

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Statutory Clarification and Simplification of CID Law

June 2007

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 will 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 September 21, 2007.

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The Law Revision Commission recommends that the existing Davis-Stirling Common Interest Development Act be repealed and replaced with a new statute that continues the substance of existing law in a more user-friendly form.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 logical organization for any future changes in the law.
- (2) Where there is significant overlap between the Corporations Code and the Davis-Stirling Act, the substance of the Corporations Code would be added to the Davis-Stirling Act and the Corporations Code provision would be made expressly inapplicable. This would consolidate relevant law in one location and minimize inconsistencies between the two sources of law.
- (3) Sections that are excessively long or complex would be restated in simpler and shorter sections.
- (4) Consistent terminology would be used throughout.
- (5) Some governance procedures would be standardized so as to simplify routine matters.
- (6) Various minor substantive improvements would be made.

This recommendation was prepared pursuant to Resolution Chapter 1 of the Statutes of 2006.

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 41,000 CIDs in California, ranging in size from three to 27,000
11 units each.³ These developments comprise over four 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 & Co., 2005 California Community Association Statistics 1 (2005).

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 logical
16 organization for any future changes in the law.¹¹

17 (2) Where there is significant overlap between the Corporations Code and the
18 Davis-Stirling Act, the substance of the Corporations Code would be added
19 to the Davis-Stirling Act and the Corporations Code provision would be
20 made expressly inapplicable. This would consolidate relevant law in one
21 location and minimize inconsistencies between the two sources of law.

22 (3) Sections that are excessively long or complex would be restated in simpler
23 and shorter sections.

24 (4) Consistent terminology would be used throughout.

25 (5) Some governance procedures would be standardized so as to simplify
26 routine matters.

27 (6) Various minor substantive improvements would be made.

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 coherent organizational structure. As changes are made to the law, it is not clear where to add new provisions, which perpetuates the lack of organization. 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 For the most part, this is a nonsubstantive reform. However, there are a number
2 of instances where minor substantive improvements are proposed. Those changes
3 are discussed more fully below.

4 The “proposed law” part of this tentative recommendation also includes a
5 number of “notes” that invite public comment on specific issues.

6 A table following the proposed law shows the proposed location of each affected
7 provision of the Davis-Stirling Act.

8 GENERAL PROVISIONS

9 The proposed law would include a chapter of general provisions (i.e., provisions
10 that apply to the act as a whole).¹² The general provisions include rules governing
11 the application of the Davis-Stirling Act and the Corporations Code, (2)
12 procedures used to deliver notices, and (3) definitions for commonly used terms.
13 For the most part, those provisions would continue existing law. Any significant
14 changes to existing law are discussed below.

15 Application of Davis-Stirling Act and Corporations Code

16 **Nonresidential CIDs**

17 Under existing law, an entirely nonresidential CID is exempt from specified
18 requirements of the Davis-Stirling Act, on the grounds that those requirements
19 “may not be necessary to protect purchasers in commercial or industrial
20 developments” and could simply add unnecessary costs and burdens.¹³

21 The proposed law continues that exemption without change, except that a
22 nonresidential CID would also be exempt from the member election provisions of
23 the Davis-Stirling Act.¹⁴ Such an association would instead be governed by the
24 Corporations Code member election procedures.¹⁵

25 **Corporations Code**

26 Proposed Civil Code Section 4025 is new. It would define the relationship
27 between the Corporations Code and the Davis-Stirling Act, in two ways:

- 28 (1) It would make clear that where there is an inconsistency between the two
29 sources of law, the Davis-Stirling Act prevails.
- 30 (2) It would list specific provisions of the Corporations Code that are entirely
31 superseded by the Davis-Stirling Act. Those provisions reflect subjects
32 where the substance of applicable Corporations Code provisions would be

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

13. Civ. Code § 1373.

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

15. See Corp. Code § 7510 *et seq.*

1 imported into the Davis-Stirling Act. Readers would no longer need to
2 consult the Corporations Code on those matters.

3 Notice Procedures

4 Drawing from existing law, the proposed law would standardize the procedure
5 for the delivery of various statutory notices.

6 **Method of Delivery**

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

- 9 (1) “Individual notice” would be delivered individually to a specific named
10 person.¹⁶ Individual notice is appropriate where a member’s individual
11 property interests would be affected.
- 12 (2) “General notice” would be provided to all members and could be provided
13 by various forms of general publication.¹⁷ General notice would be less
14 costly than individual notice. It would be appropriate for matters of more
15 general interest, such as the time, place, and agenda for a pending board
16 meeting.¹⁸
- 17 (3) A notice that is to be “delivered to the board” would be delivered in the
18 manner specified.¹⁹ This would give greater certainty as to how to
19 communicate with the board regarding official matters.

20 **Proof of Notice and Delivery Failure**

21 The Corporations Code provides rules for proving delivery of notice of a
22 member meeting (by affidavit) and for handling failed delivery (e.g., a mailed
23 notice returned as undeliverable).²⁰

24 The proposed law would generalize the substance of those provisions, with one
25 significant change.²¹

26 The exception relates to undeliverable mail: Under existing law, if a mailed
27 notice is returned as undeliverable, the corporation is excused from all future
28 notice delivery to that member, provided that the corporation keeps a copy of any
29 notices to that member for a year.

30 That rule makes sense in a typical nonprofit corporation, where a member could
31 live anywhere. If the member moves without giving a forwarding address, the

16. See proposed Civ. Code § 4040. Individual delivery can be made electronically, if the recipient assents to that form of delivery.

17. See proposed Civ. Code § 4045.

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

19. See proposed Civ. Code § 4035.

20. Corp. Code § 7511(b).

21. See proposed Civ. Code §§ 4050(d) (proof of delivery by affidavit), 4055(a) (delivery failure).

1 corporation has no way, short of conducting an investigation at its own expense, of
2 determining where to send notice to that member.

3 A CID is different. Each member necessarily owns a unit in the CID. That
4 provides a straightforward alternative. When a mailed notice is returned as
5 undeliverable, future notices should be delivered to the separate interest owned by
6 the member.²²

7 Terminology

8 **Parenthetical Reference**

9 The Corporations Code defines certain common procedural requirements and
10 then invokes those requirements by use of a parenthetical reference. For example,
11 Corporations Code Section 7150(b) provides in part: “Bylaws may be adopted,
12 amended, or repealed by approval of the members (Section 5034). . . .” Section
13 5034 specifies the number of affirmative votes required in order for an action to be
14 “approved by the members.” That approach simplifies drafting and facilitates the
15 use of standardized rules for common procedures.

16 The proposed law takes a similar approach with regard to the rules on voting
17 thresholds²³ and forms of notice delivery.²⁴

18 **“Common Interest Development” Defined**

19 The Davis-Stirling Act defines the term “common interest development” by
20 reference to the four specific types of CID:²⁵

21 “Common interest development” means any of the following:

- 22 (1) A community apartment project.
- 23 (2) A condominium project.
- 24 (3) A planned development.
- 25 (4) A stock cooperative.

26 That definition facilitates drafting, but is not very informative. A person who
27 wants a general understanding of what is meant by “common interest
28 development” would need to compare the definitions of the four specific types of
29 CID, in order to determine what they have in common.²⁶ In addition, a person
30 would need to consider Civil Code Section 1352, which provides that a CID must
31 have common area.

22. See proposed Civ. Code § 4055.

23. See proposed Civ. Code §§ 4050 (approved by board), 4055 (approved by majority of all members), 4060 (approved by quorum of majority of members).

24. See proposed Civ. Code §§ 4035 (“delivered to the board”), 4040 (individual notice), 4045 (general notice).

25. Civ. Code § 1351(c).

26. See Civ. Code § 1351(d) (“community apartment project”), (f) (“condominium project”), (k) (“planned development”), (m) (“stock cooperative”).

1 The proposed law would include a definition of “common interest development”
2 that states all of the substantive elements that define the term.²⁷

3 **CID Types**

4 The four types of CID are distinguished primarily by the nature of the
5 homeowner’s interest in the common area and the nature of the homeowner’s
6 separate interest.

7 The proposed law restates the definitions of the different types of CIDs to
8 emphasize the essential differences.²⁸

9 **“Governing Documents” Defined**

10 Existing law defines the “governing documents” of an association as follows:²⁹

11 “Governing documents” means the declaration and any other documents, such
12 as bylaws, operating rules of the association, articles of incorporation, or articles
13 of association, which govern the operation of the common interest development or
14 association.

15 The open-ended reference to “any other documents ... which govern the
16 operation of the common interest development” is potentially problematic. It could
17 cause problems in some provisions that use the term “governing documents.”³⁰

18 In the interest of certainty, the proposed law would omit the open-ended element
19 of the general definition of “governing documents.”³¹ Instead, the term would
20 mean the four named (and statutorily regulated) types of governing documents: the
21 declaration, articles, bylaws, and operating rules.

22 **“Member” v. “Owner”**

23 The Davis-Stirling Act uses the terms “member” and “owner” interchangeably,
24 with about the same frequency. Neither term is defined in the Act. The Nonprofit
25 Mutual Benefit Corporation Law uses “member” exclusively.

26 In the interest of consistency, the proposed law would use the term “member”
27 exclusively. It defines that term so as to preserve the ownership aspect.³²

27. See proposed Civ. Code § 4100.

28. See proposed Civ. Code §§ 4105 (“community apartment project”), 4125 (“condominium project”), 4175 (“planned development”), 4190 (“stock cooperative”).

29. Civ. Code § 1351(j).

30. For example, what is the scope of a provision that authorizes an association to adopt procedures in the “governing documents” (Civ. Code § 1355), or that conditions the application of a provision of law on whether or not the “governing documents” have been amended (Civ. Code § 1360.5), or that requires a seller to provide a copy of the “governing documents” to a prospective buyer (Civ. Code § 1368).

31. See proposed Civ. Code § 4150.

32. See proposed Civ. Code § 4160.

1

ASSOCIATION GOVERNANCE

2

The proposed law would include a chapter on the governance of an association by its board and members.³³ It would include provisions relating to board meetings, member meetings, member elections, record inspection, record keeping, annual reports, director conduct, managing agents, and government assistance. For the most part, those provisions would continue existing law. Any significant changes to existing law are discussed below.

8

Board Meetings

9

The Davis-Stirling Act includes a provision entitled the “Common Interest Development Open Meeting Act.”³⁴ Though much simpler than the state and local government open meeting laws,³⁵ it borrows some language from those laws and has a similar thrust.

13

The CID Open Meeting Act has the following effect:

14

(1) Require advance notice of a meeting of the association’s board.

15

(2) Guarantee a member’s right to appear and speak at a meeting of the board.

16

(3) Define which matters may be considered by the board in closed executive session.

17

18

(4) Require the preparation and availability of board meeting minutes.

19

Those rules are continued in the proposed law³⁶ with a number of minor improvements, which are discussed below.

20

21

Definition of “Meeting”

22

Existing law defines “meeting” as follows:³⁷

23

As used in this section, “meeting” includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.

24

25

26

27

The proposed law continues that definition, except that it would not limit the definition of “meeting” to a gathering for the consideration of business “scheduled to be heard by the board.”³⁸

28

29

33. See proposed Chapter 3 (commencing with Section 4400) of Part 5 of Division 4 of the Civil Code..

34. Civ. Code § 1363.05.

35. See Gov’t Code §§ 11120-11132 (Bagley-Keene Open Meeting Act); 54950-54963 (Ralph M. Brown Act).

36. See proposed Article 2 (commencing with Section 4575) of Part 5 of Division 4 of the Civil Code..

37. Civ. Code § 1363.05(f).

38. See proposed Civ. Code § 4090 (“board meeting”).

1 Strictly read, that language could create an inappropriate loophole. A board
2 could argue that the open meeting requirements do not apply to a gathering of the
3 board to consider association business so long as the matters to be considered are
4 not scheduled in advance. That would be inconsistent with the transparency sought
5 by open meeting laws.

6 **Committees**

7 A board of directors may form a committee to exercise powers delegated to it by
8 the board.³⁹ It is not clear that the existing open meeting requirements apply to
9 such a committee.

10 The proposed law would expressly apply the open meeting requirements to a
11 meeting of a committee that exercises any power of the board.⁴⁰ If the law requires
12 openness when a board meets to exercise one of its powers, then openness should
13 also be required if the same power is exercised by a committee created by the
14 board.

15 **Inclusion of Agenda in Meeting Notice**

16 Existing CID law requires only that the time and place of a board meeting be
17 included in notice of the meeting.⁴¹

18 Government open meeting law requires that a meeting notice also include an
19 agenda for the meeting.⁴² That is a sensible rule, which would add little expense.

20 The proposed law would apply the same requirement to a CID board meeting.⁴³

21 **Adjournment to Another Time and Place**

22 The Corporations Code provides for adjournment of a board meeting to another
23 time and place.⁴⁴ That provision would be continued in the proposed law.⁴⁵

24 If the meeting is adjourned for more than 24 hours, then notice of the time and
25 place at which the meeting will resume must be given to a director who was not
26 present at the time of adjournment.⁴⁶

27 The proposed law would also require that notice be given to members.⁴⁷

39. See Corp. Code §§ 7151(c)(4), 7212.

40. See proposed Civ. Code § 4560(a).

41. Civ. Code § 1363.05(g).

42. See Gov't Code §§ 11125(b), 54954.1-54954.2.

43. See proposed Civ. Code § 4520(a).

44. Corp. Code § 7211(a)(4).

45. See proposed Civ. Code § 4505(b).

46. Corp. Code § 7211(a)(4).

47. See proposed Civ. Code § 4520(d).

1 **Meeting Location**

2 Existing statutory law is silent on where a CID board meeting may be held. The
3 Department of Real Estate’s regulations include a requirement that a board
4 meeting be held within the development, unless the available meeting space is too
5 small, in which case the meeting must be held as close to the development as is
6 practicable.⁴⁸

7 The proposed law would codify that rule.⁴⁹

8 **Teleconference**

9 The Corporations Code specifically authorizes the use of teleconferencing in a
10 nonprofit mutual benefit corporation board meeting.⁵⁰ Government open meeting
11 laws also provide for teleconferencing.⁵¹

12 The Davis-Stirling Act does not specifically address teleconferencing at a board
13 meeting. The existing definition of a meeting as “any congregation of a majority
14 of the members of the board *at the same time and place*”⁵² could preclude a
15 teleconference in some cases.

16 The proposed law authorizes the use of teleconferencing in board meetings.⁵³ It
17 expressly provides that a director who participates in a meeting by teleconference
18 is deemed to be “present,” thus avoiding any conflict with the definitional
19 requirement that a majority of members be present in the same location. The
20 proposed law would also state basic procedural requirements that are drawn from
21 the teleconference provisions of the Corporations Code and the government open
22 meeting laws.

23 **Executive Session**

24 Although board meetings are generally open to the members of an association,
25 there are circumstances in which the board may meet privately, in closed
26 “executive session.”⁵⁴

27 Executive session is permitted when the board considers member discipline, an
28 assessment dispute, or a member request for an assessment payment plan.⁵⁵

29 A board must meet in closed executive session when the member who is the
30 subject of a disciplinary matter requests that the matter be closed.⁵⁶ Executive

48. 10 Cal. Code Regs. § 2792.20(b).

49. See proposed Civ. Code § 4530.

50. Corp. Code § 7211(a)(6).

51. See Gov’t Code §§ 11123(b), 54953(b).

52. Civ. Code § 1363.05(f) (emphasis added).

53. See proposed Civ. Code § 4535.

54. Civ. Code § 1363.05(b).

55. *Id.*

56. *Id.*

1 session is also required when a board considers a request for a payment plan⁵⁷ or
2 votes to foreclose to enforce an assessment lien.⁵⁸

3 Under existing law, a member who is disputing an assessment debt does not
4 have the right to compel that the matter be discussed in executive session.
5 Arguably, the same privacy considerations that apply to member discipline, a
6 payment plan request, or a decision to foreclose, would also apply to consideration
7 of an assessment dispute.

8 The proposed law would require that an assessment dispute be considered in
9 closed executive session when requested by the member who raised the dispute.⁵⁹

10 **Board Action by Written Assent**

11 The Corporations Code allows the board to act without holding a meeting, if all
12 members of the board assent to the action in writing.⁶⁰

13 The Davis-Stirling Act does not specifically address board action by unanimous
14 written assent. However, the circulation of a written proposal to the directors for
15 their assent would not constitute a “meeting” and would therefore not trigger the
16 various open meeting requirements.

17 The proposed law would generalize the Corporations Code procedure so that it
18 applies to any homeowner association, whether incorporated or unincorporated.⁶¹

19 **Member Meeting**

20 Existing law includes a number of provisions that regulate the conduct of a
21 meeting of the membership. Some are in the Davis-Stirling Act,⁶² others are in the
22 Corporations Code.⁶³

23 It would be easier for homeowners if all of the provisions relating to member
24 meetings were located in the Davis-Stirling Act. Such a change would have two
25 other benefits: (1) it would generalize the Corporations Code provisions so that
26 they also apply to an unincorporated homeowner association, and (2) it would
27 provide an opportunity to make minor improvements to procedures and drafting.

28 That is the approach taken in the proposed law.⁶⁴ Specific issues relating to the
29 proposed member meeting provisions are discussed below.

57. Civ. Code § 1367.1(c)(3).

58. Civ. Code § 1367.4(c)(2).

59. See proposed Civ. Code § 4540(b).

60. Corp. Code § 7211(b).

61. See proposed Civ. Code § 4545.

62. See Civ. Code §§ 1363(d) (parliamentary procedure), (e) (notice of matters to be considered).

63. See Corp. Code §§ 7510(a) (meeting place), (b) (meeting time), (c)-(d) (court ordered meeting), (e) (special meeting), (f) (electronic participation); 7511 (meeting notice); 7512 (quorum).

64. See proposed Civ. Code §§ 4575-4620. Those provisions would supersede the comparable Corporations Code provisions. See proposed Civ. Code § 4025(b)(2).

1 **Meeting Location**

2 The Corporations Code allows a member meeting to be held anywhere, provided
3 that the location is designated in the bylaws.⁶⁵ If no location is designated, the
4 meeting is to be held at the “principal executive office” of the corporation.

5 The proposed law would instead require that a member meeting be held in the
6 development, if space allows. If there is no suitable meeting space, then the
7 meeting is to be held as near to the development as is practicable.⁶⁶ That would
8 parallel the rule proposed for board meetings.⁶⁷

9 The proposed rule would work well in an association that is comprised mostly of
10 primary residences. It would work less well in an association in which the units
11 are primarily second homes (e.g., a condominium complex in a resort area).
12 However, in such a case it is unlikely that any single meeting location would be
13 convenient to all members. A meeting in the development itself would at least be
14 convenient to those members who are resident year-round.

15 Note too that a CID with a scattered member population could use a mailed
16 ballot in lieu of a meeting⁶⁸ or could use teleconferencing to provide satellite
17 locations for participation in the meeting.⁶⁹

18 **Teleconference**

19 The Corporations Code authorizes the use of teleconferencing in conducting a
20 member meeting.⁷⁰ The proposed law continues that policy,⁷¹ but it does so with
21 language that is drawn from the proposed board meeting teleconferencing
22 provision.⁷² Use of the same standards for both types of meetings should simplify
23 compliance with the law.

24 **Member Elections**

25 **Election Rules**

26 Existing law requires that an association adopt operating rules to address certain
27 aspects of member election procedure.⁷³ The proposed law would continue that
28 requirement but would allow the election rules to be expressed in any type of

65. Corp. Code § 7510(a).

66. See proposed Civ. Code § 4575(c).

67. See proposed Civ. Code § 4530; 10 Cal. Code Regs. § 2792.20(b).

68. See proposed Civ. Code § 4640.

69. See proposed Civ. Code § 4590.

70. Corp. Code § 7510(f).

71. See proposed Civ. Code § 4590.

72. See proposed Civ. Code § 4535.

73. Civ. Code § 1363.03(a).

1 “governing document.”⁷⁴ That would allow for the election rules to be stated in the
2 declaration, bylaws, articles, or operating rules.⁷⁵

3 That flexibility would reduce the administrative burden on an association that
4 already provides sufficient election rules in its governing documents. To require
5 that existing rules be restated as operating rules would add costs without any
6 benefit.⁷⁶

7 **County Model**

8 Existing law provides that an association “shall use as a model those procedures
9 used by California counties for ensuring confidentiality of voter absentee
10 ballots....”⁷⁷

11 That requirement is problematic. There appears to be no single statewide
12 standard that can serve as a model. Instead, the election official in each county
13 seems to be charged with developing local procedures to preserve the
14 confidentiality of absentee ballots.⁷⁸ That raises the question of which counties
15 should be used as a model? And how many counties?

16 Furthermore, existing law provides detailed election procedures. It is unclear
17 that any meaningful gaps remain to be filled with procedures that are modeled on
18 county election procedures.

19 The proposed law does not continue the “county model” requirement.

20 **Sealed Ballot Voting Procedure**

21 Existing law provides a detailed mandatory procedure for the use of sealed
22 ballots in certain types of elections.⁷⁹ The proposed law would continue that
23 procedure, with the same scope of application.⁸⁰

24 Under that procedure, an anonymous ballot is sealed within an anonymous
25 envelope. That envelope is then sealed within a mailing envelope, on which the
26 identity of the member is printed.

27 The member’s identity and voting rights are determined from the outside
28 envelope. The inside envelope is extracted and set aside for eventual counting of
29 the enclosed ballot. The anonymity of the ballot is preserved.

74. See proposed Civ. Code § 4630.

75. See proposed Civ. Code § 4150.

76. An operating rule may not contradict the declaration, articles, or bylaws. See proposed Civ. Code § 6100(c). Therefore, any operating rule cannot be used to change an election rule from what is already stated in those other types of governing documents. Therefore, if an association already has election rules in place in the declaration, articles, or bylaws, there would be no purpose in requiring that the operating rules also include election rules, as they could not differ from the existing rules.

77. Civ. Code § 1363.03(e).

78. See Elec. Code § 3017(b).

79. Civ. Code § 1363.03(b).

80. See proposed Civ. Code § 4640.

1 Vote counting is to be conducted at a properly noticed board or member
2 meeting, which must be open to the public. Any member has the right to observe
3 the process of ballot counting.⁸¹ This guarantee of transparency is in tension with
4 the secrecy of the balloting process, and it is not entirely clear how the two goals
5 are reconciled in practice.

6 The proposed law adds a minor clarification on that point:

7 Any member may observe the counting of ballots, but shall not be permitted to
8 observe any information that would reveal the identity of a member casting a
9 ballot.⁸²

10 **In-Person Voting Procedure**

11 The existing sealed ballot procedure is expressly modeled after the absentee
12 ballot procedure used in public elections.⁸³ The complexity of the procedure makes
13 sense in that context. The person who receives a mailed ballot needs to verify the
14 identity and eligibility of the member without being able to see how the member
15 voted.

16 Ballot secrecy is easier to achieve when a vote is cast in person. The election
17 inspector can verify the voter's identity and eligibility face to face and then
18 provide the member with a blank ballot. The member can mark the ballot
19 privately, and place it in a sealed ballot box.

20 The proposed law includes a procedure along those lines for an election that is
21 conducted in person, rather than by mail.⁸⁴ That would be a significant
22 simplification.

23 **Cumulative Voting**

24 The governing documents of an association may require that directors be elected
25 using cumulative voting. Cumulative voting is a system in which each voter may
26 cast a number of votes equal to the number of seats to be filled. For example, if
27 there are three vacancies being filled, a member could cast three votes. Those
28 votes can be combined in any fashion. All three could be cast for one candidate;
29 two votes could be cast for one candidate and one vote for another; etc. The
30 candidates who receive the highest vote totals fill the vacant seats.⁸⁵

31 The Corporations Code provides that cumulative voting may only be used if at
32 least one member gives notice of an intention to use cumulative voting, at the
33 member meeting that precedes the election.⁸⁶ That requirement could be difficult

81. See proposed Civ. Code §§ 4650-4655.

82. See proposed Civ. Code § 4650(c).

83. Civ. Code § 1363.03(e).

84. See proposed Civ. Code § 4645.

85. Corp. Code § 7615.

86. Corp. Code § 7615(b).

1 to satisfy if an association decides to forego most member meetings in favor of
2 conducting elections entirely by mail (as existing law allows). It could also
3 unfairly advantage candidates who have advance notice that cumulative voting
4 will be used and plan their campaigns accordingly.

5 The proposed law would supersede the existing limitation. Instead, cumulative
6 voting would be mandatory in any association that permits cumulative voting.⁸⁷
7 That approach would provide less flexibility but would be simple and predictable.

8 **Teleconference**

9 The proposed law would permit the use of teleconferencing at a member
10 meeting.⁸⁸ As a practical necessity, a member who participates in a meeting by
11 teleconference would be required to vote orally. That special rule would supersede
12 the sealed ballot procedure.⁸⁹

13 **Campaign Activity**

14 Both the Davis-Stirling Act and the Corporations Code include provisions that
15 govern the use of association resources in campaign activity. The general principle
16 is that an association resource may not be used for campaign advocacy unless
17 equal access to the resource is provided to all advocates or candidates.⁹⁰

18 The proposed law continues those rules, with minor improvements to clarity and
19 consistency.⁹¹

20 A provision drawn from the Corporations Code is included in the proposed law,
21 to make clear that an association is not liable for the publication of information
22 that the association is required to publish pursuant to the equal access rules.⁹²

23 **Voting Rights**

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

27 The proposed law includes default rules on those issues,⁹³ which are drawn from
28 the Corporations Code⁹⁴ and the Department of Real Estate's regulations.⁹⁵

87. See proposed Civ. Code § 4640(f).

88. See proposed Civ. Code § 4590.

89. *Id.*

90. Civ. Code §§ 1363.03(a)(1)-(2), 1363.04.

91. See proposed Civ. Code § 4670.

92. See Corp. Code § 7525; proposed Civ. Code § 4670(b).

93. See proposed Civ. Code § 4675.

94. Corp. Code §§ 7312(d), 7611(a).

95. 10 Cal. Code Regs. § 2792.18.

1 **Action by Written Consent**

2 Under the Corporations Code, any action that requires the approval of the
3 members may be approved by the unanimous written consent of the members.⁹⁶
4 This provides a useful alternative where a proposal is entirely uncontroversial. The
5 proposed law would include the same rule.⁹⁷

6 Suppose that an association wishes to amend a bylaw in a way that is acceptable
7 to every member of the association. The proposed law would allow those members
8 to make the amendment by simply signing a document assenting to the change.
9 The complex procedures for notification of a member meeting, sealed ballots, the
10 hiring of an election inspector, and ballot counting at an open meeting could be
11 avoided.

12 **Judicial Enforcement**

13 The Corporations Code⁹⁸ and the Davis-Stirling Act⁹⁹ provide different and
14 inconsistent rules for judicial enforcement of the member election laws.

15 The proposed law would continue the Davis-Stirling Act provision¹⁰⁰ and state
16 expressly that the Corporations Code provision is inapplicable.¹⁰¹ That will help to
17 avoid uncertainty as to which law controls.

18 **Inspection of Records**

19 An important check on association power is a member's right to inspect
20 association records. This allows a member to monitor how the association's
21 elected representatives are discharging their duties and spending association
22 money.

23 **Existing Law**

24 Until recently, record inspection rights were addressed exclusively by the
25 Corporations Code.¹⁰² It provides for member access to the membership list and
26 "accounting books and records" of the association, as well as minutes of meetings.
27 The right to inspect the membership list is limited to a noncommercial use of the
28 list that is reasonably related to the member's interest as a member.¹⁰³ Inspection

96. Corp. Code § 7516.

97. See proposed Civ. Code § 4680.

98. Corp. Code § 7616.

99. Civ. Code § 1363.09.

100. See proposed Civ. Code § 4685.

101. See proposed Civ. Code § 4025(a)(3).

102. See Corp. Code §§ 8330-8338.

103. Corp. Code § 8338.

1 may be limited in order to protect members' privacy rights.¹⁰⁴ The inspection right
2 can be enforced in the superior court.¹⁰⁵ Costs and expenses, including reasonable
3 attorney's fees, may be awarded to the member if the association acted unlawfully
4 in denying inspection.¹⁰⁶

5 The Davis-Stirling Act expressly incorporates those provisions.¹⁰⁷ As a result,
6 they apply to any association, even one that is unincorporated.

7 In 2003, the Legislature added Civil Code Section 1365.2 to further elaborate on
8 CID member record inspection rights.¹⁰⁸ That section was repealed and replaced
9 with another section of the same number in 2005.¹⁰⁹ The new section added
10 additional record inspection rules.

11 The proposed law continues existing law on member record inspection rights,
12 except as discussed below.¹¹⁰

13 **Preemption of Corporations Code**

14 The Corporations Code provisions on record inspection are expressly applicable
15 to a CID.¹¹¹ However, the main Davis-Stirling Act provision on record inspection
16 states that it supersedes two of those Corporations Code provisions, to the extent
17 of any inconsistency with those sections.¹¹²

18 Those rules of application are potentially confusing. There is a high degree of
19 overlap between the Davis-Stirling Act and the Nonprofit Mutual Benefit
20 Corporation Law, combined with some uncertainty as to which provisions of the
21 Corporations Code are superseded as "inconsistent" with the Davis-Stirling Act.

22 The proposed law would completely preempt the Corporations Code provisions
23 on record inspection.¹¹³ This would provide a single clear source of law on the
24 topic. It should not result in significant substantive change in the law, as most of
25 the substance of the Corporations Code provisions is also addressed by the Davis-
26 Stirling Act.

27 **Scope of Inspection Right**

28 The proposed law would broaden the scope of the member record inspection
29 right to include two new types of records:

104. Corp. Code § 8332.

105. Corp. Code § 8336.

106. Corp. Code § 8337.

107. See Civ. Code § 1363(f).

108. 2003 Cal. Stat. ch. 375.

109. 2005 Cal. Stat. ch. 458.

110. See proposed Civ. Code §§ 4700-4750.

111. Civ. Code § 1363(f).

112. Civ. Code § 1365.2(m).

113. See proposed Civ. Code § 4025(a)(4).

- 1 (1) The “governing documents” of the association and “any other document that
2 governs the operation of the common interest development or its
3 association.”¹¹⁴
- 4 (2) “Written correspondence of the association, other than correspondence that
5 relates to personnel matters, member discipline, an assessment dispute or a
6 request for a payment plan for overdue assessments.”¹¹⁵ The listed
7 exceptions would mirror the subjects that a board may consider in closed
8 executive session. Existing law recognizes the confidentiality of such
9 communications.

10 **Deadline for Response**

11 The Davis-Stirling Act sets out a series of time periods for response to a record
12 inspection request¹¹⁶ The proposed law would continue the existing time periods,
13 and would add a new rule for documents that have not yet been prepared at the
14 time that they are requested.¹¹⁷

15 **Redaction**

16 The Davis-Stirling Act provides some protection against identity theft, fraud,
17 and invasion of privacy by listing certain types of information that an association
18 may redact before allowing inspection of a record.¹¹⁸

19 It is not clear why redaction is optional. An association should never disclose
20 such things as a member’s social security number or checking account number to
21 another member.

22 The proposed law would make redaction mandatory.¹¹⁹

23 **Judicial Enforcement**

24 Existing law provides a number of different mechanisms for judicial
25 enforcement of member record inspection and record privacy rights.¹²⁰ The
26 proposed law combines and simplifies the substance of those provisions, as
27 follows:

114. See proposed Civ. Code § 4700(a)(1).

115. See proposed Civ. Code § 4700(a)(13).

116. See Civ. Code § 1365.2(j).

117. See proposed Civ. Code § 4705(b).

118. Civ. Code § 1365.2.

119. See proposed Civ. Code § 4710.

120. See Civ. Code §§ 1365.2(e) (action for damages resulting from misuse of records), (f) (action to enforce inspection right and impose penalty); Corp. Code §§ 8331(a) (action to set aside record request), (j) (writ of mandate to compel production of membership list), 8332 (petition to limit production of membership list on constitutional grounds), 8335 (action to postpone meeting on grounds of delay in complying with record request), 8336 (action to enforce valid inspection request), 8337 (award of costs and attorney’s fees to members where noncompliance unjustified), 8338 (action for damages resulting from misuse of membership list).

- 1 • Proposed Civil Code Section 4725 states substantive limitations on the use
2 of association records and authorizes the association to deny a request when
3 it reasonably believes that the records will be misused or that disclosure
4 would violate a member’s constitutional rights.
- 5 • Proposed Civil Code Section 4730 provides a procedure for denial of a
6 record inspection request. It requires a formal notice of denial, which
7 includes an offer to use the association’s internal dispute resolution process.
8 If the member objects to the denial decision, the association must either
9 comply with the request or commence a proceeding to set aside the request.
10 If the member does not object in the time provided, then the request expires
11 and the association need do nothing further.
- 12 • Proposed Civil Code Section 4735 authorizes a member to bring an action in
13 the superior court to enforce a record inspection request. The action would
14 turn on a small number of fairly straightforward factual questions: is the
15 requested record subject to inspection, did the requesting member follow
16 procedures, is an action pending to set the request aside, or was the request
17 in fact set aside by the court? The action may be filed in the small claims
18 division. The court may impose a civil penalty of up to \$500 against an
19 association that withholds records unreasonably.
20 If the court finds that the requested disclosure would violate member
21 constitutional rights or that there is a reasonable likelihood that disclosure
22 would result in misuse of the records, the court may modify or set aside the
23 request. The court may toll any association deadline, postpone an
24 association meeting, or order any other relief that may be appropriate under
25 the circumstances. The court may award costs and expenses against either
26 party, under specified conditions.
- 27 • Proposed Civil Code Section 4740 provides for an action to enjoin the
28 improper use of records and award damages for harms that result from
29 misuse. An association that prevails under the section would be awarded
30 costs and expenses.

31 The Comments and notes following these provisions highlight differences from
32 existing law.

33 Record Keeping

34 **Duty to Maintain**

35 The Corporations Code requires that the board of directors maintain accounting
36 records, meeting minutes, and the membership list.¹²¹

37 That requirement would be continued in the proposed law.¹²² The list of records
38 that must be maintained would be expanded to include all of the types of records
39 that are subject to member inspection and other types of business records that
40 should be maintained by any well-run nonprofit organization.

121. Corp. Code § 8320.

122. Civ. Code §4775.

1 In developing the latter category of records, the Commission looked to common
2 practice within the nonprofit sector. There is a wide range of advice available on
3 the topic, including some that is specific to homeowner associations.¹²³ The
4 proposed law is generally consistent with that body of advice.

5 **Record Retention Period**

6 A provision requiring the maintenance of specified records raises the question of
7 how long those records must be kept. That question is not answered in the
8 Corporations Code.

9 The Davis-Stirling Act provides a partial answer. It sets out periods during
10 which records must be made available to members for inspection:

11 The time periods for which specified records shall be provided is as follows:

12 (1) Association records shall be made available for the current fiscal year and
13 for each of the previous two fiscal years.

14 (2) Minutes of member and board meetings shall be permanently made
15 available. If a committee has decisionmaking authority, minutes of the meetings
16 of that committee shall be made available commencing January 1, 2007, and shall
17 thereafter be permanently made available.¹²⁴

18 An association director who reads that provision might assume that it states the
19 only applicable requirement for retention of the specified records. That would be a
20 mistake. Some of the listed documents are subject to specific retention
21 requirements that exceed three years.¹²⁵ In addition, documents that could be
22 relevant in future litigation should be maintained for at least as long as the
23 applicable statute of limitations.¹²⁶ As a practical matter, the governing documents
24 and records relating to their amendment should be kept permanently, as they are
25 fundamental to the governance of the association and the rights of members.

26 The proposed law would provide clear record retention rules. It identifies certain
27 types of records that must be retained permanently.¹²⁷ All other records that an
28 association is required to maintain would be retained for at least four years.¹²⁸ That

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

124. Civ. Code § 1365.2(i).

125. See, e.g., 22 Cal. Code Regs. § 1085-2 (employment records maintained for four years); 26 C.F.R. § 1.6001-1(e) (federal tax records maintained while material to tax assessment or collection).

126. See, e.g., Code Civ. Proc. §§ 318 (five year period for action relating to title to real property), 337(1) (four year period for action on written contract), 337.1 (four year period for action on patent construction defect), 337.15 (ten year period for action on latent construction defect), 338(a) (three year period for action on liability created by statute), 338(b) (three year period for trespass or injury to real property), 338(d) (three year period for action for fraud or mistake), 338(g) (three year period for slander of title), 343 (four year period for actions not otherwise provided for), 359 (three year period for action against director or member of corporation for penalty, forfeiture, or liability created by law).

127. See proposed Civ. Code § 4780(b).

128. See proposed Civ. Code § 4780(a).

1 should satisfy retention requirements imposed by other law, most of which require
2 that a document be preserved for three to four years.

3 Annual Reports

4 Existing law requires that an association distribute four different annual reports
5 to its membership:

- 6 (1) A pro forma operating budget must be delivered from 30 to 90 days before
7 the end of the fiscal year.¹²⁹ A number of other provisions require that
8 specified information be distributed with the budget.¹³⁰
- 9 (2) In an association with \$75,000 or more in annual gross income, a CPA
10 review of the association's financial statement must be distributed, within
11 120 days after the end of the fiscal year.¹³¹
- 12 (3) An annual financial report must be distributed within 120 days after the end
13 of the fiscal year.¹³²
- 14 (4) A nonprofit "community service organization" that provides services to an
15 association and receives 10 percent or more of its funding from the
16 association or its members is required to provide an annual financial
17 statement to the association.¹³³

18 For the most part, the proposed law would simplify those requirements without
19 making substantive changes to existing law. Significant changes are described
20 below.

21 Notice of Availability

22 Existing law recognizes that there may be members who are not interested in
23 receiving every report. For example, a summary of the pro forma operating budget
24 may be distributed rather than the budget itself.¹³⁴ The summary must include
25 instructions on how to request a copy of the complete budget. A member who
26 requests the budget will be provided with a copy at no cost.

27 Similarly, the Corporations Code provides for distribution of notice of the
28 availability of a nonprofit mutual benefit corporation's annual report, rather than

129. Civ. Code § 1365(a).

130. 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).

131. Civ. Code § 1365(b).

132. Corp. Code §§ 8321-8322

133. Civ. Code § 1365.3.

134. Civ. Code § 1365(c).

1 the report itself.¹³⁵ Again, instructions are to be provided on how to obtain a
2 complete copy of the report at no cost.

3 The proposed law would generalize that approach so that it applies to all of the
4 annual reports.¹³⁶ For each type of report, the association would only be required
5 to deliver notice of availability. However, any member who requests the full report
6 would receive it free of charge. An association would also be free to distribute the
7 complete report, rather than a notice of its availability, if that is the preferred
8 approach.

9 **Member Handbook**

10 Over time, the law has been amended to add several new disclosures to the
11 mailing of the annual budget report. The proposed law would combine the
12 nonbudgetary disclosures into a new type of report, the “member handbook.”¹³⁷
13 This would not diminish the information available to members, but would
14 repackage it into more thematically coherent groups. This should increase the
15 efficiency of the “notice of availability” approach described above, by offering
16 members clearer choices as to the types of information they wish to receive.

17 **Government Assistance**

18 The proposed law would continue two sections that relate to government
19 involvement in the governance of CIDs, without substantive change.¹³⁸

20 In addition, the proposed law would add a new provision, authorizing the
21 Attorney General to act on certain complaints regarding CID governance.¹³⁹ That
22 provision would be consistent with the spirit of existing law, as discussed below.

23 The Corporations Code currently authorizes the Attorney General to act on a
24 complaint that a nonprofit mutual benefit corporation is not complying with the
25 Corporations Code provisions governing member meetings, voting, and record
26 inspection.¹⁴⁰

27 However, there is a trend (which the proposed law would continue) to move the
28 substance of Corporations Code provisions into the Davis-Stirling Act. As a result,
29 the authority of the Attorney General to oversee *violations of the Corporations*
30 *Code* has diminished relevance to CIDs.

31 The proposed law would restore that authority to its original dimension, by
32 adding a provision that expressly authorizes the Attorney General to act on

135. Corp. Code § 8321.

136. See proposed Civ. Code § 4820.

137. See proposed Civ. Code § 4810.

138. See Civ. Code §§ 1363.001 (online director training course), 1363.6 (Secretary of State registry of CIDs). Those sections would be continued as proposed Civil Code Sections 4950 and 4960, respectively.

139. See proposed Civ. Code § 4955.

140. Corp. Code § 8216.

1 complaints regarding a violation of the Davis-Stirling Act provisions on member
2 meetings, voting, and record inspection.¹⁴¹ As under existing law, the Attorney
3 General’s authority would be largely discretionary.

4 DISPUTE RESOLUTION

5 Existing law includes a number of provisions that relate to the resolution of a
6 dispute within a CID. For the most part, those provisions would be continued
7 without substantive change. Significant changes are discussed below.

8 **Internal Dispute Resolution and Member Discipline**

9 Existing law requires that an association provide an internal dispute resolution
10 procedure for use by a homeowner who has a dispute with the association.¹⁴² The
11 point of the internal dispute resolution process is to make sure that a homeowner
12 has an opportunity to meet with a representative of the board and explain his or
13 her side of a dispute, in the hopes that the problem can be resolved by mutual
14 agreement.

15 The procedure for imposition of member discipline serves the same purpose, by
16 providing an opportunity to be heard by the board.¹⁴³

17 The proposed law would make clear that a matter resolved through the member
18 discipline procedure could not be reopened under the internal dispute resolution
19 procedure.¹⁴⁴ That would be unnecessarily duplicative.

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

21 There are a number of existing provisions that provide for a civil action to
22 enforce a specific provision of the Davis-Stirling Act.¹⁴⁵

23 Those provisions cover much, but not all of CID statutory law. That incomplete
24 coverage may create an implication that judicial enforcement is unavailable except
25 where it is specifically authorized. For example, the Davis-Stirling Act provides
26 that an association is responsible for maintenance of the common area,¹⁴⁶ but there
27 is no specific provision authorizing a civil action to enforce that obligation. It is
28 therefore not clear whether such an action may be brought.

29 The Commission sees no policy reason to authorize judicial enforcement of the
30 specific provisions listed above, while denying judicial enforcement of other

141. See proposed Civ. Code § 4955.

142. See Civ. Code §§ 1363.810-1363.850.

143. See proposed Civ. Code §§ 5000-5015.

144. See proposed Civ. Code § 5050(c).

145. 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).

146. Civ. Code § 1364(a).

1 important provisions of the Davis-Stirling Act (e.g., an owner’s right of access to a
2 separate interest, rulemaking procedure, architectural review procedure, etc.). The
3 proposed law would authorize a civil action to enforce any provision of the Davis-
4 Stirling Act.¹⁴⁷

5 RESERVE FUNDS

6 **Background**

7 The distinguishing feature of a common interest development is that the owners
8 of separate interests also have an interest in common property (either directly or
9 through an entity created for that purpose). The homeowner association exists, in
10 large part, to maintain that common property.

11 Ideally, an association will set aside funds in reserve, to provide for future
12 maintenance, repair, and replacement costs as they come due. If an association
13 fails to do so, the members may need to pay a special assessment in order to pay
14 for a needed repair or the replacement of a failed component. A large unexpected
15 assessment can pose a serious financial hardship for an owner, especially one who
16 is retired and cannot easily make up the loss.

17 An unfunded reserve can also lead to unexpected liability for a new purchaser. A
18 prospective purchaser who does not realize that the association has insufficient
19 reserves to cover looming repair costs cannot take those costs into account in
20 negotiating a purchase price.

21 Underfunding of reserves appears to be common. One survey of 687
22 associations found an average funding rate of 54%. That is, the surveyed
23 associations only had 54% of the funds in reserve that would be needed for future
24 repair and replacement costs.¹⁴⁸

25 **Reserve Study**

26 Existing law does not require that an association fully fund its reserves. Instead,
27 the law requires study and disclosure. An association must prepare an annual
28 reserve study, which identifies all of its future repair responsibilities and compares
29 the cost of those repairs to the amount set aside in the reserve fund. This serves
30 two important purposes:

- 31 (1) It educates the board and the membership about the adequacy of the
32 association’s reserve fund.
- 33 (2) It provides information that a prospective buyer can use to assess the hidden
34 cost of purchasing a unit in a CID with underfunded reserves.

147. See proposed Civ. Code § 5130.

148. See T. Berding, *The Uncertain Future of Community Associations, Thoughts on Financial Reform* 25 (January 2005).

1 The current rules on reserve funding are spread across multiple provisions.¹⁴⁹ It
2 is difficult to read those sections together and get a clear picture of what is
3 required.

4 The proposed law would restate the substance of the existing requirements in
5 significantly simplified form.¹⁵⁰

6 **Reserve Funding Plan**

7 An association must also adopt a “reserve funding plan.” The plan would
8 “include a schedule of the date and amount of any change in regular or special
9 assessments that would be needed to sufficiently fund the reserve....”¹⁵¹

10 The proposed law would restate the substance of the existing requirements in
11 significantly simplified form.¹⁵²

12 ASSESSMENTS

13 An association is required to impose assessments sufficient to perform its
14 obligations. However, an assessment may not exceed the amount required to
15 accomplish the purpose for which it is assessed.¹⁵³

16 **Assessment Increase**

17 Under existing law, an association may increase its assessments by any amount
18 that is required to meet its obligations, even if the governing documents purport to
19 limit assessment increases.¹⁵⁴ However, an increase above a certain amount must
20 be approved by the members.¹⁵⁵ The provision establishing those rules is poorly
21 phrased, but legislative history makes its meaning clear.¹⁵⁶

22 The proposed law restates those rules to improve their clarity, without changing
23 their substance.¹⁵⁷

149. See Civ. Code §§ 1365(a)(2), 1365.2.5, 1365.5.

150. See proposed Civ. Code § 5555.

151. See Civ. Code §§ 1365(a)(3)-(4), 1365.5(e)(5).

152. See proposed Civ. Code § 5560.

153. See Civ. Code §§ 1366(a), 1366.1; proposed Civ. Code § 5575.

154. Civ. Code § 1366(b).

155. *Id.*

156. See Senate Housing and Urban Affairs Committee Analysis of AB 279 (July 1, 1987) (on file with Commission); Letter from Senate Housing and Urban Affairs Committee to Senator Leroy F. Greene (August 20, 1987) (on file with Commission). See also C. Sproul and K. Rosenberry, *Advising California Common Interest Communities* § 5.4, at 283-84 (Cal. Cont. Ed. Bar 2006).

157. See proposed Civ. Code § 5580.

1 **Assessment Collection**

2 Assessment collection is governed by several complex and partially overlapping
3 sections.¹⁵⁸

4 The proposed law regroups the material by subject matter, and presents it as a
5 series of relatively short sections that roughly track the order of the procedural
6 steps involved in collecting an overdue assessment.¹⁵⁹

7 **Application Dates**

8 The existing assessment collection provisions have differing application dates:

- 9 • Civil Code Section 1367 applies to a lien created on or after January 1,
10 1986, and before January 1, 2003.
- 11 • With one exception, Civil Code Section 1367.1 applies to a lien created on
12 or after January 1, 2003. A requirement that the board make the decision to
13 record a lien applies on or after January 1, 2006.
- 14 • Civil Code Section 1367.4 applies to a lien created on or after January 1,
15 2006. However, Section 1367.1 is expressly “subordinate to” Section
16 1367.4. Arguably, that means that Section 1367.4 also applies to any lien
17 created on or after January 1, 2003.

18 The proposed law restates those rules in simpler terms.¹⁶⁰

19 **GOVERNING DOCUMENTS**

20 **Hierarchy of Document Authority**

21 The proposed law establishes a formal hierarchy of authority between the
22 different types of governing documents.¹⁶¹ The articles would be bound by the
23 declaration. The bylaws would be bound by both the articles and the declaration.
24 An operating rule would be subordinate to all of the other document types. The
25 express statement of those rules should help to avoid any uncertainty about the
26 relationship between different types of documents.

27 **Restrictive Covenants**

28 Existing law requires that illegal discriminatory covenants be deleted from the
29 governing documents, and provides an expedited procedure for doing so.¹⁶² That
30 section would be restated in the proposed law, with a new requirement that an
31 amended declaration be recorded and that amended articles of incorporation be

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

159. See proposed Civ. Code §§ 5600-5675.

160. See proposed Civ. Code §§ 5650(c) (special rule for limitations on foreclosure), 5675 (general rule).

161. See proposed Civ. Code § 6005.

162. Civ. Code § 1352.5.

1 filed with the Secretary of State.¹⁶³ Those new requirements are consistent with the
2 general practice for amending those documents.¹⁶⁴

3 CONSTRUCTION DEFECT LITIGATION

4 Existing law includes fairly lengthy provisions setting out procedural
5 prerequisites to an association filing a construction defect lawsuit against a
6 developer or builder.¹⁶⁵ The proposed law would leave those provisions unchanged
7 to the maximum extent possible. The section numbers would change and cross-
8 references would be updated, but no other changes would be made.¹⁶⁶

9 DEFERRED OPERATION

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

15 REQUEST FOR COMMENT

16 The Commission invites public comment on the changes that are described
17 above. The Commission also invites comment on any other aspect of the proposed
18 reorganization of the Davis-Stirling Act, including in particular the issues raised in
19 notes within the proposed legislation.¹⁶⁷

163. See proposed Civ. Code § 6150.

164. See Civ. Code §§ 1355 (declaration); Corp. Code § 7814, 7817 (articles).

165. Civ. Code §§ 1375-1375.1.

166. See proposed Civ. Code §§ 6200-6215.

167. See notes following proposed Civ. Code §§ 2079.3, 4015, 4040, 4090, 4110, 4125, 4135, 4150, 4420, 4520, 4540, 4555, 4580, 4595, 4600, 4615, 4630, 4635, 4640, 4650, 4670, 4675, 4685, 4700, 4705, 4710, 4735, 4745, 4750, 4780, 4785, 4815, 4855, 4900, 4905, 5000, 5005, 5015, 5130, 5500, 5555, 5580, 5600, 5620, 5635, 5640, 5650, 5675, 5700, 5705, 5725, 5730, 5745, 5760, 5810, 5850, 5900, 5905, 6025, 6040, 6045, 6050, 6150; Code Civ. Proc. § 729.035.

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PROPOSED LEGISLATION

1 **Civ. Code §§ 4000-6215 (added). Common Interest Developments**

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

4 **PART 5. COMMON INTEREST DEVELOPMENTS**

5 **CHAPTER 1. PRELIMINARY PROVISIONS**

6 **Article 1. General Provisions**

7 **§ 4000. Short title**

8 4000. This part shall be known and may be cited as the Davis-Stirling Common
9 Interest Development Act.

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

11 **§ 4005. Effect of headings**

12 4005. Division, part, title, chapter, and article headings do not in any manner
13 affect the scope, meaning, or intent of this part.

14 **Comment.** Section 4005 continues former Section 1350.5 without substantive change. It is a
15 standard provision found in many codes. See, e.g., Evid. Code § 5; Fam. Code § 5; Prob. Code §
16 4.

17 **§ 4010. Continuation of prior law**

18 4010. A provision of this part, insofar as it is substantially the same as a
19 previously existing provision relating to the same subject matter, shall be
20 considered as a restatement and continuation thereof and not as a new enactment,
21 and a reference in a statute to the provision of this part shall be deemed to include
22 a reference to the previously existing provision unless a contrary intent appears.

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

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

34 (1) *Continues without change.* A new provision “continues” a former provision “without
35 change” if the two provisions are identical or nearly so. In some cases, there may be insignificant
36 technical differences, such as where punctuation is changed without a change in meaning. Some

1 Comments may describe the relationship by simply stating that the new provision “continues” or
2 is “the same as” a former provision, or is “the same as” a provision of a uniform act.

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

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

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

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

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

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

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

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

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

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

36 § 4015. Application of part

37 4015. (a) This part applies to a common interest development.

