws and is void, and may be
27 removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions
28 under state and federal law on the age of occupants in senior housing or housing
29 for older persons shall not be construed as restrictions based on familial status.”

30 (2) The requirements set forth in paragraph (1) shall not apply to documents
31 being submitted for recordation to a county recorder.

32 (c) Any person who records a document for the express purpose of adding a
33 racially restrictive covenant is guilty of a misdemeanor. The county recorder shall
34 not incur any liability for recording the document. Notwithstanding any other
35 provision of law, a prosecution for a violation of this subdivision shall commence
36 within three years after the discovery of the recording of the document.

37 **Comment.** Section 12956.1 is amended to correct cross-references to former Civil Code
38 Section 1351(a), (h), (j).

39 **Gov't Code § 12956.2. Restrictive Covenant Modification**

40 SEC. _____. Section 12956.2 of the Government Code is amended to read:

1 12956.2. (a) A person who holds an ownership interest of record in property that
2 he or she believes is the subject of an unlawfully restrictive covenant in violation
3 of subdivision (l) of Section 12955 may record a document titled Restrictive
4 Covenant Modification. The county recorder may choose to waive the fee
5 prescribed for recording and indexing instruments pursuant to Section 27361 in
6 the case of the modification document provided for in this section. The
7 modification document shall include a complete copy of the original document
8 containing the unlawfully restrictive language with the unlawfully restrictive
9 language stricken.

10 (b) Before recording the modification document, the county recorder shall
11 submit the modification document and the original document to the county
12 counsel who shall determine whether the original document contains an unlawful
13 restriction based on race, color, religion, sex, sexual orientation, familial status,
14 marital status, disability, national origin, source of income as defined in
15 subdivision (p) of Section 12955, or ancestry. The county counsel shall return the
16 documents and inform the county recorder of its determination. The county
17 recorder shall refuse to record the modification document if the county counsel
18 finds that the original document does not contain an unlawful restriction as
19 specified in this paragraph.

20 (c) The modification document shall be indexed in the same manner as the
21 original document being modified. It shall contain a recording reference to the
22 original document in the form of a book and page or instrument number, and date
23 of the recording.

24 (d) Subject to covenants, conditions, and restrictions that were recorded after the
25 recording of the original document that contains the unlawfully restrictive
26 language and subject to covenants, conditions, and restrictions that will be
27 recorded after the Restrictive Covenant Modification, the restrictions in the
28 Restrictive Covenant Modification, once recorded, are the only restrictions having
29 effect on the property. The effective date of the terms and conditions of the
30 modification document shall be the same as the effective date of the original
31 document.

32 (e) The county recorder shall make available to the public Restrictive Covenant
33 Modification forms.

34 (f) If the holder of an ownership interest of record in property causes to be
35 recorded a modified document pursuant to this section that contains modifications
36 not authorized by this section, the county recorder shall not incur liability for
37 recording the document. The liability that may result from the unauthorized
38 recordation is the sole responsibility of the holder of the ownership interest of
39 record who caused the modified recordation.

40 (g) This section does not apply to persons holding an ownership interest in
41 property that is part of a common interest development as defined in ~~subdivision~~
42 ~~(e) of Section 1351~~ 4100 of the Civil Code if the board of directors of that

1 common interest development is subject to the requirements of subdivision (b) of
2 Section ~~1352.5~~ 4225 of the Civil Code.

3 **Comment.** Section 12956.2 is amended to correct cross-references to former Civil Code
4 Sections 1351(c) and 1352.5(b).

5 **Gov't Code § 53341.5. Lot, parcel, or unit of subdivision subject to special tax**

6 SEC. _____. Section 53341.5 of the Government Code is amended to read:

7 53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax
8 levied pursuant to this chapter, the subdivider, his or her agent, or representative,
9 shall not sell, or lease for a term exceeding five years, or permit a prospective
10 purchaser or lessor to sign a contract of purchase or a deposit receipt or any
11 substantially equivalent document in the event of a lease with respect to the lot,
12 parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until
13 the prospective purchaser or lessee of the lot, parcel, or unit has been furnished
14 with and has signed a written notice as provided in this section. The notice shall
15 contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-
16 point type, and shall be in substantially the following form. The form may be
17 modified as needed to clearly and accurately describe the tax structure and other
18 characteristics of districts created before January 1, 1993, or to clearly and
19 accurately consolidate information about the tax structure and other characteristics
20 of two or more districts that levy or are authorized to levy special taxes with
21 respect to the lot, parcel, or unit:

22 (b) "Subdivision," as used in subdivision (a), means improved or unimproved
23 land that is divided or proposed to be divided for the purpose of sale, lease, or
24 financing, whether immediate or future, into two or more lots, parcels, or units and
25 includes a condominium project, as defined by Section ~~1350~~ 4125 of the Civil
26 Code, a community apartment project, a stock cooperative, and a limited-equity
27 housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4,
28 respectively, of the Business and Professions Code.

29 (c) The buyer shall have three days after delivery in person or five days after
30 delivery by deposit in the mail of any notice required by this section, to terminate
31 his or her agreement by delivery of written notice of that termination to the owner,
32 subdivider, or agent.

33 (d) The failure to furnish the notice to the buyer or lessee, and failure of the
34 buyer or lessee to sign the notice of a special tax, shall not invalidate any grant,
35 conveyance, lease, or encumbrance.

36 (e) Any person or entity who willfully violates the provisions of this section
37 shall be liable to the purchaser of a lot or unit that is subject to the provisions of
38 this section, for actual damages, and in addition thereto, shall be guilty of a public
39 offense punishable by a fine in an amount not to exceed five hundred dollars
40 (\$500). In an action to enforce a liability or fine, the prevailing party shall be
41 awarded reasonable attorney's fees.

1 **Comment.** Section 53341.5 is amended to correct a cross-reference to former Civil Code
2 Section 1351(f).

3 **Staff Note.** The existing cross-reference appears to be in error. Section 53341.5 refers to the
4 definition of “condominium project,” which is defined in Section 1351(f), not Section 1350. The
5 proposed amendment would correct that error.

6 **Gov’t Code § 65008. Invalidity of discriminatory act**

7 SEC. _____. Section 65008 of the Government Code is amended to read:

8 65008. (a) Any action pursuant to this title by any city, county, city and county,
9 or other local governmental agency in this state is null and void if it denies to any
10 individual or group of individuals the enjoyment of residence, landownership,
11 tenancy, or any other land use in this state because of any of the following reasons:

12 (1)(A) The lawful occupation, age, or any characteristic of the individual or
13 group of individuals listed in subdivision (a) or (d) of Section 12955, as those
14 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
15 of subdivision (p) of Section 12955 and Section 12955.2.

16 (B) Notwithstanding subparagraph (A), with respect to familial status,
17 subparagraph (A) shall not be construed to apply to housing for older persons, as
18 defined in Section 12955.9. With respect to familial status, nothing in
19 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
20 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
21 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
22 subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to
23 subparagraph (A).

24 (2) The method of financing of any residential development of the individual or
25 group of individuals.

26 (3) The intended occupancy of any residential development by persons or
27 families of very low, low, moderate, or middle income.

28 (b)(1) No city, county, city and county, or other local governmental agency
29 shall, in the enactment or administration of ordinances pursuant to any law,
30 including this title, prohibit or discriminate against any residential development or
31 emergency shelter for any of the following reasons:

32 (A) Because of the method of financing.

33 (B)(i) Because of the lawful occupation, age, or any characteristic listed in
34 subdivision (a) or (d) of Section 12955, as those characteristics are defined in
35 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
36 Section 12955, and Section 12955.2 of the owners or intended occupants of the
37 residential development or emergency shelter.

38 (ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not
39 be construed to apply to housing for older persons, as defined in Section 12955.9.
40 With respect to familial status, nothing in clause (i) shall be construed to affect
41 Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to
42 housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760

1 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of this code
2 shall apply to clause (i).

3 (C) Because the development or shelter is intended for occupancy by persons
4 and families of very low, low, or moderate income, as defined in Section 50093 of
5 the Health and Safety Code, or persons and families of middle income.

6 (D) Because the development consists of a multifamily residential project that is
7 consistent with both the jurisdiction's zoning ordinance and general plan as they
8 existed on the date the application was deemed complete, except that a project
9 shall not be deemed to be inconsistent with the zoning designation for the site if
10 that zoning designation is inconsistent with the general plan only because the
11 project site has not been rezoned to conform with a more recently adopted general
12 plan.

13 (2) The discrimination prohibited by this subdivision includes the denial or
14 conditioning of a residential development or shelter because of, in whole or in
15 part, either of the following:

16 (A) The method of financing.

17 (B) The occupancy of the development by persons protected by this subdivision,
18 including, but not limited to, persons and families of very low, low, or moderate
19 income.

20 (3) A city, county, city and county, or other local government agency may not,
21 pursuant to subdivision (d) of Section 65589.5, disapprove a housing development
22 project or condition approval of a housing development project in a manner that
23 renders the project infeasible if the basis for the disapproval or conditional
24 approval includes any of the reasons prohibited in paragraph (1) or (2).

25 (c) For the purposes of this section, "persons and families of middle income"
26 means persons and families whose income does not exceed 150 percent of the
27 median income for the county in which the persons or families reside.

28 (d)(1) No city, county, city and county, or other local governmental agency may
29 impose different requirements on a residential development or emergency shelter
30 that is subsidized, financed, insured, or otherwise assisted by the federal or state
31 government or by a local public entity, as defined in Section 50079 of the Health
32 and Safety Code, than those imposed on nonassisted developments, except as
33 provided in subdivision (e). The discrimination prohibited by this subdivision
34 includes the denial or conditioning of a residential development or emergency
35 shelter based in whole or in part on the fact that the development is subsidized,
36 financed, insured, or otherwise assisted as described in this paragraph.

37 (2)(A) No city, county, city and county, or other local governmental agency
38 may, because of the lawful occupation age, or any characteristic of the intended
39 occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics
40 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
41 subdivision (p) of Section 12955, and Section 12955.2 or because the development
42 is intended for occupancy by persons and families of very low, low, moderate, or
43 middle income, impose different requirements on these residential developments

1 than those imposed on developments generally, except as provided in subdivision
2 (e).

3 (B) Notwithstanding subparagraph (A), with respect to familial status,
4 subparagraph (A) shall not be construed to apply to housing for older persons, as
5 defined in Section 12955.9. With respect to familial status, nothing in
6 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
7 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
8 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
9 subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to
10 subparagraph (A).

11 (e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title
12 do not prohibit either of the following:

13 (1) The County of Riverside from enacting and enforcing zoning to provide
14 housing for older persons, in accordance with state or federal law, if that zoning
15 was enacted prior to January 1, 1995.

16 (2) Any city, county, or city and county from extending preferential treatment to
17 residential developments or emergency shelters assisted by the federal or state
18 government or by a local public entity, as defined in Section 50079 of the Health
19 and Safety Code, or other residential developments or emergency shelters intended
20 for occupancy by persons and families of low and moderate income, as defined in
21 Section 50093 of the Health and Safety Code, or persons and families of middle
22 income, or agricultural employees, as defined in subdivision (b) of Section 1140.4
23 of the Labor Code, and their families. This preferential treatment may include, but
24 need not be limited to, reduction or waiver of fees or changes in architectural
25 requirements, site development and property line requirements, building setback
26 requirements, or vehicle parking requirements that reduce development costs of
27 these developments.

28 (f) “Residential development,” as used in this section, means a single-family
29 residence or a multifamily residence, including manufactured homes, as defined in
30 Section 18007 of the Health and Safety Code.

31 (g) This section shall apply to chartered cities.

32 (h) The Legislature finds and declares that discriminatory practices that inhibit
33 the development of housing for persons and families of very low, low, moderate,
34 and middle income, or emergency shelters for the homeless, are a matter of
35 statewide concern.

36 **Comment.** Section 65008 is amended to correct cross-references to former Civil Code Section
37 1360.

38 **Gov’t Code § 65915. Applicant seeking density bonus**

39 SEC. ____ . Section 65915 of the Government Code is amended to read:

40 65915. (a) When an applicant seeks a density bonus for a housing development
41 within, or for the donation of land for housing within, the jurisdiction of a city,
42 county, or city and county, that local government shall provide the applicant with

1 incentives or concessions for the production of housing units and child care
2 facilities as prescribed in this section. All cities, counties, or cities and counties
3 shall adopt an ordinance that specifies how compliance with this section will be
4 implemented. Failure to adopt an ordinance shall not relieve a city, county, or city
5 and county from complying with this section.

6 (b)(1) A city, county, or city and county shall grant one density bonus, the
7 amount of which shall be as specified in subdivision (f), and incentives or
8 concessions, as described in subdivision (d), when an applicant for a housing
9 development seeks and agrees to construct a housing development, excluding any
10 units permitted by the density bonus awarded pursuant to this section, that will
11 contain at least any one of the following:

12 (A) Ten percent of the total units of a housing development for lower income
13 households, as defined in Section 50079.5 of the Health and Safety Code.

14 (B) Five percent of the total units of a housing development for very low income
15 households, as defined in Section 50105 of the Health and Safety Code.

16 (C) A senior citizen housing development, as defined in Sections 51.3 and 51.12
17 of the Civil Code, or mobilehome park that limits residency based on age
18 requirements for housing for older persons pursuant to Section 798.76 or 799.5 of
19 the Civil Code.

20 (D) Ten percent of the total dwelling units in a common interest development as
21 defined in Section ~~4354~~ 4100 of the Civil Code for persons and families of
22 moderate income, as defined in Section 50093 of the Health and Safety Code,
23 provided that all units in the development are offered to the public for purchase.

24 (2) For purposes of calculating the amount of the density bonus pursuant to
25 subdivision (f), the applicant who requests a density bonus pursuant to this
26 subdivision shall elect whether the bonus shall be awarded on the basis of
27 subparagraph (A), (B), (C), or (D) of paragraph (1).

28 (3) For the purposes of this section, “total units” or “total dwelling units” does
29 not include units added by a density bonus awarded pursuant to this section or any
30 local law granting a greater density bonus.

31 (c)(1) An applicant shall agree to, and the city, county, or city and county shall
32 ensure, continued affordability of all low- and very low income units that qualified
33 the applicant for the award of the density bonus for 30 years or a longer period of
34 time if required by the construction or mortgage financing assistance program,
35 mortgage insurance program, or rental subsidy program. Rents for the lower
36 income density bonus units shall be set at an affordable rent as defined in Section
37 50053 of the Health and Safety Code. Owner-occupied units shall be available at
38 an affordable housing cost as defined in Section 50052.5 of the Health and Safety
39 Code.

40 (2) An applicant shall agree to, and the city, county, or city and county shall
41 ensure that, the initial occupant of the moderate-income units that are directly
42 related to the receipt of the density bonus in the common interest development, as
43 defined in Section ~~4354~~ 4100 of the Civil Code, are persons and families of

1 moderate income, as defined in Section 50093 of the Health and Safety Code, and
2 that the units are offered at an affordable housing cost, as that cost is defined in
3 Section 50052.5 of the Health and Safety Code. The local government shall
4 enforce an equity sharing agreement, unless it is in conflict with the requirements
5 of another public funding source or law. The following apply to the equity sharing
6 agreement:

7 (A) Upon resale, the seller of the unit shall retain the value of any
8 improvements, the downpayment, and the seller's proportionate share of
9 appreciation. The local government shall recapture any initial subsidy, as defined
10 in subparagraph (B), and its proportionate share of appreciation, as defined in
11 subparagraph (C), which amount shall be used within five years for any of the
12 purposes described in subdivision (e) of Section 33334.2 of the Health and Safety
13 Code that promote home ownership.

14 (B) For purposes of this subdivision, the local government's initial subsidy shall
15 be equal to the fair market value of the home at the time of initial sale minus the
16 initial sale price to the moderate-income household, plus the amount of any
17 downpayment assistance or mortgage assistance. If upon resale the market value is
18 lower than the initial market value, then the value at the time of the resale shall be
19 used as the initial market value.

20 (C) For purposes of this subdivision, the local government's proportionate share
21 of appreciation shall be equal to the ratio of the local government's initial subsidy
22 to the fair market value of the home at the time of initial sale.

23 (d)(1) An applicant for a density bonus pursuant to subdivision (b) may submit
24 to a city, county, or city and county a proposal for the specific incentives or
25 concessions that the applicant requests pursuant to this section, and may request a
26 meeting with the city, county, or city and county. The city, county, or city and
27 county shall grant the concession or incentive requested by the applicant unless the
28 city, county, or city and county makes a written finding, based upon substantial
29 evidence, of any of the following:

30 (A) The concession or incentive is not required in order to provide for affordable
31 housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for
32 rents for the targeted units to be set as specified in subdivision (c).

33 (B) The concession or incentive would have a specific adverse impact, as
34 defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health
35 and safety or the physical environment or on any real property that is listed in the
36 California Register of Historical Resources and for which there is no feasible
37 method to satisfactorily mitigate or avoid the specific adverse impact without
38 rendering the development unaffordable to low- and moderate-income households.