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

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

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

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

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

47 § 4020. Nonresidential development

48 4020. (a) The following provisions do not apply to a common interest
49 development that is limited to industrial or commercial uses by zoning or by a

1 declaration of covenants, conditions, and restrictions that is recorded in the official
2 records of each county in which the common interest development is located:

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

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

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

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

24 § 4025. Application of Corporations Code

25 4025. (a) Except as otherwise provided, an association that is incorporated is
26 governed by this part and by the Corporations Code.

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

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

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

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

37 **Comment.** Section 4025 is new.

38 The provisions referenced in subdivision (a)(1) are superseded by Sections 4505-4515,
39 4520(d)-(e).

40 Subdivision (a)(2) continues former Section 1356.2(m) without substantive change, except that
41 Corporations Code Sections 8332 and 8334-8338 are also superseded.

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

43 Subdivision (b) makes clear that this part may apply specified provisions of the Corporations
44 Code to an association that is unincorporated. See, e.g., Section 4405(a)(2).

1 See also Section 4080 (“association”).

2 **§ 4030. Construction of zoning ordinance**

3 4030. Unless a contrary intent is clearly expressed, a local zoning ordinance is
4 construed to treat like structures, lots, parcels, areas, or spaces in like manner
5 regardless of whether the common interest development is a community apartment
6 project, condominium project, planned development, or stock cooperative.

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

8 See also Sections 4100 (“common interest development”), 4105 (“community apartment
9 project”), 4125 (“condominium project”), 4175 (“planned development”), 4190 (“stock
10 cooperative”).

11 **§ 4035. “Delivered to the board”**

12 4035. If a provision of this part requires that a document be “delivered to the
13 board” the document shall be delivered by first-class mail, postage prepaid, to the
14 person designated in the member handbook (Section 4810) to receive documents
15 on behalf of the association. If no person has been designated to receive
16 documents, the document shall be delivered to the president of the association.

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

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

20 **§ 4040. “Individual notice”**

21 4040. (a) If a provision of this part requires “individual notice,” the notice shall
22 be delivered to the person to be notified by one of the following methods:

23 (1) Personal delivery.

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

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

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

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

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

35 **Comment.** Section 4040 is new.

36 Subdivision (b) generalizes former Sections 1365.1(c) and 1367.1(k) without substantive
37 change.

38 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
39 4165 (“operating rule”), 4170 (“person”).

40 **Note.** Existing Section 1350.7(d) provides that an agreement to a particular method of notice
41 delivery cannot be inferred from an unrecorded provision of the governing documents. That
42 provision has been recast in Section 4040(b) to eliminate the reference to recordation. Instead, the

1 restated provision makes clear that agreement to a particular method of notice shall not be
2 inferred from a provision of the governing documents other than the declaration. This eliminates
3 any implication that a less formal governing document (e.g., an operating rule) could be used to
4 mandate use of a particular method of notice if the document is subsequently recorded. The
5 Commission invites comment on whether this change would create any problems.

6 **§ 4045. “General notice”**

7 4045. If a provision of this part requires “general notice,” the notice shall be
8 provided to all members by one or more of the following methods:

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

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

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

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

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

20 **Comment.** Section 4045 restates part of former Section 1350.7 without substantive change.
21 Subdivision (c) is new.

22 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
23 4810 (“member handbook”).

24 **§ 4050. Time and proof of delivery**

25 4050. (a) This section governs the delivery of a document pursuant to this part.

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

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

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

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

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

37 (d) An affidavit of delivery of a notice, which is executed by the secretary,
38 assistant secretary, or managing agent of the association, is prima facie evidence
39 of delivery.

40 **Comment.** The first clause of subdivision (b) of Section 4050 continues part of former Section
41 1350.7(b)(2) without substantive change.

42 The second clause of subdivision (b) and paragraphs (b)(1)-(3) are drawn from Code Civ. Proc.
43 § 1013(a).

1 Subdivision (c) continues part of former Section 1350.7(b)(3) without substantive change.
2 Subdivision (d) is comparable to part of Corporations Code Section 7511(b).
3 See also Sections 4080 (“association”), 4155 (“managing agent”).

4 **§ 4055. Delivery failure**

5 4055. (a) If a notice to a member is returned by the United States Postal Service
6 marked to indicate that the United States Postal Service is unable to deliver the
7 notice to the member at the given address, the association shall address any future
8 notices to that member to the address of a separate interest owned by the member.

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

13 **Comment.** Section 4055 is new.

14 See also Sections 4160 (“member”), 4185 (“separate interest”).

15 **§ 4060. Approved by board**

16 4060. If a provision of this part requires that an action be approved by the board,
17 the action shall be approved or ratified by the vote of the board or by the vote of a
18 committee authorized to exercise the powers of the board, pursuant to Article 2
19 (commencing with Section 4500) of Chapter 3.

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

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

23 **§ 4065. Approved by majority of all members**

24 4065. If a provision of this part requires that an action be approved by a majority
25 of all members, the action shall be approved or ratified by an affirmative vote of
26 members representing more than 50 percent of the total voting power of the
27 association, or if the governing documents of an association divide the members
28 into two or more classes for the purposes of voting, by an affirmative vote of
29 members representing more than 50 percent of the voting power in each class that
30 is required to approve the action.

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

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

34 **§ 4070. Approved by majority of quorum of members**

35 4070. If a provision of this part requires that an action be approved by a majority
36 of a quorum of the members, the action shall be approved or ratified by an
37 affirmative vote of members representing more than 50 percent of the votes cast in
38 an election at which a quorum is achieved, or if the governing documents of an
39 association divide the members into two or more classes for the purposes of
40 voting, by an affirmative vote of members representing more than 50 percent of

1 the votes cast in an election at which a quorum is achieved, in each class that is
2 required to approve the action.

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

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

6 Article 2. Definitions

7 § 4075. Application of definitions

8 4075. Unless the provision or context otherwise requires, the definitions in this
9 article govern the construction of this part.

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

12 § 4080. “Association”

13 4080. “Association” means a nonprofit corporation or unincorporated
14 association created for the purpose of managing a common interest development.

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

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

17 § 4085. “Board”

18 4085. “Board” means the board of directors of an association.

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

20 See also Sections 4080 (“association”), 4140 (“director”).

21 § 4090. “Board meeting”

22 4090. “Board meeting” means a congregation of a majority of the directors at
23 the same time and place to hear, discuss, or deliberate upon any item that is within
24 the authority of the board.

25 **Comment.** Section 4090 restates former Section 1363.05(f) without substantive change, except
26 for the following changes:

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

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

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

34 See also Section 4085 (“board”).

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

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

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

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

12 **§ 4095. “Common area”**

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

15 (b) The estate in the common area may be a fee, a life estate, an estate for years,
16 or any combination of the foregoing.

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

19 **Comment.** Section 4095 continues former Section 1351(b) without substantive change.

20 See also Sections 4100 (“common interest development”), 4175 (“planned development”),
21 4185 (“separate interest”).

22 **§ 4100. “Common interest development”**

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

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

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

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

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

36 (1) A community apartment project.

37 (2) A condominium project.

38 (3) A planned development.

39 (4) A stock cooperative.

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

42 See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment
43 project”), 4125 (“condominium project”), 4175 (“planned development”), 4185 (“separate
44 interest”), 4190 (“stock cooperative”).

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

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

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

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

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

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

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

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

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

22 **§ 4115. “Condominium”**

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

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

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

30 **§ 4120. “Condominium plan”**

31 4120. “Condominium plan” means a plan of the type described in Section 6075.

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

33 **§ 4125. “Condominium project”**

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

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

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

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

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

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

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

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

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

27 § 4130. “Declarant”

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

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

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

35 § 4135. “Declaration”

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

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

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

1 § 4140. “Director”

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

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

6 See also Sections 4085 (“board”), 4170 (“person”).

7 § 4145. “Exclusive use common area”

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

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

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

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

25 See also Sections 4095 (“common area”), 4135 (“declaration”), 4160 (“member”), 4185
26 (“separate interest”), 5760 (maintenance of communication wiring).

27 § 4150. “Governing documents”

28 4150. “Governing documents” means the declaration, bylaws, articles of
29 incorporation or association, and operating rules.

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

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

36 **Note.** Proposed Section 4150 would replace the existing catch-all provision with a specific
37 reference to the operating rules. This would eliminate any existing uncertainty as to the types of
38 documents affected by provisions that apply to the governing documents. See, e.g., existing
39 Sections 1355 (governing documents may specify procedure for amendment of declaration),
40 1360.5 (amendment of governing documents triggers pet restriction override), 1368 (provision of
41 governing documents to prospective purchaser). The Commission invites comment on whether
42 the proposed change would cause any problems.

1 **§ 4155. “Managing agent”**

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

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

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

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

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

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

12 **§ 4160. “Member”**

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

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

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

17 **§ 4163. “Member election”**

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

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

22 See also Sections 4085 (“board”), 4100 (“common interest development”), 4185 (“separate
23 interest”).

24 **§ 4165. “Operating rule**

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

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

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

31 **§ 4170. “Person”**

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

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

36 See also Section 4080 (“association”).

37 **§ 4175. “Planned development”**

38 4175. “Planned development” means a real property development of any of the
39 following types:

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

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

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

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

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

19 **§ 4180. “Rule change”**

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

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

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

24 **§ 4185. “Separate interest”**

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

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

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

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

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

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

1 **§ 4190. “Stock cooperative”**

2 4190. (a) “Stock cooperative” means a real property development in which a
3 right of exclusive occupancy of a specified part of the development is coupled
4 with an ownership interest in a corporation that is formed or availed of primarily
5 for the purpose of holding title to the development as a whole, either in fee simple
6 or for a term of years.

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

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

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

15 **Comment.** Section 4190 continues former Section 1351(m) without substantive change.

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

17 CHAPTER 2. MEMBER BILL OF RIGHTS [RESERVED]

18 CHAPTER 3. COMMUNITY ASSOCIATION GOVERNANCE

19 Article 1. Association Existence and Powers

20 **§ 4400. Association**

21 4400. A common interest development shall be governed by an association,
22 which may be incorporated or unincorporated.

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

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

25 **§ 4405. Association powers**

26 4405. (a) Whether incorporated or unincorporated, an association may exercise
27 the following powers:

28 (1) The powers granted in this part.

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

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

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

36 See also Sections 4080 (“association”), 4150 (“governing documents”).

1 **§ 4410. Standing**

2 4410. An association has standing to institute, defend, settle, or intervene in
3 litigation, arbitration, mediation, or administrative proceedings in its own name as
4 the real party in interest and without joining with it the individual owners of the
5 common interest development, in matters pertaining to the following:

6 (a) Enforcement of the governing documents.

7 (b) Damage to the common area.

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

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

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

14 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
15 development”), 4150 (“governing documents”), 4185 (“separate interest”).

16 **§ 4415. Comparative fault**

17 4415. (a) In an action maintained by an association pursuant to subdivision (b),
18 (c), or (d) of Section 4410, the amount of damages recovered by the association
19 shall be reduced by the amount of damages allocated to the association or its
20 managing agents in direct proportion to their percentage of fault based upon
21 principles of comparative fault.

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

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

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

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

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

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

42 See also Sections 4080 (“association”), 4155 (“managing agent”), 4160 (“members”), 4170
43 (“person”).

1 **§ 4420. No limitation of rights**

2 4420. Except as expressly provided by statute, the rights of members provided in
3 this chapter may not be limited by contract or by the governing documents.

4 **Comment.** Section 4420 generalizes the substance of Corporations Code Section 8313.
5 See also Sections 4150 (“governing documents”), 4160 (“member”).

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

13 **Article 2. Board Meeting**

14 **§ 4500. Short title**

15 4500. This article shall be known and may be cited as the Common Interest
16 Development Open Meeting Act.

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

18 **§ 4505. Convening or adjourning meeting**

19 4505. (a) A board meeting may be called by the board chair, the president, the
20 vice president, the secretary, or any two directors.

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

23 **Comment.** Subdivision (a) of Section 4505 is comparable to Corporations Code Section
24 7211(a)(1).

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

27 See also Sections 4085 (“board”), 4090 (“board meeting”), 4140 (“director”).

28 **§ 4510. Quorum**

29 4510. Unless the governing documents provide otherwise, a majority of the total
30 number of directors authorized by the governing documents constitutes a quorum.
31 The governing documents may not provide for a quorum that is less than one-fifth
32 of the number of directors authorized, or less than two, whichever is larger.

33 **Comment.** Section 4510 is comparable to Corporations Code Section 7211(a)(7). See Section
34 4025. Note that in an association with only one director, one director is a majority of the total
35 number of directors and would therefore constitute a quorum.

36 See also Sections 4140 (“director”), 4150 (“governing documents”).

37 **§ 4515. Board action**

38 4515. (a) Except as otherwise provided by law, an action approved by a majority
39 of directors present at a meeting at which a quorum is present is the action of the

1 board. The governing documents may not provide a lower threshold for approval
2 of a board action.

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

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

8 See also Sections 4085 (“board”), 4140 (“director”), 4150 (“governing documents”).

9 **§ 4520. Notice of board meeting**

10 4520 (a) Unless the time and place of a meeting is fixed by the governing
11 documents, the association shall provide general notice (Section 4045) of a board
12 meeting, and shall provide individual notice (Section 4040) of the board meeting
13 to directors and to any association member who has requested notice of meetings.
14 The notice shall state the time and place of the board meeting and shall include an
15 agenda for the board meeting.

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

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

24 (d) If a meeting is adjourned to another time and place for more than 24 hours,
25 the association shall provide notice of the time and place at which the meeting will
26 reconvene, by general notice (Section 4045), and by individual notice (Section
27 4040) to a director who was not present at the meeting and to any member who
28 has requested notice of board meetings. The notice shall be delivered before the
29 meeting reconvenes.

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

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

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

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

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

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

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

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

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

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

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

8 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4140
9 (“director”), 4150 (“governing documents”), 4160 (“member”).

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

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

20 **§ 4525. Board meeting open**

21 4525. (a) Any member may attend a board meeting, except for any part of the
22 meeting held in executive session.

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

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

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

31 See also Sections 4085 (“board”), 4090 (“board meeting”), 4160 (“member”).

32 **§ 4530. Board meeting location**

33 4530. A board meeting shall be held within the common interest development
34 unless the board determines that a larger meeting room is required than is
35 available within the common interest development. A board meeting held outside
36 of the common interest development shall be held as close as is practicable to the
37 common interest development.

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

40 See also Sections 4085 (“board”), 4090 (“board meeting”), 4100 (“common interest
41 development”).

42 **§ 4535. Teleconference**

43 4535. (a) If all of the following conditions are satisfied, a director who is not
44 physically present at the noticed location of a board meeting may participate in the
45 meeting by teleconference:

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

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

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

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

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

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

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

17 **Comment.** Section 4535 is comparable to Corporations Code Section 7211(a)(6) and
18 Government Code Sections 11123(b) & 54953(b).

19 See also Sections 4085 (“board”), 4090 (“board meeting”), 4140 (“director”), 4160
20 (“member”).

21 **§ 4540. Executive session**

22 4540. (a) The board may adjourn to executive session to consider litigation,
23 matters relating to the formation of contracts with third parties, member discipline,
24 an assessment dispute, or personnel matters.

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

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

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

35 **Comment.** Subdivisions (a)-(b) of Section 4540 continue part of former Section 1363.05(b)
36 without substantive change, except that a member may require that discussion of an assessment
37 dispute involving that member be conducted in executive session. The remainder of former
38 Section 1363.05(b) is continued in Section 4525(a).

39 Subdivision (c) continues former Sections 1367.1(c)(3) and 1367.4(c)(2).

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

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

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

9 **§ 4545. Action without meeting**

10 4545. (a) An action required or permitted to be taken by the board may be taken
11 without a meeting, if all directors individually or collectively consent in writing to
12 that action. The written consent shall be filed with the minutes of the proceedings
13 of the board.

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

18 **Comment.** Section 4545 generalizes Corporations Code Section 7211(b).
19 See also Sections 4085 (“board”), 4140 (“director”).

20 **§ 4550. Minutes**

21 4550. (a) Within 30 days after a board meeting, including a meeting held in
22 executive session, the board shall prepare minutes of the board meeting.

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

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

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

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

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

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

40 Subdivision (d) restates former Section 1363.05(e) without substantive change.
41 See also Sections 4085 (“board”), 4090 (“board meeting”), 4160 (“member”).

42 **§ 4555. Civil action to enforce article**

43 4555. (a) A member may bring a civil action for declaratory or equitable relief
44 for a violation of this article by the member’s association, including injunctive

1 relief, restitution, or a combination thereof, within one year of the date the cause
2 of action accrues.

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

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

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

12 See also Sections 4080 ("association"), 4160 ("member").

13 **Note.** Section 1363.09 provides for an award of costs and expenses to the association if the
14 court finds that the requesting member's action is "frivolous, unreasonable, or without
15 foundation." That seems to be aimed at limiting an award of association fees to a case involving a
16 frivolous claim. However, the language may be too broad for that purpose. It allows for an award
17 of fees where the action was "without foundation." The meaning of that phrase is unclear, but it
18 could be read to encompass any case in which the court finds against the plaintiff. The
19 Commission requests comment on whether it might be better to use language drawn from Code of
20 Civil Procedure Section 1038, which governs an award of fees in a frivolous case brought under
21 the Tort Claims Act. For example: "The court may award reasonable costs and expenses,
22 including reasonable attorney's fees, to the association if it finds that the action was not brought
23 in good faith and with reasonable cause." The same issue arises under proposed Sections 4685(e)
24 and 4735(g).

25 § 4560. Application of article

26 4560. (a) This article applies to a board meeting or a meeting of a committee
27 that exercises a power of the board.

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

31 **Comment.** Subdivision (a) of Section 4560 is drawn from Corporations Code Section 7211(c).

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

33 See also Sections 4080 ("association"), 4085 ("board"), 4090 ("board meeting").

34 Article 3. Member Meeting

35 § 4575. General rules for conduct of meeting

36 4575. (a) An association shall hold a regular member meeting to transact
37 business that requires action by the members, with the frequency stated in the
38 governing documents. Notwithstanding the governing documents, an association
39 shall hold a regular member meeting in any year in which a director is to be
40 elected, in order to conduct the election and to transact any other business that
41 requires action by the members.

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

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

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

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

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

14 Subdivision (c) is new.

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

16 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest
17 development”), 4140 (“director”), 4150 (“governing documents”), 4160 (“member”).

18 **§ 4580. Quorum**

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

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

25 **Comment.** Section 4580 is comparable to the first two sentences of Corporations Code Section
26 7512(a).

27 See also Sections 4080 (“association”), 4160 (“member”), 4170 (“person”).

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

31 **§ 4585. Member action**

32 4585. (a) Unless this part or the governing documents require a greater number
33 of votes, an action approved by a majority of a quorum of the members (Section
34 4070) is the action of the members.

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

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

1 **Comment.** Section 4585 is comparable to the third sentence of Corporations Code Section
2 7512(a) and subdivisions (c)-(d) of that section.

3 See also Sections 4150 (“governing documents”), 4160 (“member”).

4 **§ 4590. Teleconference**

5 4590. (a) If all of the following conditions are satisfied, a member who is not
6 physically present at the noticed location of a member meeting may participate in
7 the meeting by teleconference:

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

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

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

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

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

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

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

25 See also Section 4160 (“member”).

26 **§ 4595. Notice of regular meeting**

27 4595. (a) The board shall deliver individual notice (Section 4040) of a regular
28 meeting to each member who, on the date of the notice, is entitled to vote at the
29 meeting. The notice shall be delivered at least 10 days, but not more than 90 days,
30 before the date of the meeting.

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

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

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

1 (2) The members shall not act on any matter that is not described in the notice
2 and that requires the approval of the members under Section 7222, 7224, 7233,
3 7812, 8610, or 8719 of the Corporations Code, unless the matter is required to be
4 approved by the unanimous vote of those entitled to vote on the matter, or the
5 general nature of the matter is described in each of the documents waiving notice
6 under Section 4610.

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

9 **Comment.** Section 4595 is comparable to Corporations Code Sections 7511(a) & (f), 7512(b),
10 and 7611(a). The introductory clause of subdivision (c) of Section 4595 continues former Section
11 1363(e) without substantive change.

12 See also Sections 4080 (“association”), 4085 (“board”), 4140 (“director”), 4160 (“member”).

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

16 § 4600. Special meeting of members

17 4600. (a) The following persons may call a special meeting of the members at
18 any time, for any lawful purpose, by adoption of a board resolution or by delivery
19 of a written request to the board (Section 4035) that states the business to be
20 transacted at the special meeting:

21 (1) The board.

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

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

24 (4) Members representing five percent or more of the voting power of the
25 association.

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

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

32 (2) The location of the special meeting.

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

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

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

41 **Comment.** Section 4600 is comparable to Corporations Code Sections 7510(e) and 7511(a) &
42 (c).

1 See also Sections 4080 (“association”), 4085 (“board”), 4150 (“governing documents”), 4160
2 (“member”), 4170 (“person”).

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

7 **§ 4605. Meeting adjournment**

8 4605. (a) Unless the governing documents provide otherwise, a member meeting
9 may be adjourned to another time or place without giving written notice of the
10 reconvened meeting, if both of the following conditions are satisfied:

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

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

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

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

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

20 See also Sections 4150 (“governing documents”), 4160 (“member”).

21 **§ 4610. Waiver of requirements**

22 4610. (a) Notwithstanding the requirements of this article, a court may find that
23 a notice is valid if it was given in a fair and reasonable manner.

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

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

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

33 (3) The member provides a waiver of notice, consent to hold the meeting, or
34 approval of the minutes of the meeting. The waiver, consent, or approval shall be
35 written and shall be filed with the association’s records and made part of the
36 minutes of the meeting. Unless expressly required by law or the governing
37 documents, the waiver, consent, or approval need not include a description of the
38 business to be transacted at the meeting.

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

1 **Comment.** Subdivision (a) of Section 4610 is comparable to Corporations Code Section
2 7511(g).

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

4 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
5 4170 (“person”).

6 **§ 4615. Court-ordered meeting**

7 4615. (a) If an association is required to hold a member meeting or conduct a
8 written ballot and does not do so, a member or the Attorney General may apply to
9 the superior court for a summary order compelling the association to hold the
10 member meeting or conduct the written ballot.

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

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

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

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

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

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

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

30 **Comment.** Section 4615 is comparable to Corporations Code Sections 7510(c)-(d) and
31 7511(c).

32 See also Sections 4080 (“association”), 4085 (“board”), 4150 (“governing documents”), 4160
33 (“member”).

34 **Notes. (1)** Proposed Section 4615(e) restates the first sentence of Corporations Code Section
35 7510(d). The Commission would like to receive comment on whether the restated provision
36 would cause any substantive change in the law.

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

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

3 See also Sections 4140 (“director”), 4163 (“member election”).

4 **§ 4630. Election provisions in governing documents**

5 4630. The governing documents shall address all of the following matters:

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

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

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

9 (d) The calculation of voting power.

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

12 (f) The selection of an election inspector.

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

17 See also Sections 4150 (“governing documents”), 4160 (“member”).

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

21 **§ 4635. Selection of election inspector**

22 4635. (a) An election shall be overseen by one or three election inspectors,
23 selected by the association for that purpose.

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

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

31 (1) A director.

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

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

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

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

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

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

40 (3) Receive ballots.

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

- 1 (5) Count and tabulate all votes.
- 2 (6) Determine when the polls open and close.
- 3 (7) Determine the results of the election.
- 4 (8) Perform any other task that may be required to conduct the election with
- 5 fairness to all members.

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

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

14 **Comment.** Subdivision (a) of Section 4635 restates former Section 1363.03(c)(1).
15 Subdivisions (b)-(c) restate former Section 1363.03(c)(2). The limitation on the selection of an
16 employee or contractor to serve as an election inspector has no effect on the ability of an
17 association to contract with and compensate a person who serves as election inspector.

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

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

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

21 See also Sections 4080 ("association"), 4140 ("director"), 4150 ("governing documents"),
22 4160 ("member"), 4170 ("person").

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

30 § 4640. Secret ballots

31 4640. (a) This section governs a member election on any of the following
32 matters:

- 33 (1) Assessment approval.
- 34 (2) Director election or removal.
- 35 (3) Amendment of the governing documents.
- 36 (4) The grant of exclusive use of common area.

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

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

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

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

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

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

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

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

10 (3) Seal and sign the outside envelope.

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

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

15 (e) Unless the governing documents provide otherwise, a member election
16 conducted pursuant to this section can be conducted entirely by mail, with the
17 exception of the meeting required by Section 4650. For the purposes of
18 determining the existence of a quorum, a ballot received by the election inspector
19 by mail shall be treated in the same way as a vote cast by a member present at a
20 meeting.

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

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

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

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

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

32 The first sentence of subdivision (e) restates former Section 1363.03(k). The second sentence
33 restates part of former Section 1363.03(b) without substantive change. See also Corp. Code §
34 7513(b).

35 See also Sections 4080 ("association"), 4095 ("common area"), 4140 ("director"), 4150
36 ("governing documents"), 4160 ("member"), 4163 ("member election"), 4185 ("separate
37 interest").

38 **Note.** Proposed Section 4640(a) would broaden the application of the secret ballot procedure
39 provided in Civil Code Section 1363.03. It would apply to all matters in which a member election
40 is required by law. This would include a handful of elections required under the Corporations
41 Code that do not currently fall within the scope of Section 1363.03. See Corp. Code §§ 7233
42 (approval of contract between association and director), 7235 (approval of loan to director), 7237
43 (indemnification of corporate agent), 7911 (sale of assets), 8012 (merger), 8610 (dissolution),
44 8719 (distribution of assets on dissolution). Those types of member elections, though relatively
45 uncommon, are deserving of secrecy protections. The Commission invites comment on this
46 proposed change.

1 **§ 4645. Alternative in-person voting procedure**

2 4645. (a) Notwithstanding Section 4640, an association may opt to use the
3 procedure provided in this section for a ballot that is cast in person. This section
4 does not apply to a mailed ballot.

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

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

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

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

19 (f) The ballot shall be counted pursuant to subdivisions (c) and (d) of Section
20 4645 and is governed by Section 4650.

21 **Comment.** Section 4645 is new.

22 See also Sections 4080 (“association”), 4160 (“member”).

23 **§ 4650. Counting ballots**

24 4650. (a) A ballot cast pursuant to this article shall be counted pursuant to this
25 section.

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

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

34 (d) The election inspector shall certify the results of the election to the board, in
35 writing. The results shall be noted in the minutes of the meeting at which the
36 ballots were counted and delivered to all members by general notice (Section
37 4045) within 15 days after the votes are counted.

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

40 See also Sections 4085 (“board”), 4090 (“board meeting”), 4160 (“member”).

41 **Note.** Existing Section 1363.03(f) provides that votes will be opened and counted “in public”
42 at a meeting of the board or a member meeting. In general, an association meeting need not be

1 open to the general public. Proposed Section 4650(c) continues the existing provision, but the
2 Commission invites comment on whether the meeting should be open to the general public.

3 **§ 4655. Ballot custody and inspection**

4 4655. (a) A ballot cast pursuant to this article shall remain in the custody of the
5 election inspector until it is opened and counted.

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

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

11 (d) On the written request of a member, the election inspector shall make the
12 ballots available for inspection by the member or the member's agent. Any
13 inspection of ballots shall be conducted in a manner that preserves the
14 confidentiality of the vote.

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

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

19 See also Sections 4080 ("association"), 4160 ("member").

20 **§ 4660. Proxies**

21 4660. (a) For the purposes of this article, "proxy" means a written authorization
22 signed by a member or the member's agent that gives another member the power
23 to vote on behalf of the member who gave the proxy. For the purposes of this
24 section, "signed" means the placing of the member's name on the proxy (whether
25 by manual signature, typewriting, telegraphic transmission, or otherwise) by the
26 member or authorized representative of the member.

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

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

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

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

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

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

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

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

1 **Comment.** Subdivisions (a)-(h) of Section 4660 restate former Section 1363.03(d).
2 Subdivision (i) is drawn from Corporations Code section 7613(g).
3 See also Sections 4080 (“association”), 4140 (“director”), 4150 (“governing documents”),
4 4160 (“member”).

5 **§ 4665. Nomination of candidate for board**

6 4665. (a) The governing documents of an association shall include a reasonable
7 procedure for the nomination of candidates in the election of a director.

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

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

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

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

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

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

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

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

23 See also Sections 4080 (“association”), 4085 (“board”), 4140 (“director”), 4150 (“governing
24 documents”), 4160 (“member”).

25 **§ 4670. Campaign related information**

26 4670. (a) An association may not use its funds to provide campaign related
27 information, except as otherwise provided in this section.

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

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

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

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

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

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

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

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

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

13 See also Sections 4080 ("association"), 4095 ("common area"), 4163 ("member election").

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

19 § 4675. Voting rights

20 4675. (a) Unless the governing documents provide otherwise, a member who is
21 entitled to vote may cast one vote for each separate interest that the member owns.

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

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

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

32 **Comment.** Subdivision (a) of Section 4675 is drawn from 10 Cal. Code Regs. § 2792.18(a). It
33 states a default rule that can be overridden by the governing documents. See also Corp. Code §
34 7312(d).

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

40 Subdivision (c) is drawn from Corporations Code Section 7611(b)-(d). See also Section 4595
41 (notice of regular meeting), which is drawn from Corporations Code Section 7611(a).

42 Subdivision (d) is new. It supersedes Corporations Code Section 7615(b), which authorizes the
43 use of cumulative voting if any member requests cumulative voting at the meeting preceding the
44 election.

45 See also Sections 4080 ("association"), 4085("board"), 4150 ("governing documents"), 4160
46 ("member"), 4163 ("member election"), 4170 ("person"), 4185 ("separate interest").

1 **Note.** The Commission invites comment on proposed Section 4675(d), which would require
2 cumulative voting in an association if the association’s governing documents permit cumulative
3 voting. This would eliminate any discretion to use cumulative voting in some elections but not in
4 others. The purpose of the provision is to avoid complications that might result under
5 Corporations Code Section 7615(b), which requires a member request at “the meeting prior” to
6 the election in order for cumulative voting to be used. That requirement may be impractical.

7 **§ 4680. Action by unanimous written consent**

8 4680. Any action required or permitted to be taken by the members may be
9 taken without a meeting, if all members individually or collectively consent in
10 writing to the action. The written consent shall be filed with the minutes of the
11 proceedings of the members. The action by written consent shall have the same
12 force and effect as the unanimous vote of the members. Action under this section
13 is not governed by Sections 4625 through 4675, inclusive.

14 **Comment.** Section 4680 is drawn from Corporations Code Section 7516.
15 See also Section 4160 (“members”).

16 **§ 4685. Judicial enforcement**

17 4685. (a) A member of an association may bring a civil action for a violation of
18 this part or the governing documents in conducting a member election.

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

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

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

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

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

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

38 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
39 4163 (“member election”).

40 **Notes. (1)** The remedy provided in existing Civil Code Section 1363.09 is largely
41 inconsistent with the judicial remedy provided in Corporations Code Section 7616. Section
42 1363.09 was probably intended to control, even though there is no express provision stating the
43 supremacy of Section 1363.09 over the Corporations Code (as there is for Section 1363.03).
44 Proposed Section 4025 eliminates any ambiguity on the point, providing that Corporations Code

1 Section 7616 does not apply to a CID. The Commission invites comment on whether any part of
2 Section 7616 should be imported into proposed Section 4685.

3 (2) Section 1363.09 provides for an award of costs and expenses to the association if the court
4 finds that an action brought under that section is “frivolous, unreasonable, or without foundation.”
5 That seems to be aimed at limiting an award of association fees to a case involving a frivolous
6 claim. However, the language may be too broad for that purpose. It allows for an award of fees
7 where the action was “without foundation.” The meaning of that phrase is unclear, but it could be
8 read to encompass any case in which the court finds against the plaintiff. The Commission
9 requests comment on whether it might be better to use language drawn from Code of Civil
10 Procedure Section 1038, which governs an award of fees in a frivolous case brought under the
11 Tort Claims Act. For example: “The court may award reasonable costs and expenses, including
12 reasonable attorney’s fees, to the association if it finds that the action was not brought in good
13 faith and with reasonable cause.” The same issue arises under proposed Sections 4555(c) and
14 4735(g).

15 Article 5. Inspection of Records

16 § 4700. Scope of inspection right

17 4700. (a) Except as otherwise provided in this article, a member may inspect the
18 following association records:

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

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

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

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

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

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

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

38 (8) An executed contract.

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

40 (10) A state or federal tax return.

41 (11) A record of the compensation provided to an employee or contractor. The
42 compensation information shall be indicated by job classification or title and may
43 not refer to an individual employee or contractor by name or by other identifying

1 information. Except as provided in this subdivision, personnel records are not
2 subject to inspection.

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

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

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

9 (1) A record that was prepared three or more fiscal years before the fiscal year in
10 which the inspection request is delivered. This paragraph does not apply to the
11 governing documents or the minutes of a member meeting, a board meeting, or a
12 meeting of a committee that exercises a power of the board. The governing
13 documents and meeting minutes must be made available for inspection
14 permanently.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100
15 (“common interest development”), 4150 (“governing documents”), 4160 (“member”), 4170
16 (“person”), 4185 (“separate interest”).

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

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

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

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

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

39 **§ 4705. Inspection procedure**

40 4705. (a) A member may deliver to the board (Section 4035) a written request to
41 inspect an association record. The request shall identify the record to be inspected
42 and shall state a purpose for the inspection that is reasonably related to the
43 member’s interest as a member. The request may designate an agent to inspect the
44 record on the member’s behalf.

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

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

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

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

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

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

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

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

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

21 Subdivisions (c) and (d) continue former Section 1365.2(c) & (h) without substantive change.

22 See also Section 4080 ("association"), 4085("board"), 4100 ("common interest development"),
23 4160 ("member").

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

30 (2) Section 1365.2(h) seems to limit electronic delivery of an association record to a "format
31 that prevents the records from being altered." The purpose of that limitation is unclear and it
32 could significantly interfere with beneficial use of the electronic transmission. Proposed Section
33 4705 does not continue the limitation. The Commission invites comment on whether that would
34 cause any problems.

35 § 4710. Redaction

36 4710. (a) Before making a record available for inspection, the association shall
37 redact all of the following information from the record:

38 (1) Any financial account number.

39 (2) Any password or personal identification number.

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

41 (4) Any driver's license number.

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

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

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

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

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

9 See also Sections 4080 (“association”), 4160 (“member”), 4170 (“person”).

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

13 § 4715. Optional redaction from membership list

14 4715. (a) A member may elect, in writing, to have the member’s name and
15 address redacted from the membership list.

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

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

22 See also Sections 4080 (“association”), 4160 (“member”).

23 § 4720. Fees

24 4720. (a) The association may charge a fee to recover the direct and actual cost
25 to copy or deliver a record. The association shall inform the member of the fee
26 amount, and the member shall agree to pay the fee, before a copy is made or a
27 record delivered.

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

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

35 See also Section 4080 (“association”), 4160 (“member”).

36 § 4725. Permissible purpose

37 4725. (a) A member may only inspect and use an association record for a
38 purpose that is reasonably related to the requesting member’s interest as a
39 member. A member may not inspect or use an association record for a commercial
40 purpose.

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

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

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

9 See also Section 4080 ("association"), 4160 ("member").

10 **§ 4730. Denial of request**

11 4730. (a) An association that denies a request for records under this article shall
12 provide the requesting member a notice of denial, by individual delivery (Section
13 4040), within 10 business days after delivery of the inspection request.

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

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

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

20 **Comment.** Section 4730 is new.

21 See also Section 4080 ("association"), 4160 ("member").

22 **§ 4735. Action to enforce**

23 4735. (a) If an association has not complied with a document inspection request
24 within the time provided, the requesting member may bring an action in the
25 superior court to enforce the record inspection request. The action may be filed in
26 the small claims division of the superior court if the amount of the demand does
27 not exceed the jurisdiction of that division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 See also Sections 4080 ("association"), 4090 ("board meeting"), 4160 ("member").

39 **Notes. (1)** Section 1365.2(f) provides for an award of costs and expenses to the requesting
40 member if the association acted "unreasonably" in withholding access to records. That is different
41 standard from the standard provided in Corporations Code Section 8337, which provides for an
42 award of costs to the member if the association acted "without justification." Proposed Section
43 4735(f) continues the standard provided in the Davis-Stirling Act on the grounds that, in general,
44 a specific standard is intended to control over a general one.

45 **(2)** Section 1365.2(f) provides for an award of costs and expenses to the association if the court
46 finds that the requesting member's action is "frivolous, unreasonable, or without foundation."
47 That seems to be aimed at limiting an award of association fees to a case involving a frivolous
48 claim. However, the language may be too broad for that purpose. It allows for an award of fees
49 where the action was "without foundation." The meaning of that phrase is unclear, but it could be

1 read to encompass any case in which the court finds against the plaintiff. The Commission
2 requests comment on whether it might be better to use language drawn from Code of Civil
3 Procedure Section 1038, which governs an award of fees in a frivolous case brought under the
4 Tort Claims Act. For example: “The court may award reasonable costs and expenses, including
5 reasonable attorney’s fees, to the association if it finds that the action was not brought in good
6 faith and with reasonable cause.” The same issue arises under proposed Sections 4555(c) and
7 4685(e).

8 **§ 4740. Action to enjoin improper use of records**

9 4740. An association may bring an action for injunctive relief and actual
10 damages against any person who misuses association records. In addition, a court
11 in its discretion may award exemplary damages for a fraudulent or malicious
12 misuse of association records. If the association prevails in an action brought
13 under this section, the court shall award the association reasonable costs and
14 expenses, including reasonable attorney’s fees.

15 **Comment.** Section 4740 is comparable to Corporations Code Section 8338(b)-(d).
16 See also Section 4080 (“association”), 4170 (“person”).

17 **§ 4745. Limited liability**

18 4745. An association, or an officer, director, employee, agent, or volunteer of an
19 association, is not liable for damages that result from a failure to withhold or
20 redact information pursuant to this article, unless the failure to withhold or redact
21 the information was intentional, willful, or negligent.

22 **Comment.** Section 4745 restates former Section 1365.2(d)(3) without substantive change.
23 See also Section 4080 (“association”), 4140 (“director”).

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

31 **§ 4750. Application of article**

32 4750. (a) For the purposes of this article, a community service organization is
33 deemed to be an association, and a member of the community service organization
34 or similar entity is deemed to be a member of an association.

35 (b) This article does not apply to a common interest development in which
36 separate interests are being offered for sale by a subdivider under the authority of a
37 public report issued by the Department of Real Estate, so long as the subdivider or
38 all subdividers offering those separate interests for sale, or any employees of those
39 subdividers or any other person who receives direct or indirect compensation from
40 any of those subdividers, comprise a majority of the members of the board of
41 directors of the association. Notwithstanding the foregoing, this article applies to a
42 common interest development no later than 10 years after the close of escrow for

1 the first sale of a separate interest to a member of the general public pursuant to
2 the public report issued for the first phase of the development.

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

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

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

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

11 See also Sections 4080 (“association”), 4100 (“common interest development”), 4110
12 (“community service organization”), 4140 (“director”), 4160 (“member”), 4170 (“person”), 4185
13 (“separate interest”).

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

20 Article 6. Record Keeping

21 § 4775. Duty to maintain records

22 4775. (a) An association shall maintain at least one copy of the following
23 association records, for the periods specified in Section 4780:

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

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

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

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

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

32 (6) Books and records of account.

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

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

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

38 (10) A record that relates to a proposed modification of a member’s separate
39 interest.

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

42 (12) An employment or payroll record.

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

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

2 (15) A loan document.

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

4 (17) A reserve funding study.

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

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

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

13 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100
14 (“common interest development”), 4150 (“governing documents”), 4160 (“member”), 4185
15 (“separate interest”).

16 **§ 4780. Record retention periods**

17 4780. (a) Unless a longer period is required by law or by the governing
18 documents, an association shall retain a record listed in Section 4775 for at least
19 four years after its date of execution or, in the case of a document that expires or
20 becomes superseded, four years after the document has expired or been
21 superseded.

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

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

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

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

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

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

32 (c) This section does not apply to a record that is discarded or destroyed before
33 January 1, 2010.

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

37 Subdivision (c) provides that the requirements of this section only apply to a record held by an
38 association at the time that the section became operative. Note that other record retention
39 requirements may govern documents that were held by the association before that date. See, e.g.,
40 Section 4770(b) (period during which records must be made available for member inspection); 22
41 Cal. Code Regs. § 1085-2 (four-year period for retention of employment records); 26 C.F.R. §
42 1.6001-1 (retention of federal tax records while material to assessment or collection of tax); 29
43 C.F.R. § 516.5 (three-year period for retention of payroll records).

44 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100
45 (“common interest development”), 4150 (“governing documents”), 4160 (“member”).

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

4 **§ 4785. Director inspection**

5 4785. A director shall have the absolute right at any reasonable time to inspect
6 all association books, records, and documents of every kind and to inspect the
7 common area.

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

9 See also Section 4080 (“association”), 4095 (“common area”), 4140 (“director”).

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

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

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

24 **Article 7. Annual Reports**

25 **§ 4800. Annual budget report**

26 4800. (a) From 30 to 90 days before the end of the fiscal year, the board shall
27 prepare an annual budget report.

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

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

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

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

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

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

42 **Comment.** Section 4800 continues part of former Sections 1365(a) & (e) and 1365.2 without
43 substantive change.

1 See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4160
2 (“member”).

3 **§ 4805. Annual financial statement**

4 4805. (a) Within 120 days after the end of the fiscal year, the board of an
5 association that receives ten thousand dollars (\$10,000) or more in gross revenues
6 or receipts during the fiscal year shall prepare an annual financial statement.

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

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

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

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

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

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

21 (d) The board shall promptly deliver a copy of the current annual financial
22 statement to any member who requests a copy, at no cost to the member.

23 (e) The type used in the annual financial statement shall be at least 12 points in
24 size.

25 **Comment.** Section 4805 is comparable to Corporations Code Section 8321, except that
26 subdivision (b) continues former Section 1365(c) without substantive change.

27 See also Sections 4080 (“association”), 4085 (“board”), 4160 (“member”).

28 **§ 4810. Member handbook**

29 4810. (a) Within 120 days after the end of the fiscal year, the board shall prepare
30 a member handbook that contains all of the following information:

31 (1) A statement explaining that a member may submit a request to have notices
32 sent to up to two different specified addresses.

33 (2) The name and address of the person designated to receive official
34 communications to the board, pursuant to Section 4035.

35 (3) Notice of a member’s right to receive copies of meeting minutes, pursuant to
36 subdivision (d) of Section 4550.

37 (4) The statement required by Section 5670.

38 (5) A statement describing the association’s policies and practices in enforcing
39 lien rights or other legal remedies for default in the payment of assessments.

40 (6) A summary of alternative dispute resolution procedures, pursuant to Sections
41 5070 and 5115.

1 (7) A summary of any requirements for association approval of a physical
2 change to property, pursuant to subdivision (c) of Section 5775.

3 (8) The location, if any, designated for posting of a general notice (Section
4 4045).

5 (9) Any other information that is required by law or the governing documents or
6 that the board determines to be appropriate for inclusion.

7 (b) The board shall promptly deliver a copy of the current member handbook to
8 any new member and to any member who requests a copy, at no cost to the
9 member.

10 (c) The type used in the annual financial statement shall be at least 12 points in
11 size.

12 **Comment.** Section 4810 is new.

13 Subdivision (a)(5) continues former Section 1365(e) without substantive change.

14 See also Sections 4080 (“association”), 4085 (“board”), 4150 (“governing documents”), 4160
15 (“member”), 4170 (“person”).

16 **§ 4815. Community service organization report**

17 4815. (a) Unless the governing documents impose more stringent standards, a
18 community service organization that receives 10 percent or more of its funding
19 from an association or its members shall prepare and distribute to the association
20 an annual report that includes all of the following information:

21 (1) A financial statement.

22 (2) A detailed statement of administrative costs that identifies the person paid
23 for each cost.

24 (3) If the report is not consistent with the requirements of Article 5
25 (commencing with Section 4700), a statement describing the noncompliance in
26 detail.

27 (4) If a community service organization is responsible for the maintenance of
28 major components for which an association would otherwise be responsible,
29 information regarding those components that the association requires to complete
30 the disclosures and reserve reports required under Article 3 (commencing with
31 Section 5550) of Chapter 5.

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

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

36 See also Sections 4080 (“association”), 4110 (“community service organization”), 4150
37 (“governing documents”), 4160 (“member”), 4170 (“person”).

38 **Note.** Existing Section 1365.3 requires that a report prepared by a community service
39 organization be consistent with the provisions of Section 1365.2 and “comply with the
40 standards.” The Commission is unsure of the meaning of that requirement and invites comment
41 on the issue. Is the requirement intended to incorporate the redaction provisions of Section
42 1365.2(d)?

1 **§ 4820. Notice of availability**

2 4820. (a) When a report is prepared pursuant to Section 4800, 4805, 4810, or
3 4815, the board shall deliver individual notice (Section 4040) to all members of
4 the availability of the report.

5 (b) Commencing January 1, 2009, the notice required by this section shall be
6 given when the association adopts a reserve funding plan pursuant to Section
7 5560.

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

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

13 **Comment.** Section 4820 is new. It is consistent with former Section 1365(b) & (d).
14 See also Sections 4080 (“association”), 4085 (“board”), 4160 (“member”).

15 **§ 4825. Financial statement**

16 4825. A financial statement required by this article shall be prepared in
17 conformity with generally accepted accounting principles or some other basis of
18 accounting that reasonably sets forth the assets and liabilities and the income and
19 expenses of the association or community service organization and discloses the
20 accounting basis used in its preparation.

21 **Comment.** Section 4825 is similar to Corporations Code Section 5012.
22 See also Sections 4080 (“association”), 4110 (“community service organization”).

23 **§ 4830. Judicial enforcement**

24 4830. (a) Any member may bring an action in superior court to enforce the
25 requirements of this article. The court may, for good cause shown, extend the time
26 for compliance with the requirements of this article.

27 (b) In any action or proceeding under this section, if the court finds the failure of
28 the association to comply with the requirements of this article to be without
29 justification, the court may award the member reasonable expenses, including
30 attorney’s fees, in connection with the action or proceeding.

31 **Comment.** Section 4830 generalizes the substance of Corporations Code Section 8323.
32 See also Section 4080 (“association”), 4160 (“member”).

33 **Article 8. Director Standard of Conduct**

34 **§ 4855. Transaction involving incorporated association and director or officer**

35 4855. Notwithstanding any other law, and regardless of whether an association
36 is incorporated or unincorporated, the provisions of Section 310 of the
37 Corporations Code shall apply to any contract or other transaction authorized,
38 approved, or ratified by the board or a committee of the board.

39 **Comment.** Section 4855 continues former Section 1365.6 without substantive change.

1 See also Sections 4080 (“association”), 4085 (“board”).

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

6 **Article 9. Managing Agent**

7 **§ 4900. Prospective managing agent disclosure**

8 4900. (a) A prospective managing agent of a common interest development shall
9 provide a written disclosure to the board before entering into a management
10 agreement. The disclosure shall be provided as soon as is practicable after entering
11 into negotiations, but in no event more than 90 days before entering into an
12 agreement.

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

15 (1) The name and business address of each owner or general partner of the
16 managing agent. If the managing agent is a corporation, the disclosure shall
17 include the name and business address of each shareholder owning more than 10
18 percent of the shares of the corporation and each director or officer of the
19 corporation.

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

27 **Comment.** Section 4900 restates former Section 1363.1 without substantive change.

28 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest development”),
29 4140 (“director”), 4155 (“managing agent”), 4170 (“person”).

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

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

37 **§ 4905. Trust fund account**

38 4905. (a) A managing agent who receives funds belonging to an association,
39 other than for deposit into an escrow account or account under the control of the
40 association, shall deposit the funds into a trust fund account.

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

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

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

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

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

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

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

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

25 (2) The managing agent maintains a fidelity and surety bond in an amount that is
26 adequate to protect each association and that provides each association at least 10
27 days notice before cancellation. The managing agent shall provide each affected
28 board with the name and address of the bonding company, the amount of the bond,
29 and the expiration date of the bond. If there are any changes in the bond coverage
30 or the company that provides the coverage, the managing agent shall disclose that
31 fact to the board of each affected association as soon as practical, but in no event
32 more than 10 days after the change.

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

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

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

42 (j) As used in this section, "financial institution" has the meaning provided in
43 Section 31041 of the Financial Code.

1 **Comment.** Section 4905 restates former Section 1363.2 without substantive change.
2 See also Sections 4080 (“association”), 4085 (“board”), 4155 (“managing agent”), 4170
3 (“person”).

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

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

11 Article 10. Government Assistance

12 § 4950. Director training course

13 4950. To the extent existing funds are available, the Department of Consumer
14 Affairs and the Department of Real Estate shall develop an on-line education
15 course for the board of directors of an association regarding the role, duties, laws,
16 and responsibilities of directors and prospective directors, and the nonjudicial
17 foreclosure process.

18 **Comment.** Section 4950 continues former Section 1363.001 without substantive change.
19 See also Sections 4080 (“association”), 4140 (“director”).

20 § 4955. Attorney general

21 4955. (a) Upon receiving a complaint from a member, director, or officer that an
22 association has violated the provisions of Article 3 (commencing with Section
23 4575), Article 4 (commencing with Section 4625), Article 5 (commencing with
24 Section 4700), Article 6 (commencing with Section 4775), or Article 7
25 (commencing with Section 4800), the Attorney General may, in the name of the
26 people of the State of California, send a notice of the complaint to the principal
27 office of the association, (or, if there is no office, to the office or residence of the
28 chief executive officer or secretary, of the corporation, as set forth in the most
29 recent statement filed pursuant to Section 8210 of the Corporations Code).

30 (b) If the answer to the notice of the complaint is not satisfactory, or if there is
31 no answer within 30 days, the Attorney General may institute, maintain, or
32 intervene in a suit, action, or proceeding of any type in any court or tribunal of
33 competent jurisdiction or before any administrative agency for relief by way of
34 injunction, the dissolution of entities, the appointment of receivers, or any other
35 temporary, preliminary, provisional or final remedy as may be appropriate to
36 protect the rights of members or to undo the consequences of the violation. In any
37 action, suit, or proceeding under this section, all persons and entities responsible
38 for or affected by the violation may be joined as parties.

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

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

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

7 **§ 4960. State registry**

8 4960. (a) To assist with the identification of common interest developments,
9 each association shall submit to the Secretary of State, on a form and for a fee not
10 to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the
11 following information concerning the association and the development that it
12 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 of
21 the association.

22 (5) The name, street address, and daytime telephone number of the association’s
23 managing agent, if any.

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

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

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

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

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

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

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

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

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

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

11 (e) The Secretary of State shall make the information submitted pursuant to
12 paragraph (4) of subdivision (a) available only for governmental purposes and
13 only to Members of the Legislature and the Business, Transportation and Housing
14 Agency, on written request. All other information submitted pursuant to this
15 section shall be subject to public inspection pursuant to the California Public
16 Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title
17 1 of the Government Code.

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

19 See also Sections 4080 ("association"), 4100 ("common interest development"), 4155
20 ("managing agent").

21 CHAPTER 4. DISPUTE RESOLUTION AND ENFORCEMENT

22 Article 1. Disciplinary Action

23 § 5000. Authority to impose disciplinary fine

24 5000. An association shall not fine a member for a violation of the governing
25 documents unless, at the time of the violation, the governing documents expressly
26 authorize the use of a fine and include a schedule of the amounts that can be
27 assessed for each type of violation.

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

30 (1) It does not continue language relating to the distribution of copies of the enforcement
31 policy. Distribution of the governing documents is governed by other law. See Sections
32 4700(a)(1) (record inspection), 5825 (seller's disclosure), 6115 (notice of proposed rule change).

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

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

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

1 **§ 5005. Disciplinary hearing**

2 5005. (a) The board shall only impose discipline at a meeting of the board at
3 which the accused member shall have an opportunity to be heard.

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

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

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

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

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

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

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

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

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

22 See also Sections 4085 (“board”), 4150 (“governing documents”), 4160 (“member”).

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

30 **§ 5015. Responsibility for guest, invitee, or tenant**

31 5015. For the purposes of this article, a member is responsible for a violation of
32 the governing documents by the member’s guest, invitee, or tenant.