39 (C) The concession or incentive would be contrary to state or federal law.

40 (2) The applicant shall receive the following number of incentives or
41 concessions:

42 (A) One incentive or concession for projects that include at least 10 percent of
43 the total units for lower income households, at least 5 percent for very low income

1 households, or at least 10 percent for persons and families of moderate income in a
2 common interest development.

3 (B) Two incentives or concessions for projects that include at least 20 percent of
4 the total units for lower income households, at least 10 percent for very low
5 income households, or at least 20 percent for persons and families of moderate
6 income in a common interest development.

7 (C) Three incentives or concessions for projects that include at least 30 percent
8 of the total units for lower income households, at least 15 percent for very low
9 income households, or at least 30 percent for persons and families of moderate
10 income in a common interest development.

11 (3) The applicant may initiate judicial proceedings if the city, county, or city and
12 county refuses to grant a requested density bonus, incentive, or concession. If a
13 court finds that the refusal to grant a requested density bonus, incentive, or
14 concession is in violation of this section, the court shall award the plaintiff
15 reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be
16 interpreted to require a local government to grant an incentive or concession that
17 has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of
18 Section 65589.5, upon health, safety, or the physical environment, and for which
19 there is no feasible method to satisfactorily mitigate or avoid the specific adverse
20 impact. Nothing in this subdivision shall be interpreted to require a local
21 government to grant an incentive or concession that would have an adverse impact
22 on any real property that is listed in the California Register of Historical
23 Resources. The city, county, or city and county shall establish procedures for
24 carrying out this section, that shall include legislative body approval of the means
25 of compliance with this section.

26 (e)(1) In no case may a city, county, or city and county apply any development
27 standard that will have the effect of physically precluding the construction of a
28 development meeting the criteria of subdivision (b) at the densities or with the
29 concessions or incentives permitted by this section. An applicant may submit to a
30 city, county, or city and county a proposal for the waiver or reduction of
31 development standards that will have the effect of physically precluding the
32 construction of a development meeting the criteria of subdivision (b) at the
33 densities or with the concessions or incentives permitted under this section, and
34 may request a meeting with the city, county, or city and county. If a court finds
35 that the refusal to grant a waiver or reduction of development standards is in
36 violation of this section, the court shall award the plaintiff reasonable attorney's
37 fees and costs of suit. Nothing in this subdivision shall be interpreted to require a
38 local government to waive or reduce development standards if the waiver or
39 reduction would have a specific, adverse impact, as defined in paragraph (2) of
40 subdivision (d) of Section 65589.5, upon health, safety, or the physical
41 environment, and for which there is no feasible method to satisfactorily mitigate or
42 avoid the specific adverse impact. Nothing in this subdivision shall be interpreted
43 to require a local government to waive or reduce development standards that

1 would have an adverse impact on any real property that is listed in the California
2 Register of Historical Resources, or to grant any waiver or reduction that would be
3 contrary to state or federal law.

4 (2) A proposal for the waiver or reduction of development standards pursuant to
5 this subdivision shall neither reduce nor increase the number of incentives or
6 concessions to which the applicant is entitled pursuant to subdivision (d).

7 (f) For the purposes of this chapter, “density bonus” means a density increase
8 over the otherwise maximum allowable residential density as of the date of
9 application by the applicant to the city, county, or city and county. The applicant
10 may elect to accept a lesser percentage of density bonus. The amount of density
11 bonus to which the applicant is entitled shall vary according to the amount by
12 which the percentage of affordable housing units exceeds the percentage
13 established in subdivision (b).

14 (1) For housing developments meeting the criteria of subparagraph (A) of
15 paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:
16

17  **Staff Note.** A table has been omitted to conserve resources.

18
19 (2) For housing developments meeting the criteria of subparagraph (B) of
20 paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:
21

22  **Staff Note.** A table has been omitted to conserve resources.

23
24 (3) For housing developments meeting the criteria of subparagraph (C) of
25 paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the
26 number of senior housing units.

27 (4) For housing developments meeting the criteria of subparagraph (D) of
28 paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:
29

30  **Staff Note.** A table has been omitted to conserve resources.

31
32 (5) All density calculations resulting in fractional units shall be rounded up to
33 the next whole number. The granting of a density bonus shall not be interpreted, in
34 and of itself, to require a general plan amendment, local coastal plan amendment,
35 zoning change, or other discretionary approval.

36 (g)(1) When an applicant for a tentative subdivision map, parcel map, or other
37 residential development approval donates land to a city, county, or city and county
38 in accordance with this subdivision, the applicant shall be entitled to a 15-percent
39 increase above the otherwise maximum allowable residential density for the entire
40 development, as follows:
41

1  **Staff Note.** A table has been omitted to conserve resources.

2
3 (2) This increase shall be in addition to any increase in density mandated by
4 subdivision (b), up to a maximum combined mandated density increase of 35
5 percent if an applicant seeks an increase pursuant to both this subdivision and
6 subdivision (b). All density calculations resulting in fractional units shall be
7 rounded up to the next whole number. Nothing in this subdivision shall be
8 construed to enlarge or diminish the authority of a city, county, or city and county
9 to require a developer to donate land as a condition of development. An applicant
10 shall be eligible for the increased density bonus described in this subdivision if all
11 of the following conditions are met:

12 (A) The applicant donates and transfers the land no later than the date of
13 approval of the final subdivision map, parcel map, or residential development
14 application.

15 (B) The developable acreage and zoning classification of the land being
16 transferred are sufficient to permit construction of units affordable to very low
17 income households in an amount not less than 10 percent of the number of
18 residential units of the proposed development.

19 (C) The transferred land is at least one acre in size or of sufficient size to permit
20 development of at least 40 units, has the appropriate general plan designation, is
21 appropriately zoned with appropriate development standards for development at
22 the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is
23 or will be served by adequate public facilities and infrastructure.

24 (D) The transferred land shall have all of the permits and approvals, other than
25 building permits, necessary for the development of the very low income housing
26 units on the transferred land, not later than the date of approval of the final
27 subdivision map, parcel map, or residential development application, except that
28 the local government may subject the proposed development to subsequent design
29 review to the extent authorized by subdivision (i) of Section 65583.2 if the design
30 is not reviewed by the local government prior to the time of transfer.

31 (E) The transferred land and the affordable units shall be subject to a deed
32 restriction ensuring continued affordability of the units consistent with paragraphs
33 (1) and (2) of subdivision (c), which shall be recorded on the property at the time
34 of the transfer.

35 (F) The land is transferred to the local agency or to a housing developer
36 approved by the local agency. The local agency may require the applicant to
37 identify and transfer the land to the developer.

38 (G) The transferred land shall be within the boundary of the proposed
39 development or, if the local agency agrees, within one-quarter mile of the
40 boundary of the proposed development.

41 (H) A proposed source of funding for the very low income units shall be
42 identified not later than the date of approval of the final subdivision map, parcel
43 map, or residential development application.

1 (h)(1) When an applicant proposes to construct a housing development that
2 conforms to the requirements of subdivision (b) and includes a child care facility
3 that will be located on the premises of, as part of, or adjacent to, the project, the
4 city, county, or city and county shall grant either of the following:

5 (A) An additional density bonus that is an amount of square feet of residential
6 space that is equal to or greater than the amount of square feet in the child care
7 facility.

8 (B) An additional concession or incentive that contributes significantly to the
9 economic feasibility of the construction of the child care facility.

10 (2) The city, county, or city and county shall require, as a condition of approving
11 the housing development, that the following occur:

12 (A) The child care facility shall remain in operation for a period of time that is
13 as long as or longer than the period of time during which the density bonus units
14 are required to remain affordable pursuant to subdivision (c).

15 (B) Of the children who attend the child care facility, the children of very low
16 income households, lower income households, or families of moderate income
17 shall equal a percentage that is equal to or greater than the percentage of dwelling
18 units that are required for very low income households, lower income households,
19 or families of moderate income pursuant to subdivision (b).

20 (3) Notwithstanding any requirement of this subdivision, a city, county, or a city
21 and county shall not be required to provide a density bonus or concession for a
22 child care facility if it finds, based upon substantial evidence, that the community
23 has adequate child care facilities.

24 (4) “Child care facility,” as used in this section, means a child day care facility
25 other than a family day care home, including, but not limited to, infant centers,
26 preschools, extended day care facilities, and schoolage child care centers.

27 (i) “Housing development,” as used in this section, means a development project
28 for five or more residential units. For the purposes of this section, “housing
29 development” also includes a subdivision or common interest development, as
30 defined in Section ~~1354~~ 4100 of the Civil Code, approved by a city, county, or city
31 and county and consists of residential units or unimproved residential lots and
32 either a project to substantially rehabilitate and convert an existing commercial
33 building to residential use or the substantial rehabilitation of an existing
34 multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the
35 result of the rehabilitation would be a net increase in available residential units.
36 For the purpose of calculating a density bonus, the residential units shall be on
37 contiguous sites that are the subject of one development application, but do not
38 have to be based upon individual subdivision maps or parcels. The density bonus
39 shall be permitted in geographic areas of the housing development other than the
40 areas where the units for the lower income households are located.

41 (j) The granting of a concession or incentive shall not be interpreted, in and of
42 itself, to require a general plan amendment, local coastal plan amendment, zoning

1 change, or other discretionary approval. This provision is declaratory of existing
2 law.

3 (k) For the purposes of this chapter, concession or incentive means any of the
4 following:

5 (1) A reduction in site development standards or a modification of zoning code
6 requirements or architectural design requirements that exceed the minimum
7 building standards approved by the California Building Standards Commission as
8 provided in Part 2.5 (commencing with Section 18901) of Division 13 of the
9 Health and Safety Code, including, but not limited to, a reduction in setback and
10 square footage requirements and in the ratio of vehicular parking spaces that
11 would otherwise be required that results in identifiable, financially sufficient, and
12 actual cost reductions.

13 (2) Approval of mixed use zoning in conjunction with the housing project if
14 commercial, office, industrial, or other land uses will reduce the cost of the
15 housing development and if the commercial, office, industrial, or other land uses
16 are compatible with the housing project and the existing or planned development
17 in the area where the proposed housing project will be located.

18 (3) Other regulatory incentives or concessions proposed by the developer or the
19 city, county, or city and county that result in identifiable, financially sufficient,
20 and actual cost reductions.

21 (l) Subdivision (k) does not limit or require the provision of direct financial
22 incentives for the housing development, including the provision of publicly owned
23 land, by the city, county, or city and county, or the waiver of fees or dedication
24 requirements.

25 (m) Nothing in this section shall be construed to supersede or in any way alter or
26 lessen the effect or application of the California Coastal Act (Division 20
27 (commencing with Section 30000) of the Public Resources Code).

28 (n) If permitted by local ordinance, nothing in this section shall be construed to
29 prohibit a city, county, or city and county from granting a density bonus greater
30 than what is described in this section for a development that meets the
31 requirements of this section or from granting a proportionately lower density
32 bonus than what is required by this section for developments that do not meet the
33 requirements of this section.

34 (o) For purposes of this section, the following definitions shall apply:

35 (1) “Development standard” includes a site or construction condition, including,
36 but not limited to, a height limitation, a setback requirement, a floor area ratio, an
37 onsite open-space requirement, or a parking ratio that applies to a residential
38 development pursuant to any ordinance, general plan element, specific plan,
39 charter, or other local condition, law, policy, resolution, or regulation.

40 (2) “Maximum allowable residential density” means the density allowed under
41 the zoning ordinance and land use element of the general plan, or if a range of
42 density is permitted, means the maximum allowable density for the specific zoning
43 range and land use element of the general plan applicable to the project. Where the

1 density allowed under the zoning ordinance is inconsistent with the density
2 allowed under the land use element of the general plan, the general plan density
3 shall prevail.

4 (p)(1) Upon the request of the developer, no city, county, or city and county
5 shall require a vehicular parking ratio, inclusive of handicapped and guest parking,
6 of a development meeting the criteria of subdivision (b), that exceeds the
7 following ratios:

8 (A) Zero to one bedroom: one onsite parking space.

9 (B) Two to three bedrooms: two onsite parking spaces.

10 (C) Four and more bedrooms: two and one-half parking spaces.

11 (2) If the total number of parking spaces required for a development is other
12 than a whole number, the number shall be rounded up to the next whole number.
13 For purposes of this subdivision, a development may provide “onsite parking”
14 through tandem parking or uncovered parking, but not through onstreet parking.

15 (3) This subdivision shall apply to a development that meets the requirements of
16 subdivision (b) but only at the request of the applicant. An applicant may request
17 parking incentives or concessions beyond those provided in this subdivision
18 pursuant to subdivision (d).

19 **Comment.** Section 65915 is amended to correct cross-references to former Civil Code Section
20 1351(c).

21 **Gov’t Code § 65995.5. Alternative calculation of amounts**

22 SEC. ____ . Section 65995.5 of the Government Code is amended to read:

23 65995.5. (a) The governing board of a school district may impose the amount
24 calculated pursuant to this section as an alternative to the amount that may be
25 imposed on residential construction calculated pursuant to subdivision (b) of
26 Section 65995.

27 (b) To be eligible to impose the fee, charge, dedication, or other requirement up
28 to the amount calculated pursuant to this section, a governing board shall do all of
29 the following:

30 (1) Make a timely application to the State Allocation Board for new construction
31 funding for which it is eligible and be determined by the board to meet the
32 eligibility requirements for new construction funding set forth in Article 2
33 (commencing with Section 17071.10) and Article 3 (commencing with Section
34 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board
35 that submits an application to determine the district’s eligibility for new
36 construction funding shall be deemed eligible if the State Allocation Board fails to
37 notify the district of the district’s eligibility within 120 days of receipt of the
38 application.

39 (2) Conduct and adopt a school facility needs analysis pursuant to Section
40 65995.6.

1 (3) Until January 1, 2000, satisfy at least one of the requirements set forth in
2 subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at
3 least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

4 (A) The district is a unified or elementary school district that has a substantial
5 enrollment of its elementary school pupils on a multitrack year-round schedule.
6 “Substantial enrollment” for purposes of this paragraph means at least 30 percent
7 of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school
8 attendance area in which all or some of the new residential units identified in the
9 needs analysis are planned for construction. A high school district shall be deemed
10 to have met the requirements of this paragraph if either of the following apply:

11 (i) At least 30 percent of the high school district’s pupils are on a multitrack
12 year-round schedule.

13 (ii) At least 40 percent of the pupils enrolled in public schools in kindergarten
14 and grades 1 to 12, inclusive, within the boundaries of the high school attendance
15 area for which the school district is applying for new facilities are enrolled in
16 multitrack year-round schools.

17 (B) The district has placed on the ballot in the previous four years a local
18 general obligation bond to finance school facilities and the measure received at
19 least 50 percent plus one of the votes cast.

20 (C) The district meets one of the following:

21 (i) The district has issued debt or incurred obligations for capital outlay in an
22 amount equivalent to 15 percent of the district’s local bonding capacity, including
23 indebtedness that is repaid from property taxes, parcel taxes, the district’s general
24 fund, special taxes levied pursuant to Section 4 of Article XIII A of the California
25 Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with
26 Section 53311) of Division 2 of Title 5 that are approved by a vote of registered
27 voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section
28 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to
29 November 4, 1998, and revenues received pursuant to the Community
30 Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of
31 the Health and Safety Code). Indebtedness or other obligation to finance school
32 facilities to be owned, leased, or used by the district, that is incurred by another
33 public agency, shall be counted for the purpose of calculating whether the district
34 has met the debt percentage requirement contained herein.

35 (ii) The district has issued debt or incurred obligations for capital outlay in an
36 amount equivalent to 30 percent of the district’s local bonding capacity, including
37 indebtedness that is repaid from property taxes, parcel taxes, the district’s general
38 fund, special taxes levied pursuant to Section 4 of Article XIII A of the California
39 Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with
40 Section 53311) of Division 2 of Title 5 that are approved by a vote of registered
41 voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section
42 53311) of Division 2 of Title 5 that are approved by a vote of landowners after
43 November 4, 1998, and revenues received pursuant to the Community

1 Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of
2 the Health and Safety Code). Indebtedness or other obligation to finance school
3 facilities to be owned, leased, or used by the district, that is incurred by another
4 public agency, shall be counted for the purpose of calculating whether the district
5 has met the debt percentage requirement contained herein.

6 (D) At least 20 percent of the teaching stations within the district are relocatable
7 classrooms.

8 (c) The maximum square foot fee, charge, dedication, or other requirement
9 authorized by this section that may be collected in accordance with Chapter 6
10 (commencing with Section 17620) of Part 10.5 of the Education Code shall be
11 calculated by a governing board of a school district, as follows:

12 (1) The number of unhoused pupils identified in the school facilities needs
13 analysis shall be multiplied by the appropriate amounts provided in subdivision (a)
14 of Section 17072.10. This sum shall be added to the site acquisition and
15 development cost determined pursuant to subdivision (h).

16 (2) The full amount of local funds the governing board has dedicated to facilities
17 necessitated by new construction shall be subtracted from the amount determined
18 pursuant to paragraph (1). Local funds include fees, charges, dedications, or other
19 requirements imposed on commercial or industrial construction.

20 (3) The resulting amount determined pursuant to paragraph (2) shall be divided
21 by the projected total square footage of assessable space of residential units
22 anticipated to be constructed during the next five-year period in the school district
23 or the city and county in which the school district is located. The estimate of the
24 projected total square footage shall be based on information available from the city
25 or county within which the residential units are anticipated to be constructed or a
26 market report prepared by an independent third party.

27 (d) A school district that has a common territorial jurisdiction with a district that
28 imposes the fee, charge, dedication, or other requirement up to the amount
29 calculated pursuant to this section or Section 65995.7, may not impose a fee,
30 charge, dedication, or other requirement on residential construction that exceeds
31 the limit set forth in subdivision (b) of Section 65995 less the portion of that
32 amount it would be required to share pursuant to Section 17623 of the Education
33 Code, unless that district is eligible to impose the fee, charge, dedication, or other
34 requirement up to the amount calculated pursuant to this section or Section
35 65995.7.

36 (e) Nothing in this section is intended to limit or discourage the joint use of
37 school facilities or to limit the ability of a school district to construct school
38 facilities that exceed the amount of funds authorized by Section 17620 of the
39 Education Code and provided by the state grant program, if the additional costs are
40 funded solely by local revenue sources other than fees, charges, dedications, or
41 other requirements imposed on new construction.

42 (f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of
43 the Education Code, a fee, charge, dedication, or other requirement authorized

1 under this section and Section 65995.7 shall be expended solely on the school
2 facilities identified in the needs analysis as being attributable to projected
3 enrollment growth from the construction of new residential units. This subdivision
4 does not preclude the expenditure of a fee, charge, dedication, or other
5 requirement, authorized pursuant to subparagraph (C) of paragraph (1) of
6 subdivision (a) of Section 17620, on school facilities identified in the needs
7 analysis as necessary due to projected enrollment growth attributable to the new
8 residential units.

9 (g) “Residential units” and “residences” as used in this section and in Sections
10 65995.6 and 65995.7 means the development of single-family detached housing
11 units, single-family attached housing units, manufactured homes and
12 mobilehomes, as defined in subdivision (f) of Section 17625 of the Education
13 Code, condominiums, and multifamily housing units, including apartments,
14 residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519
15 of the Health and Safety Code, and stock cooperatives, as defined in Section ~~1351~~
16 4190 of the Civil Code.

17 (h) Site acquisition costs shall not exceed half of the amount determined by
18 multiplying the land acreage determined to be necessary under the guidelines of
19 the State Department of Education, as published in the “School Site Analysis and
20 Development Handbook,” as that handbook read as of January 1, 1998, by the
21 estimated cost determined pursuant to Section 17072.12 of the Education Code.
22 Site development costs shall not exceed the estimated amount that would be
23 funded by the State Allocation Board pursuant to its regulations governing grants
24 for site development costs.

25 **Comment.** Section 65995.5 is amended to correct a cross-reference to former Civil Code
26 Section 1351(m).

27 **Gov’t Code § 66411. Local control of common interest developments and subdivision design**
28 **and improvement**

29 SEC. _____. Section 66411 of the Government Code is amended to read:

30 66411. Regulation and control of the design and improvement of subdivisions
31 are vested in the legislative bodies of local agencies. Each local agency shall, by
32 ordinance, regulate and control the initial design and improvement of common
33 interest developments as defined in Section ~~1351~~ 4100 of the Civil Code and
34 subdivisions for which this division requires a tentative and final or parcel map. In
35 the development, adoption, revision, and application of ~~such~~ this type of
36 ordinance, the local agency shall comply with the provisions of Section 65913.2.
37 The ordinance shall specifically provide for proper grading and erosion control,
38 including the prevention of sedimentation or damage to offsite property. Each
39 local agency may by ordinance regulate and control other subdivisions, provided
40 that the regulations are not more restrictive than the regulations for those
41 subdivisions for which a tentative and final or parcel map are required by this
42 division, and provided further that the regulations shall not be applied to short-

1 term leases (terminable by either party on not more than 30 days' notice in
2 writing) of a portion of the operating right-of-way of a railroad corporation as
3 defined by Section 230 of the Public Utilities Code unless a showing is made in
4 individual cases, under substantial evidence, that public policy necessitates the
5 application of the regulations to those short-term leases in individual cases.

6 **Comment.** Section 66411 is amended to correct a cross-reference to former Civil Code Section
7 1351(c).

8 Section 66411 is also amended to make a stylistic revision.

9 **Gov't Code § 66412. Application of Subdivision Map Act**

10 66412. This division shall be inapplicable to any of the following:

11 (a) The financing or leasing of apartments, offices, stores, or similar space
12 within apartment buildings, industrial buildings, commercial buildings,
13 mobilehome parks, or trailer parks.

14 (b) Mineral, oil, or gas leases.

15 (c) Land dedicated for cemetery purposes under the Health and Safety Code.

16 (d) A lot line adjustment between four or fewer existing adjoining parcels,
17 where the land taken from one parcel is added to an adjoining parcel, and where a
18 greater number of parcels than originally existed is not thereby created, if the lot
19 line adjustment is approved by the local agency, or advisory agency. A local
20 agency or advisory agency shall limit its review and approval to a determination of
21 whether or not the parcels resulting from the lot line adjustment will conform to
22 the local general plan, any applicable specific plan, any applicable coastal plan,
23 and zoning and building ordinances. An advisory agency or local agency shall not
24 impose conditions or exactions on its approval of a lot line adjustment except to
25 conform to the local general plan, any applicable specific plan, any applicable
26 coastal plan, and zoning and building ordinances, to require the prepayment of real
27 property taxes prior to the approval of the lot line adjustment, or to facilitate the
28 relocation of existing utilities, infrastructure, or easements. No tentative map,
29 parcel map, or final map shall be required as a condition to the approval of a lot
30 line adjustment. The lot line adjustment shall be reflected in a deed, which shall be
31 recorded. No record of survey shall be required for a lot line adjustment unless
32 required by Section 8762 of the Business and Professions Code. A local agency
33 shall approve or disapprove a lot line adjustment pursuant to the Permit
34 Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

35 (e) Boundary line or exchange agreements to which the State Lands
36 Commission or a local agency holding a trust grant of tide and submerged lands is
37 a party.

38 (f) Any separate assessment under Section 2188.7 of the Revenue and Taxation
39 Code.

40 (g) The conversion of a community apartment project, as defined in Section
41 ~~1351~~ 4105 of the Civil Code, to a condominium, as defined in Section 783 of the
42 Civil Code, but only if all of the following requirements are met:

1 (1) The property was subdivided before January 1, 1982, as evidenced by a
2 recorded deed creating the community apartment project.

3 (2) Subject to compliance with ~~subdivision (e) of Section 1351~~ Sections 4290
4 and 4295 of the Civil Code, all conveyances and other documents necessary to
5 effectuate the conversion shall be executed by the required number of owners in
6 the project as specified in the bylaws or other organizational documents. If the
7 bylaws or other organizational documents do not expressly specify the number of
8 owners necessary to execute the conveyances and other documents, a majority of
9 owners in the project shall be required to execute the conveyances or other
10 documents. Conveyances and other documents executed under the foregoing
11 provisions shall be binding upon and affect the interests of all parties in the
12 project.

13 (3) If subdivision, as defined in Section 66424, of the property occurred after
14 January 1, 1964, both of the following requirements are met:

15 (A) A final or parcel map of that subdivision was approved by the local agency
16 and recorded, with all of the conditions of that map remaining in effect after the
17 conversion.

18 (B) No more than 49 percent of the units in the project were owned by any one
19 person as defined in Section 17, including an incorporator or director of the
20 community apartment project, on January 1, 1982.

21 (4) The local agency certifies that the above requirements were satisfied if the
22 local agency, by ordinance, provides for that certification.

23 (h) The conversion of a stock cooperative, as defined in Section ~~1351~~ 4190
24 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but
25 only if all of the following requirements are met:

26 (1) The property was subdivided before January 1, 1982, as evidenced by a
27 recorded deed creating the stock cooperative, an assignment of lease, or issuance
28 of shares to a stockholder.

29 (2) A person renting a unit in a cooperative shall be entitled at the time of
30 conversion to all tenant rights in state or local law, including, but not limited to,
31 rights respecting first refusal, notice, and displacement and relocation benefits.

32 (3) Subject to compliance with ~~subdivision (e) of Section 1351~~ Sections 4290
33 and 4295 of the Civil Code, all conveyances and other documents necessary to
34 effectuate the conversion shall be executed by the required number of owners in
35 the cooperative as specified in the bylaws or other organizational documents. If
36 the bylaws or other organizational documents do not expressly specify the number
37 of owners necessary to execute the conveyances and other documents, a majority
38 of owners in the cooperative shall be required to execute the conveyances or other
39 documents. Conveyances and other documents executed under the foregoing
40 provisions shall be binding upon and affect the interests of all parties in the
41 cooperative.

42 (4) If subdivision, as defined in Section 66424, of the property occurred after
43 January 1, 1980, both of the following requirements are met:

1 (A) A final or parcel map of that subdivision was approved by the local agency
2 and recorded, with all of the conditions of that map remaining in effect after the
3 conversion.

4 (B) No more than 49 percent of the shares in the project were owned by any one
5 person as defined in Section 17, including an incorporator or director of the
6 cooperative, on January 1, 1982.

7 (5) The local agency certifies that the above requirements were satisfied if the
8 local agency, by ordinance, provides for that certification.

9 (i) The leasing of, or the granting of an easement to, a parcel of land, or any
10 portion or portions thereof, in conjunction with the financing, erection, and sale or
11 lease of a windpowered electrical generation device on the land, if the project is
12 subject to discretionary action by the advisory agency or legislative body.

13 (j) The leasing or licensing of a portion of a parcel, or the granting of an
14 easement, use permit, or similar right on a portion of a parcel, to a telephone
15 corporation as defined in Section 234 of the Public Utilities Code, exclusively for
16 the placement and operation of cellular radio transmission facilities, including, but
17 not limited to, antennae support structures, microwave dishes, structures to house
18 cellular communications transmission equipment, power sources, and other
19 equipment incidental to the transmission of cellular communications, if the project
20 is subject to discretionary action by the advisory agency or legislative body.

21 (k) Leases of agricultural land for agricultural purposes. As used in this
22 subdivision, “agricultural purposes” means the cultivation of food or fiber, or the
23 grazing or pasturing of livestock.

24 (l) The leasing of, or the granting of an easement to, a parcel of land, or any
25 portion or portions thereof, in conjunction with the financing, erection, and sale or
26 lease of a solar electrical generation device on the land, if the project is subject to
27 review under other local agency ordinances regulating design and improvement or,
28 if the project is subject to other discretionary action by the advisory agency or
29 legislative body.

30 (m) The leasing of, or the granting of an easement to, a parcel of land or any
31 portion or portions of the land in conjunction with a biogas project that uses, as
32 part of its operation, agricultural waste or byproducts from the land where the
33 project is located and reduces overall emissions of greenhouse gases from
34 agricultural operations on the land if the project is subject to review under other
35 local agency ordinances regulating design and improvement or if the project is
36 subject to discretionary action by the advisory agency or legislative body.

37 **Comment.** Section 66412 is amended to correct cross-references to former Civil Code
38 Sections 1351(d) and (m), and to the substantive requirements of former Civil Code Section
39 1351(e).

40 **Staff Notes.** (1) Section 66412 refers to compliance with Civil Code Section 1351(e). That
41 provision includes both a definition “condominium plan” and substantive provisions governing
42 the creation, amendment, or repeal of a condominium plan. In the proposed law, the definition is
43 separated from the substantive provisions (consistent with general statutory drafting practice). In
44 the proposed amendments to Section 66512(g)(2) and (h)(3), the cross-references are changed to

1 refer only to the substantive provisions of Section 1351(e) (i.e., to proposed Sections 4290 and
2 4295).

3 (2) The text of this section reflects the changes made by 2009 Cal. Stat. ch. 332 (SB 113
4 (Committee on Local Government)).

5 **Gov't Code § 66424. Subdivision**

6 SEC. ____ . Section 66424 of the Government Code is amended to read:

7 66424. "Subdivision" means the division, by any subdivider, of any unit or units
8 of improved or unimproved land, or any portion thereof, shown on the latest
9 equalized county assessment roll as a unit or as contiguous units, for the purpose
10 of sale, lease or financing, whether immediate or future. Property shall be
11 considered as contiguous units, even if it is separated by roads, streets, utility
12 easement or railroad rights-of-way. "Subdivision" includes a condominium
13 project, as defined in ~~subdivision (f) of Section 1351 4125~~ of the Civil Code, a
14 community apartment project, as defined in ~~subdivision (d) of Section 1351 4105~~
15 of the Civil Code, or the conversion of five or more existing dwelling units to a
16 stock cooperative, as defined in ~~subdivision (m) of Section 1351 4190~~ of the Civil
17 Code.

18 **Comment.** Section 66424 is amended to correct cross-references to former Civil Code Section
19 1351(d), (f), (m).

20 **Gov't Code § 66427. Map of condominium, community apartment project, or stock**
21 **cooperative project**

22 SEC. ____ . Section 66427 of the Government Code is amended to read:

23 66427. (a) A map of a condominium project, a community apartment project, or
24 of the conversion of five or more existing dwelling units to a stock cooperative
25 project need not show the buildings or the manner in which the buildings or the
26 airspace above the property shown on the map are to be divided, nor shall the
27 governing body have the right to refuse approval of a parcel, tentative, or final
28 map of the project on account of the design or the location of buildings on the
29 property shown on the map that are not violative of local ordinances or on account
30 of the manner in which airspace is to be divided in conveying the condominium.

31 (b) A map need not include a condominium plan or plans, as defined in
32 ~~subdivision (e) of Section 1351 4120~~ of the Civil Code, and the governing body
33 may not refuse approval of a parcel, tentative, or final map of the project on
34 account of the absence of a condominium plan.

35 (c) Fees and lot design requirements shall be computed and imposed with
36 respect to those maps on the basis of parcels or lots of the surface of the land
37 shown thereon as included in the project.

38 (d) Nothing herein shall be deemed to limit the power of the legislative body to
39 regulate the design or location of buildings in a project by or pursuant to local
40 ordinances.

41 (e) If the governing body has approved a parcel map or final map for the
42 establishment of condominiums on property pursuant to the requirements of this

1 division, the separation of a three-dimensional portion or portions of the property
2 from the remainder of the property or the division of that three-dimensional
3 portion or portions into condominiums shall not constitute a further subdivision as
4 defined in Section 66424, provided each of the following conditions has been
5 satisfied:

6 (1) The total number of condominiums established is not increased above the
7 number authorized by the local agency in approving the parcel map or final map.

8 (2) A perpetual estate or an estate for years in the remainder of the property is
9 held by the condominium owners in undivided interests in common, or by an
10 association as defined in ~~subdivision (a) of Section 1351~~ 4100 of the Civil Code,
11 and the duration of the estate in the remainder of the property is the same as the
12 duration of the estate in the condominiums.

13 (3) The three-dimensional portion or portions of property are described on a
14 condominium plan or plans, as defined in ~~subdivision (e) of Section 1351~~ 4120
15 of the Civil Code.

16 **Comment.** Section 66427 is amended to correct cross-references to former Civil Code Section
17 1351(a), (e).

18 **Gov't Code § 66452.10. Stock cooperative or community apartment project**

19 SEC. ____ . Section 66452.10 of the Government Code is amended to read:

20 66452.10. A stock cooperative, as defined in Section 11003.2 of the Business
21 and Professions Code, or a community apartment project, as defined in Section
22 11004 of the Business and Professions Code, shall not be converted to a
23 condominium, as defined in Section 783 of the Civil Code, unless the required
24 number of (1) owners and (2) trustees or beneficiaries of each recorded deed of
25 trust and mortgagees of each recorded mortgage in the cooperative or project, as
26 specified in the bylaws, or other organizational documents, have voted in favor of
27 the conversion. If the bylaws or other organizational documents do not expressly
28 specify the number of votes required to approve the conversion, a majority vote of
29 the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and
30 mortgagees of each recorded mortgage in the cooperative or project shall be
31 required. Upon approval of the conversion as set forth above and in compliance
32 with ~~subdivision (e) of Section 1351~~ Sections 4290 and 4295 of the Civil Code, all
33 conveyances and other documents necessary to effectuate the conversion shall be
34 executed by the required number of owners in the cooperative or project as
35 specified in the bylaws or other organizational documents. If the bylaws or other
36 organizational documents do not expressly specify the number of owners
37 necessary to execute the conveyances or other documents, a majority of owners in
38 the cooperative or project shall be required to execute the conveyances and other
39 documents. Conveyances and other documents executed under the foregoing
40 provisions shall be binding upon and affect the interests of all parties in the
41 cooperative or project. The provisions of Section 66499.31 shall not apply to a
42 violation of this section.

1 **Comment.** Section 66452.10 is amended to correct a cross-reference to former Civil Code
2 Section 1351(e).