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

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

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

40 Proposed Section 5015 would resolve that inconsistency by broadening the scope of
41 responsibility to include a violation by a member’s tenant. The damage reimbursement provisions
42 of Sections 1367 and 1367.1 will be given the same scope (i.e., a member will be liable for
43 damage caused by the member’s guest, invitee, and tenant). The Commission invites comment on
44 that approach.

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

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

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

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

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

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

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

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

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

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

24 See also Sections 4080 ("association"), 4140 ("director"), 4150 ("governing documents"),
25 4160 ("member").

26 **§ 5065. Default meet and confer procedure**

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

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

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

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

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

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

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

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

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

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

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

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

13 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest
14 development”), 4140 (“director”), 4150 (“governing documents”), 4160 (“member”).

15 **§ 5070. Notice in member handbook**

16 5070. The member handbook (Section 4810) shall include a description of the
17 internal dispute resolution process provided pursuant to this article.

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

19 **Article 3. Alternative Dispute Resolution**
20 **Prerequisite to Civil Action**

21 **§ 5075. Definitions**

22 5075. As used in this article:

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

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

30 (1) Enforcement of this part.

31 (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3
32 commencing with Section 7110) of Division 2 of Title 1 of the Corporations
33 Code).

34 (3) Enforcement of the governing documents of a common interest
35 development.

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

39 See also Section 4100 (“common interest development”), 4150 (“governing documents”).

1 **§ 5080. ADR prerequisite to enforcement action**

2 5080. (a) An association or an owner or a member of a common interest
3 development may not file an enforcement action in the superior court unless the
4 parties have endeavored to submit their dispute to alternative dispute resolution
5 pursuant to this article.

6 (b) This section applies only to an enforcement action that is solely for
7 declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim
8 for monetary damages not in excess of the jurisdictional limits stated in Sections
9 116.220 and 116.221 of the Code of Civil Procedure.

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

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

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

18 See also Sections 4080 (“association”), 4100 (“common interest development”), 4160
19 (“member”).

20 **§ 5085. Request for resolution**

21 5085. (a) Any party to a dispute may initiate the process required by Section
22 5080 by serving on all other parties to the dispute a request for resolution. The
23 request for resolution shall include all of the following:

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

25 (2) A request for alternative dispute resolution.

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

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

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

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

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

37 See also Section 4185 (“separate interest”).

38 **§ 5090. ADR process**

39 5090. (a) A party on whom a request for resolution is served may agree to
40 participate in alternative dispute resolution by delivering a written acceptance to
41 the party that served the request for resolution. The written acceptance shall be
42 delivered as an individual notice (Section 4040).

1 (b) The parties shall complete the alternative dispute resolution within 90 days
2 after delivery of the written acceptance, unless this period is extended by written
3 stipulation signed by both parties.

4 (c) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence
5 Code applies to any form of alternative dispute resolution initiated by a Request
6 for Resolution under this article, other than arbitration.

7 (d) The costs of the alternative dispute resolution shall be borne by the parties.

8 **Comment.** Section 5090 continues former Section 1369.540 without substantive change,
9 except that a procedure is added in subdivision (a) for written acceptance of a request for
10 resolution.

11 **§ 5095. Tolling of statute of limitations**

12 5095. If a request for resolution is served before the end of the applicable time
13 limitation for commencing an enforcement action, the time limitation is tolled
14 during the following periods:

15 (a) The period provided in Section 5085 for response to a request for resolution.

16 (b) If the request for resolution is accepted, the period provided by Section 5090
17 for completion of alternative dispute resolution, including any extension of time
18 stipulated to by the parties pursuant to Section 5090.

19 **Comment.** Section 5095 continues former Section 1369.550 without substantive change.

20 **§ 5100. Certification of efforts to resolve dispute**

21 5100. (a) At the time of commencement of an enforcement action, the party
22 commencing the action shall file with the initial pleading a certificate stating that
23 one or more of the following conditions is satisfied:

24 (1) Alternative dispute resolution has been completed in compliance with this
25 article.

26 (2) One of the other parties to the dispute did not accept the terms offered for
27 alternative dispute resolution.

28 (3) Preliminary or temporary injunctive relief is necessary.

29 (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a
30 demurrer or a motion to strike unless the court finds that dismissal of the action for
31 failure to comply with this article would result in substantial prejudice to one of
32 the parties.

33 **Comment.** Section 5100 continues former Section 1369.560 without substantive change.

34 **§ 5105. Stay of litigation for dispute resolution**

35 5105 (a) After an enforcement action is commenced, on written stipulation of
36 the parties, the matter may be referred to alternative dispute resolution. The
37 referred action is stayed. During the stay, the action is not subject to the rules
38 implementing subdivision (c) of Section 68603 of the Government Code.

39 (b) The costs of the alternative dispute resolution shall be borne by the parties.

40 **Comment.** Section 5105 continues former Section 1369.570 without substantive change.

1 **§ 5110. Attorney’s fees**

2 5110. In an enforcement action in which fees and costs may be awarded, the
3 court, in determining the amount of the award, may consider whether a party’s
4 refusal to participate in alternative dispute resolution before commencement of the
5 action was reasonable.

6 **Comment.** Section 5110 generalizes former Section 1369.580 so that it applies to any
7 enforcement action and not just to an action to enforce the governing documents.

8 **§ 5115. Notice in member handbook**

9 5115. The member handbook (Section 4810) shall include a summary of the
10 provisions of this article that specifically references this article. The summary
11 shall include the following language: “Failure of a member of the association to
12 comply with the alternative dispute resolution requirements of Civil Code Section
13 5080 may result in the loss of your right to sue the association or another member
14 of the association regarding enforcement of the governing documents or the
15 applicable law.”

16 **Comment.** Section 5115 restates former Section 1369.590 without substantive change.
17 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

18 **Article 4. Civil Actions**

19 **§ 5125. Enforcement of governing documents**

20 5125. (a) The covenants and restrictions in the declaration shall be enforceable
21 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind
22 all owners of separate interests in the development. Unless the declaration states
23 otherwise, these servitudes may be enforced by any owner of a separate interest or
24 by the association, or by both.

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

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

30 **Comment.** Section 5125 continues former Section 1354 without substantive change.
31 See also Sections 4080 (“association”), 4135 (“declaration”), 4150 (“governing documents”),
32 4185 (“separate interest”).

33 **§ 5130. Enforcement of this part**

34 5130. In addition to any other remedy provided by law, a member may bring an
35 action in superior court to enforce a provision of this part.

36 **Comment.** Section 5130 is new.
37 See also Section 4160 (“member”).

38 **Note.** Section 5130 would provide for judicial enforcement of any provision of the Davis-
39 Stirling Common Interest Development Act. This would eliminate the implication that a civil
40 action may only be brought to enforce a provision of this part if there is specific statutory

1 authorization for that action. See, e.g., Sections 1353.5 (display of U.S. flag), 1363.09 (election
2 and board meeting), 1365.2(f) (record inspection), 1368(d) (seller disclosure). The Commission
3 invites comment on whether this provision would be problematic.

4 CHAPTER 5. FINANCES

5 Article 1. Accounting

6 § 5500. Accounting

7 5500. (a) The board shall maintain separate operating and reserve accounts.

8 (b) The board shall maintain current income and expense records for each
9 account, on an accrual basis.

10 (c) If the reserve account includes funds received by the association as a
11 compensatory damage award or settlement in litigation involving a construction or
12 design defect, the deposit or withdrawal of those funds shall be itemized
13 separately.

14 (d) On at least a quarterly basis, the board shall reconcile the income and
15 expense record for each account against the most recent statement provided by the
16 financial institution for that account.

17 **Comment.** Subdivisions (a)-(b) of Section 5500 are new.

18 Subdivision (c) restates former Section 1365(a)(2)(B)(iii) without substantive change.

19 Subdivision (d) restates and simplifies former Section 1365.5(a) without substantive change.

20 See also Sections 4080 (“association”), 4085 (“board”).

21 **Note.** Proposed Section 5500 significantly simplifies existing Section 1365.5(a) and states
22 explicitly the implicit requirement that an association maintain separate operating and reserve
23 accounts and detailed records for both. The Commission invites comment on whether those
24 changes would cause any problems.

25 Note that the requirement of accrual accounting in proposed subdivision (b) is consistent with
26 existing law. See Section 1365(a)(1).

27 Article 2. Use of Reserve Funds

28 § 5510. Use of reserve funds

29 5510. (a) Funds on deposit in the reserve account may only be used for the
30 following purposes:

31 (1) The maintenance, repair, or replacement of a major component that the
32 association is required to maintain.

33 (2) Litigation that relates to the maintenance, repair, or replacement of a major
34 component that the association is required to maintain.

35 (3) A temporary transfer of funds (3) to the operating account pursuant to Section
36 5515.

37 (b) The withdrawal of funds from the reserve account requires either the
38 signature of two directors or the signature of one director and an officer who is not
39 a director.

1 **Comment.** Subdivision (a) of Section 5510 restates former Section 1365(c)(1) without
2 substantive change.

3 Subdivision (b) restates former Section 1365.5(b) without substantive change.

4 See also Sections 4080 (“association”), 4140 (“director”).

5 **§ 5515. Temporary transfer of reserve funds**

6 5515. (a) The board may authorize, at a board meeting, a temporary transfer of
7 funds from the reserve account to the operating account in order to address a short
8 term cash flow requirement or other expense.

9 (b) Notice of the meeting at which the transfer is to be authorized must include
10 the following information:

11 (1) A statement that the board will consider a transfer of funds from the reserve
12 account to the operating account.

13 (2) The reason for the proposed transfer.

14 (3) Options for repayment of the transferred amount.

15 (4) Whether a special assessment may be necessary for repayment of the
16 transferred amount.

17 (c) If the board authorizes the transfer, the minutes of the meeting shall include a
18 written description of the amount to be transferred, the reasons for the transfer,
19 and when and how the transferred amount will be repaid to the reserve account.

20 (d) Funds transferred under this section shall be repaid to the reserve account
21 within one year of the date of the initial transfer, except that the board may delay
22 repayment in the same manner that it would authorize a new transfer. A board may
23 only delay repayment if it makes a written finding, supported by documentation,
24 that the delay would be in the best interest of the common interest development.

25 (e) The board shall exercise prudent fiscal management in maintaining the
26 integrity of the reserve account, and shall, if necessary, levy a special assessment
27 to recover the full amount of the transferred funds within the time limits required
28 by this section. This special assessment is subject to the limitation imposed by
29 Section 5580. The board may, in its discretion, extend the date the payment on the
30 special assessment is due. An extension of the due date does not prevent the board
31 from pursuing any legal remedy to enforce the collection of an unpaid special
32 assessment.

33 **Comment.** Section 5515 restates former Section 1365.5(c)(2) without substantive change.

34 See also Sections 4085 (“board”), 4090 (“board meeting”), 4100 (“common interest
35 development”).

36 **§ 5520. Use of reserve funds for litigation**

37 5520. (a) If funds in the reserve account are expended or transferred for the
38 purpose of litigation, the board shall provide general notice to the members
39 (Section 4045) of the expenditure or transfer. The notice shall inform the members
40 of their rights under subdivision (b).

1 (b) The board shall make an accounting, at least quarterly, of any funds in the
2 reserve account that are expended or transferred for the purpose of litigation. A
3 member may inspect the accounting at the office of the association.

4 **Comment.** Section 5520 restates former Section 1365.5(d) without substantive change.
5 See also Sections 4080 (“association”), 4085 (“board”), 4160 (“member”).

6 Article 3. Reserve Funding

7 § 5550. Inspection of major components

8 5550. At least once every three years, the board shall conduct a reasonably
9 competent and diligent visual inspection of the accessible areas of the major
10 components that the association is obligated to maintain.

11 **Comment.** Section 5550 restates part of former Section 1365.5(e) without substantive change,
12 except that an exception from the inspection requirement, for major components with a
13 replacement value of less than half of the association’s operating budget, is not continued.

14 See also Sections 4080 (“association”), 4085 (“board”).

15 § 5555. Reserve funding study

16 5555. (a) At least once every three years, the board shall prepare a reserve
17 funding study. The board shall review the study annually and make any necessary
18 adjustments to the study.

19 (b) The study shall describe each major component that the association is
20 obligated to maintain and that has a remaining useful life of less than 30 years.
21 The study shall provide at least the following information for each included
22 component, as of the end of the fiscal year for which the study is prepared or
23 updated:

24 (1) An identifying description of the component.

25 (2) The total useful life of the component, in years.

26 (3) The estimated repair and replacement cost of the component over its useful
27 life.

28 (4) The average annual repair and replacement cost for the component. This is
29 calculated by dividing the lifetime repair and replacement cost by the total useful
30 life of the component.

31 (5) The number of years the component has been in service.

32 (6) The desired balance for the component. This is calculated by one of the two
33 following methods: (i) by multiplying the average annual repair and replacement
34 cost and the number of years that the component has been in service, or (ii) by a
35 generally accepted alternative method that is described in the study.

36 (c) The study shall include a summary page in the following form, with the
37 indicated attachments:

Summary of Reserve Funding Study

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(1) The information provided in this summary is current as of the end of fiscal year _____. It is based on a reserve study prepared by _____ on _____. A copy of the complete study is available from the association on request, at no charge.

(2) **Current Fiscal Year Projection:** At the end of this fiscal year, the balance in the reserve account is projected to be \$_____. This figure includes only assets held in cash or cash equivalents and projected income.

The desired balance in the reserve account for all components included in the reserve funding study is \$_____. A description of the method used to calculate the desired balance is attached.

The balance of the reserve account is _____% of the desired amount.

If the balance of the reserve account is less than the desired amount, the difference is \$_____. The difference per separate interest is \$_____.

Note: If the units in this development do not pay equal assessments, then the proportional share of the difference, for each class of unit, is attached.

(3) **Five Year Projection:** The tables below provide projections for each of the five fiscal years following the current fiscal year. Table 1 shows the projected balance in the reserve account if the most recently approved reserve funding plan is implemented. Table 2 shows the projected balance in the reserve account if the most recently approved reserve funding plan is not implemented.

Table 1. Five Year Projection with Implementation of Funding Plan

Fiscal Year	Projected Balance	Desired Balance	Ratio of Projected Balance to Desired Balance (as percentage)

1

Table 2. Five Year Projection without Implementation of Funding Plan

Fiscal year	Projected Balance	Desired Balance	Ratio of Projected Balance to Desired Balance (as percentage)

2

(4) The current regular assessment per unit is \$_____ per _____.

3

Note: If the units in this development do not pay equal assessments, then a schedule showing the current regular assessment for each class of unit is attached.

4

5

6

(5) Additional regular assessments that have already been approved for any purpose are listed in the schedule below:

7

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

8

Note: If the units in this development do not pay equal assessments, then a schedule showing the approved regular assessments for each class of unit is attached.

9

10

11

(6) Special assessments that have been approved for any purpose are listed in the schedule below:

12

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

13

Note: If the units in this development do not pay equal assessments, then a schedule showing the approved special assessments for each class of unit is attached.

14

15

1 (7) If the association has any outstanding loans with an original term of more
 2 than one year, information about those loans is included in the schedule
 3 below:

Lender	Amount owed	Interest rate	Annual payment	Date when loan to be retired

4 (8) Based on the most recent reserve study and other information available to
 5 the board of directors, will the current regular assessment, approved
 6 increases in the regular assessment, and approved special assessments
 7 provide sufficient reserve funds at the end of each year to meet the
 8 association’s obligation for repair and replacement of major components
 9 over the next 30 years?

10 Yes _____ No _____

11 (9) If the answer to question (8) is no, please refer to the most recently
 12 approved reserve funding plan for a description of any additional assessment
 13 increases or special assessments that may be proposed in order to provide
 14 sufficient reserve funds at the end of each year to meet the association’s
 15 obligation for repair and replacement of major components over the next 30
 16 years.

17 (10) The financial representations set forth in this summary are based on the best
 18 estimates of the preparer at that time. The estimates are subject to change. A
 19 statement describing the procedures used to make the calculations used in
 20 this summary is attached.

21 (d) The summary prepared pursuant to subdivision (c) shall be included with the
 22 notice of availability of the annual budget report that is delivered to members
 23 pursuant to Section 4820. The form may be supplemented or modified in order to
 24 make the information provided clearer or more complete, so long as the minimum
 25 information required by subdivision (c) is provided.

26 (e) The summary prepared pursuant to subdivision (c) shall not be admissible in
 27 evidence to show improper financial management of an association. Other relevant
 28 and competent evidence of the financial condition of the association is not made
 29 inadmissible by this subdivision.

30 (f) A component with an estimated remaining useful life of more than 30 years
 31 may be included in a study as a capital asset or disregarded from the reserve

1 calculation, so long as the decision is revealed in the reserve study report and
2 reported in the summary prepared pursuant to subdivision (c).

3 **Comment.** Subdivision (a) of Section 5555 is drawn from former Section 1365.5(e).

4 Subdivision (b)(1) restates former Sections 1365.2.5(a)(5) and 1365.5(e)(1) without substantive
5 change.

6 Subdivision (b)(2) is consistent with former Section 1365(a)(2)(A) and is required in order to
7 perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

8 Subdivision (b)(3) is consistent with former Sections 1365(a)(2)(A) and 1365.5(e)(3) and is
9 required in order to perform the calculation required by former Sections 1365(a)(2)(B)(i) and
10 1365.2.5(a)(6).

11 Subdivision (b)(4) is required in order to perform the calculation required by former Sections
12 1365.2.5(a)(6) and 1365.5(e)(4).

13 Subdivision (b)(5) is consistent with former Section 1365(a)(2)(A) and is required in order to
14 perform the calculation required by former Sections 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

15 Subdivision (b)(6) is required in order to perform the calculation required by former Sections
16 1365(a)(2)(B)(i) and 1365.2.5(a)(6).

17 Subdivision (c) restates the disclosure requirements of former Sections 1365(a)(2) and
18 1365.2.5, as follows:

19 Item (1) is drawn from Sections 1365(a)(2)(B) and 1365.2.5(a)(6).

20 Item (2) is drawn from former Sections 1365(a)(2)(B)(i)-(ii) & (C)-(D) and 1365.2.5(a)(6).

21 Item (3) is drawn from former Sections 1365(a)(2)(B)(i)-(ii) & (C) and 1365.2.5(a)(7).

22 Item (4) is drawn from Section 1365.2.5(a)(1).

23 Items (5) and (6) are drawn from former Section 1365.2.5(a)(2).

24 Item (7) is drawn from former Section 1365(a)(3)(D).

25 Item (8) is drawn from former Section 1365.2.5(a)(3).

26 Item (9) is drawn from former Section 1365.2.5(a)(4), except that the schedule of proposed
27 assessment increases will be set out in the reserve funding plan. See Section 5560.

28 Item (10) is drawn from former Section 1365.2.5(a)(7).

29 Subdivision (d) restates former Section 1365.2.5(b)(3) without substantive change.

30 Subdivision (e) restates the second paragraph of former Section 1365(a)(4) without substantive
31 change.

32 Subdivision (f) restates former Section 1365.2.5(b)(2) without substantive change.

33 See also Sections 4080 (“association”), 4085 (“board”), 4140 (“director”), 4160 (“member”),
34 4185 (“separate interest”).

35 **Note.** The Commission invites comment on the meaning and purpose of existing Section
36 1365.2.5(b)(2) (proposed Section 5555(f)). When would it be appropriate to consider a
37 component of the common area a capital asset in connection with the study of reserve funding
38 needs? Why is it necessary to explain the exclusion of components that have a useful life of more
39 than 30 years, when that would put them outside the stated scope of the study?

40 **§ 5560. Reserve funding plan**

41 5560. (a) At least once every three years, the board shall prepare a reserve
42 funding plan that describes how the association will contribute sufficient funds to
43 the reserve account to meet the association’s obligation to repair and replace the
44 major components included in the most recent reserve funding study.

45 (b) The plan may provide for an increase in the general assessment, a special
46 assessment, borrowing, use of other assets, deferral of selected replacement or
47 repairs, or other mechanisms.

48 (c) If the plan proposes an increase in the general assessment, it shall describe
49 the proposed increase in the following form:

Date assessment takes effect	Amount per unit per month	Purpose of the assessment
	Total:	

1 (d) If the plan proposes an increase in one or more special assessments, it shall
 2 describe the proposed increase in the following form:

Date assessment takes effect	Amount of the assessment	Purpose of the assessment
	Total:	

3 (e) If the separate interests in the development do not pay equal assessments, the
 4 plan shall indicate the amount of any increase or special assessment for each class
 5 of separate interest.

6 (f) The plan shall be considered by the board at a board meeting.

7 (g) Board approval of the plan does not constitute approval of an assessment
 8 increase described in the plan. Any assessment increase must be considered
 9 separately by the board and is subject to the procedure provided in Section 5580.

10 (h) The plan may not assume a rate of return on cash reserves in excess of 2
 11 percent above the discount rate published by the Federal Reserve Bank of San
 12 Francisco at the time the plan is prepared.

13 **Comment.** Section 5560 restates former Sections 1365(a)(3)-(4) and 1365.5(e)(5) without
 14 substantive change.

15 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4185
 16 (“separate interest”).

17 **Article 2. Assessments**

18 **§ 5575. Levy of assessment**

19 5575. (a) An association shall levy regular and special assessments sufficient to
 20 perform its obligations under the governing documents and this title.

21 (b) An association shall not levy an assessment or fee that exceeds the amount
 22 necessary to defray the costs for which it is levied.

23 **Comment.** Subdivision (a) of Section 5575 continues the first sentence of former Section
 24 1366(a) without substantive change.

25 Subdivision (b) continues former Section 1366.1 without substantive change.

26 See also Sections 4080 (“association”), 4150 (“governing documents”).

1 § 5580. Assessment increase

2 5580. (a) Subject to the limitations of Section 5575 and subdivision (b), the
3 board may increase the regular assessment by any amount that is required to fulfill
4 its obligations and may impose a special assessment of any amount that is required
5 to fulfill its obligations. This subdivision supersedes any contrary provision of the
6 governing documents.

7 (b) In the following circumstances, an assessment increase or special assessment
8 may only be adopted with the approval of an affirmative majority of the votes cast
9 at a meeting at which at least fifty percent of the voting power is represented:

10 (1) The association has not complied with Section 4800 for the fiscal year in
11 which the assessment increase or special assessment would take effect.

12 (2) The total increase in the regular assessment for the fiscal year would be more
13 than 20 percent of the regular assessment at the end of the preceding fiscal year.

14 (3) The total for all special assessments imposed in the fiscal year would be
15 more than 5 percent of the budgeted gross expenses of the association for the fiscal
16 year in which the special assessment would be imposed.

17 (c) Subdivision (b) does not apply to an assessment increase that is required to
18 address the following emergency expenses:

19 (1) An extraordinary expense required by an order of a court.

20 (2) An extraordinary expense necessary to repair or replace any part of the
21 development that the association is obligated to maintain, where a threat to
22 personal safety is discovered on the property.

23 (3) An extraordinary expense necessary to repair or replace any part of the
24 development that the association is obligated to maintain that could not have been
25 reasonably foreseen by the board in preparing and distributing the budget report
26 under Section 4800. Before imposing an assessment under this subdivision, the
27 board shall adopt a resolution containing written findings as to the necessity of the
28 extraordinary expense involved and why the expense was not or could not have
29 been reasonably foreseen in the budgeting process, and the resolution shall be
30 distributed to the members with the notice of assessment.

31 (d) The association shall provide the members with individual notice (Section
32 4040) of any increase in the regular or special assessments of the association at
33 least 30 days before the increased assessment takes effect.

34 **Comment.** Subdivisions (a)-(c) and (e) of Section 5580 restate the last two sentences of former
35 Section 1366(a), and former Section 1366(b), without substantive change. Subdivision (a) makes
36 clear that a board's authority to impose an assessment increase that is required to fulfill its legal
37 obligations may not be limited by the governing documents.

38 Subdivision (d) restates former Section 1366(d) without substantive change, except that the
39 prohibition on giving notice more than 60 days before the increase takes effect is not continued.

40 See also Section 4080 ("association"), 4085 ("board"), 4150 ("governing documents"), 4160
41 ("member").

42 **Note.** Existing Section 1366(b) requires member approval before the board may "impose a
43 regular assessment that is more than 20 percent greater than the regular assessment for the
44 association's preceding fiscal year..." That language is somewhat ambiguous. Does it mean that
45 the **increase** may not exceed 20 percent of the **prior year's assessment**? Or does it mean that the

1 **difference** between the increased assessment and the prior year’s assessment may not exceed 20
2 percent **of the increased assessment**? For example, an association has a monthly assessment of
3 \$80. Would an increase of \$20 per month trigger the member approval requirement? Twenty
4 dollars would be 20 percent of the increased assessment amount, but would be more than 20
5 percent of the prior year’s assessment amount.

6 Proposed Section 5580(b)(2) is intended to make clear that **the total increase may not exceed**
7 **20 percent of the prior assessment amount**. That would seem to be the more natural reading of
8 the existing language. The Commission invites comment on whether this would create any
9 problems.

10 **§ 5585. Exemption from execution**

11 5585. (a) A regular assessment imposed or collected to perform an obligation of
12 an association under the governing documents or this title is exempt from
13 execution by a judgment creditor of the association only to the extent necessary
14 for the association to perform essential services, such as paying for utilities and
15 insurance. In determining the appropriateness of an exemption, a court shall
16 ensure that only essential services are protected under this subdivision.

17 (b) This section does not apply to a consensual pledge, lien, or encumbrance that
18 is approved by a majority of a quorum of the members (Section 4070), or to any
19 state tax lien, or to any lien for labor or materials supplied to the common area.

20 **Comment.** Section 5585 continues former Section 1366(c) without substantive change.

21 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
22 documents”), 4160 (“member”).

23 **Article 3. Payment and Collection of Assessment**

24 **§ 5600. Payment**

25 5600. (a) The association shall provide a mailing address for the overnight
26 payment of an assessment. The address shall be included in the member handbook
27 (Section 4810).

28 (b) On the request of a member, the association shall provide that member with
29 a receipt for a payment made to the association. The receipt shall indicate the date
30 and amount of the payment and the person who received the payment for the
31 association.

32 (c) A payment made for a delinquent assessment shall first be applied to the
33 assessment owed. Only after the assessment owed is paid in full shall the payment
34 be applied to collection costs, a late fee, or interest.

35 **Comment.** Section 5600 continues former Section 1367.1(b) without substantive change.

36 See also Sections 4080 (“association”), 4160 (“member”), 4170 (“person”).

37 **Note.** Proposed Section 5600(a) requires that the association provide a mailing address for
38 “overnight payment” of assessments. Does this mean for receipt of payments sent by overnight
39 delivery? If not, what does it mean?

1 **§ 5605. Delinquency**

2 5605. (a) An assessment becomes delinquent 15 days after it is due, unless the
3 declaration provides a longer time period, in which case the longer time period
4 applies.

5 (b) If an assessment is delinquent, the association may recover all of the
6 following amounts:

7 (1) The unpaid amount of the assessment.

8 (2) The reasonable cost incurred in collecting the delinquent assessment,
9 including a reasonable attorney’s fee.

10 (3) A late charge not exceeding 10 percent of the delinquent assessment or ten
11 dollars (\$10), whichever is greater, unless the declaration specifies a late charge in
12 a smaller amount, in which case the late charge shall not exceed the amount
13 specified in the declaration.

14 (4) Interest on the delinquent assessment, the reasonable cost of collection, and
15 the late charge. The annual interest rate shall not exceed 12 percent, commencing
16 30 days after the assessment becomes due, unless the declaration specifies a lower
17 rate of interest, in which case the lower rate of interest applies.

18 (c) An association is exempt from interest-rate limitations imposed by Article
19 XV of the California Constitution, subject to the limitations of this section.

20 (d) The amount described in subdivision (b) becomes a debt of the member at
21 the time the assessment or other sum is levied.

22 **Comment.** Subdivisions (a)-(c) of Section 5605 restate former Section 1366(e)-(f) without
23 substantive change.

24 Subdivision (d) continues the first sentence of former Sections 1367(a) and 1367.1(a) without
25 substantive change.

26 See also Sections 4080 (“association”), 4135 (“declaration”), 4160 (“member”).

27 **§ 5610. Assignment or pledge**

28 5610. (a) Except as otherwise provided in this section, an association may not
29 voluntarily assign or pledge to a third party the association’s right to collect a
30 payment or assessment, or to enforce or foreclose a lien.

31 (b) An association may assign or pledge the association’s right to collect a
32 payment or assessment, or to enforce or foreclose a lien, to a financial institution
33 or lender chartered or licensed under federal or state law, when acting within the
34 scope of that charter or license, as security for a loan obtained by the association.

35 (c) Nothing in this section affects the right or ability of an association to assign
36 an unpaid obligation of a former member to a third party for purposes of
37 collection.

38 **Comment.** Section 5610 restates the first sentence of former Section 1367.1(g) without
39 substantive change.

40 See also Sections 4080 (“association”), 4160 (“member”).

1 (c) A payment plan may incorporate an assessment that will accrue during the
2 payment plan period. Additional late fees shall not accrue during the payment plan
3 period if the owner is in compliance with the terms of the payment plan.

4 (d) A payment plan does not affect an association's ability to record a lien on the
5 owner's separate interest to secure payment of a delinquent assessment. In the
6 event of a default on any payment plan, the association may resume its efforts to
7 collect all delinquent assessments.

8 **Comment.** Section 5620 continues former Section 1367.1(c)(3) without substantive change,
9 except that a special rule that applies to an interest in a time share is not continued. Such an
10 interest is expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212.

11 Subdivision (b) simplifies the former provision on the timing of a meeting to request a payment
12 plan.

13 See also Sections 4080 ("association"), 4085 ("board"), 4090 ("board meeting"), 4160
14 ("member"), 4185 ("separate interest").

15 **Note.** Proposed Section 5620(c) continues the existing rule that a late fee may not be imposed
16 while a payment plan is in effect. Should that rule also apply to interest on the amount owed?

17 § 5625. Pre-lien meeting

18 5625. Before recording a lien for delinquent assessments, an association shall
19 offer the owner and, if so requested by the owner, participate in internal dispute
20 resolution pursuant to Article 2 (commencing with Section 5050) of Chapter 4.

21 **Comment.** Section 5625 restates former Section 1367.1(c)(1)(A) and the second sentence of
22 former Section 1367.4(b)(2) without substantive change.

23 See also Section 4080 ("association").

24 § 5630. Lien creation and priority

25 5630. (a) An association that has complied with Sections 5615 and 5625 may
26 record a notice of delinquent assessment in the county in which the common
27 interest development is located. Recording of the notice of delinquent assessment
28 creates a lien against the property for which the delinquent assessment is owed.

29 (b) The recorded notice of delinquent assessment shall state the following
30 information:

31 (1) The amount owed, including an itemized statement of any delinquent
32 assessment amount, reasonable cost of collection, late fees, or interest.

33 (2) A legal description of the separate interest against which the lien is imposed.

34 (3) The name of the record owner of the separate interest against which the lien
35 is imposed.

36 (c) A lien may not be enforced by nonjudicial foreclosure unless the recorded
37 notice of delinquent assessment states the name and address of the trustee that is
38 authorized by the association to enforce the lien by sale.

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

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

5 (f) Unless the governing documents provide otherwise, a lien created pursuant to
6 this section has priority over a subsequently recorded lien.

7 (g) The decision to record a lien for a delinquent assessment shall be made only
8 by the board, at a meeting of the board, and may not be delegated to an agent of
9 the association.

10 (h) Nothing in this article or in subdivision (a) of Section 726 of the Code of
11 Civil Procedure prohibits an action against the owner of a separate interest to
12 recover sums for which a lien is created pursuant to this section or prohibits an
13 association from taking a deed in lieu of foreclosure.

14 (i) An association that fails to comply with Section 5615 or 5625 before
15 recording a lien shall provide a new notice under Section 5615. Any additional
16 costs that accrue from the failure to comply with Section 5615 or 5625 shall be
17 borne by the association and not by the owner of the separate interest.

18 **Comment.** Subdivisions (a)-(e) of Section 5630 restate the first six sentences of former Section
19 1367.1(d) without substantive change. Subdivision (a) is consistent with the substance of former
20 Section 1367.1(l)(1).

21 Subdivision (f) restates former Section 1367.1(f) without substantive change.

22 Subdivision (g) restates former Section 1367.1(c)(2) without substantive change, except that
23 the provision limiting the provision to liens recorded on or after January 1, 2006, is not continued.
24 See Section 5675 (application of article).

25 Subdivision (h) restates former Section 1367.1(h) without substantive change.

26 Subdivision (i) restates former Section 1367.1(l) without substantive change.

27 See also Sections 4080 ("association"), 4085 ("board"), 4100 ("common interest
28 development"), 4135 ("declaration"), 4150 ("governing documents"), 4170 ("person"), 4185
29 ("separate interest").

30 § 5635. Lien release

31 5635. (a) Within 21 days after the payment of the sums stated in a recorded
32 notice of delinquent assessment, the association shall record a lien release or
33 notice of rescission in the county in which the notice of delinquent assessment is
34 recorded. The association shall deliver to the record owner of the separate interest,
35 by individual notice (Section 4040), a copy of the lien release or notice of
36 rescission.

37 (b) Within 21 days after a determination that a notice of delinquent assessment
38 was recorded in error, the association shall record a lien release or notice of
39 rescission in the county in which the notice of delinquent assessment is recorded.
40 The association shall deliver to the record owner of the separate interest, by
41 individual notice (Section 4040), a copy of the lien release or notice of rescission
42 and a declaration that the notice of delinquent assessment was recorded in error.

43 (c) If a notice of delinquent assessment is recorded in error, the association shall
44 reverse any collection cost, late fee, or interest that results from the error. The

1 association shall bear any cost of alternative dispute resolution that relates to the
2 error.

3 **Comment.** Subdivision (a) of Section 5635 restates the seventh sentence of former Section
4 1367.1(d) without substantive change.

5 Subdivision (b) restates former Section 1367.1(i) without substantive change.

6 Subdivision (c) restates former Section 1367.5 without substantive change. The requirement
7 that the error be discovered as a result of alternative dispute resolution is not continued.

8 See also Sections 4080 (“association”), 4135 (“declaration”), 4185 (“separate interest”).

9 **Note.** Existing Section 1367.1(i) provides for the release of a lien after it is determined that
10 the lien was recorded in error. For the purposes of that provision, who makes the determination?

11 § 5640. Lien for damage or fine

12 5640. (a) Unless the governing documents provide otherwise, a monetary charge
13 imposed by the association as a means of reimbursing the association for costs
14 incurred by the association in the repair of damage to common areas and facilities
15 for which the member or the member’s guests or tenants are responsible may
16 become a lien against the member’s separate interest that is enforceable by the sale
17 of the interest under Sections 2924, 2924b, and 2924c.

18 (b) A fine imposed by the association for a violation of the governing
19 documents, however described, shall not become a lien against the member’s
20 separate interest that is enforceable by the sale of the interest under Sections 2924,
21 2924b, and 2924c. This subdivision does not apply to a penalty for late payment of
22 a regular or special assessment.

23 **Comment.** Subdivision (a) of Section 5640 restates the eight and ninth sentences of former
24 Section 1367.1(d) without substantive change.

25 Subdivision (b) restates former Section 1367.1(e) without substantive change.

26 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
27 documents”), 4160 (“member”), 4185 (“separate interest”).

28 **Notes.** (1) Existing Section 1367.1(d) provides that foreclosure may be used to collect a
29 charge imposed for damage to the common area, but expressly provides that there is no intent to
30 “contravene” a Department of Real Estate regulation that limits the use of foreclosure to collect
31 such a charge. See 10 Cal. Code Regs. § 2792.26.

32 The DRE regulations set standards for an association’s initial governing documents. Once the
33 period of developer control ends, an association can amend its governing documents to avoid the
34 DRE imposed rules.

35 Section 1367.1(d) seems to provide that foreclosure may be used to collect a damage charge,
36 except in those associations where foreclosure is prohibited pursuant to the DRE regulation.
37 Proposed Section 5640 is intended to achieve the same result, but in a more readily
38 understandable way. The Commission invites comment on whether this restatement would cause
39 any problems.

40 (2) Proposed Section 5640(b) is added in place of proposed Section 5010, which has been
41 deleted from this draft.

42 (3) The words “however described” are used in proposed Section 5640(b) to make clear that
43 the rule’s application does not depend on the terminology used to describe a fine.

1 **§ 5645. Collection generally**

2 5645. (a) Except as otherwise provided in this article, 30 days after recording a
3 notice of delinquent assessment, an association may enforce the resulting lien in
4 any manner permitted by law, including sale by the court, sale by the trustee
5 designated in the recorded notice of delinquent assessment, or sale by a trustee
6 substituted pursuant to Section 2934a.

7 (b) If the amount of the lien is within the jurisdictional limit of the small claims
8 division of the superior court, the association may bring an action to collect the
9 debt in the small claims division pursuant to Chapter 5.5 (commencing with
10 Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure. An
11 association may enforce a judgment of the small claims division as provided in
12 Article 8 (commencing with Section 116.810) of Chapter 5.5 of Title 1 of Part 1 of
13 the Code of Civil Procedure. The amount recovered in an action in the small
14 claims division, which may not exceed the jurisdictional limit of the small claims
15 division, is the sum of the following:

16 (1) The amount owed as of the date of filing the complaint.

17 (2) In the discretion of the court, an additional amount equal to the amount owed
18 for the period from the date the complaint is filed until satisfaction of the
19 judgment, which may include accruing unpaid assessments and any reasonable
20 late charges, fees and costs of collection, attorney's fees, and interest.

21 **Comment.** Subdivision (a) of Section 5645 restates the second sentence of former Section
22 1367.1(g) without substantive change.

23 Subdivision (b) restates former Section 1367.4(b)(1) without substantive change.

24 See also Section 4080 ("association").

25 **§ 5650. Prohibition on foreclosure for small amount**

26 5650. (a) An association may not foreclose on a lien, judicially or nonjudicially,
27 if the debt is less than twelve months overdue and the amount owed, excluding
28 any accelerated assessment, collection cost, late charge, or interest, is less than one
29 thousand eight hundred dollars (\$1,800).

30 (b) Subdivision (a) does not apply to a separate interest owned by the declarant.

31 (c) This section applies to a lien recorded on or after January 1, 2006.

32 **Comment.** Subdivision (a) of Section 5650 restates the introduction of former Section
33 1367.4(b) without substantive change.

34 Subdivision (b) restates former Section 1367.4(d) without substantive change, except that the
35 exemption of time share units is superfluous and has not been continued. A time share unit is not
36 subject to this section. See Bus. & Prof. Code § 11211.7. The reference to "developers" has been
37 replaced with a reference to the declarant. See Section 4130 ("declarant" defined).

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

39 **Notes. (1)** Existing Section 1367.4(d) provides that the limitation on foreclosure for amounts
40 under \$1,800 does not apply to a time share unit or to "assessments owed by developers." The
41 first exemption is unnecessary and has not been continued. A time share unit is already expressly
42 exempted from Section 1367.4. The second exemption has been narrowed. As currently drafted, it
43 would exempt any person who happens to be a developer, and not just the developer of the
44 association that is owed assessments.

1 (2) By its own terms, Section 1367.4 applies to a lien recorded on or after January 1, 2006.
2 However, Section 1367.1, which applies to a lien recorded on or after January 1, 2003, is
3 expressly subordinate to Section 1367.4. The Commission invites comment on whether the
4 limitations on foreclosure that are established in Section 1367.4 would also apply to a lien that is
5 governed by Section 1367.1.

6 **§ 5655. Foreclosure**

7 5655. (a) Before commencing foreclosure to enforce a lien created under this
8 article, the association shall satisfy all of the following requirements:

9 (1) The decision to foreclose shall be made by the board at least 30 days before
10 any public sale. The decision may not be delegated to a committee or agent. The
11 vote approving foreclosure shall be recorded in the minutes. The board shall
12 maintain the confidentiality of the owner of the separate interest by identifying the
13 matter in the minutes by the parcel number of the property only.

14 (2) The association shall offer to participate in either internal dispute resolution
15 pursuant to Article 2 (commencing with Section 5050), or alternative dispute
16 resolution pursuant to Article 3 (commencing with Section 5075), of Chapter 4.
17 The decision of whether to participate and the type of alternative dispute
18 resolution to use shall be made by the owner of the separate interest, except that
19 binding arbitration may not be used if the association intends to commence a
20 judicial foreclosure.

21 (3) The association shall serve notice of its decision to foreclose on the owner or
22 the owner's legal representative, in accordance with the manner of service of
23 summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5
24 of Part 2 of the Code of Civil Procedure.

25 (b) Any sale by a trustee shall be conducted in accordance with Sections 2924,
26 2924b, and 2924c. The fees of a trustee may not exceed the amounts prescribed in
27 Sections 2924c and 2924d, plus the cost of service for either of the following
28 documents:

29 (1) The notice of default recorded pursuant to subdivision (c).

30 (2) The decision of the board to foreclose on the separate interest provided
31 pursuant to paragraph (3) of subdivision (a).

32 (c) If the association records a notice of default pursuant to Section 2924, the
33 association shall serve a copy of the notice of default on the owner or the owner's
34 legal representative in the same manner as service of a summons under Article 3
35 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of
36 Civil Procedure.

37 (d) If the owner of the separate interest does not occupy the separate interest, a
38 notice required under this section may be delivered by first class mail to the
39 mailing address shown in the association's records. If the owner has not provided
40 the association with a mailing address, the address of the separate interest is
41 deemed to be the owner's mailing address.

1 (e) For the purposes of this section, the “owner’s legal representative” means a
2 person designated by the owner as the owner’s legal representative in a notice
3 delivered to the board (Section 4035).

4 **Comment.** Subdivision (a)(1) of Section 5655 restates former Sections 1367.1(c)(2) and
5 1367.4(c)(2) without substantive change.

6 Subdivision (a)(2) restates former Sections 1367.1(c)(1)(B) and 1367.4(c)(1) without
7 substantive change.

8 Subdivision (a)(3) restates former Section 1367.4(c)(3) without substantive change.

9 Subdivision (b) restates the third and fourth sentences of former Section 1367.1(g) without
10 substantive change.

11 Subdivisions (c)-(e) restate former Section 1367.1(j) without substantive change, except that
12 subdivisions (d) and (e) have been generalized to apply to any notice given under the section.

13 See also Sections 4080 (“association”), 4085 (“board”), 4170 (“person”), 4185 (“separate
14 interest”).

15 **§ 5660. Right of redemption after trustee sale**

16 5660. A separate interest sold by a trustee under this article is subject to a right
17 of redemption for 90 days after the sale. In addition to the requirements of Section
18 2924f, notice of sale in connection with an association’s foreclosure of a separate
19 interest shall include a statement that the property is being sold subject to the right
20 of redemption created in this section.

21 **Comment.** Section 5660 restates former Section 1367.4(c)(4) without substantive change.

22 See also Sections 4080 (“association”), 4185 (“separate interest”).

23 **§ 5665. Recorded association information**

24 5665. (a) In order to facilitate the collection of a regular assessment, special
25 assessment, transfer fee, or similar charge, the board is authorized to record a
26 statement or amended statement identifying relevant information for the
27 association. This statement may include any or all of the following information:

28 (1) The name of the association as shown in the conditions, covenants, and
29 restrictions or the current name of the association, if different.

30 (2) The name and address of a managing agent or treasurer of the association or
31 other individual or entity authorized to receive payment for assessments and fees
32 imposed by the association.

33 (3) A daytime telephone number of the person identified in paragraph (2).

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

36 (5) The recording information identifying the declaration or declarations of
37 covenants, conditions, and restrictions governing the association.

38 (6) If an amended statement is being recorded, the recording information
39 identifying the prior statement or statements that the amendment is superseding.

40 (b) The county recorder is authorized to charge a fee for recording the document
41 described in subdivision (a), based on the number of pages in the document and
42 the recorder’s per-page recording fee.

43 **Comment.** Section 5665 restates former Section 1366.2 without substantive change.

1 See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4155 (“managing
2 agent”), 4170 (“person”), 4185 (“separate interest”).

3 **§ 5670. Statement of collection procedure**

4 5670. The member handbook (Section 4810) shall include the following
5 statement:

6 **NOTICE REGARDING ASSESSMENTS AND FORECLOSURE**

7 This notice outlines some of the rights and responsibilities of owners of
8 property in common interest developments and the associations that manage
9 them. Please refer to the sections of the Civil Code indicated for further
10 information. A portion of the information in this notice applies only to liens
11 recorded on or after January 1, 2003. You may wish to consult a lawyer if you
12 dispute an assessment.

13 **ASSESSMENTS AND FORECLOSURE**

14 An assessment becomes delinquent 15 days after it is due, unless the governing
15 documents provide for a longer time. The failure to pay an association assessment
16 may result in the loss of an owner’s property through foreclosure. Foreclosure
17 may occur either as a result of a court action, known as judicial foreclosure, or
18 without court action, often referred to as nonjudicial foreclosure.

19 An association may not use judicial or nonjudicial foreclosure to enforce a lien
20 that is recorded on or after January 1, 2006, if the debt is less than twelve months
21 overdue and the amount of the delinquent assessments or dues, exclusive of any
22 accelerated assessment, late charge, fee, attorney’s fee, interest, or cost of
23 collection, is less than one thousand eight hundred dollars (\$1,800).

24 An association may use judicial or nonjudicial foreclosure to collect a debt if it
25 is more than twelve months overdue or if the amount owed for assessments or
26 dues is more than one thousand eight hundred dollars (\$1,800). Foreclosure is
27 subject to the conditions set forth in Civil Code Sections 5650 and 5655.

28 When using judicial or nonjudicial foreclosure, the association records a lien on
29 the owner’s property. The owner’s property may be sold to satisfy the lien if the
30 amounts secured by the lien are not paid. (Civil Code Sections 5645, 5650, and
31 5655)

32 In a judicial or nonjudicial foreclosure, the association may recover the
33 delinquent assessment, the reasonable cost of collection including a reasonable
34 attorney’s fee, a late charge, and interest. The association may not use nonjudicial
35 foreclosure to collect a fine or penalty. Unless the governing documents provide
36 otherwise, an association may use nonjudicial foreclosure to collect the cost to
37 repair damage to the common area that is caused by a member or the member’s
38 guests. (Civil Code Section 5640)

39 The association must comply with the requirements of Civil Code Sections
40 5615, 5620, and 5625 when collecting a delinquent assessment. If the association
41 fails to follow these requirements, it may not record a lien on the owner’s
42 property until it has satisfied the requirements. Any additional cost that results
43 from satisfying the requirements is the responsibility of the association. (Civil
44 Code Section 5630)

1 At least 30 days before recording a lien on an owner's separate interest, the
2 association must provide the owner of record with certain documents by certified
3 mail, including a description of its collection and lien enforcement procedure and
4 the method used to calculate the amount owed. It must also provide an itemized
5 statement of the charges owed by the owner. An owner has a right to review the
6 association's records to verify the debt. (Civil Code Section 5615)

7 If a lien is recorded against an owner's property in error, the person who
8 recorded the lien is required to record a lien release within 21 days, and to provide
9 an owner certain documents in this regard. (Civil Code Section 5635)

10 The collection practices of the association may be governed by state and federal
11 laws regarding fair debt collection. Penalties can be imposed for debt collection
12 practices that violate these laws.

13 PAYMENTS

14 An owner that makes a payment may request a receipt, and the association is
15 required to provide it. On the receipt, the association must indicate the date of
16 payment and the person who received it. The association must inform owners of a
17 mailing address for overnight payments. (Civil Code Section 5600)

18 An owner may dispute an assessment debt by submitting a written request for
19 dispute resolution to the association under Civil Code Section 5625. In addition,
20 an association may not initiate a foreclosure without participating in alternative
21 dispute resolution with a neutral third party under Civil Code Section 5655, if so
22 requested by the owner. Binding arbitration shall not be available if the
23 association intends to initiate a judicial foreclosure.

24 An owner is not liable for a late charge, interest, or the cost of collection, if it is
25 established that the assessment was paid properly on time. (Civil Code Section
26 5635)

27 MEETINGS AND PAYMENT PLANS

28 An owner of a separate interest may request the association to consider a
29 payment plan to satisfy a delinquent assessment. The association must inform the
30 owner of the standards for payment plans, if any exist. (Civil Code Section 5620)

31 The board of directors must meet with an owner who makes a proper written
32 request for a meeting to discuss a payment plan when the owner has received a
33 notice of a delinquent assessment. A payment plan must conform with the
34 payment plan standards of the association, if they exist. (Civil Code Section 5620)

35 **Comment.** Section 5670 restates former Section 1365.1 without substantive change, except for
36 the following changes:

37 (1) A special rule that applies to an interest in a time share is not continued. Such an interest is
38 expressly exempted from the operation of this section. See Bus. & Prof. Code § 11212. Related
39 references to time share interests are not continued.

40 (2) The substance of former Section 1365.1(c) is generalized in Section 4040.

41 See also Sections 4080 ("association"), 4085 ("board"), 4140 ("director"), 4150 ("governing
42 documents"), 4160 ("member"), 4170 ("person"), 4185 ("separate interest").

1 **§ 5675. Application of article**

2 5675. (a) Except as otherwise provided, this article applies to a lien created on or
3 after January 1, 2003.

4 (b) A lien created before January 1, 2003, is governed by the law in existence at
5 the time the lien was created.

6 **Comment.** Section 5675 is new. A lien created between January 1, 1986, and January 1, 2003,
7 is governed by former Section 1367. Note that Section 5650 only applies to a lien created on or
8 after January 1, 2006.

9 **Note.** The Commission invites comment on whether the simplified application rules provided
10 in proposed Section 5675 would cause any problems.

11 **Article 4. Insurance and Liability**

12 **§ 5680. Limitation of director and officer liability**

13 5680. (a) An association officer or director is not personally liable for a tortious
14 act or omission of the officer or director, in excess of the amount of insurance
15 coverage specified in paragraph (6), if all of the following requirements are met:

16 (1) The officer or director is a volunteer.

17 (2) The officer or director is a tenant of a separate interest or an owner of no
18 more than two separate interests.

19 (3) The association is exclusively residential.

20 (4) The act or omission was performed within the scope of the officer's or
21 director's association duties.

22 (4) The act or omission was performed in good faith.

23 (5) The act or omission was not willful, wanton, or grossly negligent.

24 (6) The association maintained and had in effect, at the time of the act or
25 omission and at the time that a claim is made, insurance coverage for the general
26 liability of the association and for the individual liability of an officer or director
27 of the association for negligent acts or omissions in that capacity. In an association
28 with 100 or fewer separate interests, the coverage for each type of liability shall be
29 at least five hundred thousand dollars (\$500,000). In an association of more than
30 100 separate interests, the coverage for each type of liability shall be at least one
31 million dollars (\$1,000,000).

32 (b) For the purposes of this section, "volunteer" does not include the declarant or
33 a person who receives direct or indirect compensation as an employee of the
34 declarant, or as an employee of a financial institution that purchased a separate
35 interest at a judicial or nonjudicial foreclosure of a mortgage or deed of trust on
36 real property. Payment of actual expenses incurred by a director or officer in the
37 execution of the duties of that position does not affect the director's or officer's
38 status as a volunteer.

39 (c) Nothing in this section limits the liability of the association for its negligent
40 act or omission or for any negligent act or omission of an officer or director of the
41 association.

1 (d) For the purposes of this section, an officer’s or director’s association duties
2 include making a decision on whether to conduct an investigation of the common
3 interest development for latent deficiencies before the expiration of the applicable
4 statute of limitations and whether to commence a civil action against the builder
5 for defects in design or construction. This subdivision is intended to clarify the
6 application of this section. It is not intended to expand or limit the fiduciary duties
7 owed by a director or officer.

8 **Comment.** Section 5680 restates former Section 1365.7 without substantive change. See also
9 Corp. Code § 7231 (standard of care and liability of director of nonprofit mutual benefit
10 corporation).