3 **Staff Note.** Section 66452.10 refers to compliance with Civil Code Section 1351(e). That
4 provision includes both a definition “condominium plan” and substantive provisions governing
5 the creation, amendment, or repeal of a condominium plan. In the proposed law, the definition is
6 separated from the substantive provisions (consistent with general statutory drafting practice). In
7 the proposed amendment to Section 66452.10, the cross-reference is changed to refer only to the
8 substantive provisions of Section 1351(e) (i.e., to proposed Sections 4290 and 4295).

9 **Gov’t Code § 66475.2. Local transit facilities**

10 SEC. ____ . Section 66475.2 of the Government Code is amended to read:

11 66475.2. (a) There may be imposed by local ordinance a requirement of a
12 dedication or an irrevocable offer of dedication of land within the subdivision for
13 local transit facilities such as bus turnouts, benches, shelters, landing pads and
14 similar items that directly benefit the residents of a subdivision. The irrevocable
15 offers may be terminated as provided in subdivisions (c) and (d) of Section
16 66477.2.

17 (b) Only the payment of fees in lieu of the dedication of land may be required in
18 subdivisions that consist of the subdivision of airspace in existing buildings into
19 condominium projects, stock cooperatives, or community apartment projects, as
20 those terms are defined in ~~Section 1351~~ Sections 4105, 4125, and 4190 of the Civil
21 Code.

22 **Comment.** Section 66475.2 is amended to correct a cross-reference to former Civil Code
23 Section 1351(d), (f), (m).

24 **Gov’t Code § 66477. Park and recreational purposes**

25 SEC. ____ . Section 66477 of the Government Code is amended to read:

26 66477. (a) The legislative body of a city or county may, by ordinance, require
27 the dedication of land or impose a requirement of the payment of fees in lieu
28 thereof, or a combination of both, for park or recreational purposes as a condition
29 to the approval of a tentative map or parcel map, if all of the following
30 requirements are met:

31 (1) The ordinance has been in effect for a period of 30 days prior to the filing of
32 the tentative map of the subdivision or parcel map.

33 (2) The ordinance includes definite standards for determining the proportion of a
34 subdivision to be dedicated and the amount of any fee to be paid in lieu thereof.
35 The amount of land dedicated or fees paid shall be based upon the residential
36 density, which shall be determined on the basis of the approved or conditionally
37 approved tentative map or parcel map and the average number of persons per
38 household. There shall be a rebuttable presumption that the average number of
39 persons per household by units in a structure is the same as that disclosed by the
40 most recent available federal census or a census taken pursuant to Chapter 17
41 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the
42 dedication of land, or the payment of fees, or both, shall not exceed the

1 proportionate amount necessary to provide three acres of park area per 1,000
2 persons residing within a subdivision subject to this section, unless the amount of
3 existing neighborhood and community park area, as calculated pursuant to this
4 subdivision, exceeds that limit, in which case the legislative body may adopt the
5 calculated amount as a higher standard not to exceed five acres per 1,000 persons
6 residing within a subdivision subject to this section.

7 (A) The park area per 1,000 members of the population of the city, county, or
8 local public agency shall be derived from the ratio that the amount of
9 neighborhood and community park acreage bears to the total population of the
10 city, county, or local public agency as shown in the most recent available federal
11 census. The amount of neighborhood and community park acreage shall be the
12 actual acreage of existing neighborhood and community parks of the city, county,
13 or local public agency as shown on its records, plans, recreational element, maps,
14 or reports as of the date of the most recent available federal census.

15 (B) For cities incorporated after the date of the most recent available federal
16 census, the park area per 1,000 members of the population of the city shall be
17 derived from the ratio that the amount of neighborhood and community park
18 acreage shown on the records, maps, or reports of the county in which the newly
19 incorporated city is located bears to the total population of the new city as
20 determined pursuant to Section 11005 of the Revenue and Taxation Code. In
21 making any subsequent calculations pursuant to this section, the county in which
22 the newly incorporated city is located shall not include the figures pertaining to the
23 new city which were calculated pursuant to this paragraph. Fees shall be payable
24 at the time of the recording of the final map or parcel map or at a later time as may
25 be prescribed by local ordinance.

26 (3) The land, fees, or combination thereof are to be used only for the purpose of
27 developing new or rehabilitating existing neighborhood or community park or
28 recreational facilities to serve the subdivision.

29 (4) The legislative body has adopted a general plan or specific plan containing
30 policies and standards for parks and recreation facilities, and the park and
31 recreational facilities are in accordance with definite principles and standards.

32 (5) The amount and location of land to be dedicated or the fees to be paid shall
33 bear a reasonable relationship to the use of the park and recreational facilities by
34 the future inhabitants of the subdivision.

35 (6) The city, county, or other local public agency to which the land or fees are
36 conveyed or paid shall develop a schedule specifying how, when, and where it will
37 use the land or fees, or both, to develop park or recreational facilities to serve the
38 residents of the subdivision. Any fees collected under the ordinance shall be
39 committed within five years after the payment of the fees or the issuance of
40 building permits on one-half of the lots created by the subdivision, whichever
41 occurs later. If the fees are not committed, they, without any deductions, shall be
42 distributed and paid to the then record owners of the subdivision in the same

1 proportion that the size of their lot bears to the total area of all lots within the
2 subdivision.

3 (7) Only the payment of fees may be required in subdivisions containing 50
4 parcels or less, except that when a condominium project, stock cooperative, or
5 community apartment project, as those terms are defined in ~~Section 1351~~ Sections
6 4105, 4125, and 4190 of the Civil Code, exceeds 50 dwelling units, dedication of
7 land may be required notwithstanding that the number of parcels may be less than
8 50.

9 (8) Subdivisions containing less than five parcels and not used for residential
10 purposes shall be exempted from the requirements of this section. However, in that
11 event, a condition may be placed on the approval of a parcel map that if a building
12 permit is requested for construction of a residential structure or structures on one
13 or more of the parcels within four years, the fee may be required to be paid by the
14 owner of each parcel as a condition of the issuance of the permit.

15 (9) If the subdivider provides park and recreational improvements to the
16 dedicated land, the value of the improvements together with any equipment
17 located thereon shall be a credit against the payment of fees or dedication of land
18 required by the ordinance.

19 (b) Land or fees required under this section shall be conveyed or paid directly to
20 the local public agency which provides park and recreational services on a
21 communitywide level and to the area within which the proposed development will
22 be located, if that agency elects to accept the land or fee. The local agency
23 accepting the land or funds shall develop the land or use the funds in the manner
24 provided in this section.

25 (c) If park and recreational services and facilities are provided by a public
26 agency other than a city or a county, the amount and location of land to be
27 dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be
28 jointly determined by the city or county having jurisdiction and that other public
29 agency.

30 (d) This section does not apply to commercial or industrial subdivisions or to
31 condominium projects or stock cooperatives that consist of the subdivision of
32 airspace in an existing apartment building that is more than five years old when no
33 new dwelling units are added.

34 (e) Common interest developments, as defined in ~~Section 1351~~ 4100 of the Civil
35 Code, shall be eligible to receive a credit, as determined by the legislative body,
36 against the amount of land required to be dedicated, or the amount of the fee
37 imposed, pursuant to this section, for the value of private open space within the
38 development which is usable for active recreational uses.

39 (f) Park and recreation purposes shall include land and facilities for the activity
40 of “recreational community gardening,” which activity consists of the cultivation
41 by persons other than, or in addition to, the owner of the land, of plant material not
42 for sale.

43 (g) This section shall be known and may be cited as the Quimby Act.

1 **Comment.** Section 66477 is amended to correct cross-references to former Civil Code Section
2 1351(a), (d), (f), (m).

3 **Health & Safety Code § 1597.531. Liability insurance or bond**

4 SEC. ____ . Section 1597.531 of the Health and Safety Code is amended to read:

5 1597.531. (a) All family day care homes for children shall maintain in force
6 either liability insurance covering injury to clients and guests in the amount of at
7 least one hundred thousand dollars (\$100,000) per occurrence and three hundred
8 thousand dollars (\$300,000) in the total annual aggregate, sustained on account of
9 the negligence of the licensee or its employees, or a bond in the aggregate amount
10 of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or
11 the bond, the family day care home may maintain a file of affidavits signed by
12 each parent with a child enrolled in the home which meets the requirements of this
13 subdivision. The affidavit shall state that the parent has been informed that the
14 family day care home does not carry liability insurance or a bond according to
15 standards established by the state. If the provider does not own the premises used
16 as the family day care home, the affidavit shall also state that the parent has been
17 informed that the liability insurance, if any, of the owner of the property or the
18 homeowners' association, as appropriate, may not provide coverage for losses
19 arising out of, or in connection with, the operation of the family day care home,
20 except to the extent that the losses are caused by, or result from, an action or
21 omission by the owner of the property or the homeowners' association, for which
22 the owner of the property or the homeowners' association would otherwise be
23 liable under the law. These affidavits shall be on a form provided by the
24 department and shall be reviewed at each licensing inspection.

25 (b) A family day care home that maintains liability insurance or a bond pursuant
26 to this section, and that provides care in premises that are rented or leased or uses
27 premises which share common space governed by a homeowners' association,
28 shall name the owner of the property or the homeowners' association, as
29 appropriate, as an additional insured party on the liability insurance policy or bond
30 if all of the following conditions are met:

31 (1) The owner of the property or governing body of the homeowners'
32 association makes a written request to be added as an additional insured party.

33 (2) The addition of the owner of the property or the homeowners' association
34 does not result in cancellation or nonrenewal of the insurance policy or bond
35 carried by the family day care home.

36 (3) Any additional premium assessed for this coverage is paid by the owner of
37 the property or the homeowners' association.

38 (c) As used in this section, "homeowners' association" means an association of a
39 common interest development, as defined in ~~Section 1351~~ Sections 4080 and 4100
40 of the Civil Code.

41 **Comment.** Section 1597.531 is amended to correct cross-references to former Civil Code
42 Section 1351(a), (c).

1 **Health & Safety Code § 13132.7. Fire retardant roof covering that meets building standards**

2 SEC. _____. Section 13132.7 of the Health and Safety Code is amended to read:

3 13132.7. (a) Within a very high fire hazard severity zone designated by the
4 Director of Forestry and Fire Protection pursuant to Article 9 (commencing with
5 Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code
6 and within a very high hazard severity zone designated by a local agency pursuant
7 to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5
8 of the Government Code, the entire roof covering of every existing structure
9 where more than 50 percent of the total roof area is replaced within any one-year
10 period, every new structure, and any roof covering applied in the alteration, repair,
11 or replacement of the roof of every existing structure, shall be a fire retardant roof
12 covering that is at least class B as defined in the Uniform Building Code, as
13 adopted and amended by the State Building Standards Commission.

14 (b) In all other areas, the entire roof covering of every existing structure where
15 more than 50 percent of the total roof area is replaced within any one-year period,
16 every new structure, and any roof covering applied in the alteration, repair, or
17 replacement of the roof of every existing structure, shall be a fire retardant roof
18 covering that is at least class C as defined in the Uniform Building Code, as
19 adopted and amended by the State Building Standards Commission.

20 (c) Notwithstanding subdivision (b), within state responsibility areas classified
21 by the State Board of Forestry and Fire Protection pursuant to Article 3
22 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public
23 Resources Code, except for those state responsibility areas designated as moderate
24 fire hazard responsibility zones, the entire roof covering of every existing structure
25 where more than 50 percent of the total roof area is replaced within any one-year
26 period, every new structure, and any roof covering applied in the alteration, repair,
27 or replacement of the roof of every existing structure, shall be a fire retardant roof
28 covering that is at least class B as defined in the Uniform Building Code, as
29 adopted and amended by the State Building Standards Commission.

30 (d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard
31 severity zones designated by the Director of Forestry and Fire Protection pursuant
32 to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4
33 of the Public Resources Code or by a local agency pursuant to Chapter 6.8
34 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the
35 Government Code, the entire roof covering of every existing structure where more
36 than 50 percent of the total roof area is replaced within any one-year period, every
37 new structure, and any roof covering applied in the alteration, repair, or
38 replacement of the roof of every existing structure, shall be a fire retardant roof
39 covering that is at least class A as defined in the Uniform Building Code, as
40 adopted and amended by the State Building Standards Commission.

41 (2) Paragraph (1) does not apply to any jurisdiction containing a very high fire
42 hazard 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
3 conforms to the 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
6 set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to
7 the California Building Standards Code in accordance with Chapter 4
8 (commencing with 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
10 county, or fire protection district in establishing more restrictive requirements, in
11 accordance with 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
14 (b), by a city, county, city and county, or fire protection district, unless the
15 ordinance mandates a standard that is less stringent than the standards set forth in
16 subdivision (a), in which case the ordinance shall not be valid on or after the
17 effective date for the relevant roofing standard specified in subdivisions (a) and
18 (b).

19 (h) Any qualified historical building or structure as defined in Section 18955
20 may, on a case-by-case basis, utilize alternative roof constructions as provided by
21 the State Historical Building Code.

22 (i) The installer of the roof covering shall provide certification of the roof
23 covering classification, as provided by the manufacturer or supplier, to the
24 building owner and, when requested, to the agency responsible for enforcement of
25 this part. The installer shall also install the roof covering in accordance with the
26 manufacturer's listing.

27 (j) No wood roof covering materials shall be sold or applied in this state unless
28 both of the following conditions are met:

29 (1) The materials have been approved and listed by the State Fire Marshal as
30 complying with the requirements of this section.

31 (2) The materials have passed at least five years of the 10-year natural
32 weathering test. The 10-year natural weathering test required by this subdivision
33 shall be conducted in accordance with standard 15-2 of the 1994 edition of the
34 Uniform Building Code at a testing facility recognized by the State Fire Marshal.

35 (k) The Insurance Commissioner shall accept the use of fire retardant wood roof
36 covering material that complies with the requirements of this section, used in the
37 partial repair or replacement of nonfire retardant wood roof covering material, as
38 complying with the requirement in Section 2695.9 of Title 10 of the California
39 Code of Regulations relative to matching replacement items in quality, color, and
40 size.

41 (l) No common interest development, as defined in Section ~~1351~~ 4100 of the
42 Civil Code, may require a homeowner to install or repair a roof in a manner that is
43 in violation of this section. The governing documents, as defined in Section ~~1351~~

1 4150 of the Civil Code, of a common interest development within a very high fire
2 severity zone shall allow for at least one type of fire retardant roof covering
3 material that meets the requirements of this section.

4 **Comment.** Section 13132.7 is amended to correct cross-references to former Civil Code
5 Section 1351(c), (j).

6 **Health & Safety Code § 19850. Filing of building plans**

7 SEC. ____ . Section 19850 of the Health and Safety Code is amended to read:

8 19850. The building department of every city or county shall maintain an
9 official copy, which may be on microfilm or other type of photographic copy, of
10 the plans of every building, during the life of the building, for which the
11 department issued a building permit.

12 “Building department” means the department, bureau, or officer charged with
13 the enforcement of laws or ordinances regulating the erection, construction, or
14 alteration of buildings.

15 Except for plans of a common interest development as defined in Section ~~1351~~
16 4100 of the Civil Code, plans need not be filed for:

17 (a) Single or multiple dwellings not more than two stories and basement in
18 height.

19 (b) Garages and other structures appurtenant to buildings described under
20 subdivision (a).

21 (c) Farm or ranch buildings.

22 (d) Any one-story building where the span between bearing walls does not
23 exceed 25 feet. The exemption in this subdivision does not, however, apply to a
24 steel frame or concrete building.

25 **Comment.** Section 19850 is amended to correct a cross-reference to former Civil Code Section
26 1351(c).

27 **Health & Safety Code § 25400.22. Lien placed on contaminated property**

28 SEC. ____ . Section 25400.22 of the Health and Safety Code is amended to read:

29 25400.22. (a) No later than 10 working days after the date when a local health
30 officer determines that property is contaminated pursuant to subdivision (b) of
31 Section 25400.20, the local health officer shall do all of the following:

32 (1) Except as provided in paragraph (2), if the property is real property, record
33 with the county recorder a lien on the property. The lien shall specify all of the
34 following:

35 (A) The name of the agency on whose behalf the lien is imposed.

36 (B) The date on which the property is determined to be contaminated.

37 (C) The legal description of the real property and the assessor’s parcel number.

38 (D) The record owner of the property.

39 (E) The amount of the lien, which shall be the greater of two hundred dollars
40 (\$200) or the costs incurred by the local health officer in compliance with this

1 chapter, including, but not limited to, the cost of inspection performed pursuant to
2 Section 25400.19 and the county recorder's fee.

3 (2)(A) If the property is a mobilehome or manufactured home specified in
4 paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record
5 with a restraint on the mobilehome, or manufactured home with the Department of
6 Housing and Community Development, in the form prescribed by that department,
7 providing notice of the determination that the property is contaminated.

8 (B) If the property is a recreational vehicle specified in paragraph (2) of
9 subdivision (t) of Section 25400.11, perfect by filing with the Department of
10 Motor Vehicles a vehicle license stop on the recreational vehicle in the form
11 prescribed by that department, providing notice of the determination that the
12 property is contaminated.

13 (C) If the property is a mobilehome or manufactured home, not subject to
14 paragraph (2) of subdivision (t) of Section 25400.11, is located on real property,
15 and is not attached to that real property, the local health officer shall record a lien
16 for the real property with the county recorder, and the Department of Housing and
17 Community Development shall amend the permanent record with a restraint for
18 the mobilehome or manufactured home, in the form and with the contents
19 prescribed by that department.

20 (3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall
21 specify all of the following:

22 (A) The name of the agency on whose behalf the lien, restraint, or vehicle
23 license stop is imposed.

24 (B) The date on which the property is determined to be contaminated.

25 (C) The legal description of the real property and the assessor's parcel number,
26 and the mailing and street address or space number of the manufactured home,
27 mobilehome, or recreational vehicle or the vehicle identification number of the
28 recreational vehicle, if applicable.

29 (D) The registered owner of the mobilehome, manufactured home, or
30 recreational vehicle, if applicable, or the name of the owner of the real property as
31 indicated in the official county records.

32 (E) The amount of the lien, if applicable, which shall be the greater of two
33 hundred dollars (\$200) or the costs incurred by the local health officer in
34 compliance with this chapter, including, but not limited to, the cost of inspection
35 performed pursuant to Section 25400.19 and the fee charged by the Department of
36 Housing and Community Development and the Department of Motor Vehicles
37 pursuant to paragraph (2) of subdivision (b).

38 (F) Other information required by the county recorder for the lien, the
39 Department of Housing and Community Development for the restraint, or the
40 Department of Motor Vehicles for the vehicle license stop.

41 (4) Issue to persons specified in subdivisions (d), (e), and (f) an order
42 prohibiting the use or occupancy of the contaminated portions of the property.

1 (b)(1) The county recorder's fees for recording and indexing documents
2 provided for in this section shall be in the amount specified in Article 5
3 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the
4 Government Code.

5 (2) The Department of Housing and Community Development and the
6 Department of Motor Vehicles may charge a fee to cover its administrative costs
7 for recording and indexing documents provided for in paragraph (2) of subdivision
8 (a).

9 (c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect,
10 and priority of a judgment lien. The restraint amending the permanent record
11 pursuant to subdivision (a) shall be displayed on any manufactured home or
12 mobilehome title search until the restraint is released. The vehicle license stop
13 shall remain in effect until it is released.

14 (2) The local health officer shall not authorize the release of a lien, restraint, or
15 vehicle license stop made pursuant to subdivision (a), until one of the following
16 occurs:

17 (A) The property owner satisfies the real property lien, or the contamination in
18 the mobilehome, manufactured home, or recreational vehicle is abated to the
19 satisfaction of the local health officer consistent with the notice in the restraint, or
20 vehicle license stop and the local health officer issues a release pursuant to Section
21 25400.27.

22 (B) For a manufactured home or mobilehome, the local health officer determines
23 that the unit will be destroyed or permanently salvaged. For the purposes of this
24 paragraph, the unit shall not be reregistered after this determination is made unless
25 the local health officer issues a release pursuant to Section 25400.27.

26 (C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in
27 a foreclosure sale.

28 (d) Except as otherwise specified in this section, an order issued pursuant to this
29 section shall be served, either personally or by certified mail, return receipt
30 requested in the following manner:

31 (1) For real property, to all known occupants of the property and to all persons
32 who have an interest in the property, as contained in the records of the recorder's
33 office of the county in which the property is located.

34 (2) In the case of a mobilehome or manufactured home, the order shall be served
35 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
36 defined in Section 18005.3, and the registered owner, as defined in Section
37 18009.5.

38 (3) In the case of a recreational vehicle, the order shall be served on the legal
39 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
40 defined in Section 505 of the Vehicle Code.

41 (e) If the whereabouts of the person described in subdivision (d) are unknown
42 and cannot be ascertained by the local health officer, in the exercise of reasonable
43 diligence, and the local health officer makes an affidavit to that effect, the local

1 health officer shall serve the order by personal service or by mailing a copy of the
2 order by certified mail, postage prepaid, return receipt requested, as follows:

3 (1) The order related to real property shall be served to each person at the
4 address appearing on the last equalized tax assessment roll of the county where the
5 property is located, and to all occupants of the affected unit.

6 (2) In the case of a mobilehome or manufactured home, the order shall be served
7 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
8 defined in Section 18005.3, and the registered owner, as defined in Section
9 18009.5, at the address appearing on the permanent record and all occupants of the
10 affected unit at the mobilehome park space.

11 (3) In the case of a recreational vehicle, the order shall be served on the legal
12 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
13 defined in Section 505 of the Vehicle Code, at the address appearing on the
14 permanent record and all occupants of the affected vehicle at the mobilehome park
15 or special occupancy park space.

16 (f)(1) The local health officer shall also mail a copy of the order required by this
17 section to the address of each person or party having a recorded right, title, estate,
18 lien, or interest in the property and to the association of a common interest
19 development, as defined in ~~Section 1354~~ Sections 4080 and 4100 of the Civil
20 Code.

21 (2) In addition to the requirements of paragraph (1), if the affected property is a
22 mobilehome, manufactured home, or recreational vehicle, specified in paragraph
23 (2) of subdivision (t) of Section 25400.11, the order issued by the local health
24 officer shall also be served, either personally or by certified mail, return receipt
25 requested, to the owner of the mobilehome park or special occupancy park.

26 (g) The order issued pursuant to this section shall include all of the following
27 information:

28 (1) A description of the property.

29 (2) The parcel identification number, address, or space number, if applicable.

30 (3) The vehicle identification number, if applicable.

31 (4) A description of the local health officer's intended course of action.

32 (5) A specification of the penalties for noncompliance with the order.

33 (6) A prohibition on the use of all or portions of the property that are
34 contaminated.

35 (7) A description of the measures the property owner is required to take to
36 decontaminate the property.

37 (8) An indication of the potential health hazards involved.

38 (9) A statement that a property owner who fails to provide a notice or disclosure
39 that is required by this chapter is subject to a civil penalty of up to five thousand
40 dollars (\$5,000).

41 (h) The local health officer shall provide a copy of the order to the local building
42 or code enforcement agency or other appropriate agency responsible for the

1 enforcement of the State Housing Law (Part 1.5 (commencing with Section
2 17910) of Division 13).

3 (i) The local health officer shall post the order in a conspicuous place on the
4 property within one working day of the date that the order is issued.

5 **Comment.** Section 25400.22 is amended to correct a cross-reference to former Civil Code
6 Section 1351(a), (c).

7 **Health & Safety Code § 25915.2. Publication and mailing of notice**

8 SEC. _____. Section 25915.2 of the Health and Safety Code is amended to read:

9 25915.2. (a) Notice provided pursuant to this chapter shall be provided in
10 writing to each individual employee, and shall be mailed to other owners
11 designated to receive the notice pursuant to subdivision (a) of Section 25915.5,
12 within 15 days of the first receipt by the owner of information identifying the
13 presence or location of asbestos-containing construction materials in the building.
14 This notice shall be provided annually thereafter. In addition, if new information
15 regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision
16 (a) of Section 25915 has been obtained within 90 days after the notice required by
17 this subdivision is provided or any subsequent 90-day period, then a supplemental
18 notice shall be provided within 15 days of the close of that 90-day period.

19 (b) Notice provided pursuant to this chapter shall be provided to new employees
20 within 15 days of commencement of work in the building.

21 (c) Notice provided pursuant to this chapter shall be mailed to any new owner
22 designated to receive the notice pursuant to subdivision (a) of Section 25915.5
23 within 15 days of the effective date of the agreement under which a person
24 becomes a new owner.

25 (d) Subdivisions (a) and (c) shall not be construed to require owners of a
26 building or part of a building within a residential common interest development to
27 mail written notification to other owners of a building or part of a building within
28 the residential common interest development, if all the following conditions are
29 met:

30 (1) The association conspicuously posts, in each building or part of a building
31 known to contain asbestos-containing materials, a large sign in a prominent
32 location that fully informs persons entering each building or part of a building
33 within the common interest development that the association knows the building
34 contains asbestos-containing materials.

35 The sign shall also inform persons of the location where further information, as
36 required by this chapter, is available about the asbestos-containing materials
37 known to be located in the building.

38 (2) The owners or association disclose, as soon as practicable before the transfer
39 of title of a separate interest in the common interest development, to a transferee
40 the existence of asbestos-containing material in a building or part of a building
41 within the common interest development.

1 Failure to comply with this section shall not invalidate the transfer of title of real
2 property. This paragraph shall only apply to transfers of title of separate interests
3 in the common interest development of which the owners have knowledge. As
4 used in this section, “association” and “common interest development” are defined
5 in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

6 (e) If a person contracting with an owner receives notice pursuant to this
7 chapter, that contractor shall provide a copy of the notice to his or her employees
8 or contractors working within the building.

9 (f) If the asbestos-containing construction material in the building is limited to
10 an area or areas within the building that meet all the following criteria:

11 (1) Are unique and physically defined.

12 (2) Contain asbestos-containing construction materials in structural, mechanical,
13 or building materials which are not replicated throughout the building.

14 (3) Are not connected to other areas through a common ventilation system; then,
15 an owner required to give notice to his or her employees pursuant to subdivision
16 (a) of Section 25915 or 25915.1 may provide that notice only to the employees
17 working within or entering that area or those areas of the building meeting the
18 conditions above.

19 (g) If the asbestos-containing construction material in the building is limited to
20 an area or areas within the building that meet all the following criteria:

21 (1) Are accessed only by building maintenance employees or contractors and are
22 not accessed by tenants or employees in the building, other than on an incidental
23 basis.

24 (2) Contain asbestos-containing construction materials in structural, mechanical,
25 or building materials which are not replicated in areas of the building which are
26 accessed by tenants and employees.

27 (3) The owner knows that no asbestos fibers are being released or have the
28 reasonable possibility to be released from the material; then, as to that asbestos-
29 containing construction material, an owner required to give notice to his or her
30 employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may
31 provide that notice only to its building maintenance employees and contractors
32 who have access to that area or those areas of the building meeting the conditions
33 above.

34 (h) In those areas of a building where the asbestos-containing construction
35 material is composed only of asbestos fibers which are completely encapsulated, if
36 the owner knows that no asbestos fibers are being released or have the reasonable
37 possibility to be released from that material in its present condition and has no
38 knowledge that other asbestos-containing material is present, then an owner
39 required to give notice pursuant to subdivision (a) of Section 25915 shall provide
40 the information required in paragraph (2) of subdivision (a) of Section 25915 and
41 may substitute the following notice for the requirements of paragraphs (1), (3), (4),
42 and (5) of subdivision (a) of Section 25915:

1 (1) The existence of, conclusions from, and a description or list of the contents
2 of, that portion of any survey conducted to determine the existence and location of
3 asbestos-containing construction materials within the building that refers to the
4 asbestos materials described in this subdivision, and information describing when
5 and where the results of the survey are available pursuant to Section 25917.

6 (2) Information to convey that moving, drilling, boring, or otherwise disturbing
7 the asbestos-containing construction material identified may present a health risk
8 and, consequently, should not be attempted by an unqualified employee. The
9 notice shall identify the appropriate person the employee is required to contact if
10 the condition of the asbestos-containing construction material deteriorates.

11 **Comment.** Section 25915.2 is amended to correct a cross-reference to former Civil Code
12 Section 1351(a), (c).

13 **Health & Safety Code § 25915.5. Notice to co-owners**

14 SEC. _____. Section 25915.5 of the Health and Safety Code is amended to read:

15 25915.5. (a) An owner required to give notice to employees pursuant to this
16 chapter, in addition to notifying his or her employees, shall mail, in accordance
17 with this subdivision, a copy of that notice to all other persons who are owners of
18 the building or part of the building, with whom the owner has privity of contract.
19 Receipt of a notice pursuant to this section by an owner, lessee or operator shall
20 constitute knowledge that the building contains asbestos-containing construction
21 materials for purposes of this chapter. Notice to an owner shall be delivered by
22 first-class mail addressed to the person and at the address designated for the
23 receipt of notices under the lease, rental agreement, or contract with the owner.

24 (b) The delivery of notice under this section or negligent failure to provide that
25 notice shall not constitute a breach of any covenant under the lease or rental
26 agreement, and nothing in this chapter enlarges or diminishes any rights or duties
27 respecting constructive eviction.

28 (c) No owner who, in good faith, complies with the provisions of this section
29 shall be liable to any other owner for any damages alleged to have resulted from
30 his or her compliance with the provisions of this section.

31 (d) This section shall not be construed to apply to owners of a building or part of
32 a building within a residential common interest development or association, if the
33 owners comply with the provisions of subdivision (d) of Section 25915.2. For
34 purposes of this section, “association” and “common interest development” are
35 defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

36 **Comment.** Section 25915.5 is amended to correct a cross-reference to former Civil Code
37 Section 1351(a), (c).

38 **Health & Safety Code § 33050. Legislative declaration of policy in undertaking community**
39 **redevelopment projects**

40 SEC. _____. Section 33050 of the Health and Safety Code is amended to read:

1 33050. (a) It is hereby declared to be the policy of the state that in undertaking
2 community redevelopment projects under this part there shall be no discrimination
3 because of any basis listed in subdivision (a) or (d) of Section 12955 of the
4 Government Code, as those bases are defined in Sections 12926, 12926.1,
5 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
6 Section 12955.2 of the Government Code.

7 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
8 (a) shall not be construed to apply to housing for older persons, as defined in
9 Section 12955.9 of the Government Code. With respect to familial status, nothing
10 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
11 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
12 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
13 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
14 apply to subdivision (a).

15 **Comment.** Section 33050 is amended to correct a cross-reference to former Civil Code Section
16 1360.

17 **Health & Safety Code § 33435. Obligation of lessees and purchasers to refrain from**
18 **discrimination**

19 SEC. _____. Section 33435 of the Health and Safety Code is amended to read:

20 33435. (a) Agencies shall obligate lessees and purchasers of real property
21 acquired in redevelopment projects and owners of property improved as a part of a
22 redevelopment project to refrain from restricting the rental, sale, or lease of the
23 property on any basis listed in subdivision (a) or (d) of Section 12955 of the
24 Government Code, as those bases are defined in Sections 12926, 12926.1,
25 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
26 Section 12955.2 of the Government Code. All deeds, leases, or contracts for the
27 sale, lease, sublease, or other transfer of any land in a redevelopment project shall
28 contain or be subject to the nondiscrimination or nonsegregation clauses hereafter
29 prescribed.

30 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
31 (a) shall not be construed to apply to housing for older persons, as defined in
32 Section 12955.9 of the Government Code. With respect to familial status, nothing
33 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
34 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
35 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
36 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
37 apply to subdivision (a).

38 **Comment.** Section 33435 is amended to correct a cross-reference to former Civil Code Section
39 1360.

40 **Health & Safety Code § 33436. Nondiscrimination and nonsegregation clauses**

41 SEC. _____. Section 33436 of the Health and Safety Code is amended to read:

1 33436. Express provisions shall be included in all deeds, leases, and contracts
2 that the agency proposes to enter into with respect to the sale, lease, sublease,
3 transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment
4 project in substantially the following form:

5 (a)(1) In deeds the following language shall appear-- “The grantee herein
6 covenants by and for himself or herself, his or her heirs, executors, administrators,
7 and assigns, and all persons claiming under or through them, that there shall be no
8 discrimination against or segregation of, any person or group of persons on
9 account of any basis listed in subdivision (a) or (d) of Section 12955 of the
10 Government Code, as those bases are defined in Sections 12926, 12926.1,
11 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
12 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer,
13 use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall
14 the grantee or any person claiming under or through him or her, establish or permit
15 any practice or practices of discrimination or segregation with reference to the
16 selection, location, number, use or occupancy of tenants, lessees, subtenants,
17 sublessees, or vendees in the premises herein conveyed. The foregoing covenants
18 shall run with the land.”

19 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
20 shall not be construed to apply to housing for older persons, as defined in Section
21 12955.9 of the Government Code. With respect to familial status, nothing in
22 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
23 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
24 of Section 51 and Section ~~4360~~ 4760 of the Civil Code and subdivisions (n), (o),
25 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

26 (b)(1) In leases the following language shall appear-- “The lessee herein
27 covenants by and for himself or herself, his or her heirs, executors, administrators,
28 and assigns, and all persons claiming under or through him or her, and this lease is
29 made and accepted upon and subject to the following conditions:

30 That there shall be no discrimination against or segregation of any person or
31 group of persons, on account of any basis listed in subdivision (a) or (d) of Section
32 12955 of the Government Code, as those bases are defined in Sections 12926,
33 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
34 and Section 12955.2 of the Government Code, in the leasing, subleasing,
35 transferring, use, occupancy, tenure, or enjoyment of the premises herein leased
36 nor shall the lessee himself or herself, or any person claiming under or through
37 him or her, establish or permit any such practice or practices of discrimination or
38 segregation with reference to the selection, location, number, use, or occupancy, of
39 tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

40 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
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
43 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,

1 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
2 of Section 51 and Section ~~1360~~ 4760 of the Civil Code and subdivisions (n), (o),
3 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

4 (c) In contracts entered into by the agency relating to the sale, transfer, or
5 leasing of land or any interest therein acquired by the agency within any survey
6 area or redevelopment project the foregoing provisions in substantially the forms
7 set forth shall be included and the contracts shall further provide that the foregoing
8 provisions shall be binding upon and shall obligate the contracting party or parties
9 and any subcontracting party or parties, or other transferees under the instrument.