11 See also Sections 4080 (“association”), 4100 (“common interest development”), 4130
12 (“declarant”), 4140 (“director”), 4170 (“person”), 4185 (“separate interest”).

13 **§ 5685. Limitation of member liability**

14 5685. (a) It is the intent of the Legislature to offer civil liability protection to
15 owners of separate interests in a common interest development that has common
16 area that is owned as tenancy-in-common if the association carries a certain level
17 of prescribed insurance that covers a cause of action in tort.

18 (b) A cause of action in tort against a member arising solely by reason of an
19 ownership interest as a tenant in common in the common area shall be brought
20 only against the association and not against the individual members, if both of the
21 insurance requirements are met:

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

25 (2) The coverage described in paragraph (1) is in the following minimum
26 amounts:

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

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

31 **Comment.** Section 5685 continues former Section 1365.9 without substantive change.

32 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
33 development”), 4160 (“member”), 4185 (“separate interest”).

34 **§ 5690. Notice of change in coverage**

35 5690. (a) If an insurance policy described in the annual budget report pursuant to
36 Section 4800 lapses or is canceled, and is not immediately renewed, restored, or
37 replaced, or if there is a significant change to the policy, such as a reduction in
38 coverage or limits or an increase in the deductible, the association shall give
39 individual notice (Section 4040) of the change to the members as soon as
40 reasonably practicable.

41 (b) If the association receives notice of nonrenewal of a policy described in the
42 annual budget report pursuant to Section 4800 and a replacement policy will not

1 be in effect by the date that the existing policy will lapse, the association shall
2 immediately give individual notice (Section 4040) of that fact to the members.

3 **Comment.** Section 5690 restates part of former Section 1365(f) without substantive change.
4 See also Sections 4080 (“association”), 4160 (“member”).

5 CHAPTER 6. PROPERTY MAINTENANCE AND USE

6 Article 1. Maintenance

7 § 5700. Maintenance responsibility generally

8 5700. Unless the declaration provides otherwise, the responsibility for repair,
9 replacement, and maintenance is as follows:

10 (a) The association is responsible for the repair, replacement, and maintenance
11 of the common area, other than exclusive use common area.

12 (b) The owner of a separate interest is responsible for the maintenance of the
13 separate interest and any exclusive use common area appurtenant to the separate
14 interest.

15 **Comment.** Section 5700 continues former Section 1364(a) without substantive change.

16 See also Sections 4080 (“association”), 4095 (“common area”), 4135 (“declaration”), 4145
17 (“exclusive use common area”), 4185 (“separate interest”).

18  **Note.** The duty imposed on an individual owner is to maintain the separate interest and any
19 appurtenant exclusive use common area. By contrast, the association is required to *repair*,
20 *replace*, and maintain the common area (not including exclusive use common area). Does that
21 difference in phrasing create two different standards of responsibility? Is there an ambiguity here
22 that is causing problems?

23 § 5705. Wood destroying organisms

24 5705. (a) Unless the declaration provides otherwise, the responsibility for repair,
25 replacement, and maintenance occasioned by the presence of wood-destroying
26 pests or organisms is as follows:

27 (1) In a community apartment project, condominium, or stock cooperative, the
28 association is responsible for the repair and maintenance of the common area
29 occasioned by the presence of wood-destroying pests or organisms.

30 (2) In a planned development, the owner of a separate interest is responsible for
31 the repair and maintenance of the separate interest occasioned by the presence of
32 wood-destroying pests or organisms. Upon approval of the majority of all
33 members (Section 4065), this responsibility may be delegated to the association,
34 which may recover its costs through a special assessment.

35 (b) The association may cause the temporary, summary removal of any occupant
36 of a common interest development as may be necessary for prompt, effective
37 treatment of wood-destroying pests or organisms.

38 (c) The association shall give individual notice (Section 4040) of the need to
39 temporarily vacate a separate interest to the occupant and, if the owner is different

1 from the occupant, to the owner. Notice shall be given not less than 15 days nor
2 more than 30 days prior to the date of the temporary relocation. The notice shall
3 state the reason for the temporary relocation, the date and time of the beginning of
4 treatment, the anticipated date and time of termination of treatment, and that the
5 occupants will be responsible for their own accommodations during the temporary
6 relocation.

7 (d) For purposes of this section, “occupant” means an owner, resident, guest,
8 invitee, tenant, lessee, sublessee, or other person in possession of the separate
9 interest.

10 (e) The costs of temporary relocation of an occupant pursuant to this section
11 shall be borne by the owner of the separate interest affected.

12 **Comment.** Section 5705 continues former Section 1364(b)-(e) without substantive change,
13 except for the following changes:

14 (1) The specific notice delivery provisions of former Section 1364(d)(3) have not been
15 continued. Rules for delivery of notice are generalized in Sections 4035-4055.

16 (2) Former Section 1364(c), governing the cost of relocation, has been restated in subdivision
17 (e) so as to make clear that it only applies to a relocation involving wood destroying organisms.

18 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
19 development”), 4105 (“community apartment project”), 4115 (“condominium”), 4135
20 (“declaration”), 4160 (“member”), 4170 (“person”), 4175 (“planned development”), 4185
21 (“separate interest”), 4190 (“stock cooperative”).

22 **Note.** Proposed Section 5705(a)(1) seems to repeat most of the substance of proposed Section
23 5700(a), but with its application limited to community apartment projects, condominiums, and
24 stock cooperatives. Similarly, the first sentence of proposed Section 5705(a)(2) seems to repeat
25 most of the substance of proposed Section 5700(b), but with its application limited to planned
26 developments. The intended purpose of these provisions is unclear. The Commission invites
27 comment explaining how these provisions differ from the general rules stated in proposed Section
28 5700, and why.

29 § 5710. Exclusive use communication wiring

30 5710. Notwithstanding the governing documents, the owner of a separate
31 interest is entitled to reasonable access to the common areas for the purpose of
32 maintaining the internal and external communication wiring that is exclusive use
33 common area pursuant to Section 4145. The access shall be subject to the consent
34 of the association, whose approval shall not be unreasonably withheld, and which
35 may include the association’s approval of communication wiring upon the exterior
36 of the common area, and other conditions as the association determines
37 reasonable. For the purposes of this section, “wiring” includes nonmetallic
38 communication lines.

39 **Comment.** Section 5710 continues former Section 1364(f) without substantive change, except
40 that the reference to “telephone wiring” has been generalized to accommodate non-telephonic
41 communication technology and nonmetallic transmission media (e.g., fiber optic).

42 See also Section 4080 (“association”), 4095 (“common area”), 4145 (“exclusive use common
43 area”), 4150 (“governing documents”), 4185 (“separate interest”), 4190 (“stock cooperative”).

1 Article 2. Limitation of Association Authority
2 to Regulate Property Use

3 **§ 5725. Application of article**

4 5725. This article includes provisions that limit the authority of an association to
5 regulate the use of a member's separate interest. Nothing in this article is intended
6 to affect the application of any other provision that limits the authority of an
7 association to regulate the use of a member's separate interest, including, but not
8 limited to, the following provisions:

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

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

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

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

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

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

19 **Comment.** Section 5725 is new. It provides a non-exclusive list of provisions outside of this
20 part that limit the authority of an association to regulate separate interest property use.

21 See also Sections 4080 ("association"), 4160 ("member"), 4185 ("separate interest").

22 **Note.** The Commission requests comment on whether there are any other provisions that
23 should be added to the nonexclusive list of cross-references provided in Section 5725.

24 **§ 5730. Display of flag or other noncommercial display**

25 5730. (a) Except as otherwise provided in this section, the governing documents
26 of an association may not prohibit the display of the flag of the United States or
27 any other noncommercial sign, poster, flag, or banner within a member's separate
28 interest or exclusive use common area.

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

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

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

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

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

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

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

4 **Comment.** Section 5730 continues former Sections 1353.5 and 1353.6 without substantive
5 change, except that Section 5730(b)(2) now applies to a flag of the United States.

6 See also Section 4080 ("association"), 4095 ("common area"), 4145 ("exclusive use common
7 area"), 4150 ("governing documents"), 4160 ("member"), 4185 ("separate interest").

8 **Note.** Proposed Section 5730 preserves two existing distinctions between the treatment of
9 the U.S. flag and any other noncommercial display: (1) an association may not limit the display of
10 a U.S. flag that is more than 15 square feet in size, and (2) a person who prevails in challenging a
11 restriction on the display of the U.S. flag is entitled to attorney's fees. The Commission invites
12 comment on whether those distinctions should be preserved (and if not, whether the special rules
13 should be eliminated or generalized).

14 **§ 5735. Pets**

15 5735. (a) No governing documents shall prohibit the owner of a separate interest
16 within a common interest development from keeping at least one pet within the
17 common interest development, subject to reasonable rules and regulations of the
18 association. This section may not be construed to affect any other rights provided
19 by law to an owner of a separate interest to keep a pet within the development.

20 (b) For purposes of this section, "pet" means any domesticated bird, cat, dog,
21 aquatic animal kept within an aquarium, or other animal as agreed to between the
22 association and the homeowner.

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

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

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

34 **Comment.** Section 5735 continues former Section 1360.5 without change.

35 See also Section 4080 ("association"), 4100 ("common interest development"), 4150
36 ("governing documents"), 4185 ("separate interest").

37 **§ 5740. Roofing materials**

38 5740. (a) An association may not require that a homeowner install or repair a
39 roof in a manner that is in violation of Section 13132.7 of the Health and Safety
40 Code.

41 (b) The governing documents of a common interest development located within
42 a very high fire severity zone, as designated by the Director of Forestry and Fire
43 Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of

1 Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to
2 Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of
3 the Government Code, shall allow for at least one type of fire retardant roof
4 covering material that meets the requirements of Section 13132.7 of the Health
5 and Safety Code.

6 **Comment.** Section 5740 continues former Section 1353.7 without substantive change. See also
7 Section 5775(a)(3) (“Notwithstanding a contrary provision of the governing documents, a
8 decision on a proposed change may not violate any governing provision of law, including, but not
9 limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of
10 Division 3 of Title 2 of the Government Code), or a building code or other applicable law
11 governing land use or public safety.”).

12 See also Sections 4080 (“association”), 4100 (“common interest development”), 4150
13 (“governing documents”).

14 **§ 5745. Television antenna or satellite dish**

15 5745. (a) Except as otherwise provided in this section, a provision of the
16 governing documents is void to the extent that it would prohibit or restrict the use
17 or installation of an antenna.

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

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

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

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

27 (4) A requirement that the association approve the installation before installation
28 takes place.

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

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

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

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

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

1 (e) For the purposes of this section “antenna” means a video or television
2 antenna, including a satellite dish, of less than 36 inches in diameter or diagonal
3 measurement.

4 **Comment.** Section 5745 restates former Section 1376 without substantive change.

5 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
6 development”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

7 **Notes.** (1) Proposed Section 5745 would significantly revise existing Section 1376, to
8 improve its clarity. The Commission requests comment on whether any of the revisions would
9 make a substantive change in the law.

10 (2) Proposed subdivision (a) replaces the phrase “a covenant, condition, or restriction contained
11 in a deed, contract, security instrument, or other instrument affecting the transfer or sale of, or an
12 interest in, a common interest development” with the more general term “a provision of the
13 governing documents.” The Commission requests comment on whether that simplification in
14 phrasing would cause a substantive change in the law.

15 (3) Proposed subdivision (b)(5) seems to be subsumed within subdivision (b)(4). The
16 Commission requests comment on whether subdivision (b)(5) can be deleted without substantive
17 effect.

18 (4) Proposed subdivision (b)(6) seems to be subsumed within subdivision (b)(7). The
19 Commission requests comment on whether subdivision (b)(6) can be deleted without substantive
20 effect.

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

28 **§ 5750. Marketing restriction**

29 5750. (a) A provision of the governing documents that arbitrarily or
30 unreasonably restricts a member’s ability to market the member’s interest in a
31 common interest development is void.

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

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

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

39 **Comment.** Subdivision (a) of Section 5750 restates former Section 1368.1(a) without
40 substantive change. The phrase “rule or regulation” has been generalized to include any provision
41 of the association’s governing documents.

42 Subdivision (b) restates former Section 1368.1(b)(1) without substantive change. Subdivision
43 (b) is a specific application of the general rule provided in 5575(b).

44 Subdivision (c) restates former Section 1368.1(b)(2) without substantive change. Language
45 making clear that the provision does not affect marketing by an association is not continued
46 because the restated language makes clear that the limitation only affects marketing by an
47 individual member.

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

1 Subdivision (e) continues former Section 1368.1(d) without substantive change.
2 See also Section 4080 (“association”), 4100 (“common interest development”), 4150
3 (“governing documents”), 4160 (“member”).

4 **§ 5755. Low water-using plants**

5 5755. The architectural guidelines of a common interest development shall not
6 prohibit or include conditions that have the effect of prohibiting the use of low
7 water-using plants as a group.

8 **Comment.** Section 5755 continues former Section 1353.8 without change.
9 See also Section 4100 (“common interest development”).

10 **§ 5760. Improvements to separate interest**

11 5760. (a) Any change in the exterior appearance of a separate interest shall be in
12 accordance with the governing documents and applicable law.

13 (b) Subject to the governing documents and applicable law, the owner of a
14 separate interest may make any improvement or alteration within the boundaries
15 of the separate interest that does not impair the structural integrity or mechanical
16 systems or lessen the support of any part of the common interest development.

17 (c) Subject to the governing documents and applicable law, the owner of a
18 separate interest may modify the separate interest, at the owner’s expense, to
19 facilitate access for a person who is blind, visually handicapped, deaf, or
20 physically disabled, or to alter conditions that could be hazardous to the disabled
21 person. This may include a modification of the route from the public way to the
22 door of the separate interest if the separate interest is on the ground floor or is
23 already accessible by an existing ramp or elevator.

24 (d) A modification made pursuant to subdivision (c) is subject to the following
25 conditions:

26 (1) The modification shall be consistent with applicable building code
27 requirements.

28 (2) The modification shall be consistent with the intent of otherwise applicable
29 provisions of the governing documents pertaining to safety or aesthetics.

30 (3) A modification of the common area shall not prevent reasonable passage by
31 other residents, and shall be removed by the owner when the unit is no longer
32 occupied by a disabled person who requires the modification.

33 (4) The owner shall submit plans and specifications for a proposed modification
34 to the association for review to determine whether the proposed modification
35 complies with this section. The association shall not deny approval of the
36 proposed modification without good cause.

37 **Comment.** Section 5760 generalizes the substance of former Section 1360 so that it applies to
38 any separate interest and not just a separate interest that is contained within the boundaries of a
39 building. See also Section 5775 (association decision on modification of separate interest must
40 comply with Fair Employment and Housing Act); Gov’t Code § 12927 (accommodation of
41 disability under Fair Employment and Housing Act).

42 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
43 development”), 4150 (“governing documents”), 4170 (“person”), 4185 (“separate interest”).

1 **Note.** Existing Section 1360 is limited by its terms to a separate interest that is contained
2 within the boundaries of a building (as in a condominium). Proposed Section 5760 would
3 generalize the substance of Section 1360, so that it applies to any separate interest. That would
4 arguably broaden owner rights to modify a unit to accommodate a disability, although other
5 provisions of existing law may already establish those rights (see, e.g., Gov't Code § 12927). The
6 Commission invites comment on whether the broadened application of proposed Section 5760
7 would cause any problems.

8 Article 3. Architectural Review

9 § 5775. Architectural review and decisionmaking

10 5775. (a) This section applies if an association's governing documents require
11 association approval before an owner of a separate interest may make a physical
12 change to the owner's separate interest or to the common area. In reviewing and
13 approving or disapproving a proposed change, the association shall satisfy the
14 following requirements:

15 (1) The association shall provide a fair, reasonable, and expeditious procedure
16 for making its decision. The procedure shall be included in the association's
17 governing documents. The procedure shall provide for prompt deadlines. The
18 procedure shall state the maximum time for response to an application or a request
19 for reconsideration by the board of directors.

20 (2) A decision on a proposed change shall be made in good faith and may not be
21 unreasonable, arbitrary, or capricious.

22 (3) Notwithstanding a contrary provision of the governing documents, a decision
23 on a proposed change may not violate any governing provision of law, including,
24 but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing
25 with Section 12900) of Division 3 of Title 2 of the Government Code), or a
26 building code or other applicable law governing land use or public safety.

27 (4) A decision on a proposed change shall be in writing. If a proposed change is
28 disapproved, the written decision shall include both an explanation of why the
29 proposed change is disapproved and a description of the procedure for
30 reconsideration of the decision by the board of directors.

31 (5) If a proposed change is disapproved, the applicant is entitled to
32 reconsideration by the board of directors of the association that made the decision,
33 at an open meeting of the board. This paragraph does not require reconsideration
34 of a decision that is made by the board of directors or a body that has the same
35 membership as the board of directors, at a meeting that satisfies the requirements
36 of Article 2 (commencing with Section 4500) of Chapter 3. Reconsideration by the
37 board does not constitute dispute resolution within the meaning of Section 5055.

38 (b) Nothing in this section authorizes a physical change to the common area in a
39 manner that is inconsistent with an association's governing documents, unless the
40 change is required by law.

41 (c) An association shall annually provide its members with notice of any
42 requirements for association approval of physical changes to property. The notice

1 shall describe the types of changes that require association approval and shall
2 include a copy of the procedure used to review and approve or disapprove a
3 proposed change.

4 **Comment.** Section 5775 continues former Section 1378 without substantive change.

5 See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4140
6 (“director”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

7 CHAPTER 7. PROPERTY OWNERSHIP AND TRANSFER

8 Article 1. Ownership Rights and Interests

9 § 5800. Ownership of common area

10 5800. Unless the declaration provides otherwise, in a condominium project, or in
11 a planned development in which the common area is owned by the owners of the
12 separate interests, the common area is owned by the owners of the separate
13 interests as tenants in common, with one share for each separate interest.

14 **Comment.** Section 5800 restates former Section 1362 without substantive change.

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

17 § 5805. Appurtenant rights and easements

18 5805. Unless the declaration provides otherwise:

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

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

28 **Comment.** Section 5805 restates former Section 1361 without substantive change.

29 See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment
30 project”), 4115 (“condominium”), 4175 (“planned development”), 4185 (“separate interest”),
31 4190 (“stock cooperative”).

32 § 5810. Access to separate interest property

33 5810. Except as otherwise provided by law, an order of the court, or an order
34 pursuant to a final and binding arbitration decision, an association may not deny a
35 member or other occupant of a separate interest physical access to the separate
36 interest, either by restricting access through the common area, or by restricting
37 access solely to the separate interest.

38 **Comment.** Section 5810 continues former Section 1361.5 without substantive change.

1 See also Sections 4080 (“association”), 4095 (“common area”), 4160 (“member”), 4185
2 (“separate interest”).

3 **Note.** What purpose is served by the language providing that a right of access may be
4 restricted pursuant to court order or an arbitration decision? When would such a restriction be
5 enforced by an association?

6 Article 2. Transfer Disclosure

7 § 5825. Disclosure to prospective purchaser

8 5825. As soon as practicable before the transfer of title to a separate interest or
9 the execution of a real property sales contract for a separate interest, as defined in
10 Section 2985, the owner of the separate interest, other than an owner subject to the
11 requirements of Section 11018.6 of the Business and Professions Code, shall
12 provide the following documents to the prospective purchaser:

13 (a) A copy of the governing documents of the common interest development,
14 including any operating rules, and including a copy of the association’s articles of
15 incorporation, or, if not incorporated, a statement in writing from an authorized
16 representative of the association that the association is not incorporated.

17 (b) If there is a restriction in the governing documents limiting the occupancy,
18 residency, or use of a separate interest on the basis of age in a manner different
19 from that provided in Section 51.3, a statement that the restriction is only
20 enforceable to the extent permitted by Section 51.3 and a statement specifying the
21 applicable provisions of Section 51.3.

22 (c) A copy of the most recent documents distributed pursuant to Article 7
23 (commencing with Section 4800) of Chapter 3.

24 (d) A true statement in writing obtained from an authorized representative of the
25 association as to the amount of the association’s current regular and special
26 assessments and fees, any assessments levied upon the owner’s interest in the
27 common interest development that are unpaid on the date of the statement, and any
28 monetary fines or penalties levied upon the owner’s interest and unpaid on the
29 date of the statement. The statement obtained from an authorized representative
30 shall also include true information on late charges, interest, and costs of collection
31 which, as of the date of the statement, are or may be made a lien upon the owner’s
32 interest in a common interest development pursuant to Article 3 (commencing
33 with Section 5600) of Chapter 5.

34 (e) A copy or a summary of any notice previously sent to the owner pursuant to
35 Section 5005 that sets forth any alleged violation of the governing documents that
36 remains unresolved at the time of the request. The notice shall not be deemed a
37 waiver of the association’s right to enforce the governing documents against the
38 owner or the prospective purchaser of the separate interest with respect to any
39 violation. This paragraph shall not be construed to require an association to inspect
40 an owner’s separate interest.

1 (f) A copy of the preliminary list of defects provided to each member of the
2 association pursuant to Section 6200, unless the association and the builder
3 subsequently enter into a settlement agreement or otherwise resolve the matter and
4 the association complies with Section 6210. Disclosure of the preliminary list of
5 defects pursuant to this paragraph does not waive any privilege attached to the
6 document. The preliminary list of defects shall also include a statement that a final
7 determination as to whether the list of defects is accurate and complete has not
8 been made.

9 (g) A copy of the latest information provided for in Section 6210.

10 (h) Any change in the association's current regular and special assessments and
11 fees that have been approved by the association's board of directors, but have not
12 become due and payable as of the date disclosure is provided pursuant to this
13 subdivision.

14 **Comment.** Section 5825 continues former Section 1368(a) without substantive change.

15 See also Sections 4080 ("association"), 4100 ("common interest development"), 4140
16 ("director"), 4150 ("governing documents"), 4160 ("member"), 4165 ("operating rule"), 4185
17 ("separate interest").

18 § 5830. Information to be provided by association

19 5830. (a) A member may request, in writing, that the association provide the
20 member with the documents described in Section 5825.

21 (b) Within 10 days after the request is delivered to the board (Section 4035), the
22 association shall provide the requesting member with a copy of the requested
23 documents.

24 (c) If the requested documents are maintained in electronic form, the requesting
25 member shall have the option of receiving them by electronic transmission or on
26 machine readable storage media.

27 (d) The association may charge a reasonable fee to recover the actual cost to
28 procure, prepare, and reproduce the requested documents.

29 **Comment.** Section 5830 continues former Section 1368(b) without substantive change.

30 See also Sections 4080 ("association"), 4085 ("board"), 4160 ("member").

31 § 5835. Related requirements

32 5835. In addition to the requirements of this article, an owner transferring title to
33 a separate interest shall comply with applicable requirements of Sections 1133 and
34 1134.

35 **Comment.** Section 5835 restates former Section 1368(f) without substantive change.

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

37 § 5840. Enforcement of article

38 5840. Any person or entity who willfully violates this article is liable to the
39 purchaser of a separate interest that is subject to this section for actual damages
40 caused by the violation and, in addition, shall pay a civil penalty in an amount not

1 to exceed five hundred dollars (\$500). In an action to enforce this liability, the
2 prevailing party shall be awarded reasonable attorneys' fees.

3 **Comment.** Section 5840 restates former Section 1368(d) without substantive change.
4 See also Sections 4170 ("person"), 4185 ("separate interest").

5 **§ 5845. Validity of title unaffected**

6 5845. Nothing in this article affects the validity of title to real property
7 transferred in violation of this section.

8 **Comment.** Section 5845 restates former Section 1368(e) without substantive change.

9 **§ 5850. Agency**

10 5850. For the purposes of this section, a person who acts as a community
11 association manager is an agent, as defined in Section 2297, of the association.

12 **Comment.** Section 5850 restates former Section 1368(g) without substantive change.
13 See also Sections 4080 ("association"), 4170 ("person").

14 **Note.** The Commission invites comment on the need for this provision.

15 **Article 3. Transfer Fee**

16 **§ 5875. Transfer fee**

17 5875. Except as provided in Section 5880, an association or community service
18 organization or similar entity may not impose or collect any assessment, penalty,
19 or fee in connection with a transfer of title or any other interest except for the
20 following:

- 21 (a) An amount not to exceed the association's actual costs to change its records.
22 (b) A fee under Section 5830.

23 **Comment.** Section 5875 continues former Section 1368(c)(1) without substantive change.
24 See also Sections 4080 ("association"), 4110 ("community service organization").

25 **§ 5880. Exemption from transfer fee limitations**

26 5880. Section 5875 does not apply to a community service organization or
27 similar entity of either of the following types:

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

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

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

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

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

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

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

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

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

8 **Comment.** Section 5880 restates former Section 1368(c)(2) without substantive change.
9 See also Sections 4110 (“community service organization”), 4185 (“separate interest”).

10 Article 4. Restrictions on Transfers

11 § 5900. Grant of exclusive use

12 5900. (a) Unless the governing documents provide otherwise, the affirmative
13 vote of members owning at least 67 percent of the separate interests in the
14 common interest development shall be required before the board of directors may
15 grant exclusive use of any portion of the common area to a member.

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

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

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

25 (3) A grant of exclusive use to eliminate or correct engineering errors in
26 documents recorded with the county recorder or on file with a public agency or
27 utility company.

28 (4) A grant of exclusive use to eliminate or correct encroachments due to errors
29 in construction of any improvements.

30 (5) A grant of exclusive use to permit changes in the plan of development
31 submitted to the Real Estate Commissioner in circumstances where the changes
32 are the result of topography, obstruction, hardship, aesthetic considerations, or
33 environmental conditions.

34 (6) A grant of exclusive use to fulfill the requirement of a public agency.

35 (7) A grant of exclusive use to transfer the burden of management and
36 maintenance of any common area that is generally inaccessible and not of general
37 use to the membership at large of the association.

38 (8) A grant in connection with an expressly zoned industrial or commercial
39 development, or any grant within a subdivision of the type defined in Section
40 4020.

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

6 **Comment.** Section 5900 restates former Section 1363.07 without substantive change, with the
7 following exceptions:

8 (1) The section is no longer limited in its application to a common area that the association
9 owns or in which the association has an easement right. It now applies to any common area.

10 (2) The substance of former subdivision (a)(1)(F) is continued in Section 4020.

11 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
12 development”), 4140 (“director”), 4150 (“governing documents”), 4160 (“member”), 4185
13 (“separate interest”).

14 **Notes.** (1) By its terms, existing Section 1363.07 only applies “[after] an association acquires
15 fee title to, or any easement right over, a common area....” That would seem to preclude
16 application of the section to a common area that is not owned by the association (e.g., where the
17 common area is owned by the members as tenants in common). It seems unlikely that the section
18 was intended to be limited in that way. Proposed Section 5900 does not continue the limitation.
19 The Commission invites comment on whether that would cause a problem.

20 (2) By its terms, Section 1363.07 relates to a grant of exclusive use that is made by the board of
21 directors. Are there circumstances in which an entity other than the board might make such a
22 grant?

23 **§ 5905. Partition of condominium project**

24 5905. (a) Except as provided in this section, the common area in a condominium
25 project shall remain undivided, and there shall be no judicial partition of the
26 common area. Nothing in this section shall be deemed to prohibit partition of a
27 cotenancy of a separate interest in a condominium.

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

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

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

41 (3) The project has been in existence more than 50 years, is obsolete and
42 uneconomic, and owners of separate interests holding in the aggregate more than a
43 50-percent interest in the common area oppose repair or restoration of the project.

44 (4) The conditions for such a sale, set forth in the declaration, have been met.

1 **§ 5930. Condominium project**

2 5930. In a condominium project the common area is not subject to partition,
3 except as provided in Section 5905. Any conveyance, judicial sale, or other
4 voluntary or involuntary transfer of the separate interest includes the undivided
5 interest in the common area. Any conveyance, judicial sale, or other voluntary or
6 involuntary transfer of the owner’s entire estate also includes the owner’s
7 membership interest in the association.

8 **Comment.** Section 5930 continues former Section 1358(b) without substantive change.

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

11 **§ 5935. Planned unit development**

12 5935. In a planned development, any conveyance, judicial sale, or other
13 voluntary or involuntary transfer of the separate interest includes the undivided
14 interest in the common area. Any conveyance, judicial sale, or other voluntary or
15 involuntary transfer of the owner’s entire estate also includes the owner’s
16 membership interest in the association.

17 **Comment.** Section 5935 continues former Section 1358(c) without substantive change, except
18 that language suggesting that a planned unit development may not include common area is not
19 continued. All common interest developments included common area. See Section 4100
20 (“common interest development” defined).

21 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
22 development”), 4175 (“planned development”), 4185 (“separate interest”).

23 **§ 5940. Stock cooperative**

24 5940. In a stock cooperative, any conveyance, judicial sale, or other voluntary or
25 involuntary transfer of the separate interest includes the ownership interest in the
26 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary
27 or involuntary transfer of the owner’s entire estate also includes the owner’s
28 membership interest in the association.

29 **Comment.** Section 5940 continues former Section 1358(d) without substantive change.

30 See also Sections 4080 (“association”), 4185 (“separate interest”), 4190 (“stock cooperative”).

31 **§ 5945. Transfer of exclusive use common area**

32 5945. Nothing in this article prohibits the transfer of exclusive use common
33 area, independent of any other interest in a common interest development, if
34 authorization to separately transfer exclusive use common area is expressly stated
35 in the declaration and the transfer occurs in accordance with the terms of the
36 declaration.

37 **Comment.** Section 5945 continues the next to last paragraph of former Section 1358 without
38 substantive change.

39 See also 4100 (“common interest development”), 4135 (“declaration”), 4145 (“exclusive use
40 common area”).

1 **§ 5950. Severability of interests**

2 5950. Any restriction on the severability of the component interests in real
3 property which are contained in the declaration shall not be deemed conditions
4 repugnant to the interest created within the meaning of Section 711 of the Civil
5 Code. However, these restrictions shall not extend beyond the period in which the
6 right to partition a project is suspended under Section 5905.

7 **Comment.** Section 5950 continues the last paragraph of former Section 1358 without
8 substantive change.

9 See also Section 4135 (“declaration”).

10 CHAPTER 8. GOVERNING DOCUMENTS

11 Article 1. General Provisions

12 **§ 6000. Creation of common interest development**

13 6000. For the purposes of this part, a common interest development is created
14 when a separate interest coupled with an interest in the common area or
15 membership in the association is, or has been, conveyed, provided that all of the
16 following are recorded:

17 (a) A declaration.

18 (b) A condominium plan, if any exists.

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

22 **Comment.** Section 6000 continues part of former Section 1352 without substantive change. It
23 governs the application of this part and is not intended to govern the date of creation of a common
24 interest development for other purposes. See *City of West Hollywood v. Beverly Towers, Inc.*, 52
25 Cal. 3d 1184, 805 P.2d 329, 278 Cal. Rptr. 375 (1991) (failure to convey unit not determinative
26 of whether condominium project exists for purposes of local planning law).

27 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
28 development”), 4120 (“condominium plan”), 4135 (“declaration”), 4185 (“separate interest”).

29 **§ 6005. Document authority**

30 6005. (a) The articles of incorporation may not include a provision that is
31 inconsistent with the declaration. To the extent of any inconsistency between the
32 articles of incorporation and the declaration, the declaration controls.

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

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

1 (b) For purposes of this section, an “airport influence area,” also known as an
2 “airport referral area,” is the area in which current or future airport-related noise,
3 overflight, safety, or airspace protection factors may significantly affect land uses
4 or necessitate restrictions on those uses as determined by an airport land use
5 commission.

6 (c) A statement in a declaration acknowledging that a property is located in an
7 airport influence area is not a title defect, lien, or encumbrance.

8 **Comment.** Section 6030 continues part of former Sections 1353(a)(1)-(2) & (4) without
9 substantive change. The remainder of former Section 1351(a)(1) is continued without substantive
10 change in Section 6025. See Bus. & Prof. Code § 11010 (disclosure of property within airport
11 influence area); Pub. Util. Code § 21675 (designation of “airport influence area” by county
12 airport land use commission).

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

14 **§ 6035. Disclosure of BCDC jurisdiction**

15 6035. (a) If a common interest development is within the jurisdiction of the San
16 Francisco Bay Conservation and Development Commission, as described in
17 Section 66610 of the Government Code, and its declaration is recorded on or after
18 January 1, 2006, the declaration shall contain the following notice:

19 “NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
20 DEVELOPMENT COMMISSION JURISDICTION

21 This property is located within the jurisdiction of the San Francisco Bay
22 Conservation and Development Commission. Use and development of
23 property within the commission’s jurisdiction may be subject to special
24 regulations, restrictions, and permit requirements. You may wish to
25 investigate and determine whether they are acceptable to you and your
26 intended use of the property before you complete your transaction.”

27 (b) A statement in a declaration acknowledging that a property is located within
28 the jurisdiction of the San Francisco Bay Conservation and Development
29 Commission is not a title defect, lien, or encumbrance.

30 **Comment.** Section 6035 continues former Section 1353(a)(3)-(4) without substantive change.
31 See also Section 4100 (“common interest development”), 4135 (“declaration”).

32 **§ 6040. Amendment authorized**

33 6040. (a) Unless a declaration expressly provides otherwise, any provision of the
34 declaration can be amended.

35 (b) If a provision of a declaration can be amended, it can be amended at any
36 time.

37 (c) The Legislature finds that there are common interest developments that have
38 been created with deed restrictions that do not provide a means for the property
39 owners to extend the term of the declaration. The Legislature further finds that
40 covenants and restrictions, contained in the declaration, are an appropriate method
41 for protecting the common plan of developments and to provide for a mechanism

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

8 (d) A declaration may be amended to extend the termination date of the
9 declaration, notwithstanding any contrary provision of the declaration. No single
10 extension of the term of the declaration made pursuant to this subdivision shall
11 exceed the initial term of the declaration or 20 years, whichever is less. However,
12 more than one extension may be made pursuant to this subdivision.

13 **Comment.** Subdivisions (a)-(b) of Section 6040 restate the first sentence of former Section
14 1355(b) without substantive change.

15 Subdivisions (c)-(d) restate Section 1357 without substantive change, except that the procedure
16 for approving an amendment of a declaration to extend its termination date is not continued. An
17 amendment under this subdivision would be approved pursuant to Section 6045.

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

20 **Notes. (1)** The Commission invites comment on whether the proposed restatement of the first
21 sentence of Section 1355(b) would cause any substantive change in the law.

22 **(2)** Existing law acknowledges that a declaration may be drafted so as to limit or prohibit its
23 amendment. That could result in permanent restrictions that become inappropriate over time, due
24 to changed circumstances or the changed desires of the property owners. The common law
25 recognizes a defense to the enforcement of an equitable servitude where “the original purpose for
26 the restrictions has become obsolete and continued enforcement of the restrictions would be
27 oppressive and inequitable.” H. Miller & M. Starr, California Real Estate § 24:20 (3d ed. 2004).
28 As a matter of policy, should there be a procedure for amendment of a declaration by the
29 members of a homeowner association, even if the declaration prohibits its own amendment?

30 § 6045. Approval of amendment

31 6045. (a) If the governing documents provide a procedure for approval of an
32 amendment of the declaration, an amendment may be approved by that procedure.

33 (b) If the governing documents do not provide a procedure for approval of an
34 amendment of the declaration, an amendment may be approved by a majority of
35 all members (Section 4065).

36 (c) The board shall provide individual notice (Section 4040) to all members of
37 an amendment approved under this section.

38 **Comment.** Section 6045 is comparable to the provisions of former Section 1355 that relate to
39 approval of an amendment of the declaration.

40 See also Sections 4085 (“board”), 4135 (“declaration”), 4150 (“governing documents”), 4160
41 (“member”).

42 **Notes. (1)** The Corporations Code provisions governing the amendment of the articles of
43 incorporation and bylaws address the possibility that the governing documents may require the
44 approval of a specific class of voters or of a specified third party in order to amend the governing
45 documents. See, e.g. Corp. Code § 7150(b), (d). Should similar provisions be applied to
46 amendment of the declaration? For example, suppose that the declaration provides that a minority

1 class of voters must approve any action that changes the proportional share of assessments
2 collected from each class. Should the majority class be able to delete that provision from the
3 declaration without the approval of a majority of the other class?

4 (2) Civil Code Section 1356 authorizes a director or member to petition the superior court for
5 an order lowering the number or percentage of affirmative votes required to approve an
6 amendment of the declaration. A comparable order may be obtained under Corporations Code
7 Section 7515, which is continued in proposed Section 4620. The Commission does not see the
8 benefit in providing two separate and slightly different provisions to achieve the same result. For
9 that reason, Section 1356 is not continued in the proposed law.

10 **§ 6050. Approval of amendment to delete obsolete construction or marketing provision**

11 6050. Notwithstanding Section 6045, the deletion of a provision of the
12 declaration may be approved by the board (Section 4060) and by a majority of a
13 quorum of the members (Section 4070) if all of the following conditions are
14 satisfied:

15 (a) The provision to be deleted is unequivocally designed and intended, or by its
16 nature can only have been designed or intended, to facilitate the developer in
17 completing the construction or marketing of the development or of a particular
18 phase of the development.

19 (b) The provision to be deleted authorizes access by the developer over or across
20 the common area for the purposes of (1) completion of construction of the
21 development, and (2) the erection, construction, or maintenance of structures or
22 other facilities designed to facilitate the completion of construction or marketing
23 of separate interests.

24 (c) The construction or marketing activities governed by the provision to be
25 deleted have been completed or terminated.

26 **Comment.** Section 6050 is comparable to former Section 1355.5 but applies only to the
27 amendment of a declaration. The requirement of former Section 1355.5(c), mandating that
28 members be given notice before the board approves the amendment, is not continued. Member
29 notice is required before board meetings and before a member vote is held.

30 See also Sections 4085 (“board”), 4095 (“common area”), 4135 (“declaration”), 4160
31 (“member”), 4185 (“separate interest”), 4520 (board meeting), 4595 (member meeting).

32 **Notes.** (1) Existing Section 1355.5 provides an optional procedure for deletion of obsolete
33 developer provisions from any type of governing document, including the articles of
34 incorporation and bylaws. However, it doesn’t appear that this section serves a useful purpose
35 when applied to the articles or bylaws. The existing procedure for amendment of those documents
36 is as expeditious or more expeditious than the procedure provided in Section 1355.5. See Corp.
37 Code §§ 7151 (amendment of bylaws), 7810-7820 (amendment of articles).

38 (2) Existing Section 1355.5 limits the optional procedure to deletion of provisions that
39 “[provide] for access by the developer over or across the common area for the purposes of (a)
40 completion of construction of the development, and (b) the erection, construction, or maintenance
41 of structures or other facilities designed to facilitate the completion of construction or marketing
42 of separate interests. Does the use of “and” imply that the provision must satisfy both of the
43 enumerated criteria? Should “and” be changed to “or”?

44 (3) Is it necessary to continue the requirement that the board approve an amendment under this
45 section? It seems unlikely that a board would ever oppose such an amendment if it were approved
46 by the members.

Article 4. Condominium Plan

§ 6075. Content of condominium plan

6075. A condominium plan shall include all of the following:

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

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

(c) A certificate consenting to the recordation of the condominium plan pursuant to this part signed and acknowledged by all of the following persons:

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

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

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

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

(5) In a conversion of a community apartment project or stock cooperative to a condominium project that has been approved by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government Code, by those owners, trustees, beneficiaries, and mortgagees who approved the conversion.

(d) A person who owns only a mineral right, easement, right-of-way, or other nonpossessory interest in the property that is included in the condominium project does not need to sign the condominium plan.

Comment. Section 6075 continues former Section 1351(e) without substantive change, except that the last paragraph is not continued. That paragraph is continued without substantive change in Section 5060.

See also Sections 4095 (“common area”), 4105 (“community apartment project”), 4120 (“condominium plan”), 4125 (“condominium project”), 4170 (“person”), 4185 (“separate interest”), 4190 (“stock cooperative”).

§ 6080. Amendment of condominium plan

6080. A condominium plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the persons whose signatures are required pursuant to subdivision (c) of Section 6075.

Comment. Section 6080 continues the last paragraph of former Section 1351(e) without substantive change.

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

Article 5. Operating Rules

§ 6100. Requirements for validity and enforceability

6100. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

(a) The rule is in writing.

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

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

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

(e) The rule is reasonable.

Comment. Section 6100 continues former Section 1357.110 without substantive change.

See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4165 (“operating rule”).

§ 6110. Application of rulemaking procedures

6110. (a) Sections 6115 and 6120 only apply to an operating rule that relates to one or more of the following subjects:

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

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

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

(4) Any standards for delinquent assessment payment plans.

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

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

(7) Any procedure for the conduct of an election.

(b) Sections 6115 and 6120 do not apply to the following actions by the board:

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

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

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

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

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

Comment. Section 6110 continues former Section 1357.120 without substantive change, except that subdivision (a)(7) is new. That provision is added to conform to Section 4625.

See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4160 (“member”), 4165 (“operating rule”), 4180 (“rule change”), 4185 (“separate interest”).

1 **§ 6115. Approval of rule change by board**

2 6115. (a) The board shall provide general notice (Section 4045) of a proposed
3 rule change at least 30 calendar days before making the rule change. The notice
4 shall include the text of the proposed rule change and a description of the purpose
5 and effect of the proposed rule change. Notice is not required under this
6 subdivision if the board determines that an immediate rule change is necessary to
7 address an imminent threat to public health or safety or imminent risk of
8 substantial economic loss to the association.

9 (b) A proposed rule change may be approved by the board (Section 4060).

10 (c) As soon as possible after approving a rule change, but not more than 15
11 calendar days after approving the rule change, the board shall provide general
12 notice (Section 4045) of the rule change. If the rule change was an emergency rule
13 change made under subdivision (d), the notice shall include the text of the rule
14 change, a description of the purpose and effect of the rule change, and the date that
15 the rule change expires.

16 (d) If the board determines that an immediate rule change is required to address
17 an imminent threat to public health or safety, or an imminent risk of substantial
18 economic loss to the association, the board may approve an emergency rule
19 change (Section 4060) without providing general notice (Section 4045) of the
20 proposed rule change. An emergency rule change is effective for 120 calendar
21 days, unless the board provides for a shorter effective period. A rule change made
22 under this subdivision may not be readopted under this subdivision.

23 **Comment.** Section 6115 restates former Section 1357.130 without substantive change.

24 See also Sections 4080 (“association”), 4085 (“board”), 4180 (“rule change”).

25 **§ 6120. Reversal of rule change by members**

26 6120. (a) Members of an association owning five percent or more of the separate
27 interests may call a special member meeting to reverse a rule change that was
28 approved by the board.

29 (b) A special member meeting may be called by delivering a request to the board
30 (Section 4035) that includes the requisite number of member signatures, after
31 which the board shall provide general notice (Section 4045) of the meeting and
32 hold the meeting in conformity with Article 2 (commencing with Section 4500) of
33 Chapter 3. A written request may only be delivered within 30 calendar days after
34 general notice (Section 4045) of the rule change or enforcement of the resulting
35 rule, whichever occurs first.

36 (c) For the purposes of Article 3 (commencing with Section 4700) of Chapter 3,
37 collection of signatures to call a special meeting under this section is a purpose
38 reasonably related to the interests of the members of the association. A member
39 request to copy or inspect the membership list solely for that purpose may not be
40 denied on the grounds that the purpose is not reasonably related to the member’s
41 interests as a member.

1 (d) A decision to reverse a rule change may be approved by a majority of a
2 quorum of the members (Section 4070), or if the declaration or bylaws require a
3 greater proportion, by the affirmative vote or written ballot of the proportion
4 required. In lieu of calling the meeting described in this section, the board may
5 distribute a written ballot to every member of the association.

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

9 (f) A meeting called under this section is governed by Article 3 (commencing
10 with Section 4575) and Article 4 (commencing with Section 4625) of Chapter 3.

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

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

18 (i) This section does not apply to an emergency rule change made under
19 subdivision (d) of Section 6115.

20 **Comment.** Section 6120 continues former Section 1357.140 without substantive change. See
21 Sections 4035 (delivered to board) 4045 (general notice), 4070 (approved by majority of quorum
22 of the members).

23 See also Sections 4080 (“association”), 4085 (“board”), 4135 (“declaration”), 4160
24 (“member”), 4180 (“rule change”), 4185 (“separate interest”).

25 **§ 6125. Applicability of article to changes commenced before and after January 1, 2004**

26 6125. (a) This article applies to a rule change commenced on or after January 1,
27 2004.

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

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

32 **Comment.** Section 6125 continues former Section 1357.150 without substantive change.
33 See also Sections 4085 (“board”), 4180 (“rule change”).

34 **Article 6. Unlawful Restrictions**

35 **§ 6150. Discriminatory restriction**

36 6150. (a) No governing document shall include a restrictive covenant in
37 violation of Section 12955 of the Government Code.

38 (b) Notwithstanding any other provision of law or provision of the governing
39 documents, the board shall amend the governing documents to delete the unlawful
40 restrictive covenant and to restate the governing document without the deleted
41 restrictive covenant. No other person is required to approve the amendment.

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) The Department of Fair Employment and Housing, a city or county in which
7 a common interest development is located, or any other person may provide
8 written notice to a board (Section 6030) requesting that it comply with this section.
9 If the board fails to comply with this section within 30 calendar days after delivery
10 of the notice under this subdivision, the person who sent the notice may bring an
11 action against the association for injunctive relief to enforce this section. The court
12 may award attorney's fees to the prevailing party.

13 **Comment.** Section 6150 restates former Section 1352.5 without substantive change, except
14 that subdivision (c) is added. See Section 4030 (delivery to board).

15 See also Sections 4080 ("association"), 4085 ("board"), 4100 ("common interest
16 development"), 4135 ("declaration"), 4150 ("governing documents"), 4170 ("person").

17 **Note.** The use of the term "restrictive covenant" in existing Section 1352.5 would seem to
18 limit its scope to a discriminatory provision in the recorded declaration (see Civ. Code § 1468(d)
19 (covenant must be recorded to bind successive owners)). That is contrary to the express terms of
20 the section, which provide that it applies to a "declaration *or other governing documents.*" Would
21 it be appropriate to replace the term "restrictive covenant" with the broader term "rule or
22 restriction"?

23 Article 7. Construction of Documents

24 § 6175. Liberal construction of instruments

25 6175. (a) Any deed, declaration, or condominium plan for a common interest
26 development shall be liberally construed to facilitate the operation of the common
27 interest development, and its provisions shall be presumed to be independent and
28 severable.

29 (b) Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2
30 of Part 1 of Division 2 shall operate to invalidate any provisions of the governing
31 documents of a common interest development.

32 **Comment.** Section 6175 continues former Section 1370 without substantive change.

33 See also Sections 4100 ("common interest development"), 4120 ("condominium plan"), 4135
34 ("declaration"), 4150 ("governing documents").

35 § 6180. Boundaries of units

36 6180. In interpreting a deed or condominium plan, the existing physical
37 boundaries of a unit in a condominium project, when the boundaries of the unit are
38 contained within a building, or of a unit reconstructed in substantial accordance
39 with the original plans thereof, shall be conclusively presumed to be its boundaries
40 rather than the metes and bounds expressed in the deed or condominium plan, if
41 any exists, regardless of settling or lateral movement of the building and

1 regardless of minor variance between boundaries shown on the plan or in the deed
2 and those of the building.

3 **Comment.** Section 6180 continues former Section 1371 without substantive change.
4 See also Sections 4120 (“condominium plan”), 4125 (“condominium project”).

5 CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

6  **Note.** The proposed law continues Sections 1375, 1375.05, and 1375.1 without any change
7 other than to correct cross-references.

8 **§ 6200. Actions for damages**

9 6200. (a) Before an association files a complaint for damages against a builder,
10 developer, or general contractor (“respondent”) of a common interest development
11 based upon a claim for defects in the design or construction of the common
12 interest development, all of the requirements of this section shall be satisfied with
13 respect to the builder, developer, or general contractor.

14 (b) The association shall serve upon the respondent a “Notice of
15 Commencement of Legal Proceedings.” The notice shall be served by certified
16 mail to the registered agent of the respondent, or if there is no registered agent,
17 then to any officer of the respondent. If there are no current officers of the
18 respondent, service shall be upon the person or entity otherwise authorized by law
19 to receive service of process. Service upon the general contractor shall be
20 sufficient to initiate the process set forth in this section with regard to any builder
21 or developer, if the builder or developer is not amenable to service of process by
22 the foregoing methods. This notice shall toll all applicable statutes of limitation
23 and repose, whether contractual or statutory, by and against all potentially
24 responsible parties, regardless of whether they were named in the notice, including
25 claims for indemnity applicable to the claim for the period set forth in subdivision

26 (c). The notice shall include all of the following:

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

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

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

31 (4) A summary of the results of a survey or questionnaire distributed to
32 homeowners to determine the nature and extent of defects, if a survey has been
33 conducted or a questionnaire has been distributed.

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

36 (c) Service of the notice shall commence a period, not to exceed 180 days,
37 during which the association, the respondent, and all other participating parties
38 shall try to resolve the dispute through the processes set forth in this section. This
39 180-day period may be extended for one additional period, not to exceed 180 days,
40 only upon the mutual agreement of the association, the respondent, and any parties

1 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any
2 extensions beyond the first extension shall require the agreement of all
3 participating parties. Unless extended, the dispute resolution process prescribed by
4 this section shall be deemed completed. All extensions shall continue the tolling
5 period described in subdivision (b).

6 (d) Within 25 days of the date the association serves the Notice of
7 Commencement of Legal Proceedings, the respondent may request in writing to
8 meet and confer with the board of directors of the association. Unless the
9 respondent and the association otherwise agree, there shall be not more than one
10 meeting, which shall take place no later than 10 days from the date of the
11 respondent's written request, at a mutually agreeable time and place. The meeting
12 shall be subject to Sections 4525 and 4540. The discussions at the meeting are
13 privileged communications and are not admissible in evidence in any civil action,
14 unless the association and the respondent consent in writing to their admission.

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

17 (1) The respondent shall provide the association with access to, for inspection
18 and copying of, all plans and specifications, subcontracts, and other construction
19 files for the project that are reasonably calculated to lead to the discovery of
20 admissible evidence regarding the defects claimed. The association shall provide
21 the respondent with access to, for inspection and copying of, all files reasonably
22 calculated to lead to the discovery of admissible evidence regarding the defects
23 claimed, including all reserve studies, maintenance records and any survey
24 questionnaires, or results of testing to determine the nature and extent of defects.
25 To the extent any of the above documents are withheld based on privilege, a
26 privilege log shall be prepared and submitted to all other parties. All other
27 potentially responsible parties shall have the same rights as the respondent
28 regarding the production of documents upon receipt of written notice of the claim,
29 and shall produce all relevant documents within 60 days of receipt of the notice of
30 the claim.

31 (2) The respondent shall provide written notice by certified mail to all
32 subcontractors, design professionals, their insurers, and the insurers of any
33 additional insured whose identities are known to the respondent or readily
34 ascertainable by review of the project files or other similar sources and whose
35 potential responsibility appears on the face of the notice. This notice to
36 subcontractors, design professionals, and insurers shall include a copy of the
37 Notice of Commencement of Legal Proceedings, and shall specify the date and
38 manner by which the parties shall meet and confer to select a dispute resolution
39 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its
40 obligation to participate in the meet and confer or serve a written acknowledgment
41 of receipt regarding this notice, advise the recipient that it will waive any
42 challenge to selection of the dispute resolution facilitator if it elects not to
43 participate in the meet and confer, advise the recipient that it may be bound by any

1 settlement reached pursuant to subdivision (d) of Section 6205, advise the
2 recipient that it may be deemed to have waived rights to conduct inspection and
3 testing pursuant to subdivision (c) of Section 6205, advise the recipient that it may
4 seek the assistance of an attorney, and advise the recipient that it should contact its
5 insurer, if any. Any subcontractor or design professional, or insurer for that
6 subcontractor, design professional, or additional insured, who receives written
7 notice from the respondent regarding the meet and confer shall, prior to the meet
8 and confer, serve on the respondent a written acknowledgment of receipt. That
9 subcontractor or design professional shall, within 10 days of service of the written
10 acknowledgment of receipt, provide to the association and the respondent a
11 Statement of Insurance that includes both of the following:

12 (A) The names, addresses, and contact persons, if known, of all insurance
13 carriers, whether primary or excess and regardless of whether a deductible or self-
14 insured retention applies, whose policies were in effect from the commencement
15 of construction of the subject project to the present and which potentially cover the
16 subject claims.