10 **Comment.** Section 33436 is amended to correct cross-references to former Civil Code Section
11 1360.

12 **Health & Safety Code § 33769. Discrimination prohibited**

13 SEC. ____ . Section 33769 of the Health and Safety Code is amended to read:

14 33769. (a) An agency shall require that any residence that is constructed with
15 financing obtained under this chapter shall be open, upon sale or rental of any
16 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of
17 Section 12955 of the Government Code, as those bases are defined in Sections
18 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
19 12955, and Section 12955.2 of the Government Code. The agency shall also
20 require that contractors and subcontractors engaged in residential construction
21 financed under this chapter shall provide equal opportunity for employment,
22 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
23 the Government Code, as those bases are defined in Sections 12926 and 12926.1
24 of the Government Code, and except as otherwise provided in Section 12940 of
25 the Government Code. All contracts and subcontracts for residential construction
26 financed under this chapter shall be let without discrimination as to any basis
27 listed in subdivision (a) of Section 12940 of the Government Code, as those bases
28 are defined in Sections 12926 and 12926.1 of the Government Code and except as
29 otherwise provided in Section 12940 of the Government Code. It shall be the
30 policy of an agency financing residential construction under this chapter to
31 encourage participation by minority contractors, and the agency shall adopt rules
32 and regulations to implement this section.

33 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
34 (a) shall not be construed to apply to housing for older persons, as defined in
35 Section 12955.9 of the Government Code. With respect to familial status, nothing
36 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
37 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
38 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
39 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
40 apply to subdivision (a).

41 **Comment.** Section 33769 is amended to correct a cross-reference to former Civil Code Section
42 1360.

1 **Health & Safety Code § 35811. Consideration of ethnicity, religion, sex, marital status, or**
2 **national origin**

3 SEC. _____. Section 35811 of the Health and Safety Code is amended to read:

4 35811. (a) No financial institution shall discriminate in the availability of, or in
5 the provision of, financial assistance for the purpose of purchasing, constructing,
6 rehabilitating, improving, or refinancing housing accommodations due, in whole
7 or in part, to the consideration of any basis listed in subdivision (a) or (d) of
8 Section 12955 of the Government Code, as those bases are defined in Sections
9 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
10 12955, and Section 12955.2 of the Government Code.

11 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
12 (a) shall not be construed to apply to housing for older persons, as defined in
13 Section 12955.9 of the Government Code. With respect to familial status, nothing
14 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
15 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
16 Subdivision (d) of Section 51 and Section ~~4360~~ 4760 of the Civil Code and
17 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
18 apply to subdivision (a).

19 **Comment.** Section 35811 is amended to correct a cross-reference to former Civil Code Section
20 1360.

21 **Health & Safety Code § 37630. Equal opportunity**

22 SEC. _____. Section 37630 of the Health and Safety Code is amended to read:

23 37630. (a) The local agency shall require that any property that is rehabilitated
24 with financing obtained under this part shall be open, upon sale or rental of any
25 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of
26 Section 12955 of the Government Code, as those bases are defined in Sections
27 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
28 12955, and Section 12955.2 of the Government Code. The local agency shall also
29 require that contractors and subcontractors engaged in historical rehabilitation
30 financed under this part provide equal opportunity for employment, without
31 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
32 Government Code, as those bases are defined in Sections 12926 and 12926.1 of
33 the Government Code, and except as otherwise provided in Section 12940 of the
34 Government Code. All contracts and subcontracts for historical rehabilitation
35 financed under this part shall be let without discrimination as to any basis listed in
36 subdivision (a) of Section 12940 of the Government Code, as those bases are
37 defined in Sections 12926 and 12926.1 of the Government Code, and except as
38 otherwise provided in Section 12940 of the Government Code.

39 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
40 (a) shall not be construed to apply to housing for older persons, as defined in
41 Section 12955.9 of the Government Code. With respect to familial status, nothing
42 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,

1 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
2 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
3 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
4 apply to subdivision (a).

5 **Comment.** Section 37630 is amended to correct a cross-reference to former Civil Code Section
6 1360.

7 **Health & Safety Code § 37923. Equal employment opportunity**

8 SEC. ____ . Section 37923 of the Health and Safety Code is amended to read:

9 37923. (a) The local agency shall require that any residence that is rehabilitated,
10 constructed, or acquired with financing obtained under this part shall be open,
11 upon sale or rental of any portion thereof, to all regardless of any basis listed in
12 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
13 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
14 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.
15 The local agency shall also require that contractors and subcontractors engaged in
16 residential rehabilitation financed under this part provide equal opportunity for
17 employment, without discrimination as to any basis listed in subdivision (a) of
18 Section 12940 of the Government Code, as those bases are defined in Sections
19 12926 and 12926.1 of the Government Code, and except as otherwise provided in
20 Section 12940 of the Government Code. All contracts and subcontracts for
21 residential rehabilitation financed under this part shall be let without
22 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
23 Government Code, as those bases are defined in Sections 12926 and 12926.1 of
24 the Government Code, and except as otherwise provided in Section 12940 of the
25 Government Code. It shall be the policy of the local agency financing residential
26 rehabilitation under this part to encourage participation by minority contractors,
27 and the local agency shall adopt rules and regulations to implement this section.

28 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
29 (a) shall not be construed to apply to housing for older persons, as defined in
30 Section 12955.9 of the Government Code. With respect to familial status, nothing
31 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
32 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
33 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
34 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
35 apply to subdivision (a).

36 **Comment.** Section 37923 is amended to correct a cross-reference to former Civil Code Section
37 1360.

38 **Health & Safety Code § 50955. Civil rights and equal employment opportunity**

39 SEC. ____ . Section 50955 of the Health and Safety Code is amended to read:

40 50955. (a) The agency and every housing sponsor shall require that occupancy
41 of housing developments assisted under this part shall be open to all regardless of

1 any basis listed in subdivision (a) or (d) of Section 12955 of the Government
2 Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and
3 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
4 Government Code, that contractors and subcontractors engaged in the construction
5 of housing developments shall provide an equal opportunity for employment,
6 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
7 the Government Code, as those bases are defined in Sections 12926 and 12926.1
8 of the Government Code, and except as otherwise provided in Section 12940 of
9 the Government Code, and that contractors and subcontractors shall submit and
10 receive approval of an affirmative action program prior to the commencement of
11 construction or rehabilitation. Affirmative action requirements respecting
12 apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070)
13 of Division 3 of the Labor Code.

14 All contracts for the management, construction, or rehabilitation of housing
15 developments, and contracts let by housing sponsors, contractors, and
16 subcontractors in the performance of management, construction or rehabilitation,
17 shall be let without discrimination as to any basis listed in subdivision (a) of
18 Section 12940 of the Government Code, as those bases are defined in Sections
19 12926 and 12926.1 of the Government Code, except as otherwise provided in
20 Section 12940 of the Government Code, and pursuant to an affirmative action
21 program, which shall be at not less than the Federal Housing Administration
22 affirmative action standards unless the board makes a specific finding that the
23 particular requirement would be unworkable. The agency shall periodically review
24 implementation of affirmative action programs required by this section.

25 It shall be the policy of the agency and housing sponsors to encourage
26 participation with respect to all projects by minority developers, builders, and
27 entrepreneurs in all levels of construction, planning, financing, and management
28 of housing developments. In areas of minority concentration the agency shall
29 require significant participation of minorities in the sponsorship, construction,
30 planning, financing, and management of housing developments. The agency shall
31 (1) require that, to the greatest extent feasible, opportunities for training and
32 employment arising in connection with the planning, construction, rehabilitation,
33 and operation of housing developments financed pursuant to this part be given to
34 persons of low income residing in the area of that housing, and (2) determine and
35 implement means to secure the participation of small businesses in the
36 performance of contracts for work on housing developments and to develop the
37 capabilities of these small businesses to more efficiently and competently
38 participate in the economic mainstream. In order to achieve this participation by
39 small businesses, the agency may, among other things, waive retention
40 requirements otherwise imposed on contractors or subcontractors by regulation of
41 the agency and may authorize or make advance payments for work to be
42 performed. The agency shall develop relevant selection criteria for the
43 participation of small businesses to ensure that, to the greatest extent feasible, the

1 participants possess the necessary nonfinancial capabilities. The agency may, with
2 respect to these small businesses, waive bond requirements otherwise imposed
3 upon contractors or subcontractors by regulation of the agency, but the agency
4 shall in that case substantially reduce the risk through (1) a pooled-risk bonding
5 program, (2) a bond program in cooperation with other federal or state agencies, or
6 (3) development of a self-insured bonding program with adequate reserves.

7 The agency shall adopt rules and regulations to implement this section.

8 Prior to commitment of a mortgage loan, the agency shall require each housing
9 sponsor, except with respect to mutual self-help housing, to submit an affirmative
10 marketing program that meets standards set forth in regulations of the agency. The
11 agency shall require ~~such a~~ each housing sponsor to conduct the affirmative
12 marketing program so approved. Additionally, the agency shall supplement the
13 efforts of individual housing sponsors by conducting affirmative marketing
14 programs with respect to housing at the state level.

15 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
16 (a) shall not be construed to apply to housing for older persons, as defined in
17 Section 12955.9 of the Government Code. With respect to familial status, nothing
18 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
19 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
20 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
21 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
22 apply to subdivision (a).

23 **Comment.** Subdivision (a) of Section 50955 is amended to make a stylistic revision.

24 Subdivision (b) is amended to correct a cross-reference to former Civil Code Section 1360.

25 **Health & Safety Code § 51602. Nondiscrimination in occupancy of housing**

26 SEC. _____. Section 51602 of the Health and Safety Code is amended to read:

27 51602. (a) The agency shall require that occupancy of housing for which a loan
28 is insured pursuant to this part shall be open to all regardless of any basis listed in
29 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
30 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
31 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,
32 and that contractors and subcontractors engaged in the construction or
33 rehabilitation of housing funded by a loan insured pursuant to this part shall
34 provide an equal opportunity for employment without discrimination as to any
35 basis listed in subdivision (a) of Section 12940 of the Government Code, as those
36 bases are defined in Sections 12926 and 12926.1 of the Government Code, and
37 except as otherwise provided in Section 12940 of the Government Code.

38 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
39 (a) shall not be construed to apply to housing for older persons, as defined in
40 Section 12955.9 of the Government Code. With respect to familial status, nothing
41 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
42 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.

1 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
2 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
3 apply to subdivision (a).

4 (c) A qualified developer shall certify compliance with this section and Section
5 50955 according to requirements specified by the pertinent criteria of the agency.

6 **Comment.** Section 51602 is amended to correct a cross-reference to former Civil Code Section
7 1360.

8 **Health & Safety Code § 116048. Public swimming pool in common interest development**

9 SEC. ____ . Section 116048 of the Health and Safety Code is amended to read:

10 116048. (a) On or after January 1, 1987, for public swimming pools in any
11 common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code,
12 that consists of fewer than 25 separate interests, as defined in ~~subdivision (l) of~~
13 Section ~~1351~~ 4185 of the Civil Code, the person operating each ~~such~~ pool open for
14 use shall be required to keep a record of the information required by subdivision
15 (a) of Section 65523 of Title 22 of the California Administrative Code, except that
16 the information shall be recorded at least two times per week and at intervals no
17 greater than four days apart.

18 (b) On or after January 1, 1987, any rule or regulation of the department that is
19 in conflict with subdivision (a) is invalid.

20 **Comment.** Section 116048 is amended to correct a cross-reference to former Civil Code
21 Section 1351(c), (l).

22 The section is also amended to make a stylistic revision.

23 **Ins. Code § 790.031. Application of Sections 790.034, 2071.1 and 10082.3**

24 SEC. ____ . Section 790.031 of the Insurance Code is amended to read:

25 790.031. The requirements of subdivision (b) of Section 790.034, and Sections
26 2071.1 and 10082.3 shall apply only to policies of residential property insurance
27 as defined in Section 10087, policies and endorsements containing those
28 coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1
29 of Division 2, policies issued by the California Earthquake Authority pursuant to
30 Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies
31 and endorsements that insure against property damage and are issued to common
32 interest developments or to associations managing common interest developments,
33 as those terms are defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil
34 Code, and to policies issued pursuant to Section 120 that insure against property
35 damage to residential units or contents thereof owned by one or more persons
36 located in this state.

37 **Comment.** Section 790.031 is amended to correct a cross-reference to former Civil Code
38 Section 1351(a), (c).

39 **Rev. & Tax. Code § 2188.6. Separate assessment of property divided into condominiums**

40 SEC. ____ . Section 2188.6 of the Revenue and Taxation Code is amended to
41 read:

1 2188.6. (a) Unless a request for exemption has been recorded pursuant to
2 subdivision (d), prior to the creation of a condominium as defined in Section 783
3 of the Civil Code, the county assessor may separately assess each individual unit
4 which is shown on the condominium plan of a proposed condominium project
5 when all of the following documents have been recorded as required by law:

6 (1) A subdivision final map or parcel map, as described in Sections 66434 and
7 66445, respectively, of the Government Code.

8 (2) A condominium plan, as defined in ~~subdivision (e)~~ of Section ~~1351~~ 4120 of
9 the Civil Code.

10 (3) A declaration, as defined in ~~subdivision (h)~~ of Section ~~1351~~ 4135 of the Civil
11 Code.

12 (b) The tax due on each individual unit shall constitute a lien solely on that unit.

13 (c) The lien created pursuant to this section shall be a lien on an undivided
14 interest in a portion of real property coupled with a separate interest in space
15 called a unit as described in ~~subdivision (f)~~ of Section ~~1351~~ 4125 of the Civil
16 Code.

17 (d) The record owner of the real property may record with the condominium
18 plan a request that the real property be exempt from separate assessment pursuant
19 to this section. If a request for exemption is recorded, separate assessment of a
20 condominium unit shall be made only in accordance with Section 2188.3.

21 (e) This section shall become operative on January 1, 1990, and shall apply to
22 condominium projects for which a condominium plan is recorded after that date.

23 **Comment.** Section 2188.6 is amended to correct cross-references to former Civil Code Section
24 1351(e), (f), (h).

25 **Veh. Code § 21107.7. Private road not open to public use**

26 SEC. _____. Section 21107.7 of the Vehicle Code is amended to read:

27 21107.7. (a) Any city or county may, by ordinance or resolution, find and
28 declare that there are privately owned and maintained roads as described in the
29 ordinance or resolution within the city or county that are not generally held open
30 for use of the public for purposes of vehicular travel but, by reason of their
31 proximity to or connection with highways, the interests of any residents residing
32 along the roads and the motoring public will best be served by application of the
33 provisions of this code to those roads. No ordinance or resolution shall be enacted
34 unless there is first filed with the city or county a petition requesting it by a
35 majority of the owners of any privately owned and maintained road, or by at least
36 a majority of the board of directors of a common interest development, as defined
37 by Section ~~1351~~ 4100 of the Civil Code, that is responsible for maintaining the
38 road, and without a public hearing thereon and 10 days' prior written notice to all
39 owners of the road or all of the owners in the development. Upon enactment of the
40 ordinance or resolution, the provisions of this code shall apply to the privately
41 owned and maintained road if appropriate signs are erected at the entrance to the
42 road of the size, shape, and color as to be readily legible during daylight hours

1 from a distance of 100 feet, to the effect that the road is subject to the provisions
2 of this code. The city or county may impose reasonable conditions and may
3 authorize the owners, or board of directors of the common interest development, to
4 erect traffic signs, signals, markings, and devices which conform to the uniform
5 standards and specifications adopted by the Department of Transportation.

6 (b) The department shall not be required to provide patrol or enforce any
7 provisions of this code on any privately owned and maintained road subjected to
8 the provisions of this code under this section, except those provisions applicable to
9 private property other than by action under this section.

10 (c) As used in this section, “privately owned and maintained roads” includes
11 roads owned and maintained by a city, county or district that are not dedicated to
12 use by the public or are not generally held open for use of the public for purposes
13 of vehicular travel.

14 **Comment.** Section 21107.7 is amended to correct a cross-reference to former Civil Code
15 Section 1351(c).

16 **Veh. Code § 22651. Circumstances in which removal of vehicle is permitted**

17 SEC. ____ . Section 22651 of the Vehicle Code is amended to read:

18 22651. A peace officer, as defined in Chapter 4.5 (commencing with Section
19 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried
20 employee, who is engaged in directing traffic or enforcing parking laws and
21 regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is
22 located, may remove a vehicle located within the territorial limits in which the
23 officer or employee may act, under the following circumstances:

24 (a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a
25 tube or tunnel where the vehicle constitutes an obstruction to traffic.

26 (b) When a vehicle is parked or left standing upon a highway in a position so as
27 to obstruct the normal movement of traffic or in a condition so as to create a
28 hazard to other traffic upon the highway.

29 (c) When a vehicle is found upon a highway or public land and a report has
30 previously been made that the vehicle is stolen or a complaint has been filed and a
31 warrant thereon is issued charging that the vehicle was embezzled.

32 (d) When a vehicle is illegally parked so as to block the entrance to a private
33 driveway and it is impractical to move the vehicle from in front of the driveway to
34 another point on the highway.

35 (e) When a vehicle is illegally parked so as to prevent access by firefighting
36 equipment to a fire hydrant and it is impracticable to move the vehicle from in
37 front of the fire hydrant to another point on the highway.

38 (f) When a vehicle, except highway maintenance or construction equipment, is
39 stopped, parked, or left standing for more than four hours upon the right-of-way of
40 a freeway that has full control of access and no crossings at grade and the driver, if
41 present, cannot move the vehicle under its own power.

1 (g) When the person in charge of a vehicle upon a highway or public land is, by
2 reason of physical injuries or illness, incapacitated to an extent so as to be unable
3 to provide for its custody or removal.

4 (h)(1) When an officer arrests a person driving or in control of a vehicle for an
5 alleged offense and the officer is, by this code or other law, required or permitted
6 to take, and does take, the person into custody.

7 (2) When an officer serves a notice of an order of suspension or revocation
8 pursuant to Section 13388 or 13389.

9 (i)(1) When a vehicle, other than a rented vehicle, is found upon a highway or
10 public land, or is removed pursuant to this code, and it is known that the vehicle
11 has been issued five or more notices of parking violations to which the owner or
12 person in control of the vehicle has not responded within 21 calendar days of
13 notice of citation issuance or citation issuance or 14 calendar days of the mailing
14 of a notice of delinquent parking violation to the agency responsible for processing
15 notices of parking violations, or the registered owner of the vehicle is known to
16 have been issued five or more notices for failure to pay or failure to appear in
17 court for traffic violations for which a certificate has not been issued by the
18 magistrate or clerk of the court hearing the case showing that the case has been
19 adjudicated or concerning which the registered owner's record has not been
20 cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17,
21 the vehicle may be impounded until that person furnishes to the impounding law
22 enforcement agency all of the following:

23 (A) Evidence of his or her identity.

24 (B) An address within this state at which he or she can be located.

25 (C) Satisfactory evidence that all parking penalties due for the vehicle and all
26 other vehicles registered to the registered owner of the impounded vehicle, and all
27 traffic violations of the registered owner, have been cleared.

28 (2) The requirements in subparagraph (C) of paragraph (1) shall be fully
29 enforced by the impounding law enforcement agency on and after the time that the
30 Department of Motor Vehicles is able to provide access to the necessary records.

31 (3) A notice of parking violation issued for an unlawfully parked vehicle shall
32 be accompanied by a warning that repeated violations may result in the
33 impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full
34 amount of parking penalties or bail has been deposited, that person may demand to
35 be taken without unnecessary delay before a magistrate, for traffic offenses, or a
36 hearing examiner, for parking offenses, within the county in which the offenses
37 charged are alleged to have been committed and who has jurisdiction of the
38 offenses and is nearest or most accessible with reference to the place where the
39 vehicle is impounded. Evidence of current registration shall be produced after a
40 vehicle has been impounded, or, at the discretion of the impounding law
41 enforcement agency, a notice to appear for violation of subdivision (a) of Section
42 4000 shall be issued to that person.

1 (4) A vehicle shall be released to the legal owner, as defined in Section 370, if
2 the legal owner does all of the following:

3 (A) Pays the cost of towing and storing the vehicle.

4 (B) Submits evidence of payment of fees as provided in Section 9561.

5 (C) Completes an affidavit in a form acceptable to the impounding law
6 enforcement agency stating that the vehicle was not in possession of the legal
7 owner at the time of occurrence of the offenses relating to standing or parking. A
8 vehicle released to a legal owner under this subdivision is a repossessed vehicle
9 for purposes of disposition or sale. The impounding agency shall have a lien on
10 any surplus that remains upon sale of the vehicle to which the registered owner is
11 or may be entitled, as security for the full amount of the parking penalties for all
12 notices of parking violations issued for the vehicle and for all local administrative
13 charges imposed pursuant to Section 22850.5. The legal owner shall promptly
14 remit to, and deposit with, the agency responsible for processing notices of
15 parking violations from that surplus, on receipt of that surplus, the full amount of
16 the parking penalties for all notices of parking violations issued for the vehicle and
17 for all local administrative charges imposed pursuant to Section 22850.5.

18 (5) The impounding agency that has a lien on the surplus that remains upon the
19 sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4)
20 has a deficiency claim against the registered owner for the full amount of the
21 parking penalties for all notices of parking violations issued for the vehicle and for
22 all local administrative charges imposed pursuant to Section 22850.5, less the
23 amount received from the sale of the vehicle.

24 (j) When a vehicle is found illegally parked and there are no license plates or
25 other evidence of registration displayed, the vehicle may be impounded until the
26 owner or person in control of the vehicle furnishes the impounding law
27 enforcement agency evidence of his or her identity and an address within this state
28 at which he or she can be located.

29 (k) When a vehicle is parked or left standing upon a highway for 72 or more
30 consecutive hours in violation of a local ordinance authorizing removal.

31 (l) When a vehicle is illegally parked on a highway in violation of a local
32 ordinance forbidding standing or parking and the use of a highway, or a portion
33 thereof, is necessary for the cleaning, repair, or construction of the highway, or for
34 the installation of underground utilities, and signs giving notice that the vehicle
35 may be removed are erected or placed at least 24 hours prior to the removal by a
36 local authority pursuant to the ordinance.

37 (m) Wherever the use of the highway, or a portion of the highway, is authorized
38 by a local authority for a purpose other than the normal flow of traffic or for the
39 movement of equipment, articles, or structures of unusual size, and the parking of
40 a vehicle would prohibit or interfere with that use or movement, and signs giving
41 notice that the vehicle may be removed are erected or placed at least 24 hours
42 prior to the removal by a local authority pursuant to the ordinance.

1 (n) Whenever a vehicle is parked or left standing where local authorities, by
2 resolution or ordinance, have prohibited parking and have authorized the removal
3 of vehicles. A vehicle shall not be removed unless signs are posted giving notice
4 of the removal.

5 (o)(1) When a vehicle is found or operated upon a highway, public land, or an
6 offstreet parking facility under the following circumstances:

7 (A) With a registration expiration date in excess of six months before the date it
8 is found or operated on the highway, public lands, or the offstreet parking facility.

9 (B) Displaying in, or upon, the vehicle, a registration card, identification card,
10 temporary receipt, license plate, special plate, registration sticker, device issued
11 pursuant to Section 4853, or permit that was not issued for that vehicle, or is not
12 otherwise lawfully used on that vehicle under this code.

13 (C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or
14 falsified registration card, identification card, temporary receipt, license plate,
15 special plate, registration sticker, device issued pursuant to Section 4853, or
16 permit.

17 (2) When a vehicle described in paragraph (1) is occupied, only a peace officer,
18 as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of
19 the Penal Code, may remove the vehicle.

20 (3) For the purposes of this subdivision, the vehicle shall be released to the
21 owner or person in control of the vehicle only after the owner or person furnishes
22 the storing law enforcement agency with proof of current registration and a
23 currently valid driver's license to operate the vehicle.

24 (4) As used in this subdivision, "offstreet parking facility" means an offstreet
25 facility held open for use by the public for parking vehicles and includes a publicly
26 owned facility for offstreet parking, and a privately owned facility for offstreet
27 parking if a fee is not charged for the privilege to park and it is held open for the
28 common public use of retail customers.

29 (p) When the peace officer issues the driver of a vehicle a notice to appear for a
30 violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5,
31 or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle
32 so removed from the highway or public land, or from private property after having
33 been on a highway or public land, shall not be released to the registered owner or
34 his or her agent, except upon presentation of the registered owner's or his or her
35 agent's currently valid driver's license to operate the vehicle and proof of current
36 vehicle registration, or upon order of a court.

37 (q) Whenever a vehicle is parked for more than 24 hours on a portion of
38 highway that is located within the boundaries of a common interest development,
39 as defined in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code, and signs, as
40 required by paragraph (1) of subdivision (a) of Section 22658 of this code, have
41 been posted on that portion of highway providing notice to drivers that vehicles
42 parked thereon for more than 24 hours will be removed at the owner's expense,
43 pursuant to a resolution or ordinance adopted by the local authority.

1 (r) When a vehicle is illegally parked and blocks the movement of a legally
2 parked vehicle.

3 (s)(1) When a vehicle, except highway maintenance or construction equipment,
4 an authorized emergency vehicle, or a vehicle that is properly permitted or
5 otherwise authorized by the Department of Transportation, is stopped, parked, or
6 left standing for more than eight hours within a roadside rest area or viewpoint.

7 (2) Notwithstanding paragraph (1), when a commercial motor vehicle, as
8 defined in paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or
9 left standing for 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
11 publicly maintained vehicle parking area, adjacent to a highway, utilized for the
12 convenient, safe stopping of a vehicle to enable motorists to rest or to view the
13 scenery. If two or more roadside rest areas are located on opposite sides of the
14 highway, or upon the center divider, within seven miles of each other, then that
15 combination of rest areas is considered to be the same rest area.

16 (t) When a peace officer issues a notice to appear for a violation of Section
17 25279.

18 (u) When a peace officer issues a citation for a violation of Section 11700 and
19 the vehicle is being offered for sale.

20 **Comment.** Subdivision (q) of Section 22651 is amended to correct a cross-reference to former
21 Civil Code Section 1351(c).

22  **Staff Note.** The text of this section reflects the changes made by 2009 Cal. Stat. ch. 140 (AB
23 1164 (Tran)).

24 **Veh. Code § 22651.05. Removal of vehicle by trained volunteer in specified circumstances**

25 SEC. _____. Section 22651.05 of the Vehicle Code is amended to read:

26 22651.05. (a) A trained volunteer of a state or local law enforcement agency,
27 who is engaged in directing traffic or enforcing parking laws and regulations, of a
28 city, county, or jurisdiction of a state agency in which a vehicle is located, may
29 remove or authorize the removal of a vehicle located within the territorial limits in
30 which an officer or employee of that agency may act, under any of the following
31 circumstances:

32 (1) When a vehicle is parked or left standing upon a highway for 72 or more
33 consecutive hours in violation of a local ordinance authorizing the removal.

34 (2) When a vehicle is illegally parked or left standing on a highway in violation
35 of a local ordinance forbidding standing or parking and the use of a highway, or a
36 portion thereof, is necessary for the cleaning, repair, or construction of the
37 highway, or for the installation of underground utilities, and signs giving notice
38 that the vehicle may be removed are erected or placed at least 24 hours prior to the
39 removal by local authorities pursuant to the ordinance.

40 (3) Wherever the use of the highway, or a portion thereof, is authorized by local
41 authorities for a purpose other than the normal flow of traffic or for the movement
42 of equipment, articles, or structures of unusual size, and the parking of a vehicle

1 would prohibit or interfere with that use or movement, and signs giving notice that
2 the vehicle may be removed are erected or placed at least 24 hours prior to the
3 removal by local authorities pursuant to the ordinance.

4 (4) Whenever a vehicle is parked or left standing where local authorities, by
5 resolution or ordinance, have prohibited parking and have authorized the removal
6 of vehicles. A vehicle may not be removed unless signs are posted giving notice of
7 the removal.

8 (5) Whenever a vehicle is parked for more than 24 hours on a portion of
9 highway that is located within the boundaries of a common interest development,
10 as defined in ~~subdivision (c) of Section 1351~~ 4100 of the Civil Code, and signs, as
11 required by Section 22658.2, have been posted on that portion of highway
12 providing notice to drivers that vehicles parked thereon for more than 24 hours
13 will be removed at the owner's expense, pursuant to a resolution or ordinance
14 adopted by the local authority.

15 (b) The provisions of this chapter that apply to a vehicle removed pursuant to
16 Section 22651 apply to a vehicle removed pursuant to subdivision (a).

17 (c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his
18 or her own free will, provides services, without any financial gain, to a local or
19 state law enforcement agency, and who is duly trained and certified to remove a
20 vehicle by a local or state law enforcement agency.

21 **Comment.** Section 22651.05 is amended to correct a cross-reference to former Civil Code
22 Section 1351(c).

23 **Veh. Code § 22658. Removal of vehicle from private property by property owner**

24 SEC. ____ . Section 22658 of the Vehicle Code is amended to read:

25 22658. (a) The owner or person in lawful possession of private property,
26 including an association of a common interest development as defined in ~~Section~~
27 ~~1351~~ Sections 4080 and 4100 of the Civil Code, may cause the removal of a
28 vehicle parked on the property to a storage facility that meets the requirements of
29 subdivision (n) under any of the following circumstances:

30 (1) There is displayed, in plain view at all entrances to the property, a sign not
31 less than 17 inches by 22 inches in size, with lettering not less than one inch in
32 height, prohibiting public parking and indicating that vehicles will be removed at
33 the owner's expense, and containing the telephone number of the local traffic law
34 enforcement agency and the name and telephone number of each towing company
35 that is a party to a written general towing authorization agreement with the owner
36 or person in lawful possession of the property. The sign may also indicate that a
37 citation may also be issued for the violation.

38 (2) The vehicle has been issued a notice of parking violation, and 96 hours have
39 elapsed since the issuance of that notice.

40 (3) The vehicle is on private property and lacks an engine, transmission, wheels,
41 tires, doors, windshield, or any other major part or equipment necessary to operate
42 safely on the highways, the owner or person in lawful possession of the private

1 property has notified the local traffic law enforcement agency, and 24 hours have
2 elapsed since that notification.

3 (4) The lot or parcel upon which the vehicle is parked is improved with a single-
4 family dwelling.

5 (b) The tow truck operator removing the vehicle, if the operator knows or is able
6 to ascertain from the property owner, person in lawful possession of the property,
7 or the registration records of the Department of Motor Vehicles the name and
8 address of the registered and legal owner of the vehicle, shall immediately give, or
9 cause to be given, notice in writing to the registered and legal owner of the fact of
10 the removal, the grounds for the removal, and indicate the place to which the
11 vehicle has been removed. If the vehicle is stored in a storage facility, a copy of
12 the notice shall be given to the proprietor of the storage facility. The notice
13 provided for in this section shall include the amount of mileage on the vehicle at
14 the time of removal and the time of the removal from the property. If the tow truck
15 operator does not know and is not able to ascertain the name of the owner or for
16 any other reason is unable to give the notice to the owner as provided in this
17 section, the tow truck operator shall comply with the requirements of subdivision
18 (c) of Section 22853 relating to notice in the same manner as applicable to an
19 officer removing a vehicle from private property.

20 (c) This section does not limit or affect any right or remedy that the owner or
21 person in lawful possession of private property may have by virtue of other
22 provisions of law authorizing the removal of a vehicle parked upon private
23 property.

24 (d) The owner of a vehicle removed from private property pursuant to
25 subdivision (a) may recover for any damage to the vehicle resulting from any
26 intentional or negligent act of a person causing the removal of, or removing, the
27 vehicle.

28 (e)(1) An owner or person in lawful possession of private property, or an
29 association of a common interest development, causing the removal of a vehicle
30 parked on that property is liable for double the storage or towing charges
31 whenever there has been a failure to comply with paragraph (1), (2), or (3) of
32 subdivision (a) or to state the grounds for the removal of the vehicle if requested
33 by the legal or registered owner of the vehicle as required by subdivision (f).

34 (2) A property owner or owner's agent or lessee who causes the removal of a
35 vehicle parked on that property pursuant to the exemption set forth in
36 subparagraph (A) of paragraph (1) of subdivision (l) and fails to comply with that
37 subdivision is guilty of an infraction, punishable by a fine of one thousand dollars
38 (\$1,000).

39 (f) An owner or person in lawful possession of private property, or an
40 association of a common interest development, causing the removal of a vehicle
41 parked on that property shall notify by telephone or, if impractical, by the most
42 expeditious means available, the local traffic law enforcement agency within one
43 hour after authorizing the tow. An owner or person in lawful possession of private

1 property, an association of a common interest development, causing the removal
2 of a vehicle parked on that property, or the tow truck operator who removes the
3 vehicle, shall state the grounds for the removal of the vehicle if requested by the
4 legal or registered owner of that vehicle. A towing company that removes a
5 vehicle from private property in compliance with subdivision (I) is not responsible
6 in a situation relating to the validity of the removal. A towing company that
7 removes the vehicle under this section shall be responsible for the following:

8 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

9 (2) The removal of a vehicle other than the vehicle specified by the owner or
10 other person in lawful possession of the private property.

11 (g)(1)(A) Possession of a vehicle under this section shall be deemed to arise
12 when a vehicle is removed from private property and is in transit.

13 (B) Upon the request of the owner of the vehicle or that owner's agent, the
14 towing company or its driver shall immediately and unconditionally release a
15 vehicle that is not yet removed from the private property and in transit.