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

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

34 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of
35 subdivision (e), the association, respondent, subcontractors, design professionals,
36 and their insurers who have been sent a notice as described in paragraph (2) of
37 subdivision (e) shall meet and confer in an effort to select a dispute resolution
38 facilitator to preside over the mandatory dispute resolution process prescribed by
39 this section. Any subcontractor or design professional who has been given timely
40 notice of this meeting but who does not participate, waives any challenge he or she
41 may have as to the selection of the dispute resolution facilitator. The role of the
42 dispute resolution facilitator is to attempt to resolve the conflict in a fair manner.
43 The dispute resolution facilitator shall be sufficiently knowledgeable in the subject

1 matter and be able to devote sufficient time to the case. The dispute resolution
2 facilitator shall not be required to reside in or have an office in the county in which
3 the project is located. The dispute resolution facilitator and the participating
4 parties shall agree to a date, time, and location to hold a case management meeting
5 of all parties and the dispute resolution facilitator, to discuss the claims being
6 asserted and the scheduling of events under this section. The case management
7 meeting with the dispute resolution facilitator shall be held within 100 days of
8 service of the Notice of Commencement of Legal Proceedings at a location in the
9 county where the project is located. Written notice of the case management
10 meeting with the dispute resolution facilitator shall be sent by the respondent to
11 the association, subcontractors and design professionals, and their insurers who are
12 known to the respondent to be on notice of the claim, no later than 10 days prior to
13 the case management meeting, and shall specify its date, time, and location. The
14 dispute resolution facilitator in consultation with the respondent shall maintain a
15 contact list of the participating parties.

16 (2) No later than 10 days prior to the case management meeting, the dispute
17 resolution facilitator shall disclose to the parties all matters that could cause a
18 person aware of the facts to reasonably entertain a doubt that the proposed dispute
19 resolution facilitator would be able to resolve the conflict in a fair manner. The
20 facilitator's disclosure shall include the existence of any ground specified in
21 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any
22 attorney-client relationship the facilitator has or had with any party or lawyer for a
23 party to the dispute resolution process, and any professional or significant personal
24 relationship the facilitator or his or her spouse or minor child living in the
25 household has or had with any party to the dispute resolution process. The
26 disclosure shall also be provided to any subsequently noticed subcontractor or
27 design professional within 10 days of the notice.

28 (3) A dispute resolution facilitator shall be disqualified by the court if he or she
29 fails to comply with this paragraph and any party to the dispute resolution process
30 serves a notice of disqualification prior to the case management meeting. If the
31 dispute resolution facilitator complies with this paragraph, he or she shall be
32 disqualified by the court on the basis of the disclosure if any party to the dispute
33 resolution process serves a notice of disqualification prior to the case management
34 meeting.

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

41 (5) Any subcontractor or design professional who receives notice of the
42 association's claim without having previously received timely notice of the meet
43 and confer to select the dispute resolution facilitator shall be notified by the

1 respondent regarding the name, address, and telephone number of the dispute
2 resolution facilitator. Any such subcontractor or design professional may serve
3 upon the parties and the dispute resolution facilitator a written objection to the
4 dispute resolution facilitator within 15 days of receiving notice of the claim.
5 Within seven days after service of this objection, the subcontractor or design
6 professional may petition the superior court to replace the dispute resolution
7 facilitator. The court may replace the dispute resolution facilitator only upon a
8 showing of good cause, liberally construed. Failure to satisfy the deadlines set
9 forth in this subdivision shall constitute a waiver of the right to challenge the
10 dispute resolution facilitator.

11 (6) The costs of the dispute resolution facilitator shall be apportioned in the
12 following manner: one-third to be paid by the association; one-third to be paid by
13 the respondent; and one-third to be paid by the subcontractors and design
14 professionals, as allocated among them by the dispute resolution facilitator. The
15 costs of the dispute resolution facilitator shall be recoverable by the prevailing
16 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil
17 Procedure, provided however that any nonsettling party may, prior to the filing of
18 the complaint, petition the facilitator to reallocate the costs of the dispute
19 resolution facilitator as they apply to any nonsettling party. The determination of
20 the dispute resolution facilitator with respect to the allocation of these costs shall
21 be binding in any subsequent litigation. The dispute resolution facilitator shall take
22 into account all relevant factors and equities between all parties in the dispute
23 resolution process when reallocating costs.

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

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

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

32 (A) The scope of the work performed by each potentially responsible
33 subcontractor.

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

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

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

42 (h) At the case management meeting, the parties shall, with the assistance of the
43 dispute resolution facilitator, reach agreement on a case management statement,

1 which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive,
2 except that the parties may dispense with one or more of these elements if they
3 agree that it is appropriate to do so. The case management statement shall provide
4 that the following elements shall take place in the following order:

5 (1) Establishment of a document depository, located in the county where the
6 project is located, for deposit of documents, defect lists, demands, and other
7 information provided for under this section. All documents exchanged by the
8 parties and all documents created pursuant to this subdivision shall be deposited in
9 the document depository, which shall be available to all parties throughout the
10 prefiling dispute resolution process and in any subsequent litigation. When any
11 document is deposited in the document depository, the party depositing the
12 document shall provide written notice identifying the document to all other parties.
13 The costs of maintaining the document depository shall be apportioned among the
14 parties in the same manner as the costs of the dispute resolution facilitator.

15 (2) Provision of a more detailed list of defects by the association to the
16 respondent after the association completes a visual inspection of the project. This
17 list of defects shall provide sufficient detail for the respondent to ensure that all
18 potentially responsible subcontractors and design professionals are provided with
19 notice of the dispute resolution process. If not already completed prior to the case
20 management meeting, the Notice of Commencement of Legal Proceedings shall be
21 served by the respondent on all additional subcontractors and design professionals
22 whose potential responsibility appears on the face of the more detailed list of
23 defects within seven days of receipt of the more detailed list. The respondent shall
24 serve a copy of the case management statement, including the name, address, and
25 telephone number of the dispute resolution facilitator, to all the potentially
26 responsible subcontractors and design professionals at the same time.

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

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

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

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

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

41 (8) Facilitated dispute resolution of the claim, with all parties, including
42 peripheral parties, as appropriate, and insurers, if any, present and having
43 settlement authority. The dispute resolution facilitators shall endeavor to set

1 specific times for the attendance of specific parties at dispute resolution sessions.
2 If the dispute resolution facilitator does not set specific times for the attendance of
3 parties at dispute resolution sessions, the dispute resolution facilitator shall permit
4 those parties to participate in dispute resolution sessions by telephone.

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

11 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the
12 time the case management statement is established, set deadlines for the
13 occurrence of each event set forth in the case management statement, taking into
14 account such factors as the size and complexity of the case, and the requirement of
15 this section that this dispute resolution process not exceed 180 days absent
16 agreement of the parties to an extension of time.

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

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

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

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

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

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

30 (C) No less than 10 days after the respondent submits the items required by this
31 paragraph, the respondent and the board of directors of the association shall meet
32 and confer about the respondent's settlement offer.

33 (D) If the association's board of directors rejects a settlement offer presented at
34 the meeting held pursuant to this subdivision, the board shall hold a meeting open
35 to each member of the association. The meeting shall be held no less than 15 days
36 before the association commences an action for damages against the respondent.

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

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

41 (ii) The options that are available to address the problems, including the filing of
42 a civil action and a statement of the various alternatives that are reasonably
43 foreseeable by the association to pay for those options and whether these payments

1 are expected to be made from the use of reserve account funds or the imposition of
2 regular or special assessments, or emergency assessment increases.

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

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

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

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

15 (I) Except for the purpose of in camera review as provided in subdivision (c) of
16 Section 6205, all defect lists and demands, communications, negotiations, and
17 settlement offers made in the course of the prelitigation dispute resolution process
18 provided by this section shall be inadmissible pursuant to Sections 1119 to 1124,
19 inclusive, of the Evidence Code and all applicable decisional law. This
20 inadmissibility shall not be extended to any other documents or communications
21 which would not otherwise be deemed inadmissible.

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

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

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

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

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

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

7 (5) To seek a determination that a settlement is a good faith settlement pursuant
8 to Section 877.6 of the Code of Civil Procedure and all related authorities. The
9 page limitations and meet and confer requirements specified in this section shall
10 not apply to these motions, which may be made on shortened notice. Instead, these
11 motions shall be subject to other applicable state law, rules of court, and local
12 rules. A determination made by the court pursuant to this motion shall have the
13 same force and effect as the determination of a postfiling application or motion for
14 good faith settlement.

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

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

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

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

30 (p) As used in this section:

31 (1) "Association" shall have the same meaning as defined in Section 4080.

32 (2) "Builder" means the declarant, as defined in subdivision Section 4130.

33 (3) "Common interest development" shall have the same meaning as in Section
34 4100, except that it shall not include developments or projects with less than 20
35 units.

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

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

41 (s) This section shall become inoperative on July 1, 2010, and as of January 1,
42 2011, is repealed, unless a later enacted statute, that is enacted before January 1,
43 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

1 **Comment.** Section 6200 continues former Section 1375 without change other than to correct
2 obsolete cross-references.

3 See also Sections 4080 (“association”), 4100 (“common interest development”), 4140
4 (“director”), 4160 (“member”), 4170 (“person”).

5 **§ 6205. Action following pre-filing dispute resolution**

6 6205. (a) Upon the completion of the mandatory pre-filing dispute resolution
7 process described in Section 6200, if the parties have not settled the matter, the
8 association or its assignee may file a complaint in the superior court in the county
9 in which the project is located. Those matters shall be given trial priority.

10 (b) In assigning trial priority, the court shall assign the earliest possible trial
11 date, taking into consideration the pretrial preparation completed pursuant to
12 Section 6200, and shall deem the complaint to have been filed on the date of
13 service of the Notice of Commencement of Legal Proceedings described under
14 Section 6200.

15 (c) Any respondent, subcontractor, or design professional who received timely
16 prior notice of the inspections and testing conducted under Section 6200 shall be
17 prohibited from engaging in additional inspection or testing, except if all of the
18 following specific conditions are met, upon motion to the court:

19 (1) There is an insurer for a subcontractor or design professional, that did not
20 have timely notice that legal proceedings were commenced under Section 6200 at
21 least 30 days prior to the commencement of inspections or testing pursuant to
22 paragraph (6) of subdivision (h) of Section 6200.

23 (2) The insurer’s insured did not participate in any inspections or testing
24 conducted under the provisions of paragraph (6) of subdivision (h) of Section
25 6200.

26 (3) The insurer has, after receiving notice of a complaint filed in superior court
27 under subdivision (a), retained separate counsel, who did not participate in the
28 Section 6200 dispute resolution process, to defend its insured as to the allegations
29 in the complaint.

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

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

34 If the court permits additional inspections or testing upon finding that these
35 requirements are met, any additional inspections or testing shall be limited to the
36 extent reasonably necessary to avoid the likelihood of prejudice and shall be
37 coordinated among all similarly situated parties to ensure that they occur without
38 unnecessary duplication. For purposes of providing notice to an insurer prior to
39 inspections or testing under paragraph (6) of subdivision (h) of Section 6200, if
40 notice of the proceedings was not provided by the insurer’s insured, notice may be
41 made via certified mail either by the subcontractor, design professional,
42 association, or respondent to the address specified in the Statement of Insurance
43 provided under paragraph (2) of subdivision (e) of Section 6200. Nothing herein

1 shall affect the rights of an intervenor who files a complaint in intervention. If the
2 association alleges defects that were not specified in the prefiling dispute
3 resolution process under Section 6200, the respondent, subcontractor, and design
4 professionals shall be permitted to engage in testing or inspection necessary to
5 respond to the additional claims. A party who seeks additional inspections or
6 testing based upon the amendment of claims shall apply to the court for leave to
7 conduct those inspections or that testing. If the court determines that it must
8 review the defect claims alleged by the association in the prefiling dispute
9 resolution process in order to determine whether the association alleges new or
10 additional defects, this review shall be conducted in camera. Upon objection of
11 any party, the court shall refer the matter to a judge other than the assigned trial
12 judge to determine if the claim has been amended in a way that requires additional
13 testing or inspection.

14 (d) Any subcontractor or design professional who had notice of the facilitated
15 dispute resolution conducted under Section 6200 but failed to attend, or attended
16 without settlement authority, shall be bound by the amount of any settlement
17 reached in the facilitated dispute resolution in any subsequent trial, although the
18 affected party may introduce evidence as to the allocation of the settlement. Any
19 party who failed to participate in the facilitated dispute resolution because the
20 party did not receive timely notice of the mediation shall be relieved of any
21 obligation to participate in the settlement. Notwithstanding any privilege
22 applicable to the prefiling dispute resolution process provided by Section 6200,
23 evidence may be introduced by any party to show whether a subcontractor or
24 design professional failed to attend or attended without settlement authority. The
25 binding effect of this subdivision shall in no way diminish or reduce a nonsettling
26 subcontractor or design professional's right to defend itself or assert all available
27 defenses relevant to its liability in any subsequent trial. For purposes of this
28 subdivision, a subcontractor or design professional shall not be deemed to have
29 attended without settlement authority because it asserted defenses to its potential
30 liability.

31 (e) Notice of the facilitated dispute resolution conducted under Section 6200
32 must be mailed by the respondent no later than 20 days prior to the date of the first
33 facilitated dispute resolution session to all parties. Notice shall also be mailed to
34 each of these parties' known insurance carriers. Mailing of this notice shall be by
35 certified mail. Any subsequent facilitated dispute resolution notices shall be served
36 by any means reasonably calculated to provide those parties actual notice.

37 (f) As to the complaint, the order of discovery shall, at the request of any
38 defendant, except upon a showing of good cause, permit the association's expert
39 witnesses to be deposed prior to any percipient party depositions. The depositions
40 shall, at the request of the association, be followed immediately by the defendant's
41 experts and then by the subcontractors' and design professionals' experts, except
42 on a showing of good cause. For purposes of this section, in determining what
43 constitutes "good cause," the court shall consider, among other things, the goal of

1 early disclosure of defects and whether the expert is prepared to render a final
2 opinion, except that the court may modify the scope of any expert's deposition to
3 address those concerns.

4 (g)(1) The only method of seeking judicial relief for the failure of the
5 association or the respondent to complete the dispute resolution process under
6 Section 6200 shall be the assertion, as provided for in this subdivision, of a
7 procedural deficiency to an action for damages by the association against the
8 respondent after that action has been filed. A verified application asserting a
9 procedural deficiency shall be filed with the court no later than 90 days after the
10 answer to the plaintiff's complaint has been served, unless the court finds that
11 extraordinary conditions exist.

12 (2) Upon the verified application of the association or the respondent alleging
13 substantial noncompliance with Section 6200, the court shall schedule a hearing
14 within 21 days of the application to determine whether the association or
15 respondent has substantially complied with this section. The issue may be
16 determined upon affidavits or upon oral testimony, in the discretion of the court.

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

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

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

33 (i) This section shall become inoperative on July 1, 2010, and, as of January 1,
34 2011, is repealed, unless a later enacted statute that is enacted before January 1,
35 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

36 **Comment.** Section 6205 continues former Section 1375.05 without change other than to
37 correct obsolete cross-references.

38 See also Section 4080 ("association").

39 **§ 6210. Notice of resolution**

40 6210. (a) As soon as is reasonably practicable after the association and the
41 builder have entered into a settlement agreement or the matter has otherwise been
42 resolved regarding alleged defects in the common areas, alleged defects in the

1 separate interests that the association is obligated to maintain or repair, or alleged
2 defects in the separate interests that arise out of, or are integrally related to, defects
3 in the common areas or separate interests that the association is obligated to
4 maintain or repair, where the defects giving rise to the dispute have not been
5 corrected, the association shall, in writing, inform only the members of the
6 association whose names appear on the records of the association that the matter
7 has been resolved, by settlement agreement or other means, and disclose all of the
8 following:

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

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

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

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

22 (c) Disclosure of the information required pursuant to subdivision (a) or
23 authorized by subdivision (b) shall not waive any privilege attached to the
24 information.

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

27 **Comment.** Section 6210 continues former Section 1375.1 without change other than to correct
28 obsolete cross-references.

29 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
30 development”), 4160 (“member”), 4185 (“separate interest”).

31 **§ 6215. Notice of civil action**

32 6215. (a) Not later than 30 days prior to the filing of any civil action by the
33 association against the declarant or other developer of a common interest
34 development for alleged damage to the common areas, alleged damage to the
35 separate interests that the association is obligated to maintain or repair, or alleged
36 damage to the separate interests that arises out of, or is integrally related to,
37 damage to the common areas or separate interests that the association is obligated
38 to maintain or repair, the board shall deliver individual notice (Section 4040) to
39 each member of the association who appears on the records of the association
40 when the notice is provided. The notice shall specify all of the following:

41 (1) That a meeting will take place to discuss problems that may lead to the filing
42 of a civil action.

1 (2) The options, including civil actions, that are available to address the
2 problems.

3 (3) The time and place of this meeting.

4 (b) Notwithstanding subdivision (a), if the association has reason to believe that
5 the applicable statute of limitations will expire before the association files the civil
6 action, the association may give the notice, as described above, within 30 days
7 after the filing of the action.

8 **Comment.** Section 6215 continues former Section 1368.5 without substantive change.

9 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
10 development”), 4130 (“declarant”), 4160 (“member”), 4185 (“separate interest”).

11 **Uncodified (added). Operative date**

12 This act becomes operative on January 1, 2010.

CONFORMING REVISIONS

1 **Bus. & Prof. Code § 10131.01 (amended). Real estate broker exception**

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.** Subdivision (b) of Section 10131.01 is amended to correct an obsolete reference to
35 former Civil Code Section 1351.

36 **Bus. & Prof. Code § 10153.2 (amended). Educational requirements for real estate broker**
37 **license**

38 SEC. _____. Section 10153.2 of the Business and Professions Code is amended to
39 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 Part 5~~ (commencing with Section
26 ~~1350 4000~~) of ~~Part 4 of Division 2~~ Division 4 of the Civil Code).

27 (b) The commissioner shall waive the requirements of this section for an
28 applicant who is a member of the State Bar of California and shall waive the
29 requirements for which an applicant has successfully completed an equivalent
30 course of study as determined under Section 10153.5.

31 (c) The commissioner shall extend credit under this section for any course
32 completed to satisfy requirements of Section 10153.3 or 10153.4.

33 **Comment.** Subdivision (a) of Section 10153.2 is amended to correct an obsolete reference to
34 former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code.

35 **Bus. & Prof. Code § 10177 (amended). Grounds for revoking real estate license**

36 SEC. _____. Section 10177 of the Business and Professions Code is amended to
37 read:

38 10177. The commissioner may suspend or revoke the license of a real estate
39 licensee, or may deny the issuance of a license to an applicant, who has done any
40 of the following, or may suspend or revoke the license of a corporation, or deny
41 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 any salesperson, by fraud, misrepresentation, or deceit, or by
5 making any 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 involving moral turpitude, and the time for
9 appeal has elapsed or the judgment of conviction has been affirmed on appeal,
10 irrespective of an order granting probation following that conviction, suspending
11 the imposition of sentence, or of a subsequent order under Section 1203.4 of the
12 Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter
13 a plea of not guilty, or dismissing the accusation or information.

14 (c) Knowingly authorized, directed, connived at, or aided in the publication,
15 advertisement, distribution, or circulation of any material false statement or
16 representation concerning his or her designation or certification of special
17 education, credential, trade organization membership, or business, or concerning
18 any business opportunity or any land or subdivision, as defined in Chapter 1
19 (commencing with Section 11000) of Part 2, offered for sale.

20 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing
21 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or
22 the rules and regulations of the commissioner for the administration and
23 enforcement of the Real Estate Law and Chapter 1 (commencing with Section
24 11000) of Part 2.

25 (e) Willfully used the term "realtor" or any trade name or insignia of
26 membership in any real estate organization of which the licensee is not a member.

27 (f) Acted or conducted himself or herself in a manner that would have warranted
28 the denial of his or her application for a real estate license, or has either had a
29 license denied or had a license issued by another agency of this state, another state,
30 or the federal government revoked or suspended for acts that, if done by a real
31 estate licensee, would be grounds for the suspension or revocation of a California
32 real estate license, if the action of denial, revocation, or suspension by the other
33 agency or entity was taken only after giving the licensee or applicant fair notice of
34 the charges, an opportunity for a hearing, and other due process protections
35 comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with
36 Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5
37 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
38 Government Code), and only upon an express finding of a violation of law by the
39 agency or entity.

40 (g) Demonstrated negligence or incompetence in performing any act for which
41 he or she is required to hold a license.

42 (h) As a broker licensee, failed to exercise reasonable supervision over the
43 activities of his or her salespersons, or, as the officer designated by a corporate

1 broker licensee, failed to exercise reasonable supervision and control of the
2 activities of the corporation for which a real estate license is required.

3 (i) Has used his or her employment by a governmental agency in a capacity
4 giving access to records, other than public records, in a manner that violates the
5 confidential nature of the records.

6 (j) Engaged in any other conduct, whether of the same or a different character
7 than specified in this section, which constitutes fraud or dishonest dealing.

8 (k) Violated any of the terms, conditions, restrictions, and limitations contained
9 in any order granting a restricted license.

10 (l)(1) Solicited or induced the sale, lease, or listing for sale or lease of residential
11 property on the ground, wholly or in part, of loss of value, increase in crime, or
12 decline of the quality of the schools due to the present or prospective entry into the
13 neighborhood of a person or persons having any characteristic listed in subdivision
14 (a) or (d) of Section 12955 of the Government Code, as those characteristics are
15 defined in Sections 12926, 12926.1, subdivision (m), and paragraph (1) of
16 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

17 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
18 shall not be construed to apply to housing for older persons, as defined in Section
19 12955.9 of the Government Code. With respect to familial status, nothing in
20 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
21 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
22 of Section 51 and Section ~~4360~~ 5760 of the Civil Code and subdivisions (n), (o),
23 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

24 (m) Violated the Franchise Investment Law (Division 5 (commencing with
25 Section 31000) of Title 4 of the Corporations Code) or regulations of the
26 Commissioner of Corporations pertaining thereto.

27 (n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing
28 with Section 25000) of Title 4 of the Corporations Code) or the regulations of the
29 Commissioner of Corporations pertaining thereto.

30 (o) Failed to disclose to the buyer of real property, in a transaction in which the
31 licensee is an agent for the buyer, the nature and extent of a licensee's direct or
32 indirect ownership interest in that real property. The direct or indirect ownership
33 interest in the property by a person related to the licensee by blood or marriage, by
34 an entity in which the licensee has an ownership interest, or by any other person
35 with whom the licensee has a special relationship shall be disclosed to the buyer.

36 (p) Violated Article 6 (commencing with Section 10237).

37 If a real estate broker that is a corporation has not done any of the foregoing
38 acts, either directly or through its employees, agents, officers, directors, or persons
39 owning or controlling 10 percent or more of the corporation's stock, the
40 commissioner may not deny the issuance of a real estate license to, or suspend or
41 revoke the real estate license of, the corporation, provided that any offending
42 officer, director, or stockholder, who has done any of the foregoing acts

1 individually and not on behalf of the corporation, has been completely
2 disassociated from any affiliation or ownership in the corporation.

3 **Comment.** Subdivision (l) of Section 10177 is amended to correct an obsolete reference to
4 former Civil Code Section 1360.

5 **Bus. & Prof. Code § 11003 (amended). “Planned development”**

6 SEC. _____. Section 11003 of the Business and Professions Code is amended to
7 read:

8 11003. “Planned development” has the same meaning as specified in
9 ~~subdivision (k) of Section 1351~~ Section 4175 of the Civil Code.

10 **Comment.** Section 11003 is amended to correct an obsolete reference to former Civil Code
11 Section 1351(k).

12 **Bus. & Prof. Code § 11003.2 (amended). “Stock cooperative”**

13 SEC. _____. Section 11003.2 of the Business and Professions Code is amended to
14 read:

15 11003.2. “Stock cooperative” has the same meaning as specified in ~~subdivision~~
16 ~~(m) of Section 1351~~ Section 4190 of the Civil Code, except that, as used in this
17 chapter, a “stock cooperative” does not include a limited-equity housing
18 cooperative.

19 **Comment.** Section 11003.2 is amended to correct an obsolete reference to former Civil Code
20 Section 1351(m).

21 **Bus. & Prof. Code § 11004 (amended). “Community apartment project”**

22 SEC. _____. Section 11004 of the Business and Professions Code is amended to
23 read:

24 11004. “Community apartment project” has the same meaning as specified in
25 ~~subdivision (d) of Section 1351~~ Section 4105 of the Civil Code.

26 **Comment.** Section 11004 is amended to correct an obsolete reference to former Civil Code
27 Section 1351(d).

28 **Bus. & Prof. Code § 11004.5 (amended). “Subdivided lands” and “subdivisions”**

29 SEC. _____. Section 11004.5 of the Business and Professions Code is amended to
30 read:

31 11004.5. In addition to any provisions of Section 11000, the reference in this
32 code to “subdivided lands” and “subdivision” shall include all of the following:

33 (a) Any planned development, as defined in Section 11003, containing five or
34 more lots.

35 (b) Any community apartment project, as defined by Section 11004, containing
36 five or more apartments.

37 (c) Any condominium project containing five or more condominiums, as defined
38 in Section 783 of the Civil Code.

39 (d) Any stock cooperative as defined in Section 11003.2, including any legal or
40 beneficial interests therein, having or intended to have five or more shareholders.

1 (e) Any limited-equity housing cooperative, as defined in Section 11003.4.

2 (f) In addition, the following interests shall be subject to this chapter and the
3 regulations of the commissioner adopted pursuant thereto:

4 (1) Any accompanying memberships or other rights or privileges created in, or
5 in connection with, any of the forms of development referred to in subdivision (a),
6 (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments,
7 declarations of restrictions, articles of incorporation, bylaws, or contracts
8 applicable thereto.

9 (2) Any interests or memberships in any owners' association as defined in
10 Section ~~1351~~ 4080 of the Civil Code, created in connection with any of the forms
11 of the development referred to in subdivision (a), (b), (c), (d), or (e).

12 (g) Notwithstanding this section, time-share plans, exchange programs,
13 incidental benefits, and short-term product subject to Chapter 2 (commencing with
14 Section 11210) are not "subdivisions" or "subdivided lands" subject to this
15 chapter.

16 **Comment.** Subdivision (f) of Section 11004.5 is amended to correct an obsolete reference to
17 former Civil Code Section 1351.

18 **Bus. & Prof. Code § 11010.10 (amended). Application for review of declaration**

19 SEC. _____. Section 11010.10 of the Business and Professions Code is amended
20 to read:

21 11010.10. A person who plans to offer for sale or lease lots or other interests in a
22 subdivision which sale or lease (a) is not subject to the provisions of this chapter,
23 (b) does not require the submission of a notice of intention as provided in Section
24 11010, or (c) is subject to this chapter and for which the local jurisdiction requires
25 review and approval of the declaration, as defined in ~~subdivision (h) of Section~~
26 ~~1351~~ Section 4135 of the Civil Code, prior to or concurrently with the recordation
27 of the subdivision map and prior to the approval of the declaration pursuant to a
28 notice of intention for a public report, may submit an application requesting
29 review of the declaration, along with any required supporting documentation, to
30 the commissioner, without the filing of a notice of intention for the subdivision for
31 which the declaration is being prepared. Upon approval, the commissioner shall
32 give notice to the applicant that the declaration shall be approved for a subsequent
33 notice of intent filing for any public report for the subdivision identified in the
34 application, provided that the subdivision setup is substantially the same as that
35 originally described in the application for review of the declaration.

36 **Comment.** Section 11010.10 is amended to correct an obsolete reference to former Civil Code
37 Section 1351(h).

38 **Bus. & Prof. Code § 11018.1 (amended). Disclosure to prospective purchaser**

39 SEC. _____. Section 11018.1 of the Business and Professions Code is amended to
40 read:

1 11018.1. (a) A copy of the public report of the commissioner, when issued, shall
2 be given to the prospective purchaser by the owner, subdivider or agent prior to
3 the execution of a binding contract or agreement for the sale or lease of any lot or
4 parcel in a subdivision. The requirement of this section extends to lots or parcels
5 offered by the subdivider after repossession. A receipt shall be taken from the
6 prospective purchaser in a form and manner as set forth in regulations of the Real
7 Estate Commissioner.

8 (b) A copy of the public report shall be given by the owner, subdivider or agent
9 at any time, upon oral or written request, to any member of the public. A copy of
10 the public report and a statement advising that a copy of the public report may be
11 obtained from the owner, subdivider or agent at any time, upon oral or written
12 request, shall be posted in a conspicuous place at any office where sales or leases
13 or offers to sell or lease lots within the subdivision are regularly made.

14 (c) At the same time that a public report is required to be given by the owner,
15 subdivider, or agent pursuant to subdivision (a) with respect to a common interest
16 development, as defined, in ~~subdivision (c) of Section 1351~~ Section 4100 of the
17 Civil Code, the owner, subdivider, or agent shall give the prospective purchaser a
18 copy of the following statement:

19 “Common Interest Development General Information

20 The project described in the attached Subdivision Public Report is known as a
21 common-interest development. Read the public report carefully for more
22 information about the type of development. The development includes common
23 areas and facilities ~~which~~ that will be owned or operated by an owners’
24 association. Purchase of a lot or unit automatically entitles and obligates you as a
25 member of the association and, in most cases, includes a beneficial interest in the
26 areas and facilities. Since membership in the association is mandatory, you should
27 be aware of the following information before you purchase:

28 Your ownership in this development and your rights and remedies as a member
29 of its association will be controlled by governing instruments ~~which~~ that generally
30 include a Declaration of Restrictions (also known as CC&R’s), Articles of
31 Incorporation (or association) and bylaws. The provisions of these documents are
32 intended to be, and in most cases are, enforceable in a court of law. Study these
33 documents carefully before entering into a contract to purchase a subdivision
34 interest.

35 In order to provide funds for operation and maintenance of the common
36 facilities, the association will levy assessments against your lot or unit. If you are
37 delinquent in the payment of assessments, the association may enforce payment
38 through court proceedings or your lot or unit may be liened and sold through the
39 exercise of a power of sale. The anticipated income and expenses of the
40 association, including the amount that you may expect to pay through assessments,
41 are outlined in the proposed budget. Ask to see a copy of the budget if the
42 subdivider has not already made it available for your examination.

1 A homeowner association provides a vehicle for the ownership and use of
2 recreational and other common facilities which were designed to attract you to buy
3 in this development. The association also provides a means to accomplish
4 architectural control and to provide a base for homeowner interaction on a variety
5 of issues. The purchaser of an interest in a common-interest development should
6 contemplate active participation in the affairs of the association. He or she should
7 be willing to serve on the board of directors or on committees created by the
8 board. In short, “they” in a common interest development is “you.” Unless you
9 serve as a member of the governing board or on a committee appointed by the
10 board, your control of the operation of the common areas and facilities is limited
11 to your vote as a member of the association. There are actions that can be taken by
12 the governing body without a vote of the members of the association which can
13 have a significant impact upon the quality of life for association members.

14 Until there is a sufficient number of purchasers of lots or units in a common
15 interest development to elect a majority of the governing body, it is likely that the
16 subdivider will effectively control the affairs of the association. It is frequently
17 necessary and equitable that the subdivider do so during the early stages of
18 development. It is vitally important to the owners of individual subdivision
19 interests that the transition from subdivider to resident-owner control be
20 accomplished in an orderly manner and in a spirit of cooperation.

21 When contemplating the purchase of a dwelling in a common interest
22 development, you should consider factors beyond the attractiveness of the
23 dwelling units themselves. Study the governing instruments and give careful
24 thought to whether you will be able to exist happily in an atmosphere of
25 cooperative living where the interests of the group must be taken into account as
26 well as the interests of the individual. Remember that managing a common interest
27 development is very much like governing a small community ... the management
28 can serve you well, but you will have to work for its success.”

29 Failure to provide the statement in accordance with this subdivision shall not be
30 deemed a violation subject to Section 10185.

31 **Comment.** Subdivision (c) of Section 11018.1 is amended to correct an obsolete reference to
32 former Civil Code Section 1351(c) and to make stylistic revisions.

33 **Bus. & Prof. Code § 11018.12 (amended). Conditional public report**

34 SEC. _____. Section 11018.12 of the Business and Professions Code is amended
35 to read:

36 11018.12. (a) The commissioner may issue a conditional public report for a
37 subdivision specified in Section 11004.5 if the requirements of subdivision (e) are
38 met, all deficiencies and substantive inadequacies in the documents that are
39 required to make an application for a final public report for the subdivision
40 substantially complete have been corrected, the material elements of the setup of
41 the offering to be made under the authority of the conditional public report have
42 been established, and all requirements for the issuance of a public report set forth

1 in the regulations of the commissioner have been satisfied, except for one or more
2 of the following requirements, as applicable:

3 (1) A final map has not been recorded.

4 (2) A condominium plan pursuant to ~~subdivision (e) of Section 1351~~ Section
5 4120 of the Civil Code has not been recorded.

6 (3) A declaration of covenants, conditions, and restrictions pursuant to ~~Section~~
7 1353 Sections 6025, 6030, and 6035 of the Civil Code has not been recorded.

8 (4) A declaration of annexation has not been recorded.

9 (5) A recorded subordination of existing liens to the declaration of covenants,
10 conditions, and restrictions or declaration of annexation, or escrow instructions to
11 effect recordation prior to the first sale, are lacking.

12 (6) Filed articles of incorporation are lacking.

13 (7) A current preliminary report of a licensed title insurance company issued
14 after filing of the final map and recording of the declaration covering all
15 subdivision interests to be included in the public report has not been provided.

16 (8) Other requirements the commissioner determines are likely to be timely
17 satisfied by the applicant, notwithstanding the fact that the failure to meet these
18 requirements makes the application qualitatively incomplete.

19 (b) The commissioner may issue a conditional public report for a subdivision not
20 referred to or specified in Section 11000.1 or 11004.5 if the requirements of
21 subdivision (e) are met, all deficiencies and substantive inadequacies in the
22 documents that are required to make an application for a final public report for the
23 subdivision substantially complete have been corrected, the material elements of
24 the setup of the offering to be made under the authority of the conditional public
25 report have been established, and all requirements for issuance of a public report
26 set forth in the regulations of the commissioner have been satisfied, except for one
27 or more of the following requirements, as applicable:

28 (1) A final map has not been recorded.

29 (2) A declaration of covenants, conditions, and restrictions has not been
30 recorded.

31 (3) A current preliminary report of a licensed title insurance company issued
32 after filing of the final map and recording of the declaration covering all
33 subdivision interests to be included in the public report has not been provided.

34 (4) Other requirements the commissioner determines are likely to be timely
35 satisfied by the applicant, notwithstanding the fact that the failure to meet these
36 requirements makes the application qualitatively incomplete.

37 (c) A decision by the commissioner to not issue a conditional public report shall
38 be noticed in writing to the applicant within five business days and that notice
39 shall specifically state the reasons why the report is not being issued.

40 (d) Notwithstanding the provisions of Section 11018.2, a person may sell or
41 lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a
42 conditional public report if, as a condition of the sale or lease or offer for sale or
43 lease, delivery of legal title or other interest contracted for will not take place until

1 issuance of a public report and provided that the requirements of subdivision (e)
2 are met.

3 (e)(1) Evidence shall be supplied that all purchase money will be deposited in
4 compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section
5 11013.4, and in the case of a subdivision referred to in subdivision (a) of this
6 section, evidence shall be given of compliance with paragraphs (1) and (2) of
7 subdivision (a) of Section 11018.5.

8 (2) A description of the nature of the transaction shall be supplied.

9 (3) Provision shall be made for the return of the entire sum of money paid or
10 advanced by the purchaser if a subdivision public report has not been issued
11 during the term of the conditional public report, or as extended, or the purchaser is
12 dissatisfied with the public report because of a change pursuant to Section 11012.

13 (f) A subdivider, principal, or his or her agent shall provide a prospective
14 purchaser a copy of the conditional public report and a written statement including
15 all of the following:

16 (1) Specification of the information required for issuance of a public report.

17 (2) Specification of the information required in the public report that is not
18 available in the conditional public report, along with a statement of the reasons
19 why that information is not available at the time of issuance of the conditional
20 public report.

21 (3) A statement that no person acting as a principal or agent shall sell or lease, or
22 offer for sale or lease, lots or parcels in a subdivision for which a conditional
23 public report has been issued except as provided in this article.

24 (4) Specification of the requirements of subdivision (e).

25 (g) The prospective purchaser shall sign a receipt that he or she has received and
26 has read the conditional public report and the written statement provided pursuant
27 to subdivision (f).

28 (h) The term of a conditional public report shall not exceed six months, and may
29 be renewed for one additional term of six months if the commissioner determines
30 that the requirements for issuance of a public report are likely to be satisfied
31 during the renewal term.

32 (i) The term of a conditional public report for attached residential condominium
33 units, as defined pursuant to Section 783 of the Civil Code, consisting of 25 units
34 or more as specified on the approved tentative tract map, shall not exceed 30
35 months and may be renewed for one additional term of six months if the
36 commissioner determines that the requirements for issuance of a public report are
37 likely to be satisfied during the renewal term.

38 **Comment.** Subdivision (a) of Section 11018.12 is amended to correct obsolete references to
39 former Civil Code Sections 1351(c) and 1353.

40 **Bus. & Prof. Code § 11018.6 (amended). Disclosure to prospective purchaser**

41 SEC. _____. Section 11018.6 of the Business and Professions Code is amended to
42 read:

1 11018.6. Any person offering to sell or lease any interest subject to the
2 requirements of subdivision (a) of Section 11018.1 in a subdivision described in
3 Section 11004.5 shall make a copy of each of the following documents available
4 for examination by a prospective purchaser or lessee before the execution of an
5 offer to purchase or lease and shall give a copy thereof to each purchaser or lessee
6 as soon as practicable before transfer of the interest being acquired by the
7 purchaser or lessee:

8 (a) The declaration of covenants, conditions, and restrictions for the subdivision.

9 (b) Articles of incorporation or association for the subdivision owners
10 association.

11 (c) Bylaws for the subdivision owners association.

12 (d) Any other instrument ~~which~~ that establishes or defines the common, mutual,
13 and reciprocal rights, and responsibilities of the owners or lessees of interests in
14 the subdivision as shareholders or members of the subdivision owners association
15 or otherwise.

16 (e) To the extent available, the current financial information and related
17 statements as specified in ~~subdivision (a) of Section 1365~~ Sections 4800 and 5560
18 of the Civil Code, for subdivisions subject to those provisions.

19 (f) A statement prepared by the governing body of the association setting forth
20 the outstanding delinquent assessments and related charges levied by the
21 association against the subdivision interests in question under authority of the
22 governing instruments for the subdivision and association.

23 **Comment.** Subdivision (e) of Section 11018.6 is amended to correct an obsolete reference to
24 former Civil Code Section 1365(a) and to make a stylistic revision.

25 **Bus. & Prof. Code § 11211.7 (amended). Application of Davis Stirling Common Interest**
26 **Development Act to time-share plan**

27 SEC. _____. Section 11211.7 of the Business and Professions Code is amended to
28 read:

29 11211.7. (a) Any time-share plan registered pursuant to this chapter to which the
30 Davis-Stirling Common Interest Development Act (~~Chapter 1 (commencing with~~
31 ~~Section 1350) of Part 4 of Division 2 of the Civil Code~~) (Part 5 (commencing with
32 Section 4000) of Division 4 of the Civil Code) might otherwise apply is exempt
33 from that act, except for ~~Sections 1354, 1355, 1355.5, 1356, 1357, 1358, 1361,~~
34 ~~1361.5, 1362, 1363.05, 1364, 1365.5, 1370, and 1371 of the Civil Code.~~ the
35 following provisions of the Civil Code:

36 (1) Sections 4520, 4525, 4540, and 4550.

37 (2) Section 4620.

38 (3) Section 5125.

39 (4) Subdivision (d) of Section 5500.

40 (5) Subdivision (b) of Section 5510.

41 (6) Sections 5515-5520, inclusive.

42 (7) Section 5550.

1 (8) Subdivision (a) of, and paragraphs (1), (3), and (4) of subdivision (b) of,
2 Section 5555.

3 (9) Article 1 (commencing with Section 5700) of Chapter 6 of Part 5 of Division
4 4.

5 (10) Article 1 (commencing with Section 5800) of Chapter 7 of Part 5 of
6 Division 4.

7 (11) Article 5 (commencing with Section 5925) of Chapter 7 of Part 5 of
8 Division 4.

9 (12) Article 7 (commencing with Section 6175) of Chapter 8 of Part 5 of
10 Division 4.

11 (13) Sections 6040-6050, inclusive.

12 (b)(1) To the extent that a single site time-share plan or component site of a
13 multisite time-share plan located in the state is structured as a condominium or
14 other common interest development, and there is any inconsistency between the
15 applicable provisions of this chapter and the Davis-Stirling Common Interest
16 Development Act, the applicable provisions of this chapter shall control.

17 (2) To the extent that a time-share plan is part of a mixed use project where the
18 time-share plan comprises a portion of a condominium or other common interest
19 development, the applicable provisions of this chapter shall apply to that portion
20 of the project uniquely comprising the time-share plan, and the Davis-Stirling
21 Common Interest Development Act shall apply to the project as a whole.

22 (c)(1) The offering of any time-share plan, exchange program, incidental
23 benefit, or short term product in this state that is subject to the provisions of this
24 chapter shall be exempt from Sections 1689.5 to 1689.14, inclusive, of the Civil
25 Code (Home Solicitation Sales), Sections 1689.20 to 1689.24, inclusive, of the
26 Civil Code (Seminar Sales), and Sections 1812.100 to 1812.129, inclusive, of the
27 Civil Code (Contracts for Discount Buying Services).

28 (2) A developer or exchange company that, in connection with a time-share
29 sales presentation or offer to arrange an exchange, offers a purchaser the
30 opportunity to utilize the services of an affiliate, subsidiary, or third-party entity in
31 connection with wholesale or retail air or sea transportation, shall not, in and of
32 itself, cause the developer or exchange company to be considered a seller of travel
33 subject to Sections 17550 to 17550.34, inclusive, of the Business and Professions
34 Code, so long as the entity that actually provides or arranges the air or sea
35 transportation is registered as a seller of travel with the California Attorney
36 General's office or is otherwise exempt under those sections.

37 (d) To the extent certain sections in this chapter require information and
38 disclosure that by their terms only apply to real property time-share plans, those
39 requirements shall not apply to personal property time-share plans.

40 **Comment.** Subdivision (a) of Section 11211.7 is amended to correct obsolete references to
41 provisions of former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil
42 Code.

1 **Bus. & Prof. Code §11500 (amended). Definitions**

2 SEC. _____. Section 11500 of the Business and Professions Code is amended to
3 read:

4 11500. For purposes of this chapter, the following definitions apply:

5 (a) “Common interest development” means a residential development identified
6 in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code.

7 (b) “Community association” means a nonprofit corporation or unincorporated
8 association created for the purpose of managing a common interest development.
9 A community association is an “association” as defined in ~~subdivision (a) of~~
10 ~~Section 1351~~ Section 4080 of the Civil Code.

11 (c) “Financial services” means an act performed or offered to be performed, for
12 compensation, for a community association including, but not limited to, the
13 preparation of internal unaudited financial statements, internal accounting and
14 bookkeeping functions, billing of assessments, and related services.

15 (d) “Management services” means an act performed or offered to be performed
16 in an advisory capacity for a community association including, but not limited to,
17 the following:

18 (1) Administering or supervising the financial or common area assets of a
19 community association or common interest development, at the direction of the
20 community association’s governing body.

21 (2) Implementing resolutions and directives of the board of directors of the
22 community association elected to oversee the operation of a common interest
23 development.

24 (3) Implementing provisions of governing documents, as defined in Section
25 ~~1351~~ 4150 of the Civil Code, which govern the operation of the community
26 association or common interest development.

27 (4) Administering a community association’s contracts, including insurance
28 contracts, within the scope of the community association’s duties or with other
29 common interest development managers, vendors, contractors, and other third-
30 party providers of goods and services to a community association or common
31 interest development.

32 (e) “Professional association for common interest development managers”
33 means an organization that meets all of the following:

34 (1) Has at least 200 members or certificants who are common interest
35 development managers in California.

36 (2) Has been in existence for at least five years.

37 (3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

38 (4) Certifies that a common interest development manager has met the criteria
39 set forth in Section 11502 without requiring membership in the association.

40 (5) Requires adherence to a code of professional ethics and standards of practice
41 for certified common interest development managers.

42 **Comment.** Subdivisions (a), (b), and (d) of Section 11500 are amended to correct obsolete
43 references to former Civil Code Section 1351.

1 **Bus. & Prof. Code § 11502 (amended). “Certified common interest development manager”**

2 SEC. _____. Section 11502 of the Business and Professions Code is amended to
3 read:

4 11502. In order to be called a “certified common interest development
5 manager,” the person shall meet one of the following requirements:

6 (a) Prior to July 1, 2003, has passed a knowledge, skills, and aptitude
7 examination as specified in Section 11502.5 or has been granted a certification or
8 a designation by a professional association for common interest development
9 managers, and who has, within five years prior to July 1, 2004, received
10 instruction in California law pursuant to paragraph (1) of subdivision (b).

11 (b) On or after July 1, 2003, has successfully completed an educational
12 curriculum that shall be no less than a combined 30 hours in coursework described
13 in this subdivision and passed an examination or examinations that test
14 competence in common interest development management in the following areas:

15 (1) Instruction in California law that is related to the management of common
16 interest developments, including, but not limited to, the following courses of
17 study:

18 (A) The topics covered by the Davis-Stirling Common Interest Development
19 Act, contained in ~~Sections 1350 to 1376, inclusive, Part 5 (commencing with~~
20 Section 4000) of Division 4 of the Civil Code, including, but not limited to, the
21 types of California common interest developments, disclosure requirements
22 pertaining to common interest developments, meeting requirements for
23 community association boards of directors and members, financial disclosure and
24 reporting requirements, and access to community association records.

25 (B) Personnel issues, including, but not limited to, general matters related to
26 independent contractor or employee status, issues related to types of harassment,
27 the Unruh Civil Rights Act, fair employment laws, and the Americans with
28 Disabilities Act.

29 (C) Risk management as it pertains to common interest development, including,
30 but not limited to, required insurance coverage and preventative maintenance
31 programs.

32 (D) Property protection, including, but not limited to, general matters relating to
33 hazardous materials such as asbestos, radon, and lead, the Vehicle Code, local and
34 municipal regulations, family day care homes, energy conservation, Federal
35 Communications Commission rules and regulations, and solar energy systems.

36 (E) The business affairs of community associations, including, but not limited
37 to, necessary compliance with all required local, state, and federal laws and
38 treatises.

39 (F) Basic understanding of governing documents, codes, and regulations relating
40 to the activities and affairs of community associations and common interest
41 developments.

1 (2) Instruction in general management that is related to the managerial and
2 business skills needed for management of a common interest development,
3 including, but not limited to, the following:

4 (A) Finance issues, including, but not limited to, budget preparation,
5 management, and administration of community association financial affairs,
6 bankruptcy laws, and assessment collection activities.

7 (B) Contract negotiation and administration.

8 (C) Supervision of common interest development employees and staff.

9 (D) Management of common interest development maintenance programs.

10 (E) Management and administration of rules, regulations, parliamentary
11 procedures, and architectural standards pertaining to community associations and
12 common interest developments.

13 (F) Management and administration of common interest development
14 recreational programs and facilities.

15 (G) Management and administration of owner and resident communications.

16 (H) Training and strategic planning for the community association's board of
17 directors and committees, and other activities of residents in a common interest
18 development.

19 (I) Risk management as it pertains to common interest development properties,
20 activities, and emergency preparedness.

21 (J) Implementation of community association policies and procedures.

22 (K) Ethics for common interest development managers.

23 (L) Professional conduct and standards of practice for common interest
24 development managers.

25 (M) Current issues relating to common interest developments.

26 **Comment.** Subdivision (b) of Section 11502 is amended to correct an obsolete reference to
27 former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code. The
28 reference incorrectly stated that Section 1376 was the final section of the former title.

29 **Bus. & Prof. Code § 11504 (amended). Annual report to board of directors**

30 SEC. _____. Section 11504 of the Business and Professions Code is amended to
31 read:

32 11504. On or before September 1, 2003, and on an annual basis thereafter, a
33 person who either provides or contemplates providing the services of a common
34 interest development manager to a community association shall disclose to the
35 board of directors of the community association the following information:

36 (a) Whether or not the common interest development manager has met the
37 requirements of Section 11502 so he or she may be called a certified common
38 interest development manager.

39 (b) The name, address, and telephone number of the professional association
40 that certified the common interest development manager, the date the manager was
41 certified, and the status of the certification.

42 (c) The location of his or her primary office.

1 (d) Prior to entering into or renewing a contract with a community association,
2 the common interest development manager shall disclose to the governing board
3 of the community association whether the fidelity insurance of the community
4 manager or his or her employer covers the operating and reserve funds of the
5 community association. This requirement may not be construed to compel or
6 require a community association or common interest development manager to
7 require fidelity insurance.

8 (e) Possession of an active real estate license, if applicable.

9 This section may not preclude a common interest development manager from
10 disclosing information as required in Section ~~1363.1~~ 4900 of the Civil Code.

11 **Comment.** Subdivision (e) of Section 11504 is amended to correct an obsolete reference to
12 former Civil Code Section 1363.1.

13 **Bus. & Prof. Code § 11505 (amended). Common interest development manager**

14 SEC. _____. Section 11505 of the Business and Professions Code is amended to
15 read:

16 11505. It is an unfair business practice for a common interest development
17 manager, a company that employs the manager, or a company that is controlled by
18 a company that also has a financial interest in a company employing a manager, to
19 do any of the following:

20 (a) On or after July 1, 2003, to hold oneself out or use the title of “certified
21 common interest development manager” or any other term that implies or suggests
22 that the person is certified as a common interest development manager without
23 meeting the requirements of Section 11502.

24 (b) To state or advertise that he or she is certified, registered, or licensed by a
25 governmental agency to perform the functions of a certified common interest
26 development manager.

27 (c) To state or advertise a registration or license number, unless the license or
28 registration is specified by a statute, regulation, or ordinance.

29 (d) To fail to disclose or misrepresent any item to be disclosed in Section 11504
30 of this code, or Section ~~1363.1~~ 4900 of the Civil Code.

31 **Comment.** Subdivision (d) of Section 11505 is amended to correct an obsolete reference to
32 former Civil Code Section 1363.1.

33 **Bus. & Prof. Code § 23426.5 (amended). Tennis club**

34 SEC. _____. Section 23426.5 of the Business and Professions Code is amended to
35 read:

36 23426.5. (a) For purposes of this article, “club” also means any tennis club that
37 maintains not less than four regulation tennis courts, together with the necessary
38 facilities and clubhouse, has members paying regular monthly dues, has been in
39 existence for not less than 45 years, and is not associated with a common interest
40 development as defined in Section ~~1351~~ 4100 of the Civil Code, a community
41 apartment project as defined in Section 11004 of this code, a project consisting of

1 condominiums as defined in Section 783 of the Civil Code, or a mobilehome park
2 as defined in Section 18214 of the Health and Safety Code.

3 (b) It shall be unlawful for any club licensed pursuant to this section to make
4 any discrimination, distinction, or restriction against any person on account of the
5 person's color, race, religion, ancestry, national origin, sex, or age.

6 **Comment.** Subdivision (a) of Section 23426.5 is amended to correct an obsolete reference to
7 former Civil Code Section 1351.

8 **Bus. & Prof. Code § 23428.20 (amended). "Club"**

9 SEC. _____. Section 23428.20 of the Business and Professions Code is amended
10 to read:

11 23428.20. (a) For the purposes of this article, "club" also means any bona fide
12 nonprofit corporation that has been in existence for not less than nine years, has
13 more than 8,500 memberships issued and outstanding to owners of condominiums
14 and owners of memberships in stock cooperatives, and owns, leases, operates, or
15 maintains recreational facilities for its members.

16 (b) For the purposes of this article, "club" also means any bona fide nonprofit
17 corporation that was formed as a condominium homeowners' association, has at
18 least 250 members, has served daily meals to its members and guests for a period
19 of not less than 12 years, owns or leases, operates, and maintains a clubroom or
20 rooms for its membership, has an annual fee of not less than nine hundred dollars
21 (\$900) per year per member, and has as a condition of membership that one
22 member of each household be at least 54 years old.

23 (c) Section 23399 and the numerical limitation of Section 23430 shall not apply
24 to a club defined in this section.

25 (d) No license shall be issued pursuant to this section to any club that withholds
26 membership or denies facilities or services to any person on account of any basis
27 listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those
28 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
29 of subdivision (p) of Section 12955, and Section 12955.2 of the Government
30 Code.

31 (e) Notwithstanding subdivision (d), with respect to familial status, subdivision
32 (d) shall not be construed to apply to housing for older persons, as defined in
33 Section 12955.9 of the Government Code. With respect to familial status, nothing
34 in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
35 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
36 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
37 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
38 apply to subdivision (d).

39 **Comment.** Subdivision (e) of Section 23428.20 is amended to correct an obsolete reference to
40 former Civil Code Section 1360.

1 **Civ. Code § 51.11 (amended). Senior housing in Riverside County**

2 SEC. _____. Section 51.11 of the Civil Code is amended to read:

3 51.11. (a) The Legislature finds and declares that this section is essential to
4 establish and preserve housing for senior citizens. There are senior citizens who
5 need special living environments, and find that there is an inadequate supply of
6 this type of housing in the state.

7 (b) For the purposes of this section, the following definitions apply:

8 (1) “Qualifying resident” or “senior citizen” means a person 62 years of age or
9 older, or 55 years of age or older in a senior citizen housing development.

10 (2) “Qualified permanent resident” means a person who meets both of the
11 following requirements:

12 (A) Was residing with the qualifying resident or senior citizen prior to the death,
13 hospitalization, or other prolonged absence of, or the dissolution of marriage with,
14 the qualifying resident or senior citizen.

15 (B) Was 45 years of age or older, or was a spouse, cohabitant, or person
16 providing primary physical or economic support to the qualifying resident or
17 senior citizen.

18 (3) “Qualified permanent resident” also means a disabled person or person with
19 a disabling illness or injury who is a child or grandchild of the senior citizen or a
20 qualified permanent resident as defined in paragraph (2) who needs to live with
21 the senior citizen or qualified permanent resident because of the disabling
22 condition, illness, or injury. For purposes of this section, “disabled” means a
23 person who has a disability as defined in subdivision (b) of Section 54. A
24 “disabling injury or illness” means an illness or injury ~~which~~ that results in a
25 condition meeting the definition of disability set forth in subdivision (b) of Section
26 54.

27 (A) For any person who is a qualified permanent resident under paragraph (3)
28 whose disabling condition ends, the owner, board of directors, or other governing
29 body may require the formerly disabled resident to cease residing in the
30 development upon receipt of six months’ written notice; provided, however, that
31 the owner, board of directors, or other governing body may allow the person to
32 remain a resident for up to one year, after the disabling condition ends.

33 (B) The owner, board of directors, or other governing body of the senior citizen
34 housing development may take action to prohibit or terminate occupancy by a
35 person who is a qualified permanent resident under paragraph (3) if the owner,
36 board of directors, or other governing body finds, based on credible and objective
37 evidence, that the person is likely to pose a significant threat to the health or safety
38 of others that cannot be ameliorated by means of a reasonable accommodation;
39 provided, however, that action to prohibit or terminate the occupancy may be
40 taken only after doing both of the following:

41 (i) Providing reasonable notice to and an opportunity to be heard for the disabled
42 person whose occupancy is being challenged, and reasonable notice to the
43 coresident parent or grandparent of that person.

1 (ii) Giving due consideration to the relevant, credible, and objective information
2 provided in that hearing. The evidence shall be taken and held in a confidential
3 manner, pursuant to a closed session, by the owner, board of directors, or other
4 governing body in order to preserve the privacy of the affected persons.

5 The affected persons shall be entitled to have present at the hearing an attorney
6 or any other person authorized by them to speak on their behalf or to assist them in
7 the matter.

8 (4) “Senior citizen housing development” means a residential development
9 developed with more than 20 units as a senior community by its developer and
10 zoned as a senior community by a local governmental entity, or characterized as a
11 senior community in its governing documents, as these are defined in Section
12 ~~1351~~ 4150, or qualified as a senior community under the federal Fair Housing
13 Amendments Act of 1988, as amended. Any senior citizen housing development
14 ~~which~~ that is required to obtain a public report under Section 11010 of the
15 Business and Professions Code and ~~which~~ that submits its application for a public
16 report after July 1, 2001, shall be required to have been issued a public report as
17 a senior citizen housing development under Section 11010.05 of the Business and
18 Professions Code.

19 (5) “Dwelling unit” or “housing” means any residential accommodation other
20 than a mobilehome.

21 (6) “Cohabitant” refers to persons who live together as husband and wife, or
22 persons who are domestic partners within the meaning of Section 297 of the
23 Family Code.

24 (7) “Permitted health care resident” means a person hired to provide live-in,
25 long-term, or terminal health care to a qualifying resident, or a family member of
26 the qualifying resident providing that care. For the purposes of this section, the
27 care provided by a permitted health care resident must be substantial in nature and
28 must provide either assistance with necessary daily activities or medical treatment,
29 or both.

30 A permitted health care resident shall be entitled to continue his or her
31 occupancy, residency, or use of the dwelling unit as a permitted resident in the
32 absence of the senior citizen from the dwelling unit only if both of the following
33 are applicable:

34 (A) The senior citizen became absent from the dwelling due to hospitalization or
35 other necessary medical treatment and expects to return to his or her residence
36 within 90 days from the date the absence began.

37 (B) The absent senior citizen or an authorized person acting for the senior
38 citizen submits a written request to the owner, board of directors, or governing
39 board stating that the senior citizen desires that the permitted health care resident
40 be allowed to remain in order to be present when the senior citizen returns to
41 reside in the development.

42 Upon written request by the senior citizen or an authorized person acting for the
43 senior citizen, the owner, board of directors, or governing board shall have the

1 discretion to allow a permitted health care resident to remain for a time period
2 longer than 90 days from the date that the senior citizen's absence began, if it
3 appears that the senior citizen will return within a period of time not to exceed an
4 additional 90 days.

5 (c) The covenants, conditions, and restrictions and other documents or written
6 policy shall set forth the limitations on occupancy, residency, or use on the basis
7 of age. ~~Any such~~ A limitation shall not be more exclusive than to require that one
8 person in residence in each dwelling unit may be required to be a senior citizen
9 and that each other resident in the same dwelling unit may be required to be a
10 qualified permanent resident, a permitted health care resident, or a person under 55
11 years of age whose occupancy is permitted under subdivision (g) of this section or
12 subdivision (b) of Section 51.12. That limitation may be less exclusive, but shall at
13 least require that the persons commencing any occupancy of a dwelling unit
14 include a senior citizen who intends to reside in the unit as his or her primary
15 residence on a permanent basis. The application of the rules set forth in this
16 subdivision regarding limitations on occupancy may result in less than all of the
17 dwellings being actually occupied by a senior citizen.

18 (d) The covenants, conditions, and restrictions or other documents or written
19 policy shall permit temporary residency, as a guest of a senior citizen or qualified
20 permanent resident, by a person of less than 55 years of age for periods of time,
21 not more than 60 days in any year, that are specified in the covenants, conditions,
22 and restrictions or other documents or written policy.

23 (e) Upon the death or dissolution of marriage, or upon hospitalization, or other
24 prolonged absence of the qualifying resident, any qualified permanent resident
25 shall be entitled to continue his or her occupancy, residency, or use of the dwelling
26 unit as a permitted resident. This subdivision shall not apply to a permitted health
27 care resident.

28 (f) The covenants, conditions, and restrictions or other documents or written
29 policies applicable to any condominium, stock cooperative, limited-equity housing
30 cooperative, planned development, or multiple-family residential property that
31 contained age restrictions on January 1, 1984, shall be enforceable only to the
32 extent permitted by this section, notwithstanding lower age restrictions contained
33 in those documents or policies.

34 (g) Any person who has the right to reside in, occupy, or use the housing or an
35 unimproved lot subject to this section on or after January 1, 1985, shall not be
36 deprived of the right to continue that residency, occupancy, or use as the result of
37 the enactment of this section by Chapter 1147 of the Statutes of 1996.

38 (h) A housing development may qualify as a senior citizen housing development
39 under this section even though, as of January 1, 1997, it does not meet the
40 definition of a senior citizen housing development specified in subdivision (b), if
41 the development complies with that definition for every unit that becomes
42 occupied after January 1, 1997, and if the development was once within that

1 definition, and then became noncompliant with the definition as the result of any
2 one of the following:

3 (1) The development was ordered by a court or a local, state, or federal
4 enforcement agency to allow persons other than qualifying residents, qualified
5 permanent residents, or permitted health care residents to reside in the
6 development.

7 (2) The development received a notice of a pending or proposed action in, or by,
8 a court, or a local, state, or federal enforcement agency, which action could have
9 resulted in the development being ordered by a court or a state or federal
10 enforcement agency to allow persons other than qualifying residents, qualified
11 permanent residents, or permitted health care residents to reside in the
12 development.

13 (3) The development agreed to allow persons other than qualifying residents,
14 qualified permanent residents, or permitted health care residents to reside in the
15 development by entering into a stipulation, conciliation agreement, or settlement
16 agreement with a local, state, or federal enforcement agency or with a private
17 party who had filed, or indicated an intent to file, a complaint against the
18 development with a local, state, or federal enforcement agency, or file an action in
19 a court.

20 (4) The development allowed persons other than qualifying residents, qualified
21 permanent residents, or permitted health care residents to reside in the
22 development on the advice of counsel in order to prevent the possibility of an
23 action being filed by a private party or by a local, state, or federal enforcement
24 agency.

25 (i) The covenants, conditions, and restrictions or other documents or written
26 policy of the senior citizen housing development shall permit the occupancy of a
27 dwelling unit by a permitted health care resident during any period that the person
28 is actually providing live-in, long-term, or hospice health care to a qualifying
29 resident for compensation.

30 (j) This section shall only apply to the County of Riverside.

31 **Comment.** Subdivision (b) of Section 51.11 is amended to correct an obsolete reference to
32 former Section 1351.

33 The section is also amended to make stylistic revisions.

34 **Civ. Code § 714.1 (amended). Solar energy system in common interest development**

35 SEC. _____. Section 714.1 of the Civil Code is amended to read:

36 714.1. Notwithstanding Section 714, any association, as defined in Section ~~1351~~
37 ~~4080~~, may impose reasonable provisions ~~which~~ that:

38 (a) Restrict the installation of solar energy systems installed in common areas, as
39 defined in Section ~~1351~~ ~~4095~~, to those systems approved by the association.

40 (b) Require the owner of a separate interest, as defined in Section ~~1351~~ ~~4185~~, to
41 obtain the approval of the association for the installation of a solar energy system
42 in a separate interest owned by another.

1 (c) Provide for the maintenance, repair, or replacement of roofs or other building
2 components.

3 (d) Require installers of solar energy systems to indemnify or reimburse the
4 association or its members for loss or damage caused by the installation,
5 maintenance, or use of the solar energy system.

6 **Comment.** Section 714.1 is amended to correct obsolete references to former Section 1351 and
7 to make a stylistic revision.

8 **Civ. Code § 782 (amended). Discriminatory restriction**

9 SEC. _____. Section 782 of the Civil Code is amended to read:

10 782. (a) Any provision in any deed of real property in California, whether
11 executed before or after the effective date of this section, that purports to restrict
12 the right of any persons to sell, lease, rent, use or occupy the property to persons
13 having any characteristic listed in subdivision (a) or (d) of Section 12955 of the
14 Government Code, as those bases are defined in Sections 12926, 12926.1,
15 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section
16 12955.2 of the Government Code, by providing for payment of a penalty,
17 forfeiture, reverter, or otherwise, is void.

18 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
19 (a) shall not be construed to apply to housing for older persons, as defined in
20 Section 12955.9 of the Government Code. With respect to familial status, nothing
21 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
22 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
23 51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section
24 12955 of the Government Code shall apply to subdivision (a).

25 **Comment.** Subdivision (b) of Section 782 is amended to correct an obsolete reference to
26 former Section 1360.

27 **Civ. Code § 782.5 (amended). Discriminatory restriction**

28 SEC. _____. Section 782.5 of the Civil Code is amended to read:

29 782.5. (a) Any deed or other written instrument that relates to title to real
30 property, or any written covenant, condition, or restriction annexed or made a part
31 of, by reference or otherwise, any ~~such~~ the deed or instrument, that contains any
32 provision that purports to forbid, restrict, or condition the right of any person or
33 persons to sell, buy, lease, rent, use, or occupy the property on account of any
34 basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as
35 those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph
36 (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government
37 Code, with respect to any person or persons, shall be deemed to be revised to omit
38 that provision.

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

1 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
2 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
3 51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section
4 12955 of the Government Code shall apply to subdivision (a).

5 (c) This section shall not be construed to limit or expand the powers of a court to
6 reform a deed or other written instrument.

7 **Comment.** Section 782.5 is amended to correct an obsolete reference to former Section 1360
8 and to make a stylistic revision.

9 **Civ. Code § 783 (amended). “Condominium”**

10 SEC. _____. Section 783 of the Civil Code is amended to read:

11 783. A condominium is an estate in real property described in ~~subdivision (f) of~~
12 ~~Section 1351~~ Section 4115. A condominium may, with respect to the duration of
13 its enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an
14 estate for life, (3) an estate for years, such as a leasehold or a subleasehold, or (4)
15 any combination of the foregoing.

16 **Comment.** Section 783 is amended to correct an obsolete reference to former Section 1351(f).

17 **Civ. Code § 783.1 (amended). Real property in stock cooperative**

18 SEC. _____. Section 783.1 of the Civil Code is amended to read:

19 783.1. In a stock cooperative, as defined in ~~subdivision (m) of Section 1351~~
20 Section 4190, both the separate interest, as defined in ~~paragraph (4) of subdivision~~
21 ~~(l) of Section 1351~~ Section 4185, and the correlative interest in the stock
22 cooperative corporation, however designated, are interests in real property.

23 **Comment.** Section 783.1 is amended to correct obsolete references to former Sections
24 1351(m) and 1351(l).

25 **Civ. Code § 798.20 (amended). Discrimination in private club membership**

26 SEC. _____. Section 798.20 of the Civil Code is amended to read:

27 798.20. (a) Membership in any private club or organization that is a condition
28 for tenancy in a park shall not be denied on any basis listed in subdivision (a) or
29 (d) of Section 12955 of the Government Code, as those bases are defined in
30 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
31 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~~ 5760 of this code and subdivisions (n), (o), and (p) of Section
38 12955 of the Government Code shall apply to subdivision (a).

39 **Comment.** Subdivision (b) of Section 798.20 is amended to correct an obsolete reference to
40 former Section 1360.

1 **Civ. Code § 799.10 (amended). Right to display political campaign sign**

2 SEC. _____. Section 799.10 of the Civil Code is amended to read:

3 799.10. A resident may not be prohibited from displaying a political campaign
4 sign relating to a candidate for election to public office or to the initiative,
5 referendum, or recall process in the window or on the side of a manufactured
6 home or mobilehome, or within the site on which the home is located or installed.
7 The size of the face of a political sign may not exceed six square feet, and the sign
8 may not be displayed in excess of a period of time from 90 days prior to an
9 election to 15 days following the election, unless a local ordinance within the
10 jurisdiction where the manufactured home or mobilehome subject to this article is
11 located imposes a more restrictive period of time for the display of ~~such a~~ the sign.
12 In the event of a conflict between the provisions of this section and the provisions
13 of ~~Title 6 Part 5~~ (commencing with Section ~~1350~~ 4000) of ~~Part 4 of Division 2~~
14 Division 4, relating to the size and display of political campaign signs, the
15 provisions of this section shall prevail.

16 **Comment.** Section 799.10 is amended to correct an obsolete reference to former Title 6
17 (commencing with Section 1350) of Part 4 of Division 4 and to make a stylistic revision.

18 **Civ. Code § 800.25 (amended). Membership discrimination in private marina club**

19 SEC. _____. Section 800.25 of the Civil Code is amended to read:

20 800.25. (a) Membership in any private club or organization that is a condition
21 for tenancy in a floating home marina shall not be denied on any basis listed in
22 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
23 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
24 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

25 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
26 (a) shall not be construed to apply to housing for older persons, as defined in
27 Section 12955.9 of the Government Code. With respect to familial status, nothing
28 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
29 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
30 51 and Section ~~1360~~ 5760 of this code and subdivisions (n), (o), and (p) of Section
31 12955 of the Government Code shall apply to subdivision (a).

32 **Comment.** Subdivision (b) of Section 800.25 is amended to correct an obsolete reference to
33 former Section 1360.

34 **Civ. Code § 895 (amended). Definitions**

35 SEC. _____. Section 895 of the Civil Code is amended to read:

36 895. (a) “Structure” means any residential dwelling, other building, or
37 improvement located upon a lot or within a common area.

38 (b) “Designed moisture barrier” means an installed moisture barrier specified in
39 the plans and specifications, contract documents, or manufacturer’s
40 recommendations.

1 (c) “Actual moisture barrier” means any component or material, actually
2 installed, that serves to any degree as a barrier against moisture, whether or not
3 intended as such.

4 (d) “Unintended water” means water that passes beyond, around, or through a
5 component or the material that is designed to prevent that passage.

6 (e) “Close of escrow” means the date of the close of escrow between the builder
7 and the original homeowner. With respect to claims by an association, as defined
8 in ~~subdivision (a) of Section 1351~~ Section 4080, “close of escrow” means the date
9 of substantial completion, as defined in Section 337.15 of the Code of Civil
10 Procedure, or the date the builder relinquishes control over the association’s ability
11 to decide whether to initiate a claim under this title, whichever is later.

12 (f) “Claimant” or “homeowner” includes the individual owners of single-family
13 homes, individual unit owners of attached dwellings and, in the case of a common
14 interest development, any association as defined in ~~subdivision (a) of Section 1351~~
15 Section 4080.

16 **Comment.** Subdivisions (e) and (f) of Section 895 are amended to correct obsolete references
17 to former Section 1351(a).

18 **Civ. Code § 935 (amended). Construction of chapter**

19 SEC. _____. Section 935 of the Civil Code is amended to read:

20 935. To the extent that provisions of this chapter are enforced and those
21 provisions are substantially similar to provisions in Section ~~1375~~ 6200 of the Civil
22 Code, but an action is subsequently commenced under Section ~~1375~~ 6200 of the
23 Civil Code, the parties are excused from performing the substantially similar
24 requirements under Section ~~1375~~ 6200 of the Civil Code.

25 **Comment.** Section 935 is amended to correct obsolete references to former Section 1375.

26 **Civ. Code § 945 (amended). Binding effect upon original purchaser and successor-in-**
27 **interest**

28 SEC. _____. Section 945 of the Civil Code is amended to read:

29 945. The provisions, standards, rights, and obligations set forth in this title are
30 binding upon all original purchasers and their successors-in-interest. For purposes
31 of this title, associations and others having the rights set forth in Sections ~~1368.3~~
32 ~~and 1368.4~~ 4410 and 4415 shall be considered to be original purchasers and shall
33 have standing to enforce the provisions, standards, rights, and obligations set forth
34 in this title.

35 **Comment.** Section 945 is amended to correct an obsolete reference to former Sections 1368.3
36 and 1368.4.

37 **Civ. Code § 1102.6d (amended). Manufactured home and mobilehome transfer disclosure**
38 **statement**

39 SEC. _____. Section 1102.6d of the Civil Code is amended to read:

1 1102.6d. Except for manufactured homes and mobilehomes located in a
2 common interest development governed by ~~Title 6~~ Part 5 (commencing with
3 Section ~~1351~~ 4000) of Division 4, the disclosures applicable to the resale of a
4 manufactured home or mobilehome pursuant to subdivision (b) of Section 1102
5 are set forth in, and shall be made on a copy of, the following disclosure form:

6 ~~[~~ **Note. In the interest of conserving resources, the lengthy disclosure form**
7 **is not reproduced here.]**

8 **Comment.** Section 1102.6d is amended to correct an obsolete reference to former Title 6
9 (commencing with Section 1351).

10 **Civ. Code § 1133 (amended). Notice to prospective purchaser**

11 SEC. _____. Section 1133 of the Civil Code is amended to read:

12 1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket
13 encumbrance, as defined in Section 11013 of the Business and Professions Code,
14 but is exempt from a requirement of compliance with Section 11013.2 of the
15 Business and Professions Code, the subdivider, his or her agent, or representative,
16 shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor
17 cause it to be sold, or leased for a term exceeding five years, until the prospective
18 purchaser or lessee of the lot, parcel, or unit has been furnished with and has
19 signed a true copy of the following notice:

20
21 BUYER/LESSEE IS AWARE OF THE FACT THAT THE LOT, PARCEL, OR
22 UNIT WHICH HE OR SHE IS PROPOSING TO PURCHASE OR LEASE IS
23 SUBJECT TO A DEED OF TRUST, MORTGAGE, OR OTHER LIEN KNOWN
24 AS A "BLANKET ENCUMBRANCE".

25
26 IF BUYER/LESSEE PURCHASES OR LEASES THIS LOT, PARCEL, OR
27 UNIT, HE OR SHE COULD LOSE THAT INTEREST THROUGH
28 FORECLOSURE OF THE BLANKET ENCUMBRANCE OR OTHER LEGAL
29 PROCESS EVEN THOUGH BUYER/LESSEE IS NOT DELINQUENT IN HIS
30 OR HER PAYMENTS OR OTHER OBLIGATIONS UNDER THE
31 MORTGAGE, DEED OF TRUST, OR LEASE.

32
33
34 _____
Date

Signature of Buyer or Lessee

35 (b) "Subdivision," as used in subdivision (a), means improved or unimproved
36 land that is divided or proposed to be divided for the purpose of sale, lease, or
37 financing, whether immediate or future, into two or more lots, parcels, or units and
38 includes a condominium project, as defined in ~~subdivision (f) of Section 1351~~
39 Section 4125, a community apartment project, as defined in ~~subdivision (d) of~~
40 ~~Section 1351~~ Section 4105, a stock cooperative, as defined in ~~subdivision (m) of~~

1 ~~Section 1351~~ Section 4190, and a limited equity housing cooperative, as defined in
2 ~~subdivision (m) of Section 1351~~ Section 4190.

3 (c) The failure of the buyer or lessee to sign the notice shall not invalidate any
4 grant, conveyance, lease, or encumbrance.

5 (d) Any person or entity who willfully violates the provisions of this section
6 shall be liable to the purchaser of a lot or unit ~~which~~ that is subject to the
7 provisions of this section, for actual damages, and in addition thereto, shall be
8 guilty of a public offense punishable by a fine in an amount not to exceed five
9 hundred dollars (\$500). In an action to enforce ~~such~~ this liability or fine, the
10 prevailing party shall be awarded reasonable attorney's fees.

11 **Comment.** Subdivision (b) of Section 1133 is amended to correct obsolete references to former
12 Sections 1351(f), 1351(d), and 1351(m) and to make stylistic revisions.

13 **Civ. Code § 1633.3 (amended). Application of title**

14 SEC. _____. Section 1633.3 of the Civil Code is amended to read:

15 1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title
16 applies to electronic records and electronic signatures relating to a transaction.

17 (b) This title does not apply to transactions subject to the following laws:

18 (1) A law governing the creation and execution of wills, codicils, or
19 testamentary trusts.

20 (2) Division 1 (commencing with Section 1101) of the Uniform Commercial
21 Code, except Sections 1107 and 1206.

22 (3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section
23 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9
24 (commencing with Section 9101), and 11 (commencing with Section 11101) of the
25 Uniform Commercial Code.

26 (4) A law that requires that specifically identifiable text or disclosures in a
27 record or a portion of a record be separately signed, including initialed, from the
28 record. However, this paragraph does not apply to Section 1677 or 1678 of this
29 code or Section 1298 of the Code of Civil Procedure.

30 (c) This title does not apply to any specific transaction described in Section
31 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14,
32 1133, ~~or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1134,~~ 1689.6,
33 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of
34 Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or
35 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of
36 Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6,
37 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5
38 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3
39 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d
40 (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, ~~or~~
41 Section 3071.5 of, or Part 5 (commencing with Section 4000) of Division 4 of the
42 Civil Code, subdivision (b) of Section 18608 or Section 22328 of the Financial

1 Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and
2 Safety Code, Section 658, 662, 663, 664, 666, 667.5, 673, 677, 678, 678.1, 786,
3 10083, 10086, 10087, 10102, 10113.7, 10127.7, 10127.9, 10127.10, 10197,
4 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1
5 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities
6 Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may
7 not be substituted for any notice that is required to be sent pursuant to Section
8 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be
9 construed to prohibit the recordation of any document with a county recorder by
10 electronic means.

11 (d) This title applies to an electronic record or electronic signature otherwise
12 excluded from the application of this title under subdivision (b) when used for a
13 transaction subject to a law other than those specified in subdivision (b).

14 (e) A transaction subject to this title is also subject to other applicable
15 substantive law.

16 (f) The exclusion of a transaction from the application of this title under
17 subdivision (b) or (c) shall be construed only to exclude the transaction from the
18 application of this title, but shall not be construed to prohibit the transaction from
19 being conducted by electronic means if the transaction may be conducted by
20 electronic means under any other applicable law.

21 **Comment.** Subdivision (c) of Section 1633.3 is amended to correct an obsolete reference to
22 former Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code.

23 **Civ. Code § 1864 (amended). Transient occupancy**

24 SEC. _____. Section 1864 of the Civil Code is amended to read:

25 1864. Any person or entity, including a person employed by a real estate broker,
26 who, on behalf of another or others, solicits or arranges, or accepts reservations or
27 money, or both, for transient occupancies described in paragraphs (1) and (2) of
28 subdivision (b) of Section 1940, in a dwelling unit in a common interest
29 development, as defined in Section ~~1354~~ 4100, in a dwelling unit in an apartment
30 building or complex, or in a single-family home, shall do each of the following:

31 (a) Prepare and maintain, in accordance with a written agreement with the
32 owner, complete and accurate records and books of account, kept in accordance
33 with generally accepted accounting principles, of all reservations made and money
34 received and spent with respect to each dwelling unit. All money received shall be
35 kept in a trust account maintained for the benefit of owners of the dwelling units.

36 (b) Render, monthly, to each owner of the dwelling unit, or to that owner's
37 designee, an accounting for each month in which there are any deposits or
38 disbursements on behalf of that owner, however, in no event shall this accounting
39 be rendered any less frequently than quarterly.

40 (c) Make all records and books of account with respect to a dwelling unit
41 available, upon reasonable advance notice, for inspection and copying by the

1 dwelling unit's owner. The records shall be maintained for a period of at least
2 three years.

3 (d) Comply fully with all collection, payment, and recordkeeping requirements
4 of a transient occupancy tax ordinance, if any, applicable to the occupancy.

5 (e) In no event shall any activities described in this section subject the person or
6 entity performing those activities in any manner to Part 1 (commencing with
7 Section 10000) of Division 4 of the Business and Professions Code. However, a
8 real estate licensee subject to this section may satisfy the requirements of this
9 section by compliance with the Real Estate Law.

10 **Comment.** Section 1864 is amended to correct an obsolete reference to former Section 1351.

11 **Civ. Code § 2079.3 (amended). Scope of inspection**

12 SEC. _____. Section 2079.3 of the Civil Code is amended to read:

13 2079.3. The inspection to be performed pursuant to this article does not include
14 or involve an inspection of areas that are reasonably and normally inaccessible to
15 ~~such~~ this type of an inspection, nor an affirmative inspection of areas off the site of
16 the subject property or public records or permits concerning the title or use of the
17 property, and, if the property comprises a unit in a planned development as
18 defined in Section 11003 of the Business and Professions Code, a condominium as
19 defined in Section 783, or a stock cooperative as defined in Section 11003.2 of the
20 Business and Professions Code, does not include an inspection of more than the
21 unit offered for sale, if the seller or the broker complies with the provisions of
22 Section ~~1368~~ 5825.

23 **Comment.** Section 2079.3 is amended to correct an obsolete reference to former Section
24 1368(a) and to make a stylistic revision.

25 **Note.** Civil Code Section 2079.3 refers to a property seller's compliance with existing
26 Section 1368. Only subdivision (a) of Section 1368 states a duty that would apply to a seller
27 (disclosure of certain information to a prospective buyer). In the section above, the reference is
28 revised to refer only to the section that continues Section 1368(a). The other parts of Section 1368
29 do not impose duties on sellers and are not included in the revised cross-reference. The
30 Commission invites comment on whether that would cause any problems.

31 **Civ. Code § 2929.5 (amended). Inspection for hazardous substance**

32 SEC. _____. Section 2929.5 of the Civil Code is amended to read:

33 2929.5. (a) A secured lender may enter and inspect the real property security for
34 the purpose of determining the existence, location, nature, and magnitude of any
35 past or present release or threatened release of any hazardous substance into, onto,
36 beneath, or from the real property security on either of the following:

37 (1) Upon reasonable belief of the existence of a past or present release or
38 threatened release of any hazardous substance into, onto, beneath, or from the real
39 property security not previously disclosed in writing to the secured lender in
40 conjunction with the making, renewal, or modification of a loan, extension of
41 credit, guaranty, or other obligation involving the borrower.

1 (2) After the commencement of nonjudicial or judicial foreclosure proceedings
2 against the real property security.

3 (b) The secured lender shall not abuse the right of entry and inspection or use it
4 to harass the borrower or tenant of the property. Except in case of an emergency,
5 when the borrower or tenant of the property has abandoned the premises, or if it is
6 impracticable to do so, the secured lender shall give the borrower or tenant of the
7 property reasonable notice of the secured lender's intent to enter, and enter only
8 during the borrower's or tenant's normal business hours. Twenty-four hours'
9 notice shall be presumed to be reasonable notice in the absence of evidence to the
10 contrary.

11 (c) The secured lender shall reimburse the borrower for the cost of repair of any
12 physical injury to the real property security caused by the entry and inspection.

13 (d) If a secured lender is refused the right of entry and inspection by the
14 borrower or tenant of the property, or is otherwise unable to enter and inspect the
15 property without a breach of the peace, the secured lender may, upon petition,
16 obtain an order from a court of competent jurisdiction to exercise the secured
17 lender's rights under subdivision (a), and that action shall not constitute an action
18 within the meaning of subdivision (a) of Section 726 of the Code of Civil
19 Procedure.

20 (e) For purposes of this section:

21 (1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
22 mortgage, where the deed of trust or mortgage encumbers real property security
23 and secures the performance of the trustor or mortgagor under a loan, extension of
24 credit, guaranty, or other obligation. The term includes any successor-in-interest of
25 the trustor or mortgagor to the real property security before the deed of trust or
26 mortgage has been discharged, reconveyed, or foreclosed upon.

27 (2) "Hazardous substance" includes all of the following:

28 (A) Any "hazardous substance" as defined in subdivision (h) of Section 25281
29 of the Health and Safety Code.

30 (B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water
31 Code.

32 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
33 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
34 thereof.

35 (3) "Real property security" means any real property and improvements, other
36 than a separate interest and any related interest in the common area of a residential
37 common interest development, as the terms "separate interest," "common area,"
38 and "common interest development" are defined in ~~Section 1351~~ Sections 4185,
39 4095, and 4100, respectively, or real property consisting of one acre or less ~~which~~
40 that contains 1 to 15 dwelling units.

41 (4) "Release" means any spilling, leaking, pumping, pouring, emitting,
42 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into

1 the environment, including continuing migration, of hazardous substances into,
2 onto, or through soil, surface water, or groundwater.

3 (5) “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 **Comment.** Section 2929.5 is amended to correct an obsolete reference to former Section 1351
8 and to make stylistic revisions.

9 **Civ. Code § 2955.1 (amended). Disclosure of earthquake insurance requirement**

10 SEC. _____. Section 2955.1 of the Civil Code is amended to read:

11 2955.1. (a) Any lender originating a loan secured by the borrower’s separate
12 interest in a condominium project, as defined in ~~subdivision (f) of Section 1351~~
13 Section 4125, which requires earthquake insurance or imposes a fee or any other
14 condition in lieu thereof pursuant to an underwriting requirement imposed by an
15 institutional third-party purchaser shall disclose all of the following to the
16 potential borrower:

17 (1) That the lender or the institutional third party in question requires earthquake
18 insurance or imposes a fee or any other condition in lieu thereof pursuant to an
19 underwriting requirement imposed by an institutional third party purchaser.

20 (2) That not all lenders or institutional third parties require earthquake insurance
21 or impose a fee or any other condition in lieu thereof pursuant to an underwriting
22 requirement imposed by an institutional third party purchaser.

23 (3) Earthquake insurance may be required on the entire condominium project.

24 (4) That lenders or institutional third parties may also require that a
25 condominium project maintain, or demonstrate an ability to maintain, financial
26 reserves in the amount of the earthquake insurance deductible.

27 (b) For the purposes of this section, “institutional third party” means the Federal
28 Home Loan Mortgage Corporation, the Federal National Mortgage Association,
29 the Government National Mortgage Association, and other substantially similar
30 institutions, whether public or private.

31 (c) The disclosure required by this section shall be made in writing by the lender
32 as soon as reasonably practicable.

33 **Comment.** Subdivision (a) of Section 2955.1 is amended to correct an obsolete reference to
34 former Section 1351(f) and to make a stylistic revision.

35 **Code Civ. Proc. § 86 (amended). Jurisdiction**

36 SEC. _____. Section 86 of the Code of Civil Procedure is amended to read:

37 86. (a) The following civil cases and proceedings are limited civil cases:

38 (1) Cases at law in which the demand, exclusive of interest, or the value of the
39 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less.
40 This paragraph does not apply to cases that involve the legality of any tax, impost,
41 assessment, toll, or municipal fine, except actions to enforce payment of

1 delinquent unsecured personal property taxes if the legality of the tax is not
2 contested by the defendant.

3 (2) Actions for dissolution of partnership where the total assets of the
4 partnership do not exceed twenty-five thousand dollars (\$25,000); actions of
5 interpleader where the amount of money or the value of the property involved
6 does not exceed twenty-five thousand dollars (\$25,000).

7 (3) Actions to cancel or rescind a contract when the relief is sought in
8 connection with an action to recover money not exceeding twenty-five thousand
9 dollars (\$25,000) or property of a value not exceeding twenty-five thousand
10 dollars (\$25,000), paid or delivered under, or in consideration of, the contract;
11 actions to revise a contract where the relief is sought in an action upon the contract
12 if the action otherwise is a limited civil case.

13 (4) Proceedings in forcible entry or forcible or unlawful detainer where the
14 whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or
15 less.

16 (5) Actions to enforce and foreclose liens on personal property where the
17 amount of the liens is twenty-five thousand dollars (\$25,000) or less.

18 (6) Actions to enforce and foreclose, or petitions to release, liens of mechanics,
19 ~~materialmen~~ material providers, artisans, laborers, and of all other persons to
20 whom liens are given under the provisions of Chapter 2 (commencing with
21 Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce
22 and foreclose an assessment lien on a common interest development as defined in
23 Section ~~1351~~ 4100 of the Civil Code, where the amount of the liens is twenty-five
24 thousand dollars (\$25,000) or less. However, where an action to enforce the lien
25 affects property that is also affected by a similar pending action that is not a
26 limited civil case, or where the total amount of the liens sought to be foreclosed
27 against the same property aggregates an amount in excess of twenty-five thousand
28 dollars (\$25,000), the action is not a limited civil case.

29 (7) Actions for declaratory relief when brought pursuant to either of the
30 following:

31 (A) By way of cross-complaint as to a right of indemnity with respect to the
32 relief demanded in the complaint or a cross-complaint in an action or proceeding
33 that is otherwise a limited civil case.

34 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
35 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
36 Division 3 of the Business and Professions Code, where the amount in controversy
37 is twenty-five thousand dollars (\$25,000) or less.

38 (8) Actions to issue temporary restraining orders and preliminary injunctions,
39 and to take accounts, where necessary to preserve the property or rights of any
40 party to a limited civil case; to make any order or perform any act, pursuant to
41 Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments)
42 in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited
43 civil case; to determine title to personal property seized in a limited civil case.

1 (9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of
2 Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property
3 or to enforce the liability of the debtor of a judgment debtor where the interest
4 claimed adversely is of a value not exceeding twenty-five thousand dollars
5 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars
6 (\$25,000).

7 (10) Arbitration-related petitions filed pursuant to either of the following:

8 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
9 except for uninsured motorist arbitration proceedings in accordance with Section
10 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
11 becomes final and the matter to be resolved by arbitration is a limited civil case
12 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
13 after the arbitration award becomes final and the amount of the award and all other
14 rulings, pronouncements, and decisions made in the award are within paragraphs
15 (1) to (9), inclusive, of subdivision (a).

16 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
17 and client that is binding or has become binding, pursuant to Article 13
18 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
19 Professions Code, where the arbitration award is twenty-five thousand dollars
20 (\$25,000) or less.

21 (b) The following cases in equity are limited civil cases:

22 (1) Cases to try title to personal property when the amount involved is not more
23 than twenty-five thousand dollars (\$25,000).

24 (2) Cases when equity is pleaded as a defensive matter in any case that is
25 otherwise a limited civil case.

26 (3) Cases to vacate a judgment or order of the court obtained in a limited civil
27 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

28 **Comment.** Subdivision (a) of Section 86 is amended to correct an obsolete reference to former
29 Civil Code Section 1351 and to make a stylistic revision.

30 **Code Civ. Proc. § 116.540 (amended). Appearance by person other than plaintiff or**
31 **defendant in small claims action**

32 SEC. ____. Section 116.540 of the Code of Civil Procedure is amended to read:

33 116.540. (a) Except as permitted by this section, no individual other than the
34 plaintiff and the defendant may take part in the conduct or defense of a small
35 claims action.

36 (b) Except as additionally provided in subdivision (i), a corporation may appear
37 and participate in a small claims action only through a regular employee, or a duly
38 appointed or elected officer or director, who is employed, appointed, or elected for
39 purposes other than solely representing the corporation in small claims court.

40 (c) A party who is not a corporation or a natural person may appear and
41 participate in a small claims action only through a regular employee, or a duly
42 appointed or elected officer or director, or in the case of a partnership, a partner,

1 engaged for purposes other than solely representing the party in small claims
2 court.

3 (d) If a party is an individual doing business as a sole proprietorship, the party
4 may appear and participate in a small claims action by a representative and
5 without personally appearing if both of the following conditions are met:

6 (1) The claim can be proved or disputed by evidence of an account that
7 constitutes a business record as defined in Section 1271 of the Evidence Code, and
8 there is no other issue of fact in the case.

9 (2) The representative is a regular employee of the party for purposes other than
10 solely representing the party in small claims actions and is qualified to testify to
11 the identity and mode of preparation of the business record.

12 (e) A plaintiff is not required to personally appear, and may submit declarations
13 to serve as evidence supporting his or her claim or allow another individual to
14 appear and participate on his or her behalf, if (1) the plaintiff is serving on active
15 duty in the United States Armed Forces outside this state, (2) the plaintiff was
16 assigned to his or her duty station after his or her claim arose, (3) the assignment is
17 for more than six months, (4) the representative is serving without compensation,
18 and (5) the representative has appeared in small claims actions on behalf of others
19 no more than four times during the calendar year. The defendant may file a claim
20 in the same action in an amount not to exceed the jurisdictional limits stated in
21 Sections 116.220, 116.221, and 116.231.

22 (f) A party incarcerated in a county jail, a Department of Corrections and
23 Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to
24 personally appear, and may submit declarations to serve as evidence supporting
25 his or her claim, or may authorize another individual to appear and participate on
26 his or her behalf if that individual is serving without compensation and has
27 appeared in small claims actions on behalf of others no more than four times
28 during the calendar year.

29 (g) A defendant who is a nonresident owner of real property may defend against
30 a claim relating to that property without personally appearing by (1) submitting
31 written declarations to serve as evidence supporting his or her defense, (2)
32 allowing another individual to appear and participate on his or her behalf if that
33 individual is serving without compensation and has appeared in small claims
34 actions on behalf of others no more than four times during the calendar year, or (3)
35 taking the action described in both (1) and (2).

36 (h) A party who is an owner of rental real property may appear and participate in
37 a small claims action through a property agent under contract with the owner to
38 manage the rental of that property, if (1) the owner has retained the property agent
39 principally to manage the rental of that property and not principally to represent
40 the owner in small claims court, and (2) the claim relates to the rental property.

41 (i) A party that is an association created to manage a common interest
42 development, as defined in Section ~~1354~~ 4100 of the Civil Code, may appear and

1 participate in a small claims action through an agent, a management company
2 representative, or bookkeeper who appears on behalf of that association.

3 (j) At the hearing of a small claims action, the court shall require any individual
4 who is appearing as a representative of a party under subdivisions (b) to (i),
5 inclusive, to file a declaration stating (1) that the individual is authorized to appear
6 for the party, and (2) the basis for that authorization. If the representative is
7 appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state
8 that the individual is not employed solely to represent the party in small claims
9 court. If the representative is appearing under subdivision (e), (f), or (g), the
10 declaration also shall state that the representative is serving without compensation,
11 and has appeared in small claims actions on behalf of others no more than four
12 times during the calendar year.

13 (k) A husband or wife who sues or who is sued with his or her spouse may
14 appear and participate on behalf of his or her spouse if (1) the claim is a joint
15 claim, (2) the represented spouse has given his or her consent, and (3) the court
16 determines that the interests of justice would be served.

17 (l) If the court determines that a party cannot properly present his or her claim or
18 defense and needs assistance, the court may in its discretion allow another
19 individual to assist that party.

20 (m) Nothing in this section shall operate or be construed to authorize an attorney
21 to participate in a small claims action except as expressly provided in Section
22 116.530.

23 **Comment.** Subdivision (i) of Section 116.540 is amended to correct an obsolete reference to
24 former Civil Code Section 1351.

25 **Code Civ. Proc. § 564 (amended). Appointment of receiver**

26 SEC. _____. Section 564 of the Code of Civil Procedure is amended to read:

27 564. (a) A receiver may be appointed, in the manner provided in this chapter, by
28 the court in which an action or proceeding is pending in any case in which the
29 court is empowered by law to appoint a receiver.

30 (b) A receiver may be appointed by the court in which an action or proceeding is
31 pending, or by a judge thereof, in the following cases:

32 (1) In an action by a vendor to vacate a fraudulent purchase of property, or by a
33 creditor to subject any property or fund to the creditor's claim, or between partners
34 or others jointly owning or interested in any property or fund, on the application of
35 the plaintiff, or of any party whose right to or interest in the property or fund, or
36 the proceeds thereof, is probable, and where it is shown that the property or fund is
37 in danger of being lost, removed, or materially injured.

38 (2) In an action by a secured lender for the foreclosure of a deed of trust or
39 mortgage and sale of property upon which there is a lien under a deed of trust or
40 mortgage, where it appears that the property is in danger of being lost, removed, or
41 materially injured, or that the condition of the deed of trust or mortgage has not

1 been performed, and that the property is probably insufficient to discharge the
2 deed of trust or mortgage debt.

3 (3) After judgment, to carry the judgment into effect.

4 (4) After judgment, to dispose of the property according to the judgment, or to
5 preserve it during the pendency of an appeal, or pursuant to the Enforcement of
6 Judgments Law (Title 9 (commencing with Section 680.010)), or after sale of real
7 property pursuant to a decree of foreclosure, during the redemption period, to
8 collect, expend, and disburse rents as directed by the court or otherwise provided
9 by law.

10 (5) Where a corporation has been dissolved, as provided in Section 565.

11 (6) Where a corporation is insolvent, or in imminent danger of insolvency, or
12 has forfeited its corporate rights.

13 (7) In an action of unlawful detainer.

14 (8) At the request of the Public Utilities Commission pursuant to Section 855 or
15 5259.5 of the Public Utilities Code.

16 (9) In all other cases where necessary to preserve the property or rights of any
17 party.

18 (10) At the request of the Office of Statewide Health Planning and
19 Development, or the Attorney General, pursuant to Section 129173 of the Health
20 and Safety Code.

21 (11) In an action by a secured lender for specific performance of an assignment
22 of rents provision in a deed of trust, mortgage, or separate assignment document.
23 The appointment may be continued after entry of a judgment for specific
24 performance if appropriate to protect, operate, or maintain real property
25 encumbered by a deed of trust or mortgage or to collect rents therefrom while a
26 pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage
27 is being completed.

28 (12) In a case brought by an assignee under an assignment of leases, rents,
29 issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

30 (c) A receiver may be appointed, in the manner provided in this chapter,
31 including, but not limited to, Section 566, by the superior court in an action
32 brought by a secured lender to enforce the rights provided in Section 2929.5 of the
33 Civil Code, to enable the secured lender to enter and inspect the real property
34 security for the purpose of determining the existence, location, nature, and
35 magnitude of any past or present release or threatened release of any hazardous
36 substance into, onto, beneath, or from the real property security. The secured
37 lender shall not abuse the right of entry and inspection or use it to harass the
38 borrower or tenant of the property. Except in case of an emergency, when the
39 borrower or tenant of the property has abandoned the premises, or if it is
40 impracticable to do so, the secured lender shall give the borrower or tenant of the
41 property reasonable notice of the secured lender's intent to enter and shall enter
42 only during the borrower's or tenant's normal business hours. Twenty-four hours'

1 notice shall be presumed to be reasonable notice in the absence of evidence to the
2 contrary.

3 (d) Any action by a secured lender to appoint a receiver pursuant to this section
4 shall not constitute an action within the meaning of subdivision (a) of Section 726.

5 (e) For purposes of this section:

6 (1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
7 mortgage, where the deed of trust or mortgage encumbers real property security
8 and secures the performance of the trustor or mortgagor under a loan, extension of
9 credit, guaranty, or other obligation. The term includes any successor in interest of
10 the trustor or mortgagor to the real property security before the deed of trust or
11 mortgage has been discharged, reconveyed, or foreclosed upon.

12 (2) "Hazardous substance" means any of the following:

13 (A) Any "hazardous substance" as defined in subdivision (h) of Section 25281
14 of the Health and Safety Code.

15 (B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water
16 Code.

17 (C) Petroleum including crude oil or any fraction thereof, natural gas, natural
18 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
19 thereof.

20 (3) "Real property security" means any real property and improvements, other
21 than a separate interest and any related interest in the common area of a residential
22 common interest development, as the terms "separate interest," "common area,"
23 and "common interest development" are defined in ~~Section 1351~~ Sections 4185,
24 4095, and 4100 of the Civil Code, or real property consisting of one acre or less
25 that contains 1 to 15 dwelling units.

26 (4) "Release" means any spilling, leaking, pumping, pouring, emitting,
27 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
28 the environment, including continuing migration, of hazardous substances into,
29 onto, or through soil, surface water, or groundwater.

30 (5) "Secured lender" means the beneficiary under a deed of trust against the real
31 property security, or the mortgagee under a mortgage against the real property
32 security, and any successor in interest of the beneficiary or mortgagee to the deed
33 of trust or mortgage.

34 **Comment.** Subdivision (e) of Section 564 is amended to correct an obsolete reference to
35 former Civil Code Section 1351.

36 **Code Civ. Proc. § 726.5 (amended). Remedies for lender**

37 SEC. _____. Section 726.5 of the Code of Civil Procedure is amended to read:

38 726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision
39 of law, except subdivision (d) of this section, a secured lender may elect between
40 the following where the real property security is environmentally impaired and the
41 borrower's obligations to the secured lender are in default:

1 (1)(A) Waiver of its lien against (i) any parcel of real property security that is
2 environmentally impaired or is an affected parcel, and (ii) all or any portion of the
3 fixtures and personal property attached to the parcels; and

4 (B) Exercise of (i) the rights and remedies of an unsecured creditor, including
5 reduction of its claim against the borrower to judgment, and (ii) any other rights
6 and remedies permitted by law.

7 (2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust
8 or mortgage and, if applicable, a lien against fixtures or personal property attached
9 to the real property security, and (ii) any other rights and remedies permitted by
10 law.

11 (b) Before the secured lender may waive its lien against any parcel of real
12 property security pursuant to paragraph (1) of subdivision (a) on the basis of the
13 environmental impairment contemplated by paragraph (3) of subdivision (e), (i)
14 the secured lender shall provide written notice of the default to the borrower, and
15 (ii) the value of the subject real property security shall be established and its
16 environmentally impaired status shall be confirmed by an order of a court of
17 competent jurisdiction in an action brought by the secured lender against the
18 borrower. The complaint for a valuation and confirmation action may include
19 causes of action for a money judgment for all or part of the secured obligation, in
20 which case the waiver of the secured lender's liens under paragraph (1) of
21 subdivision (a) shall result only if and when a final money judgment is obtained
22 against the borrower.

23 (c) If a secured lender elects the rights and remedies permitted by paragraph (1)
24 of subdivision (a) and the borrower's obligations are also secured by other real
25 property security, fixtures, or personal property, the secured lender shall first
26 foreclose against the additional collateral to the extent required by applicable law
27 in which case the amount of the judgment of the secured lender pursuant to
28 paragraph (1) of subdivision (a) shall be limited to the extent Section 580a or
29 580d, or subdivision (b) of Section 726 apply to the foreclosures of additional real
30 property security. The borrower may waive or modify the foreclosure
31 requirements of this subdivision provided that the waiver or modification is in
32 writing and signed by the borrower after default.

33 (d) Subdivision (a) shall be inapplicable if all of the following are true:

34 (1) The release or threatened release was not knowingly or negligently caused or
35 contributed to, or knowingly or willfully permitted or acquiesced to, by any of the
36 following:

37 (A) The borrower or any related party.

38 (B) Any affiliate or agent of the borrower or any related party.

39 (2) In conjunction with the making, renewal, or modification of the loan,
40 extension of credit, guaranty, or other obligation secured by the real property
41 security, neither the borrower, any related party, nor any affiliate or agent of either
42 the borrower or any related party had actual knowledge or notice of the release or
43 threatened release, or if a person had knowledge or notice of the release or

1 threatened release, the borrower made written disclosure thereof to the secured
2 lender after the secured lender's written request for information concerning the
3 environmental condition of the real property security, or the secured lender
4 otherwise obtained actual knowledge thereof, prior to the making, renewal, or
5 modification of the obligation.

6 (e) For purposes of this section:

7 (1) "Affected parcel" means any portion of a parcel of real property security that
8 is (A) contiguous to the environmentally impaired parcel, even if separated by
9 roads, streets, utility easements, or railroad rights-of-way, (B) part of an approved
10 or proposed subdivision within the meaning of Section 66424 of the Government
11 Code, of which the environmentally impaired parcel is also a part, or (C) within
12 2,000 feet of the environmentally impaired parcel.

13 (2) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
14 mortgage, where the deed of trust or mortgage encumbers real property security
15 and secures the performance of the trustor or mortgagor under a loan, extension of
16 credit, guaranty, or other obligation. The term includes any successor-in-interest of
17 the trustor or mortgagor to the real property security before the deed of trust or
18 mortgage has been discharged, reconveyed, or foreclosed upon.