16 (C) A person failing to comply with subparagraph (B) is guilty of a
17 misdemeanor.

18 (2) If a vehicle is released to a person in compliance with subparagraph (B) of
19 paragraph (1), the vehicle owner or authorized agent shall immediately move that
20 vehicle to a lawful location.

21 (h) A towing company may impose a charge of not more than one-half of the
22 regular towing charge for the towing of a vehicle at the request of the owner, the
23 owner's agent, or the person in lawful possession of the private property pursuant
24 to this section if the owner of the vehicle or the vehicle owner's agent returns to
25 the vehicle after the vehicle is coupled to the tow truck by means of a regular
26 hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by
27 means of a conventional trailer, and before it is removed from the private property.
28 The regular towing charge may only be imposed after the vehicle has been
29 removed from the property and is in transit.

30 (i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section
31 is excessive if the charge exceeds the greater of the following:

32 (i) That which would have been charged for that towing or storage, or both,
33 made at the request of a law enforcement agency under an agreement between a
34 towing company and the law enforcement agency that exercises primary
35 jurisdiction in the city in which is located the private property from which the
36 vehicle was, or was attempted to be, removed, or if the private property is not
37 located within a city, then the law enforcement agency that exercises primary
38 jurisdiction in the county in which the private property is located.

39 (ii) That which would have been charged for that towing or storage, or both,
40 under the rate approved for that towing operator by the California Highway Patrol
41 for the jurisdiction in which the private property is located and from which the
42 vehicle was, or was attempted to be, removed.

1 (B) A towing operator shall make available for inspection and copying his or her
2 rate approved by the California Highway Patrol, if any, within 24 hours of a
3 request without a warrant to law enforcement, the Attorney General, district
4 attorney, or city attorney.

5 (2) If a vehicle is released within 24 hours from the time the vehicle is brought
6 into the storage facility, regardless of the calendar date, the storage charge shall be
7 for only one day. Not more than one day's storage charge may be required for a
8 vehicle released the same day that it is stored.

9 (3) If a request to release a vehicle is made and the appropriate fees are tendered
10 and documentation establishing that the person requesting release is entitled to
11 possession of the vehicle, or is the owner's insurance representative, is presented
12 within the initial 24 hours of storage, and the storage facility fails to comply with
13 the request to release the vehicle or is not open for business during normal
14 business hours, then only one day's storage charge may be required to be paid
15 until after the first business day. A business day is any day in which the lienholder
16 is open for business to the public for at least eight hours. If a request is made more
17 than 24 hours after the vehicle is placed in storage, charges may be imposed on a
18 full calendar day basis for each day, or part thereof, that the vehicle is in storage.

19 (j)(1) A person who charges a vehicle owner a towing, service, or storage charge
20 at an excessive rate, as described in subdivision (h) or (i), is civilly liable to the
21 vehicle owner for four times the amount charged.

22 (2) A person who knowingly charges a vehicle owner a towing, service, or
23 storage charge at an excessive rate, as described in subdivision (h) or (i), or who
24 fails to make available his or her rate as required in subparagraph (B) of paragraph
25 (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more
26 than two thousand five hundred dollars (\$2,500), or by imprisonment in the county
27 jail for not more than three months, or by both that fine and imprisonment.

28 (k)(1) A person operating or in charge of a storage facility where vehicles are
29 stored pursuant to this section shall accept a valid bank credit card or cash for
30 payment of towing and storage by a registered owner, the legal owner, or the
31 owner's agent claiming the vehicle. A credit card shall be in the name of the
32 person presenting the card. "Credit card" means "credit card" as defined in
33 subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of
34 this section, credit card does not include a credit card issued by a retail seller.

35 (2) A person described in paragraph (1) shall conspicuously display, in that
36 portion of the storage facility office where business is conducted with the public, a
37 notice advising that all valid credit cards and cash are acceptable means of
38 payment.

39 (3) A person operating or in charge of a storage facility who refuses to accept a
40 valid credit card or who fails to post the required notice under paragraph (2) is
41 guilty of a misdemeanor, punishable by a fine of not more than two thousand five
42 hundred dollars (\$2,500), or by imprisonment in the county jail for not more than
43 three months, or by both that fine and imprisonment.

1 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is
2 civilly liable to the registered owner of the vehicle or the person who tendered the
3 fees for four times the amount of the towing and storage charges.

4 (5) A person operating or in charge of the storage facility shall have sufficient
5 moneys on the premises of the primary storage facility during normal business
6 hours to accommodate, and make change in, a reasonable monetary transaction.

7 (6) Credit charges for towing and storage services shall comply with Section
8 1748.1 of the Civil Code. Law enforcement agencies may include the costs of
9 providing for payment by credit when making agreements with towing companies
10 as described in subdivision (i).

11 (l)(1)(A) A towing company shall not remove or commence the removal of a
12 vehicle from private property without first obtaining the written authorization from
13 the property owner or lessee, including an association of a common interest
14 development, or an employee or agent thereof, who shall be present at the time of
15 removal and verify the alleged violation, except that presence and verification is
16 not required if the person authorizing the tow is the property owner, or the owner's
17 agent who is not a tow operator, of a residential rental property of 15 or fewer
18 units that does not have an onsite owner, owner's agent or employee, and the
19 tenant has verified the violation, requested the tow from that tenant's assigned
20 parking space, and provided a signed request or electronic mail, or has called and
21 provides a signed request or electronic mail within 24 hours, to the property owner
22 or owner's agent, which the owner or agent shall provide to the towing company
23 within 48 hours of authorizing the tow. The signed request or electronic mail shall
24 contain the name and address of the tenant, and the date and time the tenant
25 requested the tow. A towing company shall obtain, within 48 hours of receiving
26 the written authorization to tow, a copy of a tenant request required pursuant to
27 this subparagraph. For the purpose of this subparagraph, a person providing the
28 written authorization who is required to be present on the private property at the
29 time of the tow does not have to be physically present at the specified location of
30 where the vehicle to be removed is located on the private property.

31 (B) The written authorization under subparagraph (A) shall include all of the
32 following:

33 (i) The make, model, vehicle identification number, and license plate number of
34 the removed vehicle.

35 (ii) The name, signature, job title, residential or business address and working
36 telephone number of the person, described in subparagraph (A), authorizing the
37 removal of the vehicle.

38 (iii) The grounds for the removal of the vehicle.

39 (iv) The time when the vehicle was first observed parked at the private property.

40 (v) The time that authorization to tow the vehicle was given.

41 (C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing
42 company prior to payment of a towing or storage charge shall provide a photocopy
43 of the written authorization to the vehicle owner or the agent.

1 (ii) If the vehicle was towed from a residential property, the towing company
2 shall redact the information specified in clause (ii) of subparagraph (B) in the
3 photocopy of the written authorization provided to the vehicle owner or the agent
4 pursuant to clause (i).

5 (iii) The towing company shall also provide to the vehicle owner or the agent a
6 separate notice that provides the telephone number of the appropriate local law
7 enforcement or prosecuting agency by stating “If you believe that you have been
8 wrongfully towed, please contact the local law enforcement or prosecuting agency
9 at [insert appropriate telephone number].” The notice shall be in English and in the
10 most populous language, other than English, that is spoken in the jurisdiction.

11 (D) A towing company shall not remove or commence the removal of a vehicle
12 from private property described in subdivision (a) of Section 22953 unless the
13 towing company has made a good faith inquiry to determine that the owner or the
14 property owner’s agent complied with Section 22953.

15 (E)(i) General authorization to remove or commence removal of a vehicle at the
16 towing company’s discretion shall not be delegated to a towing company or its
17 affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire
18 hydrant or in a fire lane, or in a manner which interferes with an entrance to, or
19 exit from, the private property.

20 (ii) In those cases in which general authorization is granted to a towing company
21 or its affiliate to undertake the removal or commence the removal of a vehicle that
22 is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that
23 interferes with an entrance to, or exit from, private property, the towing company
24 and the property owner, or owner’s agent, or person in lawful possession of the
25 private property shall have a written agreement granting that general authorization.

26 (2) If a towing company removes a vehicle under a general authorization
27 described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully
28 parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that
29 interferes with an entrance to, or exit from, the private property, the towing
30 company shall take, prior to the removal of that vehicle, a photograph of the
31 vehicle that clearly indicates that parking violation. Prior to accepting payment,
32 the towing company shall keep one copy of the photograph taken pursuant to this
33 paragraph, and shall present that photograph and provide, without charge, a
34 photocopy to the owner or an agent of the owner, when that person claims the
35 vehicle.

36 (3) A towing company shall maintain the original written authorization, or the
37 general authorization described in subparagraph (E) of paragraph (1) and the
38 photograph of the violation, required pursuant to this section, and any written
39 requests from a tenant to the property owner or owner’s agent required by
40 subparagraph (A) of paragraph (1), for a period of three years and shall make them
41 available for inspection and copying within 24 hours of a request without a
42 warrant to law enforcement, the Attorney General, district attorney, or city
43 attorney.

1 (4) A person who violates this subdivision is guilty of a misdemeanor,
2 punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
3 or by imprisonment in the county jail for not more than three months, or by both
4 that fine and imprisonment.

5 (5) A person who violates this subdivision is civilly liable to the owner of the
6 vehicle or his or her agent for four times the amount of the towing and storage
7 charges.

8 (m)(1) A towing company that removes a vehicle from private property under
9 this section shall notify the local law enforcement agency of that tow after the
10 vehicle is removed from the private property and is in transit.

11 (2) A towing company is guilty of a misdemeanor if the towing company fails to
12 provide the notification required under paragraph (1) within 60 minutes after the
13 vehicle is removed from the private property and is in transit or 15 minutes after
14 arriving at the storage facility, whichever time is less.

15 (3) A towing company that does not provide the notification under paragraph (1)
16 within 30 minutes after the vehicle is removed from the private property and is in
17 transit is civilly liable to the registered owner of the vehicle, or the person who
18 tenders the fees, for three times the amount of the towing and storage charges.

19 (4) If notification is impracticable, the times for notification, as required
20 pursuant to paragraphs (2) and (3), shall be tolled for the time period that
21 notification is impracticable. This paragraph is an affirmative defense.

22 (n) A vehicle removed from private property pursuant to this section shall be
23 stored in a facility that meets all of the following requirements:

24 (1)(A) Is located within a 10-mile radius of the property from where the vehicle
25 was removed.

26 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a
27 towing company has prior general written approval from the law enforcement
28 agency that exercises primary jurisdiction in the city in which is located the
29 private property from which the vehicle was removed, or if the private property is
30 not located within a city, then the law enforcement agency that exercises primary
31 jurisdiction in the county in which is located the private property.

32 (2)(A) Remains open during normal business hours and releases vehicles after
33 normal business hours.

34 (B) A gate fee may be charged for releasing a vehicle after normal business
35 hours, weekends, and state holidays. However, the maximum hourly charge for
36 releasing a vehicle after normal business hours shall be one-half of the hourly tow
37 rate charged for initially towing the vehicle, or less.

38 (C) Notwithstanding any other provision of law and for purposes of this
39 paragraph, “normal business hours” are Monday to Friday, inclusive, from 8 a.m.
40 to 5 p.m., inclusive, except state holidays.

41 (3) Has a public pay telephone in the office area that is open and accessible to
42 the public.

1 (o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to
2 assist vehicle owners or their agents by, among other things, allowing payment by
3 credit cards for towing and storage services, thereby expediting the recovery of
4 towed vehicles and concurrently promoting the safety and welfare of the public.

5 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further
6 the safety of the general public by ensuring that a private property owner or lessee
7 has provided his or her authorization for the removal of a vehicle from his or her
8 property, thereby promoting the safety of those persons involved in ordering the
9 removal of the vehicle as well as those persons removing, towing, and storing the
10 vehicle.

11 (3) It is the intent of the Legislature in the adoption of subdivision (g) to
12 promote the safety of the general public by requiring towing companies to
13 unconditionally release a vehicle that is not lawfully in their possession, thereby
14 avoiding the likelihood of dangerous and violent confrontation and physical injury
15 to vehicle owners and towing operators, the stranding of vehicle owners and their
16 passengers at a dangerous time and location, and impeding expedited vehicle
17 recovery, without wasting law enforcement's limited resources.

18 (p) The remedies, sanctions, restrictions, and procedures provided in this section
19 are not exclusive and are in addition to other remedies, sanctions, restrictions, or
20 procedures that may be provided in other provisions of law, including, but not
21 limited to, those that are provided in Sections 12110 and 34660.

22 (q) A vehicle removed and stored pursuant to this section shall be released by
23 the law enforcement agency, impounding agency, or person in possession of the
24 vehicle, or any person acting on behalf of them, to the legal owner or the legal
25 owner's agent upon presentation of the assignment, as defined in subdivision (b)
26 of Section 7500.1 of the Business and Professions Code; a release from the one
27 responsible governmental agency, only if required by the agency; a government-
28 issued photographic identification card; and any one of the following as
29 determined by the legal owner or the legal owner's agent: a certificate of
30 repossession for the vehicle, a security agreement for the vehicle, or title, whether
31 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
34 be notarized. The storage facility may require the agent of the legal owner to
35 produce a photocopy or facsimile copy of its repossession agency license or
36 registration issued pursuant to Chapter 11 (commencing with Section 7500) of
37 Division 3 of the Business and Professions Code, or to demonstrate, to the
38 satisfaction of the storage facility, that the agent is exempt from licensure pursuant
39 to Section 7500.2 or 7500.3 of the Business and Professions Code.

40 **Comment.** Subdivision (a) of Section 22658 is amended to correct a cross-reference to former
41 Civil Code Section 1351(a), (c).

42 **Staff Note.** The text of this section reflects the changes made by 2009 Cal. Stat. ch. 322 (AB
43 515 (Hagman)).

1 **Water Code § 13553. 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
4 domestic water for toilet and urinal flushing in structures is a waste or an
5 unreasonable use of water within the meaning of Section 2 of Article X of the
6 California Constitution if recycled water, for these uses, is available to the user
7 and meets the requirements set forth in Section 13550, as determined by the state
8 board after notice and a hearing.

9 (b) The state board may require a public agency or person subject to this section
10 to furnish any information that may be relevant to making the determination
11 required in subdivision (a).

12 (c) For the purposes of this section and Section 13554, “structure” or
13 “structures” means commercial, retail, and office buildings, theaters, auditoriums,
14 condominium projects, schools, hotels, apartments, barracks, dormitories, jails,
15 prisons, and reformatories, and other structures as determined by the State
16 Department of Public Health.

17 (d) Recycled water may be used in condominium projects, as defined in Section
18 1351 of the Civil Code, subject to all of the following conditions:

19 (1) Prior to the indoor use of recycled water in any condominium project, the
20 agency delivering the recycled water to the condominium project shall file a report
21 with the appropriate regional water quality control board and receive written
22 approval of the report from the State Department of Public Health. The report shall
23 be consistent with the provisions of Title 22 of the California Code of Regulations
24 generally applicable to dual-plumbed structures and shall include all the following:

25 (A) That potable water service to each condominium project will be provided
26 with a backflow protection device approved by the State Department of Public
27 Health to protect the agency’s public water system, as defined in Section 116275
28 of the Health and Safety Code. The backflow protection device approved by the
29 State Department of Public Health shall be inspected and tested annually by a
30 person certified in the inspection of backflow prevention devices.

31 (B) That any plumbing modifications in the condominium unit or any physical
32 alteration of the structure will be done in compliance with state and local
33 plumbing codes.

34 (C) That each condominium project will be tested by the recycled water agency
35 or the responsible local agency at least once every four years to ensure that there
36 are no indications of a possible cross connection between the condominium’s
37 potable and nonpotable systems.

38 (D) That recycled water lines will be color coded consistent with current statutes
39 and regulations.

40 (2) The recycled water agency or the responsible local agency shall maintain
41 records of all tests and annual inspections conducted.

42 (3) The condominium’s declaration, as defined in Section ~~1354~~ 4135 of the Civil
43 Code, shall provide that the laws and regulations governing recycled water apply,

1 shall permit no exceptions to those laws and regulations, shall incorporate the
2 report 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
5 of recycled water for toilet and urinal flushing. This water is not potable, is not
6 suitable for indoor purposes other than toilet and urinal flushing purposes, and
7 requires dual plumbing. Alterations and modifications to the plumbing system
8 require a permit and are prohibited without first consulting with the appropriate
9 local building code enforcement agency and your property management company
10 or homeowners’ association to ensure that the recycled water is not mixed with the
11 drinking water.”

12 (e) The State Department of Public Health may adopt regulations as necessary to
13 assist in the implementation of this section.

14 (f) This section shall only apply to condominium projects that are created,
15 within the meaning of Section ~~1352~~ 4030 of the Civil Code, on or after January 1,
16 2008.

17 (g) Nothing in this section or Section 13554 applies to a pilot program adopted
18 pursuant to Section 13553.1.

19 **Comment.** Section 13553 is amended to correct cross-references to former Civil Code
20 Sections 1351(h) and 1352.