19 (3) "Environmentally impaired" means that the estimated costs to clean up and
20 remediate a past or present release or threatened release of any hazardous
21 substance into, onto, beneath, or from the real property security, not disclosed in
22 writing to, or otherwise actually known by, the secured lender prior to the making
23 of the loan or extension of credit secured by the real property security, exceeds 25
24 percent of the higher of the aggregate fair market value of all security for the loan
25 or extension of credit (A) at the time of the making of the loan or extension of
26 credit, or (B) at the time of the discovery of the release or threatened release by the
27 secured lender. For the purposes of this definition, the estimated cost to clean up
28 and remediate the contamination caused by the release or threatened release shall
29 include only those costs that would be incurred reasonably and in good faith, and
30 fair market value shall be determined without giving consideration to the release
31 or threatened release, and shall be exclusive of the amount of all liens and
32 encumbrances against the security that are senior in priority to the lien of the
33 secured lender. Notwithstanding the foregoing, the real property security for any
34 loan or extension of credit secured by a single parcel of real property ~~which~~ that is
35 included in the National Priorities List pursuant to Section 9605 of Title 42 of the
36 United States Code, or in any list published by the Department of Toxic
37 Substances Control pursuant to subdivision (b) of Section 25356 of the Health and
38 Safety Code, shall be deemed to be environmentally impaired.

39 (4) "Hazardous substance" means any of the following:

40 (A) Any "hazardous substance" as defined in subdivision (h) of Section 25281
41 of the Health and Safety Code.

42 (B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water
43 Code.

1 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
2 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
3 thereof.

4 (5) “Real property security” means any real property and improvements, other
5 than a separate interest and any related interest in the common area of a residential
6 common interest development, as the terms “separate interest,” “common area,”
7 and “common interest development” are defined in ~~Section 1351~~ Sections 4185,
8 4095, and 4100 of the Civil Code, or real property ~~which that~~ contains only 1 to 15
9 dwelling units, which in either case (A) is solely used (i) for residential purposes,
10 or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage,
11 for residential purposes as well as limited agricultural or commercial purposes
12 incidental thereto, and (B) is the subject of an issued certificate of occupancy
13 unless the dwelling is to be owned and occupied by the borrower.

14 (6) “Related party” means any person who shares an ownership interest with the
15 borrower in the real property security, or is a partner or joint venturer with the
16 borrower in a partnership or joint venture, the business of which includes the
17 acquisition, development, use, lease, or sale of the real property security.

18 (7) “Release” means any spilling, leaking, pumping, pouring, emitting,
19 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
20 the environment, including continuing migration, of hazardous substances into,
21 onto, or through soil, surface water, or groundwater. The term does not include
22 actions directly relating to the incorporation in a lawful manner of building
23 materials into a permanent improvement to the real property security.

24 (8) “Secured lender” means the beneficiary under a deed of trust against the real
25 property security, or the mortgagee under a mortgage against the real property
26 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
27 of trust or mortgage.

28 (f) This section shall not be construed to invalidate or otherwise affect in any
29 manner any rights or obligations arising under contract in connection with a loan
30 or extension of credit, including, without limitation, provisions limiting recourse.

31 (g) This section shall only apply to loans, extensions of credit, guaranties, or
32 other obligations secured by real property security made, renewed, or modified on
33 or after January 1, 1992.

34 **Comment.** Subdivision (e) of Section 726.5 is amended to correct an obsolete reference to
35 former Civil Code Section 1351.

36 **Code Civ. Proc. § 729.035 (amended). Right of redemption**

37 SEC. _____. Section 729.035 of the Code of Civil Procedure is amended to read:

38 729.035. Notwithstanding any provision of law to the contrary, the sale of a
39 separate interest in a common interest development is subject to the right of
40 redemption within 90 days after the sale if the sale arises from a foreclosure by the
41 association of a common interest development pursuant to ~~subdivision (g) of~~

1 ~~Section 1367.1~~ Section 5645 of the Civil Code, subject to the conditions of
2 ~~Section 1367.4~~ Sections 5625, 5650, 5655, and 5660 of the Civil Code.

3 **Comment.** Section 729.035 is amended to correct obsolete references to former Civil Code
4 Sections 1367.1(g) and 1367.4.

5 **Note.** Code of Civil Procedure Section 729.035 refers to foreclosure on a separate interest
6 pursuant to existing Section 1367.1(g). Section 1367.1(g) does grant authority to foreclose to
7 enforce a lien on a separate interest, but it also addresses two other topics (assignment of a debt,
8 trustee fees). In the section above, the reference is revised to refer only to the provision that
9 authorizes foreclosure. The other provisions of Section 1367.1(g) do not fit with the purpose of
10 the reference and are not included. The Commission invites comment on whether that would
11 cause any problems.

12 **Code Civ. Proc. § 736 (amended). Remedy of secured lender for breach of environmental**
13 **provision**

14 SEC. ____ . Section 736 of the Code of Civil Procedure is amended to read:

15 736. (a) Notwithstanding any other provision of law, a secured lender may bring
16 an action for breach of contract against a borrower for breach of any
17 environmental provision made by the borrower relating to the real property
18 security, for the recovery of damages, and for the enforcement of the
19 environmental provision, and that action or failure to foreclose first against
20 collateral shall not constitute an action within the meaning of subdivision (a) of
21 Section 726, or constitute a money judgment for a deficiency or a deficiency
22 judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of
23 Section 726. No injunction for the enforcement of an environmental provision may
24 be issued after (1) the obligation secured by the real property security has been
25 fully satisfied, or (2) all of the borrower's rights, title, and interest in and to the
26 real property security has been transferred in a bona fide transaction to an
27 unaffiliated third party for fair value.

28 (b) The damages a secured lender may recover pursuant to subdivision (a) shall
29 be limited to reimbursement or indemnification of the following:

30 (1) If not pursuant to an order of any federal, state, or local governmental agency
31 relating to the cleanup, remediation, or other response action required by
32 applicable law, those costs relating to a reasonable and good faith cleanup,
33 remediation, or other response action concerning a release or threatened release of
34 hazardous substances ~~which~~ that is anticipated by the environmental provision.

35 (2) If pursuant to an order of any federal, state, or local governmental agency
36 relating to the cleanup, remediation, or other response action required by
37 applicable law ~~which~~ that is anticipated by the environmental provision, all
38 amounts reasonably advanced in good faith by the secured lender in connection
39 therewith, provided that the secured lender negotiated, or attempted to negotiate,
40 in good faith to minimize the amounts it was required to advance under the order.

41 (3) Indemnification against all liabilities of the secured lender to any third party
42 relating to the breach and not arising from acts, omissions, or other conduct ~~which~~
43 that occur after the borrower is no longer an owner or operator of the real property

1 security, and provided the secured lender is not responsible for the
2 environmentally impaired condition of the real property security in accordance
3 with the standards set forth in subdivision (d) of Section 726.5. For purposes of
4 this paragraph, the term “owner or operator” means those persons described in
5 Section 101(20)(A) of the Comprehensive Environmental Response,
6 Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et
7 seq.).

8 (4) Attorneys’ fees and costs incurred by the secured lender relating to the
9 breach.

10 The damages a secured lender may recover pursuant to subdivision (a) shall not
11 include (i) any part of the principal amount or accrued interest of the secured
12 obligation, except for any amounts advanced by the secured lender to cure or
13 mitigate the breach of the environmental provision that are added to the principal
14 amount, and contractual interest thereon, or (ii) amounts ~~which~~ that relate to a
15 release which was knowingly permitted, caused, or contributed to by the secured
16 lender or any affiliate or agent of the secured lender.

17 (c) A secured lender may not recover damages against a borrower pursuant to
18 subdivision (a) for amounts advanced or obligations incurred for the cleanup or
19 other remediation of real property security, and related attorneys’ fees and costs, if
20 all of the following are true:

21 (1) The original principal amount of, or commitment for, the loan or other
22 obligation secured by the real property security did not exceed two hundred
23 thousand dollars (\$200,000).

24 (2) In conjunction with the secured lender’s acceptance of the environmental
25 provision, the secured lender agreed in writing to accept the real property security
26 on the basis of a completed environmental site assessment and other relevant
27 information from the borrower.

28 (3) The borrower did not permit, cause, or contribute to the release or threatened
29 release.

30 (4) The deed of trust or mortgage covering the real property security has not
31 been discharged, reconveyed, or foreclosed upon.

32 (d) This section is not intended to establish, abrogate, modify, limit, or otherwise
33 affect any cause of action other than that provided by subdivision (a) that a
34 secured lender may have against a borrower under an environmental provision.

35 (e) This section shall apply only to environmental provisions contracted in
36 conjunction with loans, extensions of credit, guaranties, or other obligations made,
37 renewed, or modified on or after January 1, 1992. Notwithstanding the foregoing,
38 this section shall not be construed to validate, invalidate, or otherwise affect in any
39 manner the rights and obligations of the parties to, or the enforcement of,
40 environmental provisions contracted before January 1, 1992.

41 (f) For purposes of this section:

42 (1) “Borrower” means the trustor under a deed of trust, or a mortgagor under a
43 mortgage, where the deed of trust or mortgage encumbers real property security

1 and secures the performance of the trustor or mortgagor under a loan, extension of
2 credit, guaranty, or other obligation. The term includes any successor-in-interest of
3 the trustor or mortgagor to the real property security before the deed of trust or
4 mortgage has been discharged, reconveyed, or foreclosed upon.

5 (2) “Environmental provision” means any written representation, warranty,
6 indemnity, promise, or covenant relating to the existence, location, nature, use,
7 generation, manufacture, storage, disposal, handling, or past, present, or future
8 release or threatened release, of any hazardous substance into, onto, beneath, or
9 from the real property security, or to past, present, or future compliance with any
10 law relating thereto, made by a borrower in conjunction with the making, renewal,
11 or modification of a loan, extension of credit, guaranty, or other obligation
12 involving the borrower, whether or not the representation, warranty, indemnity,
13 promise, or covenant is or was contained in or secured by the deed of trust or
14 mortgage, and whether or not the deed of trust or mortgage has been discharged,
15 reconveyed, or foreclosed upon.

16 (3) “Hazardous substance” means any of the following:

17 (A) Any “hazardous substance” as defined in subdivision (h) of Section 25281
18 of the Health and Safety Code.

19 (B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water
20 Code.

21 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
22 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
23 thereof.

24 (4) “Real property security” means any real property and improvements, other
25 than a separate interest and any related interest in the common area of a residential
26 common interest development, as the terms “separate interest,” “common area,”
27 and “common interest development” are defined in ~~Section 1351~~ Sections 4185,
28 4095, and 4100 of the Civil Code, or real property ~~which that~~ contains only 1 to 15
29 dwelling units, which in either case (A) is solely used (i) for residential purposes,
30 or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage,
31 for residential purposes as well as limited agricultural or commercial purposes
32 incidental thereto, and (B) is the subject of an issued certificate of occupancy
33 unless the dwelling is to be owned and occupied by the borrower.

34 (5) “Release” means any spilling, leaking, pumping, pouring, emitting,
35 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
36 the environment, including continuing migration, of hazardous substances into,
37 onto, or through soil, surface water, or groundwater. The term does not include
38 actions directly relating to the incorporation in a lawful manner of building
39 materials into a permanent improvement to the real property security.

40 (6) “Secured lender” means the beneficiary under a deed of trust against the real
41 property security, or the mortgagee under a mortgage against the real property
42 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
43 of trust or mortgage.

1 **Comment.** Section 736 is amended to correct an obsolete reference to former Civil Code
2 Section 1351 and to make stylistic revisions.

3 **Gov't Code § 12191 (amended). Miscellaneous business entity filing fee**

4 SEC. _____. Section 12191 of the Government Code is amended to read:

5 12191. The miscellaneous business entity filing fees are the following:

6 (a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations
7 Code:

8 (1) Filing the statement and designation upon the qualification of a foreign
9 association pursuant to Section 2105 of the Corporations Code: One hundred
10 dollars (\$100).

11 (2) Filing an amended statement and designation by a foreign association
12 pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

13 (3) Filing a certificate showing the surrender of the right of a foreign association
14 to transact intrastate business pursuant to Section 2112 of the Corporations Code:
15 No fee.

16 (b) Unincorporated Associations:

17 (1) Filing a statement in accordance with Section 24003 of the Corporations
18 Code as to principal place of office or place for sending notices or designating
19 agent for service: Twenty-five dollars (\$25).

20 (2) Insignia Registrations: Ten dollars (\$10).

21 (c) Community Associations and Common Interest Developments:

22 (1) Filing a statement by a community association in accordance with Section
23 ~~1363.6~~ 4960 of the Civil Code to register the common interest development that it
24 manages: An amount not to exceed thirty dollars (\$30).

25 (2) Filing an amended statement by a community association in accordance with
26 Section ~~1363.6~~ 4960 of the Civil Code: No fee.

27 **Comment.** Subdivision (c) of Section 12191 is amended to correct obsolete references to
28 former Civil Code Section 1363.6.

29 **Gov't Code § 12956.1 (amended). Discriminatory restriction**

30 SEC. _____. Section 12956.1 of the Government Code is amended to read:

31 12956.1. (a) As used in this section, “association,” “governing documents,” and
32 “declaration” have the same meanings as set forth in ~~Section 1351~~ Sections 4080,
33 4150, and 4135 of the Civil Code.

34 (b)(1) A county recorder, title insurance company, escrow company, real estate
35 broker, real estate agent, or association that provides a copy of a declaration,
36 governing document, or deed to any person shall place a cover page or stamp on
37 the first page of the previously recorded document or documents stating, in at least
38 14-point boldface type, the following:

39 “If this document contains any restriction based on race, color, religion, sex,
40 sexual orientation, familial status, marital status, disability, national origin, source
41 of income as defined in subdivision (p) of Section 12955, or ancestry, that

1 restriction violates state and federal fair housing laws and is void, and may be
2 removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions
3 under state and federal law on the age of occupants in senior housing or housing
4 for older persons shall not be construed as restrictions based on familial status.”

5 (2) The requirements set forth in paragraph (1) shall not apply to documents
6 being submitted for recordation to a county recorder.

7 (c) Any person who records a document for the express purpose of adding a
8 racially restrictive covenant is guilty of a misdemeanor. The county recorder shall
9 not incur any liability for recording the document. Notwithstanding any other
10 provision of law, a prosecution for a violation of this subdivision shall commence
11 within three years after the discovery of the recording of the document.

12 **Comment.** Subdivision (a) of Section 12956.1 is amended to correct obsolete references to
13 former Civil Code Section 1351.

14 **Gov’t Code § 12956.2 (amended). Modification of discriminatory restriction**

15 SEC. ____. Section 12956.2 of the Government Code is amended to read:

16 12956.2. (a) A person who holds an ownership interest of record in property that
17 he or she believes is the subject of an unlawfully restrictive covenant in violation
18 of subdivision (l) of Section 12955 may record a document titled Restrictive
19 Covenant Modification. The county recorder may choose to waive the fee
20 prescribed for recording and indexing instruments pursuant to Section 27361 in
21 the case of the modification document provided for in this section. The
22 modification document shall include a complete copy of the original document
23 containing the unlawfully restrictive language with the unlawfully restrictive
24 language stricken.

25 (b) Before recording the modification document, the county recorder shall
26 submit the modification document and the original document to the county
27 counsel who shall determine whether the original document contains an unlawful
28 restriction based on race, color, religion, sex, sexual orientation, familial status,
29 marital status, disability, national origin, source of income as defined in
30 subdivision (p) of Section 12955, or ancestry. The county counsel shall return the
31 documents and inform the county recorder of its determination. The county
32 recorder shall refuse to record the modification document if the county counsel
33 finds that the original document does not contain an unlawful restriction as
34 specified in this paragraph.

35 (c) The modification document shall be indexed in the same manner as the
36 original document being modified. It shall contain a recording reference to the
37 original document in the form of a book and page or instrument number, and date
38 of the recording.

39 (d) Subject to covenants, conditions, and restrictions that were recorded after the
40 recording of the original document that contains the unlawfully restrictive
41 language and subject to covenants, conditions, and restrictions that will be
42 recorded after the Restrictive Covenant Modification, the restrictions in the

1 Restrictive Covenant Modification, once recorded, are the only restrictions having
2 effect on the property. The effective date of the terms and conditions of the
3 modification document shall be the same as the effective date of the original
4 document.

5 (e) The county recorder shall make available to the public Restrictive Covenant
6 Modification forms.

7 (f) If the holder of an ownership interest of record in property causes to be
8 recorded a modified document pursuant to this section that contains modifications
9 not authorized by this section, the county recorder shall not incur liability for
10 recording the document. The liability that may result from the unauthorized
11 recordation is the sole responsibility of the holder of the ownership interest of
12 record who caused the modified recordation.

13 (g) This section does not apply to persons holding an ownership interest in
14 property that is part of a common interest development as defined in ~~subdivision~~
15 ~~(e) of Section 1351~~ Section 4100 of the Civil Code if the board of directors of that
16 common interest development is subject to the requirements of ~~subdivision (b) of~~
17 ~~Section 1352.5~~ Section 6150 of the Civil Code.

18 **Comment.** Subdivision (g) of Section 12956.2 is amended to correct obsolete references to
19 former Civil Code Sections 1351(c) and 1352.5(b).

20 **Gov't Code § 53341.5 (amended). Notice of special tax in sale or lease of lot, parcel or unit**
21 **of subdivision**

22 SEC. ____ . Section 53341.5 of the Government Code is amended to read:

23 53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax
24 levied pursuant to this chapter, the subdivider, his or her agent, or representative,
25 shall not sell, or lease for a term exceeding five years, or permit a prospective
26 purchaser or lessor to sign a contract of purchase or a deposit receipt or any
27 substantially equivalent document in the event of a lease with respect to the lot,
28 parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until
29 the prospective purchaser or lessee of the lot, parcel, or unit has been furnished
30 with and has signed a written notice as provided in this section. The notice shall
31 contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-
32 point type, and shall be in substantially the following form. The form may be
33 modified as needed to clearly and accurately describe the tax structure and other
34 characteristics of districts created before January 1, 1993, or to clearly and
35 accurately consolidate information about the tax structure and other characteristics
36 of two or more districts that levy or are authorized to levy special taxes with
37 respect to the lot, parcel, or unit:

38
39 NOTICE OF SPECIAL TAX

40
41 COMMUNITY FACILITIES DISTRICT NO. _____
42 COUNTY OF _____, CALIFORNIA

1
2 TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY
3 KNOWN AS:

4 _____
5 _____

6
7 THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR ENTERING INTO A
8 CONTRACT TO PURCHASE THIS PROPERTY. THE SELLER IS REQUIRED
9 TO GIVE YOU THIS NOTICE AND TO OBTAIN A COPY SIGNED BY YOU
10 TO INDICATE THAT YOU HAVE RECEIVED AND READ A COPY OF THIS
11 NOTICE.

12 (1) This property is subject to a special tax, which is in addition to the regular
13 property taxes and any other charges, fees, special taxes, and benefit assessments
14 on the parcel. It is imposed on this property because it is a new development, and
15 may not be imposed generally upon property outside of this new development. If
16 you fail to pay this tax when due each year, the property may be foreclosed upon
17 and sold. The tax is used to provide public facilities or services that are likely to
18 particularly benefit the property. YOU SHOULD TAKE THIS TAX AND THE
19 BENEFITS FROM THE FACILITIES AND SERVICES FOR WHICH IT PAYS
20 INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

21 (2) The maximum special tax ~~which~~ that may be levied against this parcel to pay
22 for public facilities is \$_____ during the _____- ____ tax year. This
23 amount will increase by _____ percent per year after that (if applicable).
24 The special tax will be levied each year until all of the authorized facilities are
25 built and all special tax bonds are repaid, but in any case not after the
26 _____- ____ tax year. An additional special tax will be used to pay for
27 ongoing service costs, if applicable. The maximum amount of this tax is
28 _____ dollars (\$_____) during the _____- ____ tax year. This
29 amount may increase by _____, if applicable, and that part may be levied
30 until the _____- ____ tax year (or forever, as applicable).

31 (3) The authorized facilities ~~which~~ that are being paid for by the special taxes,
32 and by the money received from the sale of bonds which are being repaid by the
33 special taxes, are:

34
35 These facilities may not yet have all been constructed or acquired and it is
36 possible that some may never be constructed or acquired.

37
38 In addition, the special taxes may be used to pay for costs of the following
39 services:

40
41 YOU MAY OBTAIN A COPY OF THE RESOLUTION OF FORMATION
42 ~~WHICH~~ THAT AUTHORIZED CREATION OF THE COMMUNITY
43 FACILITIES DISTRICT, AND ~~WHICH~~ THAT SPECIFIES MORE PRECISELY

1 HOW THE SPECIAL TAX IS APPORTIONED AND HOW THE PROCEEDS
2 OF THE TAX WILL BE USED, FROM THE _____ (name of jurisdiction)
3 BY CALLING _____ (telephone number). THERE MAY BE A CHARGE
4 FOR THIS DOCUMENT NOT TO EXCEED THE REASONABLE COST OF
5 PROVIDING THE DOCUMENT.

6
7 I (WE) ACKNOWLEDGE THAT I (WE) HAVE READ THIS NOTICE AND
8 RECEIVED A COPY OF THIS NOTICE PRIOR TO ENTERING INTO A
9 CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITH RESPECT TO
10 THE ABOVE-REFERENCED PROPERTY. I (WE) UNDERSTAND THAT I
11 (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT
12 RECEIPT WITHIN THREE DAYS AFTER RECEIVING THIS NOTICE IN
13 PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE
14 MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE
15 OWNER, SUBDIVIDER, OR AGENT SELLING THE PROPERTY.

16
17 DATE: _____
18 _____
19 _____
20

21 (b) “Subdivision,” as used in subdivision (a), means improved or unimproved
22 land that is divided or proposed to be divided for the purpose of sale, lease, or
23 financing, whether immediate or future, into two or more lots, parcels, or units and
24 includes a condominium project, as defined by Section ~~1350~~ 4125 of the Civil
25 Code, a community apartment project, a stock cooperative, and a limited-equity
26 housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4,
27 respectively, of the Business and Professions Code.

28 (c) The buyer shall have three days after delivery in person or five days after
29 delivery by deposit in the mail of any notice required by this section, to terminate
30 his or her agreement by delivery of written notice of that termination to the owner,
31 subdivider, or agent.

32 (d) The failure to furnish the notice to the buyer or lessee, and failure of the
33 buyer or lessee to sign the notice of a special tax, shall not invalidate any grant,
34 conveyance, lease, or encumbrance.

35 (e) Any person or entity who willfully violates the provisions of this section
36 shall be liable to the purchaser of a lot or unit ~~which~~ that is subject to the
37 provisions of this section, for actual damages, and in addition thereto, shall be
38 guilty of a public offense punishable by a fine in an amount not to exceed five
39 hundred dollars (\$500). In an action to enforce ~~such~~ this liability or fine, the
40 prevailing party shall be awarded reasonable attorney’s fees.

41 **Comment.** Section 53341.5 is amended to correct an obsolete reference to former Civil Code
42 Section 1350 and to make stylistic revisions.

1 **Gov't Code § 65008 (amended). Prohibition of discrimination in land use**

2 SEC. ____ . Section 65008 of the Government Code is amended to read:

3 65008. (a) Any action pursuant to this title by any city, county, city and county,
4 or other local governmental agency in this state is null and void if it denies to any
5 individual or group of individuals the enjoyment of residence, landownership,
6 tenancy, or any other land use in this state because of any of the following reasons:

7 (1)(A) The lawful occupation, age, or any characteristic of the individual or
8 group of individuals listed in subdivision (a) or (d) of Section 12955, as those
9 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
10 of subdivision (p) of Section 12955 and Section 12955.2.

11 (B) Notwithstanding subparagraph (A), with respect to familial status,
12 subparagraph (A) shall not be construed to apply to housing for older persons, as
13 defined in Section 12955.9. With respect to familial status, nothing in
14 subparagraph (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 ~~1360~~ 5760 of the Civil Code and
17 subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to
18 subparagraph (A).

19 (2) The method of financing of any residential development of the individual or
20 group of individuals.

21 (3) The intended occupancy of any residential development by persons or
22 families of very low, low, moderate, or middle income.

23 (b)(1) No city, county, city and county, or other local governmental agency
24 shall, in the enactment or administration of ordinances pursuant to any law,
25 including this title, prohibit or discriminate against any residential development or
26 emergency shelter for any of the following reasons:

27 (A) Because of the method of financing.

28 (B)(i) Because of the lawful occupation, age, or any characteristic listed in
29 subdivision (a) or (d) of Section 12955, as those characteristics are defined in
30 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
31 Section 12955, and Section 12955.2 of the owners or intended occupants of the
32 residential development or emergency shelter.

33 (ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not
34 be construed to apply to housing for older persons, as defined in Section 12955.9.
35 With respect to familial status, nothing in clause (i) shall be construed to affect
36 Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to
37 housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 5760
38 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of this code
39 shall apply to clause (i).

40 (C) Because the development or shelter is intended for occupancy by persons
41 and families of very low, low, or moderate income, as defined in Section 50093 of
42 the Health and Safety Code, or persons and families of middle income.

1 (D) Because the development consists of a multifamily residential project that is
2 consistent with both the jurisdiction's zoning ordinance and general plan as they
3 existed on the date the application was deemed complete, except that a project
4 shall not be deemed to be inconsistent with the zoning designation for the site if
5 that zoning designation is inconsistent with the general plan only because the
6 project site has not been rezoned to conform with a more recently adopted general
7 plan.

8 (2) The discrimination prohibited by this subdivision includes the denial or
9 conditioning of a residential development or shelter because of, in whole or in
10 part, either of the following:

11 (A) The method of financing.

12 (B) The occupancy of the development by persons protected by this subdivision,
13 including, but not limited to, persons and families of very low, low, or moderate
14 income.

15 (3) A city, county, city and county, or other local government agency may not,
16 pursuant to subdivision (d) of Section 65589.5, disapprove a housing development
17 project or condition approval of a housing development project in a manner that
18 renders the project infeasible if the basis for the disapproval or conditional
19 approval includes any of the reasons prohibited in paragraph (1) or (2).

20 (c) For the purposes of this section, "persons and families of middle income"
21 means persons and families whose income does not exceed 150 percent of the
22 median income for the county in which the persons or families reside.

23 (d)(1) No city, county, city and county, or other local governmental agency may
24 impose different requirements on a residential development or emergency shelter
25 that is subsidized, financed, insured, or otherwise assisted by the federal or state
26 government or by a local public entity, as defined in Section 50079 of the Health
27 and Safety Code, than those imposed on nonassisted developments, except as
28 provided in subdivision (e). The discrimination prohibited by this subdivision
29 includes the denial or conditioning of a residential development or emergency
30 shelter based in whole or in part on the fact that the development is subsidized,
31 financed, insured, or otherwise assisted as described in this paragraph.

32 (2)(A) No city, county, city and county, or other local governmental agency
33 may, because of the lawful occupation age, or any characteristic of the intended
34 occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics
35 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
36 subdivision (p) of Section 12955, and Section 12955.2 or because the development
37 is intended for occupancy by persons and families of very low, low, moderate, or
38 middle income, impose different requirements on these residential developments
39 than those imposed on developments generally, except as provided in subdivision
40 (e).

41 (B) Notwithstanding subparagraph (A), with respect to familial status,
42 subparagraph (A) shall not be construed to apply to housing for older persons, as
43 defined in Section 12955.9. With respect to familial status, nothing in

1 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
2 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
3 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
4 subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to
5 subparagraph (A).

6 (e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title
7 do not prohibit either of the following:

8 (1) The County of Riverside from enacting and enforcing zoning to provide
9 housing for older persons, in accordance with state or federal law, if that zoning
10 was enacted prior to January 1, 1995.

11 (2) Any city, county, or city and county from extending preferential treatment to
12 residential developments or emergency shelters assisted by the federal or state
13 government or by a local public entity, as defined in Section 50079 of the Health
14 and Safety Code, or other residential developments or emergency shelters intended
15 for occupancy by persons and families of low and moderate income, as defined in
16 Section 50093 of the Health and Safety Code, or persons and families of middle
17 income, or agricultural employees, as defined in subdivision (b) of Section 1140.4
18 of the Labor Code, and their families. This preferential treatment may include, but
19 need not be limited to, reduction or waiver of fees or changes in architectural
20 requirements, site development and property line requirements, building setback
21 requirements, or vehicle parking requirements that reduce development costs of
22 these developments.

23 (f) “Residential development,” as used in this section, means a single-family
24 residence or a multifamily residence, including manufactured homes, as defined in
25 Section 18007 of the Health and Safety Code.

26 (g) This section shall apply to chartered cities.

27 (h) The Legislature finds and declares that discriminatory practices that inhibit
28 the development of housing for persons and families of very low, low, moderate,
29 and middle income, or emergency shelters for the homeless, are a matter of
30 statewide concern.

31 **Comment.** Subdivisions (a), (b) and (d) of Section 65008 are amended to correct obsolete
32 references to former Civil Code Section 1360.

33 **Gov’t Code § 65915 (amended). Density bonus in housing development**

34 SEC. _____. Section 65915 of the Government Code is amended to read:

35 65915. (a) When an applicant seeks a density bonus for a housing development
36 within, or for the donation of land for housing within, the jurisdiction of a city,
37 county, or city and county, that local government shall provide the applicant
38 incentives or concessions for the production of housing units and child care
39 facilities as prescribed in this section. All cities, counties, or cities and counties
40 shall adopt an ordinance that specifies how compliance with this section will be
41 implemented.

1 (b)(1) A city, county, or city and county shall grant one density bonus, the
2 amount of which shall be as specified in subdivision (g), and incentives or
3 concessions, as described in subdivision (d), when an applicant for a housing
4 development seeks and agrees to construct a housing development, excluding any
5 units permitted by the density bonus awarded pursuant to this section, that will
6 contain at least any one of the following:

7 (A) Ten percent of the total units of a housing development for lower income
8 households, as defined in Section 50079.5 of the Health and Safety Code.

9 (B) Five percent of the total units of a housing development for very low income
10 households, as defined in Section 50105 of the Health and Safety Code.

11 (C) A senior citizen housing development as defined in Sections 51.3 and 51.12
12 of the Civil Code, or mobilehome park that limits residency based on age
13 requirements for housing for older persons pursuant to Section 798.76 or 799.5 of
14 the Civil Code.

15 (D) Ten percent of the total dwelling units in a common interest development as
16 defined in Section ~~4354~~ 4100 of the Civil Code for persons and families of
17 moderate income, as defined in Section 50093 of the Health and Safety Code,
18 provided that all units in the development are offered to the public for purchase.

19 (2) For purposes of calculating the amount of the density bonus pursuant to
20 subdivision (f), the applicant who requests a density bonus pursuant to this
21 subdivision shall elect whether the bonus shall be awarded on the basis of
22 subparagraph (A), (B), (C), or (D) of paragraph (1).

23 (c)(1) An applicant shall agree to, and the city, county, or city and county shall
24 ensure, continued affordability of all low-and very low income units that qualified
25 the applicant for the award of the density bonus for 30 years or a longer period of
26 time if required by the construction or mortgage financing assistance program,
27 mortgage insurance program, or rental subsidy program. Rents for the lower
28 income density bonus units shall be set at an affordable rent as defined in Section
29 50053 of the Health and Safety Code. Owner-occupied units shall be available at
30 an affordable housing cost as defined in Section 50052.5 of the Health and Safety
31 Code.

32 (2) An applicant shall agree to, and the city, county, or city and county shall
33 ensure that, the initial occupant of the moderate-income units that are directly
34 related to the receipt of the density bonus in the common interest development, as
35 defined in Section ~~4354~~ 4100 of the Civil Code, are persons and families of
36 moderate income, as defined in Section 50093 of the Health and Safety Code, and
37 that the units are offered at an affordable housing cost, as that cost is defined in
38 Section 50052.5 of the Health and Safety Code. The local government shall
39 enforce an equity-sharing agreement, unless it is in conflict with the requirements
40 of another public funding source or law. The following apply to the equity-sharing
41 agreement:

42 (A) Upon resale, the seller of the unit shall retain the value of any
43 improvements, the downpayment, and the seller's proportionate share of

1 appreciation. The local government shall recapture any initial subsidy and its
2 proportionate share of appreciation, which shall then be used within three years for
3 any of the purposes described in subdivision (e) of Section 33334.2 of the Health
4 and Safety Code that promote homeownership.

5 (B) For purposes of this subdivision, the local government's initial subsidy shall
6 be equal to the fair market value of the home at the time of initial sale minus the
7 initial sale price to the moderate-income household, plus the amount of any
8 downpayment assistance or mortgage assistance. If upon resale the market value is
9 lower than the initial market value, then the value at the time of the resale shall be
10 used as the initial market value.

11 (C) For purposes of this subdivision, the local government's proportionate share
12 of appreciation shall be equal to the ratio of the initial subsidy to the fair market
13 value of the home at the time of initial sale.

14 (d)(1) An applicant for a density bonus pursuant to subdivision (b) may submit
15 to a city, county, or city and county a proposal for the specific incentives or
16 concessions that the applicant requests pursuant to this section, and may request a
17 meeting with the city, county, or city and county. The city, county, or city and
18 county shall grant the concession or incentive requested by the applicant unless the
19 city, county, or city and county makes a written finding, based upon substantial
20 evidence, of either of the following:

21 (A) The concession or incentive is not required in order to provide for affordable
22 housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for
23 rents for the targeted units to be set as specified in subdivision (c).

24 (B) The concession or incentive would have a specific adverse impact, as
25 defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health
26 and safety or the physical environment or on any real property that is listed in the
27 California Register of Historical Resources and for which there is no feasible
28 method to satisfactorily mitigate or avoid the specific adverse impact without
29 rendering the development unaffordable to low- and moderate-income households.

30 (2) The applicant shall receive the following number of incentives or
31 concessions:

32 (A) One incentive or concession for projects that include at least 10 percent of
33 the total units for lower income households, at least 5 percent for very low income
34 households, or at least 10 percent for persons and families of moderate income in a
35 common interest development.

36 (B) Two incentives or concessions for projects that include at least 20 percent of
37 the total units for lower income households, at least 10 percent for very low
38 income households, or at least 20 percent for persons and families of moderate
39 income in a common interest development.

40 (C) Three incentives or concessions for projects that include at least 30 percent
41 of the total units for lower income households, at least 15 percent for very low
42 income households, or at least 30 percent for persons and families of moderate
43 income in a common interest development.

1 (3) The applicant may initiate judicial proceedings if the city, county, or city and
2 county refuses to grant a requested density bonus, incentive, or concession. If a
3 court finds that the refusal to grant a requested density bonus, incentive, or
4 concession is in violation of this section, the court shall award the plaintiff
5 reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be
6 interpreted to require a local government to grant an incentive or concession that
7 has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of
8 Section 65589.5, upon health, safety, or the physical environment, and for which
9 there is no feasible method to satisfactorily mitigate or avoid the specific adverse
10 impact. Nothing in this subdivision shall be interpreted to require a local
11 government to grant an incentive or concession that would have an adverse impact
12 on any real property that is listed in the California Register of Historical
13 Resources. The city, county, or city and county shall establish procedures for
14 carrying out this section, that shall include legislative body approval of the means
15 of compliance with this section. The city, county, or city and county shall also
16 establish procedures for waiving or modifying development and zoning standards
17 that would otherwise inhibit the utilization of the density bonus on specific sites.
18 These procedures shall include, but not be limited to, such items as minimum lot
19 size, side yard setbacks, and placement of public works improvements.

20 (e) In no case may a city, county, or city and county apply any development
21 standard that will have the effect of precluding the construction of a development
22 meeting the criteria of subdivision (b) at the densities or with the concessions or
23 incentives permitted by this section. An applicant may submit to a city, county, or
24 city and county a proposal for the waiver or reduction of development standards
25 and may request a meeting with the city, county, or city and county. If a court
26 finds that the refusal to grant a waiver or reduction of development standards is in
27 violation of this section, the court shall award the plaintiff reasonable attorney's
28 fees and costs of suit. Nothing in this subdivision shall be interpreted to require a
29 local government to waive or reduce development standards if the waiver or
30 reduction would have a specific, adverse impact, as defined in paragraph (2) of
31 subdivision (d) of Section 65589.5, upon health, safety, or the physical
32 environment, and for which there is no feasible method to satisfactorily mitigate or
33 avoid the specific adverse impact. Nothing in this subdivision shall be interpreted
34 to require a local government to waive or reduce development standards that
35 would have an adverse impact on any real property that is listed in the California
36 Register of Historical Resources.

37 (f) The applicant shall show that the waiver or modification is necessary to make
38 the housing units economically feasible.

39 (g) For the purposes of this chapter, "density bonus" means a density increase
40 over the otherwise maximum allowable residential density under the applicable
41 zoning ordinance and land use element of the general plan as of the date of
42 application by the applicant to the city, county, or city and county. The applicant
43 may elect to accept a lesser percentage of density bonus. The amount of density

1 bonus to which the applicant is entitled shall vary according to the amount by
2 which the percentage of affordable housing units exceeds the percentage
3 established in subdivision (b).

4 (1) For housing developments meeting the criteria of subparagraph (A) of
5 paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

6	Percentage Low-Income Units	Percentage Density Bonus
7	10	20
8	11	21.5
9	12	23
10	13	24.5
11	14	26
12	15	27.5
13	17	30.5
14	18	32
15	19	33.5
16	20	35
17		
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	Percentage Very Low Income Units	Percentage Density Bonus
22	5	20
23	6	22.5
24	7	25
25	8	27.5
26	9	30
27	10	32.5
28	11	35
29		
30		

31 (3) For housing developments meeting the criteria of subparagraph (C) of
32 paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

33 (4) For housing developments meeting the criteria of subparagraph (D) of
34 paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

35	Percentage Moderate-Income Units	Percentage Density Bonus
36	10	5
37	11	6
38	12	7
39	13	8
40	14	9
41	15	10
42	16	11
43		

1	17	12
2	18	13
3	19	14
4	20	15
5	21	16
6	22	17
7	23	18
8	24	19
9	25	20
10	26	21
11	27	22
12	28	23
13	29	24
14	30	25
15	31	26
16	32	27
17	33	28
18	34	29
19	35	30
20	36	31
21	37	32
22	38	33
23	39	34
24	40	35

25
26 (5) All density calculations resulting in fractional units shall be rounded up to
27 the next whole number. The granting of a density bonus shall not be interpreted, in
28 and of itself, to require a general plan amendment, local coastal plan amendment,
29 zoning change, or other discretionary approval. As used in subdivision (b), “total
30 units” or “total dwelling units” does not include units permitted by a density bonus
31 awarded pursuant to this section or any local law granting a greater density bonus.
32 The density bonus provided by this section shall apply to housing developments
33 consisting of five or more dwelling units.

34 (h)(1) When an applicant for a tentative subdivision map, parcel map, or other
35 residential development approval donates land to a city, county, or city and county
36 as provided for in this subdivision, the applicant shall be entitled to a 15-percent
37 increase above the otherwise maximum allowable residential density under the
38 applicable zoning ordinance and land use element of the general plan for the entire
39 development, as follows:

40	41	42
	Percentage Very Low Income	Percentage Density Bonus
41	10	15
42	11	16
43		

1	12	17
2	13	18
3	14	19
4	15	20
5	16	21
6	17	22
7	18	23
8	19	24
9	20	25
10	21	26
11	22	27
12	23	28
13	24	29
14	25	30
15	26	31
16	27	32
17	28	33
18	29	34
19	30	35
20		

21 (2) This increase shall be in addition to any increase in density mandated by
22 subdivision (b), up to a maximum combined mandated density increase of 35
23 percent if an applicant seeks both the increase required pursuant to this subdivision
24 and subdivision (b). All density calculations resulting in fractional units shall be
25 rounded up to the next whole number. Nothing in this subdivision shall be
26 construed to enlarge or diminish the authority of a city, county, or city and county
27 to require a developer to donate land as a condition of development. An applicant
28 shall be eligible for the increased density bonus described in this subdivision if all
29 of the following conditions are met:

30 (A) The applicant donates and transfers the land no later than the date of
31 approval of the final subdivision map, parcel map, or residential development
32 application.

33 (B) The developable acreage and zoning classification of the land being
34 transferred are sufficient to permit construction of units affordable to very low
35 income households in an amount not less than 10 percent of the number of
36 residential units of the proposed development.

37 (C) The transferred land is at least one acre in size or of sufficient size to permit
38 development of at least 40 units, has the appropriate general plan designation, is
39 appropriately zoned for development as affordable housing, and is or will be
40 served by adequate public facilities and infrastructure. The land shall have
41 appropriate zoning and development standards to make the development of the
42 affordable units feasible. No later than the date of approval of the final subdivision
43 map, parcel map, or of the residential development, the transferred land shall have

1 all of the permits and approvals, other than building permits, necessary for the
2 development of the very low income housing units on the transferred land, except
3 that the local government may subject the proposed development to subsequent
4 design review to the extent authorized by subdivision (i) of Section 65583.2 if the
5 design is not reviewed by the local government prior to the time of transfer.

6 (D) The transferred land and the affordable units shall be subject to a deed
7 restriction ensuring continued affordability of the units consistent with paragraphs
8 (1) and (2) of subdivision (c), which shall be recorded on the property at the time
9 of dedication.

10 (E) The land is transferred to the local agency or to a housing developer
11 approved by the local agency. The local agency may require the applicant to
12 identify and transfer the land to the developer.

13 (F) The transferred land shall be within the boundary of the proposed
14 development or, if the local agency agrees, within one-quarter mile of the
15 boundary of the proposed development.

16 (i)(1) When an applicant proposes to construct a housing development that
17 conforms to the requirements of subdivision (b) and includes a child care facility
18 that will be located on the premises of, as part of, or adjacent to, the project, the
19 city, county, or city and county shall grant either of the following:

20 (A) An additional density bonus that is an amount of square feet of residential
21 space that is equal to or greater than the amount of square feet in the child care
22 facility.

23 (B) An additional concession or incentive that contributes significantly to the
24 economic feasibility of the construction of the child care facility.

25 (2) The city, county, or city and county shall require, as a condition of approving
26 the housing development, that the following occur:

27 (A) The child care facility shall remain in operation for a period of time that is
28 as long as or longer than the period of time during which the density bonus units
29 are required to remain affordable pursuant to subdivision (c).

30 (B) Of the children who attend the child care facility, the children of very low
31 income households, lower income households, or families of moderate income
32 shall equal a percentage that is equal to or greater than the percentage of dwelling
33 units that are required for very low income households, lower income households,
34 or families of moderate income pursuant to subdivision (b).

35 (3) Notwithstanding any requirement of this subdivision, a city, county, or a city
36 and county shall not be required to provide a density bonus or concession for a
37 child care facility if it finds, based upon substantial evidence, that the community
38 has adequate child care facilities.

39 (4) "Child care facility," as used in this section, means a child day care facility
40 other than a family day care home, including, but not limited to, infant centers,
41 preschools, extended day care facilities, and schoolage child care centers.

42 (j) "Housing development," as used in this section, means one or more groups of
43 projects for residential units constructed in the planned development of a city,

1 county, or city and county. For the purposes of this section, “housing
2 development” also includes a subdivision or common interest development, as
3 defined in Section ~~1351~~ 4100 of the Civil Code, approved by a city, county, or city
4 and county and consists of residential units or unimproved residential lots and
5 either a project to substantially rehabilitate and convert an existing commercial
6 building to residential use or the substantial rehabilitation of an existing
7 multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the
8 result of the rehabilitation would be a net increase in available residential units.
9 For the purpose of calculating a density bonus, the residential units do not have to
10 be based upon individual subdivision maps or parcels. The density bonus shall be
11 permitted in geographic areas of the housing development other than the areas
12 where the units for the lower income households are located.

13 (k) The granting of a concession or incentive shall not be interpreted, in and of
14 itself, to require a general plan amendment, local coastal plan amendment, zoning
15 change, or other discretionary approval. This provision is declaratory of existing
16 law.

17 (l) For the purposes of this chapter, concession or incentive means any of the
18 following:

19 (1) A reduction in site development standards or a modification of zoning code
20 requirements or architectural design requirements that exceed the minimum
21 building standards approved by the California Building Standards Commission as
22 provided in Part 2.5 (commencing with Section 18901) of Division 13 of the
23 Health and Safety Code, including, but not limited to, a reduction in setback and
24 square footage requirements and in the ratio of vehicular parking spaces that
25 would otherwise be required that results in identifiable, financially sufficient, and
26 actual cost reductions.

27 (2) Approval of mixed use zoning in conjunction with the housing project if
28 commercial, office, industrial, or other land uses will reduce the cost of the
29 housing development and if the commercial, office, industrial, or other land uses
30 are compatible with the housing project and the existing or planned development
31 in the area where the proposed housing project will be located.

32 (3) Other regulatory incentives or concessions proposed by the developer or the
33 city, county, or city and county that result in identifiable, financially sufficient,
34 and actual cost reductions.

35 This subdivision does not limit or require the provision of direct financial
36 incentives for the housing development, including the provision of publicly owned
37 land, by the city, county, or city and county, or the waiver of fees or dedication
38 requirements.

39 (m) Nothing in this section shall be construed to supersede or in any way alter or
40 lessen the effect or application of the California Coastal Act (Division 20
41 (commencing with Section 30000) of the Public Resources Code.

42 (n) Nothing in this section shall be construed to prohibit a city, county, or city
43 and county from granting a density bonus greater than what is described in this

1 section for a development that meets the requirements of this section or from
2 granting a proportionately lower density bonus than what is required by this
3 section for developments that do not meet the requirements of this section.

4 (o) For purposes of this section, the following definitions shall apply:

5 (1) “Development standard” includes site or construction conditions that apply
6 to a residential development pursuant to any ordinance, general plan element,
7 specific plan, charter amendment, or other local condition, law, policy, resolution,
8 or regulation.

9 (2) “Maximum allowable residential density” means the density allowed under
10 the zoning ordinance, or if a range of density is permitted, means the maximum
11 allowable density for the specific zoning range applicable to the project.

12 (p)(1) Upon the request of the developer, no city, county, or city and county
13 shall require a vehicular parking ratio, inclusive of handicapped and guest parking,
14 of a development meeting the criteria of subdivision (b), that exceeds the
15 following ratios:

16 (A) Zero to one bedrooms: one onsite parking space.

17 (B) Two to three bedrooms: two onsite parking spaces.

18 (C) Four and more bedrooms: two and one-half parking spaces.

19 (2) If the total number of parking spaces required for a development is other
20 than a whole number, the number shall be rounded up to the next whole number.
21 For purposes of this subdivision, a development may provide “onsite parking”
22 through tandem parking or uncovered parking, but not through onstreet parking.

23 (3) This subdivision shall apply to a development that meets the requirements of
24 subdivision (b) but only at the request of the applicant. An applicant may request
25 additional parking incentives or concessions beyond those provided in this section,
26 subject to subdivision (d).

27 **Comment.** Subdivisions (b), (c) and (j) of Section 65915 are amended to correct obsolete
28 references to former Civil Code Section 1351.

29 **Gov’t Code § 65995.5 (amended). Alternative calculation of residential construction amount**

30 SEC. _____. Section 65995.5 of the Government Code is amended to read:

31 65995.5. (a) The governing board of a school district may impose the amount
32 calculated pursuant to this section as an alternative to the amount that may be
33 imposed on residential construction calculated pursuant to subdivision (b) of
34 Section 65995.

35 (b) To be eligible to impose the fee, charge, dedication, or other requirement up
36 to the amount calculated pursuant to this section, a governing board shall do all of
37 the following:

38 (1) Make a timely application to the State Allocation Board for new construction
39 funding for which it is eligible and be determined by the board to meet the
40 eligibility requirements for new construction funding set forth in Article 2
41 (commencing with Section 17071.10) and Article 3 (commencing with Section
42 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board

1 that submits an application to determine the district's eligibility for new
2 construction funding shall be deemed eligible if the State Allocation Board fails to
3 notify the district of the district's eligibility within 120 days of receipt of the
4 application.

5 (2) Conduct and adopt a school facility needs analysis pursuant to Section
6 65995.6.

7 (3) Until January 1, 2000, satisfy at least one of the requirements set forth in
8 subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at
9 least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

10 (A) The district is a unified or elementary school district that has a substantial
11 enrollment of its elementary school pupils on a multitrack year-round schedule.
12 "Substantial enrollment" for purposes of this paragraph means at least 30 percent
13 of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school
14 attendance area in which all or some of the new residential units identified in the
15 needs analysis are planned for construction. A high school district shall be deemed
16 to have met the requirements of this paragraph if either of the following apply:

17 (i) At least 30 percent of the high school district's pupils are on a multitrack
18 year-round schedule.

19 (ii) At least 40 percent of the pupils enrolled in public schools in kindergarten
20 and grades 1 to 12, inclusive, within the boundaries of the high school attendance
21 area for which the school district is applying for new facilities are enrolled in
22 multitrack year-round schools.

23 (B) The district has placed on the ballot in the previous four years a local
24 general obligation bond to finance school facilities and the measure received at
25 least 50 percent plus one of the votes cast.

26 (C) The district meets one of the following:

27 (i) The district has issued debt or incurred obligations for capital outlay in an
28 amount equivalent to 15 percent of the district's local bonding capacity, including
29 indebtedness that is repaid from property taxes, parcel taxes, the district's general
30 fund, special taxes levied pursuant to Section 4 of Article XIII A of the California
31 Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with
32 Section 53311) of Division 2 of Title 5 that are approved by a vote of registered
33 voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section
34 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to
35 November 4, 1998, and revenues received pursuant to the Community
36 Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of
37 the Health and Safety Code). Indebtedness or other obligation to finance school
38 facilities to be owned, leased, or used by the district, that is incurred by another
39 public agency, shall be counted for the purpose of calculating whether the district
40 has met the debt percentage requirement contained herein.

41 (ii) The district has issued debt or incurred obligations for capital outlay in an
42 amount equivalent to 30 percent of the district's local bonding capacity, including
43 indebtedness that is repaid from property taxes, parcel taxes, the district's general

1 fund, special taxes levied pursuant to Section 4 of Article XIII A of the California
2 Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with
3 Section 53311) of Division 2 of Title 5 that are approved by a vote of registered
4 voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section
5 53311) of Division 2 of Title 5 that are approved by a vote of landowners after
6 November 4, 1998, and revenues received pursuant to the Community
7 Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of
8 the Health and Safety Code). Indebtedness or other obligation to finance school
9 facilities to be owned, leased, or used by the district, that is incurred by another
10 public agency, shall be counted for the purpose of calculating whether the district
11 has met the debt percentage requirement contained herein.

12 (D) At least 20 percent of the teaching stations within the district are relocatable
13 classrooms.

14 (c) The maximum square foot fee, charge, dedication, or other requirement
15 authorized by this section that may be collected in accordance with Chapter 6
16 (commencing with Section 17620) of Part 10.5 of the Education Code shall be
17 calculated by a governing board of a school district, as follows:

18 (1) The number of unhoused pupils identified in the school facilities needs
19 analysis shall be multiplied by the appropriate amounts provided in subdivision (a)
20 of Section 17072.10. This sum shall be added to the site acquisition and
21 development cost determined pursuant to subdivision (h).

22 (2) The full amount of local funds the governing board has dedicated to facilities
23 necessitated by new construction shall be subtracted from the amount determined
24 pursuant to paragraph (1). Local funds include fees, charges, dedications, or other
25 requirements imposed on commercial or industrial construction.

26 (3) The resulting amount determined pursuant to paragraph (2) shall be divided
27 by the projected total square footage of assessable space of residential units
28 anticipated to be constructed during the next five-year period in the school district
29 or the city and county in which the school district is located. The estimate of the
30 projected total square footage shall be based on information available from the city
31 or county within which the residential units are anticipated to be constructed or a
32 market report prepared by an independent third party.

33 (d) A school district that has a common territorial jurisdiction with a district that
34 imposes the fee, charge, dedication, or other requirement up to the amount
35 calculated pursuant to this section or Section 65995.7, may not impose a fee,
36 charge, dedication, or other requirement on residential construction that exceeds
37 the limit set forth in subdivision (b) of Section 65995 less the portion of that
38 amount it would be required to share pursuant to Section 17623 of the Education
39 Code, unless that district is eligible to impose the fee, charge, dedication, or other
40 requirement up to the amount calculated pursuant to this section or Section
41 65995.7.

42 (e) Nothing in this section is intended to limit or discourage the joint use of
43 school facilities or to limit the ability of a school district to construct school

1 facilities that exceed the amount of funds authorized by Section 17620 of the
2 Education Code and provided by the state grant program, if the additional costs are
3 funded solely by local revenue sources other than fees, charges, dedications, or
4 other requirements imposed on new construction.

5 (f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of
6 the Education Code, a fee, charge, dedication, or other requirement authorized
7 under this section and Section 65995.7 shall be expended solely on the school
8 facilities identified in the needs analysis as being attributable to projected
9 enrollment growth from the construction of new residential units. This subdivision
10 does not preclude the expenditure of a fee, charge, dedication, or other
11 requirement, authorized pursuant to subparagraph (C) of paragraph (1) of
12 subdivision (a) of Section 17620, on school facilities identified in the needs
13 analysis as necessary due to projected enrollment growth attributable to the new
14 residential units.

15 (g) “Residential units” and “residences” as used in this section and in Sections
16 65995.6 and 65995.7 means the development of single-family detached housing
17 units, single-family attached housing units, manufactured homes and
18 mobilehomes, as defined in subdivision (f) of Section 17625 of the Education
19 Code, condominiums, and multifamily housing units, including apartments,
20 residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519
21 of the Health and Safety Code, and stock cooperatives, as defined in Section ~~1351~~
22 4190 of the Civil Code.

23 (h) Site acquisition costs shall not exceed half of the amount determined by
24 multiplying the land acreage determined to be necessary under the guidelines of
25 the State Department of Education, as published in the “School Site Analysis and
26 Development Handbook,” as that handbook read as of January 1, 1998, by the
27 estimated cost determined pursuant to Section 17072.12 of the Education Code.
28 Site development costs shall not exceed the estimated amount that would be
29 funded by the State Allocation Board pursuant to its regulations governing grants
30 for site development costs.

31 **Comment.** Subdivision (g) of Section 65995.5 is amended to correct an obsolete reference to
32 former Civil Code Section 1351.

33 **Gov’t Code § 66411 (amended). Local control of common interest development and**
34 **subdivision**

35 SEC. _____. Section 66411 of the Government Code is amended to read:

36 66411. Regulation and control of the design and improvement of subdivisions
37 are vested in the legislative bodies of local agencies. Each local agency shall, by
38 ordinance, regulate and control the initial design and improvement of common
39 interest developments as defined in Section ~~1351~~ 4100 of the Civil Code and
40 subdivisions for which this division requires a tentative and final or parcel map. In
41 the development, adoption, revision, and application of ~~such~~ the ordinance, the
42 local agency shall comply with the provisions of Section 65913.2. The ordinance

1 shall specifically provide for proper grading and erosion control, including the
2 prevention of sedimentation or damage to offsite property. Each local agency may
3 by ordinance regulate and control other subdivisions, provided that the regulations
4 are not more restrictive than the regulations for those subdivisions for which a
5 tentative and final or parcel map are required by this division, and provided further
6 that the regulations shall not be applied to short-term leases (terminable by either
7 party on not more than 30 days' notice in writing) of a portion of the operating
8 right-of-way of a railroad corporation as defined by Section 230 of the Public
9 Utilities Code unless a showing is made in individual cases, under substantial
10 evidence, that public policy necessitates the application of the regulations to those
11 short-term leases in individual cases.

12 **Comment.** Section 66411 is amended to correct an obsolete reference to former Civil Code
13 Section 1351 and to make a stylistic revision.

14 **Gov't Code § 66412 (amended). Exceptions to application of division**

15 SEC. ____ . Section 66412 of the Government Code is amended to read:

16 66412. This division shall be inapplicable to any of the following:

17 (a) The financing or leasing of apartments, offices, stores, or similar space
18 within apartment buildings, industrial buildings, commercial buildings,
19 mobilehome parks, or trailer parks.

20 (b) Mineral, oil, or gas leases.

21 (c) Land dedicated for cemetery purposes under the Health and Safety Code.

22 (d) A lot line adjustment between four or fewer existing adjoining parcels,
23 where the land taken from one parcel is added to an adjoining parcel, and where a
24 greater number of parcels than originally existed is not thereby created, if the lot
25 line adjustment is approved by the local agency, or advisory agency. A local
26 agency or advisory agency shall limit its review and approval to a determination of
27 whether or not the parcels resulting from the lot line adjustment will conform to
28 the local general plan, any applicable specific plan, any applicable coastal plan,
29 and zoning and building ordinances. An advisory agency or local agency shall not
30 impose conditions or exactions on its approval of a lot line adjustment except to
31 conform to the local general plan, any applicable specific plan, any applicable
32 coastal plan, and zoning and building ordinances, to require the prepayment of real
33 property taxes prior to the approval of the lot line adjustment, or to facilitate the
34 relocation of existing utilities, infrastructure, or easements. No tentative map,
35 parcel map, or final map shall be required as a condition to the approval of a lot
36 line adjustment. The lot line adjustment shall be reflected in a deed, which shall be
37 recorded. No record of survey shall be required for a lot line adjustment unless
38 required by Section 8762 of the Business and Professions Code.

39 (e) Boundary line or exchange agreements to which the State Lands
40 Commission or a local agency holding a trust grant of tide and submerged lands is
41 a party.

1 (f) Any separate assessment under Section 2188.7 of the Revenue and Taxation
2 Code.

3 (g) Unless a parcel or final map was approved by the legislative body of a local
4 agency, the conversion of a community apartment project, as defined in Section
5 ~~1351~~ 4105 of the Civil Code, to a condominium, as defined in Section 783 of the
6 Civil Code, but only if all of the following requirements are met:

7 (1) At least 75 percent of the units in the project were occupied by record
8 owners of the project on March 31, 1982.

9 (2) A final or parcel map of the project was properly recorded, if the property
10 was subdivided, as defined in Section 66424, after January 1, 1964, with all of the
11 conditions of that map remaining in effect after the conversion.

12 (3) The local agency certifies that the above requirements were satisfied if the
13 local agency, by ordinance, provides for that certification.

14 (4) Subject to compliance with ~~subdivision (e) of Section 1351~~ Section 6075 of
15 the Civil Code, all conveyances and other documents necessary to effectuate the
16 conversion shall be executed by the required number of owners in the project as
17 specified in the bylaws or other organizational documents. If the bylaws or other
18 organizational documents do not expressly specify the number of owners
19 necessary to execute the conveyances and other documents, a majority of owners
20 in the project shall be required to execute the conveyances or other documents.
21 Conveyances and other documents executed under the foregoing provisions shall
22 be binding upon and affect the interests of all parties in the project.

23 (h) Unless a parcel or final map was approved by the legislative body of a local
24 agency, the conversion of a stock cooperative, as defined in Section ~~1351~~ 4190 of
25 the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but
26 only if all of the following requirements are met:

27 (1) At least 51 percent of the units in the cooperative were occupied by
28 stockholders of the cooperative on January 1, 1981, or individually owned by
29 stockholders of the cooperative on January 1, 1981. As used in this paragraph, a
30 cooperative unit is “individually owned” if and only if the stockholder of that unit
31 owns or partially owns an interest in no more than one unit in the cooperative.

32 (2) No more than 25 percent of the shares of the cooperative were owned by any
33 one person, as defined in Section 17, including an incorporator or director of the
34 cooperative, on January 1, 1981.

35 (3) A person renting a unit in a cooperative shall be entitled at the time of
36 conversion to all tenant rights in state or local law, including, but not limited to,
37 rights respecting first refusal, notice, and displacement and relocation benefits.

38 (4) The local agency certifies that the above requirements were satisfied if the
39 local agency, by ordinance, provides for that certification.

40 (5) Subject to compliance with ~~subdivision (e) of Section 1351~~ Section 6075 of
41 the Civil Code, all conveyances and other documents necessary to effectuate the
42 conversion shall be executed by the required number of owners in the cooperative
43 as specified in the bylaws or other organizational documents. If the bylaws or

1 other organizational documents do not expressly specify the number of owners
2 necessary to execute the conveyances and other documents, a majority of owners
3 in the cooperative shall be required to execute the conveyances or other
4 documents. Conveyances and other documents executed under the foregoing
5 provisions shall be binding upon and affect the interests of all parties in the
6 cooperative.

7 (i) The leasing of, or the granting of an easement to, a parcel of land, or any
8 portion or portions thereof, in conjunction with the financing, erection, and sale or
9 lease of a windpowered electrical generation device on the land, if the project is
10 subject to discretionary action by the advisory agency or legislative body.

11 (j) The leasing or licensing of a portion of a parcel, or the granting of an
12 easement, use permit, or similar right on a portion of a parcel, to a telephone
13 corporation as defined in Section 234 of the Public Utilities Code, exclusively for
14 the placement and operation of cellular radio transmission facilities, including, but
15 not limited to, antennae support structures, microwave dishes, structures to house
16 cellular communications transmission equipment, power sources, and other
17 equipment incidental to the transmission of cellular communications, if the project
18 is subject to discretionary action by the advisory agency or legislative body.

19 (k) Leases of agricultural land for agricultural purposes. As used in this
20 subdivision, “agricultural purposes” means the cultivation of food or fiber, or the
21 grazing or pasturing of livestock.

22 **Comment.** Subdivisions (g) and (h) of Section 66412 are amended to correct obsolete
23 references to former Civil Code Section 1351.

24 **Gov’t Code § 66424 (amended). Subdivision**

25 SEC. _____. Section 66424 of the Government Code is amended to read:

26 66424. “Subdivision” means the division, by any subdivider, of any unit or units
27 of improved or unimproved land, or any portion thereof, shown on the latest
28 equalized county assessment roll as a unit or as contiguous units, for the purpose
29 of sale, lease or financing, whether immediate or future. Property shall be
30 considered as contiguous units, even if it is separated by roads, streets, utility
31 easement or railroad rights-of-way. “Subdivision” includes a condominium
32 project, as defined in ~~subdivision (f) of Section 1351~~ Section 4125 of the Civil
33 Code, a community apartment project, as defined in ~~subdivision (d) of Section~~
34 ~~1351~~ Section 4105 of the Civil Code, or the conversion of five or more existing
35 dwelling units to a stock cooperative, as defined in ~~subdivision (m) of Section~~
36 ~~1351~~ Section 4190 of the Civil Code.

37 **Comment.** Section 66424 is amended to correct obsolete references to former Civil Code
38 Sections 1351(f), 1351(d), and 1351(m).

39 **Gov’t Code § 66427 (amended). Project map**

40 SEC. _____. Section 66427 of the Government Code is amended to read:

1 66427. (a) A map of a condominium project, a community apartment project, or
2 of the conversion of five or more existing dwelling units to a stock cooperative
3 project need not show the buildings or the manner in which the buildings or the
4 airspace above the property shown on the map are to be divided, nor shall the
5 governing body have the right to refuse approval of a parcel, tentative, or final
6 map of the project on account of the design or the location of buildings on the
7 property shown on the map that are not violative of local ordinances or on account
8 of the manner in which airspace is to be divided in conveying the condominium.

9 (b) A map need not include a condominium plan or plans, as defined in
10 ~~subdivision (e) of Section 1351~~ Section 4120 of the Civil Code, and the governing
11 body may not refuse approval of a parcel, tentative, or final map of the project on
12 account of the absence of a condominium plan.

13 (c) Fees and lot design requirements shall be computed and imposed with
14 respect to those maps on the basis of parcels or lots of the surface of the land
15 shown thereon as included in the project.

16 (d) Nothing herein shall be deemed to limit the power of the legislative body to
17 regulate the design or location of buildings in a project by or pursuant to local
18 ordinances.

19 (e) If the governing body has approved a parcel map or final map for the
20 establishment of condominiums on property pursuant to the requirements of this
21 division, the separation of a three-dimensional portion or portions of the property
22 from the remainder of the property or the division of that three-dimensional
23 portion or portions into condominiums shall not constitute a further subdivision as
24 defined in Section 66424, provided each of the following conditions has been
25 satisfied:

26 (1) The total number of condominiums established is not increased above the
27 number authorized by the local agency in approving the parcel map or final map.

28 (2) A perpetual estate or an estate for years in the remainder of the property is
29 held by the condominium owners in undivided interests in common, or by an
30 association as defined in ~~subdivision (a) of Section 1351~~ Section 4080 of the Civil
31 Code, and the duration of the estate in the remainder of the property is the same as
32 the duration of the estate in the condominiums.

33 (3) The three-dimensional portion or portions of property are described on a
34 condominium plan or plans, as defined in ~~subdivision (e) of Section 1351~~ Section
35 4120 of the Civil Code.

36 **Comment.** Subdivision (b) of Section 66427 is amended to correct an obsolete reference to
37 former Civil Code Section 1351(e).

38 Subdivision (e) of Section 66427 is amended to correct obsolete references to former Civil
39 Code Section 1351.

40 **Gov't Code § 66452.10 (amended). Conversion of stock cooperative or community**
41 **apartment project into condominium**

42 SEC. _____. Section 66452.10 of the Government Code is amended to read:

1 66452.10. A stock cooperative, as defined in Section 11003.2 of the Business
2 and Professions Code, or a community apartment project, as defined in Section
3 11004 of the Business and Professions Code, shall not be converted to a
4 condominium, as defined in Section 783 of the Civil Code, unless the required
5 number of (1) owners and (2) trustees or beneficiaries of each recorded deed of
6 trust and mortgagees of each recorded mortgage in the cooperative or project, as
7 specified in the bylaws, or other organizational documents, have voted in favor of
8 the conversion. If the bylaws or other organizational documents do not expressly
9 specify the number of votes required to approve the conversion, a majority vote of
10 the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and
11 mortgagees of each recorded mortgage in the cooperative or project shall be
12 required. Upon approval of the conversion as set forth above and in compliance
13 with ~~subdivision (e) of Section 1351~~ Section 6075 of the Civil Code, all
14 conveyances and other documents necessary to effectuate the conversion shall be
15 executed by the required number of owners in the cooperative or project as
16 specified in the bylaws or other organizational documents. If the bylaws or other
17 organizational documents do not expressly specify the number of owners
18 necessary to execute the conveyances or other documents, a majority of owners in
19 the cooperative or project shall be required to execute the conveyances and other
20 documents. Conveyances and other documents executed under the foregoing
21 provisions shall be binding upon and affect the interests of all parties in the
22 cooperative or project. The provisions of Section 66499.31 shall not apply to a
23 violation of this section.

24 **Comment.** Section 66452.10 is amended to correct an obsolete reference to former Civil Code
25 Section 1351(e).

26 **Gov't Code § 66475.2 (amended). Local transit facility**

27 SEC. _____. Section 66475.2 of the Government Code is amended to read:

28 66475.2. (a) There may be imposed by local ordinance a requirement of a
29 dedication or an irrevocable offer of dedication of land within the subdivision for
30 local transit facilities such as bus turnouts, benches, shelters, landing pads and
31 similar items that directly benefit the residents of a subdivision. The irrevocable
32 offers may be terminated as provided in subdivisions (c) and (d) of Section
33 66477.2.

34 (b) Only the payment of fees in lieu of the dedication of land may be required in
35 subdivisions that consist of the subdivision of airspace in existing buildings into
36 condominium projects, stock cooperatives, or community apartment projects, as
37 those terms are defined in ~~Section 1351~~ Sections 4125, 4190, and 4105 of the Civil
38 Code.

39 **Comment.** Subdivision (b) of Section 66475.2 is amended to correct an obsolete reference to
40 former Civil Code Section 1351.

1 **Gov't Code § 66477 (amended). Park and recreational fee under Quimby Act**

2 SEC. ____ . Section 66477 of the Government Code is amended to read:

3 66477. (a) The legislative body of a city or county may, by ordinance, require
4 the dedication of land or impose a requirement of the payment of fees in lieu
5 thereof, or a combination of both, for park or recreational purposes as a condition
6 to the approval of a tentative map or parcel map, if all of the following
7 requirements are met:

8 (1) The ordinance has been in effect for a period of 30 days prior to the filing of
9 the tentative map of the subdivision or parcel map.

10 (2) The ordinance includes definite standards for determining the proportion of a
11 subdivision to be dedicated and the amount of any fee to be paid in lieu thereof.
12 The amount of land dedicated or fees paid shall be based upon the residential
13 density, which shall be determined on the basis of the approved or conditionally
14 approved tentative map or parcel map and the average number of persons per
15 household. There shall be a rebuttable presumption that the average number of
16 persons per household by units in a structure is the same as that disclosed by the
17 most recent available federal census or a census taken pursuant to Chapter 17
18 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the
19 dedication of land, or the payment of fees, or both, shall not exceed the
20 proportionate amount necessary to provide three acres of park area per 1,000
21 persons residing within a subdivision subject to this section, unless the amount of
22 existing neighborhood and community park area, as calculated pursuant to this
23 subdivision, exceeds that limit, in which case the legislative body may adopt the
24 calculated amount as a higher standard not to exceed five acres per 1,000 persons
25 residing within a subdivision subject to this section.

26 (A) The park area per 1,000 members of the population of the city, county, or
27 local public agency shall be derived from the ratio that the amount of
28 neighborhood and community park acreage bears to the total population of the
29 city, county, or local public agency as shown in the most recent available federal
30 census. The amount of neighborhood and community park acreage shall be the
31 actual acreage of existing neighborhood and community parks of the city, county,
32 or local public agency as shown on its records, plans, recreational element, maps,
33 or reports as of the date of the most recent available federal census.

34 (B) For cities incorporated after the date of the most recent available federal
35 census, the park area per 1,000 members of the population of the city shall be
36 derived from the ratio that the amount of neighborhood and community park
37 acreage shown on the records, maps, or reports of the county in which the newly
38 incorporated city is located bears to the total population of the new city as
39 determined pursuant to Section 11005 of the Revenue and Taxation Code. In
40 making any subsequent calculations pursuant to this section, the county in which
41 the newly incorporated city is located shall not include the figures pertaining to the
42 new city which were calculated pursuant to this paragraph. Fees shall be payable

1 at the time of the recording of the final map or parcel map or at a later time as may
2 be prescribed by local ordinance.

3 (3) The land, fees, or combination thereof are to be used only for the purpose of
4 developing new or rehabilitating existing neighborhood or community park or
5 recreational facilities to serve the subdivision.

6 (4) The legislative body has adopted a general plan or specific plan containing
7 policies and standards for parks and recreation facilities, and the park and
8 recreational facilities are in accordance with definite principles and standards.

9 (5) The amount and location of land to be dedicated or the fees to be paid shall
10 bear a reasonable relationship to the use of the park and recreational facilities by
11 the future inhabitants of the subdivision.

12 (6) The city, county, or other local public agency to which the land or fees are
13 conveyed or paid shall develop a schedule specifying how, when, and where it will
14 use the land or fees, or both, to develop park or recreational facilities to serve the
15 residents of the subdivision. Any fees collected under the ordinance shall be
16 committed within five years after the payment of the fees or the issuance of
17 building permits on one-half of the lots created by the subdivision, whichever
18 occurs later. If the fees are not committed, they, without any deductions, shall be
19 distributed and paid to the then record owners of the subdivision in the same
20 proportion that the size of their lot bears to the total area of all lots within the
21 subdivision.

22 (7) Only the payment of fees may be required in subdivisions containing 50
23 parcels or less, except that when a condominium project, stock cooperative, or
24 community apartment project, as those terms are defined in ~~Section 1351~~ Sections
25 4125, 4190, and 4105 of the Civil Code, exceeds 50 dwelling units, dedication of
26 land may be required notwithstanding that the number of parcels may be less than
27 50.

28 (8) Subdivisions containing less than five parcels and not used for residential
29 purposes shall be exempted from the requirements of this section. However, in that
30 event, a condition may be placed on the approval of a parcel map that if a building
31 permit is requested for construction of a residential structure or structures on one
32 or more of the parcels within four years, the fee may be required to be paid by the
33 owner of each parcel as a condition of the issuance of the permit.

34 (9) If the subdivider provides park and recreational improvements to the
35 dedicated land, the value of the improvements together with any equipment
36 located thereon shall be a credit against the payment of fees or dedication of land
37 required by the ordinance.

38 (b) Land or fees required under this section shall be conveyed or paid directly to
39 the local public agency ~~which~~ that provides park and recreational services on a
40 communitywide level and to the area within which the proposed development will
41 be located, if that agency elects to accept the land or fee. The local agency
42 accepting the land or funds shall develop the land or use the funds in the manner
43 provided in this section.

1 (c) If park and recreational services and facilities are provided by a public
2 agency other than a city or a county, the amount and location of land to be
3 dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be
4 jointly determined by the city or county having jurisdiction and that other public
5 agency.

6 (d) This section does not apply to commercial or industrial subdivisions or to
7 condominium projects or stock cooperatives that consist of the subdivision of
8 airspace in an existing apartment building that is more than five years old when no
9 new dwelling units are added.

10 (e) Common interest developments, as defined in Section ~~1351~~ 4100 of the Civil
11 Code, shall be eligible to receive a credit, as determined by the legislative body,
12 against the amount of land required to be dedicated, or the amount of the fee
13 imposed, pursuant to this section, for the value of private open space within the
14 development ~~which~~ that is usable for active recreational uses.

15 (f) Park and recreation purposes shall include land and facilities for the activity
16 of “recreational community gardening,” which activity consists of the cultivation
17 by persons other than, or in addition to, the owner of the land, of plant material not
18 for sale.

19 (g) This section shall be known and may be cited as the Quimby Act.

20 **Comment.** Subdivisions (a) and (e) of Section 66477 are amended to correct obsolete
21 references to former Civil Code Section 1351. Section 66477 is also amended to make stylistic
22 revisions.

23 **Health & Safety Code § 1597.531 (amended). Liability insurance or bond for family day**
24 **care home**

25 SEC. ____. Section 1597.531 of the Health and Safety Code is amended to read:

26 1597.531. (a) All family day care homes for children shall maintain in force
27 either liability insurance covering injury to clients and guests in the amount of at
28 least one hundred thousand dollars (\$100,000) per occurrence and three hundred
29 thousand dollars (\$300,000) in the total annual aggregate, sustained on account of
30 the negligence of the licensee or its employees, or a bond in the aggregate amount
31 of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or
32 the bond, the family day care home may maintain a file of affidavits signed by
33 each parent with a child enrolled in the home ~~which~~ that meets the requirements of
34 this subdivision. The affidavit shall state that the parent has been informed that the
35 family day care home does not carry liability insurance or a bond according to
36 standards established by the state. If the provider does not own the premises used
37 as the family day care home, the affidavit shall also state that the parent has been
38 informed that the liability insurance, if any, of the owner of the property or the
39 homeowners’ association, as appropriate, may not provide coverage for losses
40 arising out of, or in connection with, the operation of the family day care home,
41 except to the extent that the losses are caused by, or result from, an action or
42 omission by the owner of the property or the homeowners’ association, for which

1 the owner of the property or the homeowners' association would otherwise be
2 liable under the law. These affidavits shall be on a form provided by the
3 department and shall be reviewed at each licensing inspection.

4 (b) A family day care home that maintains liability insurance or a bond pursuant
5 to this section, and that provides care in premises that are rented or leased or uses
6 premises ~~which~~ that share common space governed by a homeowners' association,
7 shall name the owner of the property or the homeowners' association, as
8 appropriate, as an additional insured party on the liability insurance policy or bond
9 if all of the following conditions are met:

10 (1) The owner of the property or governing body of the homeowners'
11 association makes a written request to be added as an additional insured party.

12 (2) The addition of the owner of the property or the homeowners' association
13 does not result in cancellation or nonrenewal of the insurance policy or bond
14 carried by the family day care home.

15 (3) Any additional premium assessed for this coverage is paid by the owner of
16 the property or the homeowners' association.

17 (c) As used in this section, "homeowners' association" means an association of a
18 common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code.

19 **Comment.** Section 1597.531 is amended to correct an obsolete reference to former Civil Code
20 Section 1351 and to make stylistic revisions.

21 **Health & Safety Code § 13132.7 (amended). Fire retardant roof covering**

22 SEC. _____. Section 13132.7 of the Health and Safety Code is amended to read:

23 13132.7. (a) Within a very high fire hazard severity zone designated by the
24 Director of Forestry and Fire Protection pursuant to Article 9 (commencing with
25 Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code
26 and within a very high hazard severity zone designated by a local agency pursuant
27 to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5
28 of the Government Code, the entire roof covering of every existing structure
29 where more than 50 percent of the total roof area is replaced within any one-year
30 period, every new structure, and any roof covering applied in the alteration, repair,
31 or replacement of the roof of every existing structure, shall be a fire retardant roof
32 covering that is at least class B as defined in the Uniform Building Code, as
33 adopted and amended by the State Building Standards Commission.

34 (b) In all other areas, the entire roof covering of every existing structure where
35 more than 50 percent of the total roof area is replaced within any one-year period,
36 every new structure, and any roof covering applied in the alteration, repair, or
37 replacement of the roof of every existing structure, shall be a fire retardant roof
38 covering that is at least class C as defined in the Uniform Building Code, as
39 adopted and amended by the State Building Standards Commission.

40 (c) Notwithstanding subdivision (b), within state responsibility areas classified
41 by the State Board of Forestry and Fire Protection pursuant to Article 3
42 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public

1 Resources Code, except for those state responsibility areas designated as moderate
2 fire hazard responsibility zones, the entire roof covering of every existing structure
3 where more than 50 percent of the total roof area is replaced within any one-year
4 period, every new structure, and any roof covering applied in the alteration, repair,
5 or replacement of the roof of every existing structure, shall be a fire retardant roof
6 covering that is at least class B as defined in the Uniform Building Code, as
7 adopted and amended by the State Building Standards Commission.

8 (d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard
9 severity zones designated by the Director of Forestry and Fire Protection pursuant
10 to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4
11 of the Public Resources Code or by a local agency pursuant to Chapter 6.8
12 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the
13 Government Code, the entire roof covering of every existing structure where more
14 than 50 percent of the total roof area is replaced within any one-year period, every
15 new structure, and any roof covering applied in the alteration, repair, or
16 replacement of the roof of every existing structure, shall be a fire retardant roof
17 covering that is at least class A as defined in the Uniform Building Code, as
18 adopted and amended by the State Building Standards Commission.

19 (2) Paragraph (1) does not apply to any jurisdiction containing a very high fire
20 hazard severity zone if the jurisdiction fulfills both of the following requirements:

21 (A) Adopts the model ordinance approved by the State Fire Marshal pursuant to
22 Section 51189 of the Government Code or an ordinance that substantially
23 conforms to the model ordinance of the State Fire Marshal.

24 (B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

25 (e) The State Building Standards Commission shall incorporate the requirements
26 set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to
27 the California Building Standards Code in accordance with Chapter 4
28 (commencing with Section 18935) of Part 2.5 of Division 13.

29 (f) Nothing in this section shall limit the authority of a city, county, city and
30 county, or fire protection district in establishing more restrictive requirements, in
31 accordance with current law, than those specified in this section.

32 (g) This section shall not affect the validity of an ordinance, adopted prior to the
33 effective date for the relevant roofing standard specified in subdivisions (a) and
34 (b), by a city, county, city and county, or fire protection district, unless the
35 ordinance mandates a standard that is less stringent than the standards set forth in
36 subdivision (a), in which case the ordinance shall not be valid on or after the
37 effective date for the relevant roofing standard specified in subdivisions (a) and
38 (b).

39 (h) Any qualified historical building or structure as defined in Section 18955
40 may, on a case-by-case basis, utilize alternative roof constructions as provided by
41 the State Historical Building Code.

42 (i) The installer of the roof covering shall provide certification of the roof
43 covering classification, as provided by the manufacturer or supplier, to the

1 building owner and, when requested, to the agency responsible for enforcement of
2 this part. The installer shall also install the roof covering in accordance with the
3 manufacturer's listing.

4 (j) No wood roof covering materials shall be sold or applied in this state unless
5 both of the following conditions are met:

6 (1) The materials have been approved and listed by the State Fire Marshal as
7 complying with the requirements of this section.

8 (2) The materials have passed at least five years of the 10-year natural
9 weathering test. The 10-year natural weathering test required by this subdivision
10 shall be conducted in accordance with standard 15-2 of the 1994 edition of the
11 Uniform Building Code at a testing facility recognized by the State Fire Marshal.

12 (k) The Insurance Commissioner shall accept the use of fire retardant wood roof
13 covering material that complies with the requirements of this section, used in the
14 partial repair or replacement of nonfire retardant wood roof covering material, as
15 complying with the requirement in Section 2695.9 of Title 10 of the California
16 Code of Regulations relative to matching replacement items in quality, color, and
17 size.

18 (l) No common interest development, as defined in Section ~~1351~~ 4100 of the
19 Civil Code, may require a homeowner to install or repair a roof in a manner that is
20 in violation of this section. The governing documents, as defined in Section ~~1351~~
21 4150 of the Civil Code, of a common interest development within a very high fire
22 severity zone shall allow for at least one type of fire retardant roof covering
23 material that meets the requirements of this section.

24 **Comment.** Subdivision (l) of Section 13132.7 is amended to correct obsolete references to
25 former Civil Code Section 1351.

26 **Health & Safety Code § 19850 (amended). Filing of building plan**

27 SEC. _____. Section 19850 of the Health and Safety Code is amended to read:

28 19850. The building department of every city or county shall maintain an
29 official copy, which may be on microfilm or other type of photographic copy, of
30 the plans of every building, during the life of the building, for which the
31 department issued a building permit.

32 "Building department" means the department, bureau, or officer charged with
33 the enforcement of laws or ordinances regulating the erection, construction, or
34 alteration of buildings.

35 Except for plans of a common interest development as defined in Section ~~1351~~
36 4100 of the Civil Code, plans need not be filed for:

37 (a) Single or multiple dwellings not more than two stories and basement in
38 height.

39 (b) Garages and other structures appurtenant to buildings described under
40 subdivision (a).

41 (c) Farm or ranch buildings.

1 (d) Any one-story building where the span between bearing walls does not
2 exceed 25 feet. The exemption in this subdivision does not, however, apply to a
3 steel frame or concrete building.

4 **Comment.** Section 19850 is amended to correct an obsolete reference to former Civil Code
5 Section 1351.

6 **Health & Safety Code § 25400.22 (amended). Lien on contaminated property**

7 SEC. ____ . Section 25400.22 of the Health and Safety Code is amended to read:

8 25400.22. (a) No later than 10 working days after the date when a local health
9 officer determines that property is contaminated pursuant to subdivision (b) of
10 Section 25400.20, the local health officer shall do all of the following:

11 (1) Except as provided in paragraph (2), if the property is real property, record
12 with the county recorder a lien on the property. The lien shall specify all of the
13 following:

14 (A) The name of the agency on whose behalf the lien is imposed.

15 (B) The date on which the property is determined to be contaminated.

16 (C) The legal description of the real property and the assessor's parcel number.

17 (D) The record owner of the property.

18 (E) The amount of the lien, which shall be the greater of two hundred dollars
19 (\$200) or the costs incurred by the local health officer in compliance with this
20 chapter, including, but not limited to, the cost of inspection performed pursuant to
21 Section 25400.19 and the county recorder's fee.

22 (2)(A) If the property is a mobilehome or manufactured home specified in
23 paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record
24 with a restraint on the mobilehome, or manufactured home with the Department of
25 Housing and Community Development, in the form prescribed by that department,
26 providing notice of the determination that the property is contaminated.

27 (B) If the property is a recreational vehicle specified in paragraph (2) of
28 subdivision (t) of Section 25400.11, perfect by filing with the Department of
29 Motor Vehicles a vehicle license stop on the recreational vehicle in the form
30 prescribed by that department, providing notice of the determination that the
31 property is contaminated.

32 (C) If the property is a mobilehome or manufactured home, not subject to
33 paragraph (2) of subdivision (t) of Section 25400.11, is located on real property,
34 and is not attached to that real property, the local health officer shall record a lien
35 for the real property with the county recorder, and the Department of Housing and
36 Community Development shall amend the permanent record with a restraint for
37 the mobilehome or manufactured home, in the form and with the contents
38 prescribed by that department.

39 (3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall
40 specify all of the following:

41 (A) The name of the agency on whose behalf the lien, restraint, or vehicle
42 license stop is imposed.

1 (B) The date on which the property is determined to be contaminated.

2 (C) The legal description of the real property and the assessor's parcel number,
3 and the mailing and street address or space number of the manufactured home,
4 mobilehome, or recreational vehicle or the vehicle identification number of the
5 recreational vehicle, if applicable.

6 (D) The registered owner of the mobilehome, manufactured home, or
7 recreational vehicle, if applicable, or the name of the owner of the real property as
8 indicated in the official county records.

9 (E) The amount of the lien, if applicable, which shall be the greater of two
10 hundred dollars (\$200) or the costs incurred by the local health officer in
11 compliance with this chapter, including, but not limited to, the cost of inspection
12 performed pursuant to Section 25400.19 and the fee charged by the Department of
13 Housing and Community Development and the Department of Motor Vehicles
14 pursuant to paragraph (2) of subdivision (b).

15 (F) Other information required by the county recorder for the lien, the
16 Department of Housing and Community Development for the restraint, or the
17 Department of Motor Vehicles for the vehicle license stop.

18 (4) Issue to persons specified in subdivisions (d), (e), and (f) an order
19 prohibiting the use or occupancy of the contaminated portions of the property.

20 (b)(1) The county recorder's fees for recording and indexing documents
21 provided for in this section shall be in the amount specified in Article 5
22 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the
23 Government Code.

24 (2) The Department of Housing and Community Development and the
25 Department of Motor Vehicles may charge a fee to cover its administrative costs
26 for recording and indexing documents provided for in paragraph (2) of subdivision
27 (a).

28 (c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect,
29 and priority of a judgment lien. The restraint amending the permanent record
30 pursuant to subdivision (a) shall be displayed on any manufactured home or
31 mobilehome title search until the restraint is released. The vehicle license stop
32 shall remain in effect until it is released.

33 (2) The local health officer shall not authorize the release of a lien, restraint, or
34 vehicle license stop made pursuant to subdivision (a), until one of the following
35 occurs:

36 (A) The property owner satisfies the real property lien, or the contamination in
37 the mobilehome, manufactured home, or recreational vehicle is abated to the
38 satisfaction of the local health officer consistent with the notice in the restraint, or
39 vehicle license stop and the local health officer issues a release pursuant to Section
40 25400.27.

41 (B) For a manufactured home or mobilehome, the local health officer determines
42 that the unit will be destroyed or permanently salvaged. For the purposes of this

1 paragraph, the unit shall not be reregistered after this determination is made unless
2 the local health officer issues a release pursuant to Section 25400.27.

3 (C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in
4 a foreclosure sale.

5 (d) Except as otherwise specified in this section, an order issued pursuant to this
6 section shall be served, either personally or by certified mail, return receipt
7 requested in the following manner:

8 (1) For real property, to all known occupants of the property and to all persons
9 who have an interest in the property, as contained in the records of the recorder's
10 office of the county in which the property is located.

11 (2) In the case of a mobilehome or manufactured home, the order shall be served
12 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
13 defined in Section 18005.3, and the registered owner, as defined in Section
14 18009.5.

15 (3) In the case of a recreational vehicle, the order shall be served on the legal
16 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
17 defined in Section 505 of the Vehicle Code.

18 (e) If the whereabouts of the person described in subdivision (d) are unknown
19 and cannot be ascertained by the local health officer, in the exercise of reasonable
20 diligence, and the local health officer makes an affidavit to that effect, the local
21 health officer shall serve the order by personal service or by mailing a copy of the
22 order by certified mail, postage prepaid, return receipt requested, as follows:

23 (1) The order related to real property shall be served to each person at the
24 address appearing on the last equalized tax assessment roll of the county where the
25 property is located, and to all occupants of the affected unit.

26 (2) In the case of a mobilehome or manufactured home, the order shall be served
27 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
28 defined in Section 18005.3, and the registered owner, as defined in Section
29 18009.5, at the address appearing on the permanent record and all occupants of the
30 affected unit at the mobilehome park space.

31 (3) In the case of a recreational vehicle, the order shall be served on the legal
32 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
33 defined in Section 505 of the Vehicle Code, at the address appearing on the
34 permanent record and all occupants of the affected vehicle at the mobilehome park
35 or special occupancy park space.

36 (f)(1) The local health officer shall also mail a copy of the order required by this
37 section to the address of each person or party having a recorded right, title, estate,
38 lien, or interest in the property and to the association of a common interest
39 development, as defined in Section ~~4354~~ 4100 of the Civil Code.

40 (2) In addition to the requirements of paragraph (1), if the affected property is a
41 mobilehome, manufactured home, or recreational vehicle, specified in paragraph
42 (2) of subdivision (t) of Section 25400.11, the order issued by the local health

1 officer shall also be served, either personally or by certified mail, return receipt
2 requested, to the owner of the mobilehome park or special occupancy park.

3 (g) The order issued pursuant to this section shall include all of the following
4 information:

5 (1) A description of the property.

6 (2) The parcel identification number, address, or space number, if applicable.

7 (3) The vehicle identification number, if applicable.

8 (4) A description of the local health officer's intended course of action.

9 (5) A specification of the penalties for noncompliance with the order.

10 (6) A prohibition on the use of all or portions of the property that are
11 contaminated.

12 (7) A description of the measures the property owner is required to take to
13 decontaminate the property.

14 (8) An indication of the potential health hazards involved.

15 (9) A statement that a property owner who fails to provide a notice or disclosure
16 that is required by this chapter is subject to a civil penalty of up to five thousand
17 dollars (\$5,000).

18 (h) The local health officer shall provide a copy of the order to the local building
19 or code enforcement agency or other appropriate agency responsible for the
20 enforcement of the State Housing Law (Part 1.5 (commencing with Section
21 17910) of Division 13).

22 (i) The local health officer shall post the order in a conspicuous place on the
23 property within one working day of the date that the order is issued.

24 **Comment.** Subdivision (f) of Section 25400.22 is amended to correct an obsolete reference to
25 former Civil Code Section 1351.

26 **Health & Safety Code § 25915.2 (amended). Written notice of asbestos in construction**
27 **material**

28 SEC. ____. Section 25915.2 of the Health and Safety Code is amended to read:

29 25915.2. (a) Notice provided pursuant to this chapter shall be provided in
30 writing to each individual employee, and shall be mailed to other owners
31 designated to receive the notice pursuant to subdivision (a) of Section 25915.5,
32 within 15 days of the first receipt by the owner of information identifying the
33 presence or location of asbestos-containing construction materials in the building.
34 This notice shall be provided annually thereafter. In addition, if new information
35 regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision
36 (a) of Section 25915 has been obtained within 90 days after the notice required by
37 this subdivision is provided or any subsequent 90-day period, then a supplemental
38 notice shall be provided within 15 days of the close of that 90-day period.

39 (b) Notice provided pursuant to this chapter shall be provided to new employees
40 within 15 days of commencement of work in the building.

41 (c) Notice provided pursuant to this chapter shall be mailed to any new owner
42 designated to receive the notice pursuant to subdivision (a) of Section 25915.5

1 within 15 days of the effective date of the agreement under which a person
2 becomes a new owner.

3 (d) Subdivisions (a) and (c) shall not be construed to require owners of a
4 building or part of a building within a residential common interest development to
5 mail written notification to other owners of a building or part of a building within
6 the residential common interest development, if all the following conditions are
7 met:

8 (1) The association conspicuously posts, in each building or part of a building
9 known to contain asbestos-containing materials, a large sign in a prominent
10 location that fully informs persons entering each building or part of a building
11 within the common interest development that the association knows the building
12 contains asbestos-containing materials.

13 The sign shall also inform persons of the location where further information, as
14 required by this chapter, is available about the asbestos-containing materials
15 known to be located in the building.

16 (2) The owners or association disclose, as soon as practicable before the transfer
17 of title of a separate interest in the common interest development, to a transferee
18 the existence of asbestos-containing material in a building or part of a building
19 within the common interest development.

20 Failure to comply with this section shall not invalidate the transfer of title of real
21 property. This paragraph shall only apply to transfers of title of separate interests
22 in the common interest development of which the owners have knowledge. As
23 used in this section, “association” and “common interest development” are defined
24 in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

25 (e) If a person contracting with an owner receives notice pursuant to this
26 chapter, that contractor shall provide a copy of the notice to his or her employees
27 or contractors working within the building.

28 (f) If the asbestos-containing construction material in the building is limited to
29 an area or areas within the building that meet all the following criteria:

30 (1) Are unique and physically defined.

31 (2) Contain asbestos-containing construction materials in structural, mechanical,
32 or building materials ~~which that~~ are not replicated throughout the building.

33 (3) Are not connected to other areas through a common ventilation system; then,
34 an owner required to give notice to his or her employees pursuant to subdivision
35 (a) of Section 25915 or 25915.1 may provide that notice only to the employees
36 working within or entering that area or those areas of the building meeting the
37 conditions above.

38 (g) If the asbestos-containing construction material in the building is limited to
39 an area or areas within the building that meet all the following criteria:

40 (1) Are accessed only by building maintenance employees or contractors and are
41 not accessed by tenants or employees in the building, other than on an incidental
42 basis.

1 (2) Contain asbestos-containing construction materials in structural, mechanical,
2 or building materials ~~which~~ that are not replicated in areas of the building ~~which~~
3 that are accessed by tenants and employees.

4 (3) The owner knows that no asbestos fibers are being released or have the
5 reasonable possibility to be released from the material; then, as to that asbestos-
6 containing construction material, an owner required to give notice to his or her
7 employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may
8 provide that notice only to its building maintenance employees and contractors
9 who have access to that area or those areas of the building meeting the conditions
10 above.

11 (h) In those areas of a building where the asbestos-containing construction
12 material is composed only of asbestos fibers ~~which~~ that are completely
13 encapsulated, if the owner knows that no asbestos fibers are being released or have
14 the reasonable possibility to be released from that material in its present condition
15 and has no knowledge that other asbestos-containing material is present, then an
16 owner required to give notice pursuant to subdivision (a) of Section 25915 shall
17 provide the information required in paragraph (2) of subdivision (a) of Section
18 25915 and may substitute the following notice for the requirements of paragraphs
19 (1), (3), (4), and (5) of subdivision (a) of Section 25915:

20 (1) The existence of, conclusions from, and a description or list of the contents
21 of, that portion of any survey conducted to determine the existence and location of
22 asbestos-containing construction materials within the building that refers to the
23 asbestos materials described in this subdivision, and information describing when
24 and where the results of the survey are available pursuant to Section 25917.

25 (2) Information to convey that moving, drilling, boring, or otherwise disturbing
26 the asbestos-containing construction material identified may present a health risk
27 and, consequently, should not be attempted by an unqualified employee. The
28 notice shall identify the appropriate person the employee is required to contact if
29 the condition of the asbestos-containing construction material deteriorates.

30 **Comment.** Subdivision (d) of Section 25915.2 is amended to correct an obsolete reference to
31 former Civil Code Section 1351.

32 Subdivisions (g) and (h) are amended to make stylistic revisions.

33 **Health & Safety Code § 25915.5 (amended). Notice to persons in privity with owner**

34 SEC. _____. Section 25915.5 of the Health and Safety Code is amended to read:

35 25915.5. (a) An owner required to give notice to employees pursuant to this
36 chapter, in addition to notifying his or her employees, shall mail, in accordance
37 with this subdivision, a copy of that notice to all other persons who are owners of
38 the building or part of the building, with whom the owner has privity of contract.
39 Receipt of a notice pursuant to this section by an owner, lessee or operator shall
40 constitute knowledge that the building contains asbestos-containing construction
41 materials for purposes of this chapter. Notice to an owner shall be delivered by

1 first-class mail addressed to the person and at the address designated for the
2 receipt of notices under the lease, rental agreement, or contract with the owner.

3 (b) The delivery of notice under this section or negligent failure to provide that
4 notice shall not constitute a breach of any covenant under the lease or rental
5 agreement, and nothing in this chapter enlarges or diminishes any rights or duties
6 respecting constructive eviction.

7 (c) No owner who, in good faith, complies with the provisions of this section
8 shall be liable to any other owner for any damages alleged to have resulted from
9 his or her compliance with the provisions of this section.

10 (d) This section shall not be construed to apply to owners of a building or part of
11 a building within a residential common interest development or association, if the
12 owners comply with the provisions of subdivision (d) of Section 25915.2. For
13 purposes of this section, “association” and “common interest development” are
14 defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

15 **Comment.** Subdivision (d) of Section 25915.5 is amended to correct an obsolete reference to
16 former Civil Code Section 1351.

17 **Health & Safety Code § 33050 (amended). Prohibition of discrimination in community**
18 **redevelopment project**

19 SEC. _____. Section 33050 of the Health and Safety Code is amended to read:

20 33050. (a) It is hereby declared to be the policy of the state that in undertaking
21 community redevelopment projects under this part there shall be no discrimination
22 because of any basis listed in subdivision (a) or (d) of Section 12955 of the
23 Government Code, as those bases are defined in Sections 12926, 12926.1,
24 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
25 Section 12955.2 of the Government Code.

26 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
27 (a) shall not be construed to apply to housing for older persons, as defined in
28 Section 12955.9 of the Government Code. With respect to familial status, nothing
29 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
30 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
31 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
32 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
33 apply to subdivision (a).

34 **Comment.** Subdivision (b) of Section 33050 is amended to correct an obsolete reference to
35 former Civil Code Section 1360.

36 **Health & Safety Code § 33435 (amended). Obligation of lessee and purchaser to refrain**
37 **from discrimination**

38 SEC. _____. Section 33435 of the Health and Safety Code is amended to read:

39 33435. (a) Agencies shall obligate lessees and purchasers of real property
40 acquired in redevelopment projects and owners of property improved as a part of a
41 redevelopment project to refrain from restricting the rental, sale, or lease of the

1 property on any basis listed in subdivision (a) or (d) of Section 12955 of the
2 Government Code, as those bases are defined in Sections 12926, 12926.1,
3 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
4 Section 12955.2 of the Government Code. All deeds, leases, or contracts for the
5 sale, lease, sublease, or other transfer of any land in a redevelopment project shall
6 contain or be subject to the nondiscrimination or nonsegregation clauses hereafter
7 prescribed.

8 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
9 (a) shall not be construed to apply to housing for older persons, as defined in
10 Section 12955.9 of the Government Code. With respect to familial status, nothing
11 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
12 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
13 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
14 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
15 apply to subdivision (a).

16 **Comment.** Subdivision (b) of Section 33435 is amended to correct an obsolete reference to
17 former Civil Code Section 1360.

18 **Health & Safety Code § 33436 (amended). Form of nondiscrimination and nonsegregation**
19 **clause**

20 SEC. _____. Section 33436 of the Health and Safety Code is amended to read:

21 33436. Express provisions shall be included in all deeds, leases, and contracts
22 that the agency proposes to enter into with respect to the sale, lease, sublease,
23 transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment
24 project in substantially the following form:

25 (a)(1) In deeds the following language shall appear -- “The grantee herein
26 covenants by and for himself or herself, his or her heirs, executors, administrators,
27 and assigns, and all persons claiming under or through them, that there shall be no
28 discrimination against or segregation of, any person or group of persons on
29 account of any basis listed in subdivision (a) or (d) of Section 12955 of the
30 Government Code, as those bases are defined in Sections 12926, 12926.1,
31 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
32 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer,
33 use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall
34 the grantee or any person claiming under or through him or her, establish or permit
35 any practice or practices of discrimination or segregation with reference to the
36 selection, location, number, use or occupancy of tenants, lessees, subtenants,
37 sublessees, or vendees in the premises herein conveyed. The foregoing covenants
38 shall run with the land.”

39 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
40 shall not be construed to apply to housing for older persons, as defined in Section
41 12955.9 of the Government Code. With respect to familial status, nothing in
42 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~~ 5760 of the Civil Code and subdivisions (n), (o),
3 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

4 (b)(1) In leases the following language shall appear -- “The lessee herein
5 covenants by and for himself or herself, his or her heirs, executors, administrators,
6 and assigns, and all persons claiming under or through him or her, and this lease is
7 made and accepted upon and subject to the following conditions:

8 That there shall be no discrimination against or segregation of any person or
9 group of persons, on account of any basis listed in subdivision (a) or (d) of Section
10 12955 of the Government Code, as those bases are defined in Sections 12926,
11 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
12 and Section 12955.2 of the Government Code, in the leasing, subleasing,
13 transferring, use, occupancy, tenure, or enjoyment of the premises herein leased
14 nor shall the lessee himself or herself, or any person claiming under or through
15 him or her, establish or permit any ~~such~~ of this type of practice or practices of
16 discrimination or segregation with reference to the selection, location, number,
17 use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the
18 premises herein leased.”

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 ~~1360~~ 5760 of the Civil Code and subdivisions (n), (o),
25 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

26 (c) In contracts entered into by the agency relating to the sale, transfer, or
27 leasing of land or any interest therein acquired by the agency within any survey
28 area or redevelopment project the foregoing provisions in substantially the forms
29 set forth shall be included and the contracts shall further provide that the foregoing
30 provisions shall be binding upon and shall obligate the contracting party or parties
31 and any subcontracting party or parties, or other transferees under the instrument.

32 **Comment.** Section 33436 is amended to correct obsolete references to former Civil Code
33 Section 1360 and to make a stylistic revision.

34 **Health & Safety Code § 33724 (amended). Prohibition of discrimination in rebuilding or**
35 **rehabilitation of renewal area**

36 SEC. ____. Section 33724 of the Health and Safety Code is amended to read:

37 33724. (a) All property of the renewal area agency, and all property of persons
38 participating in the rebuilding or rehabilitation of the renewal area or who derive
39 any benefit from the rebuilding or rehabilitation, shall be sold, transferred, leased,
40 purchased, acquired, administered, and managed without discrimination on
41 account of any basis listed in subdivision (a) or (d) of Section 12955 of the
42 Government Code, as those bases are defined in Sections 12926, 12926.1,

1 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
2 Section 12955.2 of the Government Code.

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 of the Civil Code, relating to housing for senior citizens.
8 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
9 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
10 apply to subdivision (a).

11 **Comment.** Subdivision (b) of Section 33724 is amended to correct an obsolete reference to
12 former Civil Code Section 1360.

13 **Health & Safety Code § 33769 (amended). Nondiscrimination in construction and**
14 **disposition of residence**

15 SEC. _____. Section 33769 of the Health and Safety Code is amended to read:

16 33769. (a) An agency shall require that any residence that is constructed with
17 financing obtained under this chapter shall be open, upon sale or rental of any
18 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of
19 Section 12955 of the Government Code, as those bases are defined in Sections
20 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
21 12955, and Section 12955.2 of the Government Code. The agency shall also
22 require that contractors and subcontractors engaged in residential construction
23 financed under this chapter shall provide equal opportunity for employment,
24 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
25 the Government Code, as those bases are defined in Sections 12926 and 12926.1
26 of the Government Code, and except as otherwise provided in Section 12940 of
27 the Government Code. All contracts and subcontracts for residential construction
28 financed under this chapter shall be let without discrimination as to any basis
29 listed in subdivision (a) of Section 12940 of the Government Code, as those bases
30 are defined in Sections 12926 and 12926.1 of the Government Code and except as
31 otherwise provided in Section 12940 of the Government Code. It shall be the
32 policy of an agency financing residential construction under this chapter to
33 encourage participation by minority contractors, and the agency shall adopt rules
34 and regulations to implement this section.

35 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
36 (a) shall not be construed to apply to housing for older persons, as defined in
37 Section 12955.9 of the Government Code. With respect to familial status, nothing
38 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
39 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
40 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
41 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
42 apply to subdivision (a).

1 **Comment.** Subdivision (b) of Section 33769 is amended to correct an obsolete reference to
2 former Civil Code Section 1360.

3 **Health & Safety Code § 35811 (amended). Prohibition of discrimination by financial**
4 **institution**

5 SEC. _____. Section 35811 of the Health and Safety Code is amended to read:

6 35811. (a) No financial institution shall discriminate in the availability of, or in
7 the provision of, financial assistance for the purpose of purchasing, constructing,
8 rehabilitating, improving, or refinancing housing accommodations due, in whole
9 or in part, to the consideration of any basis listed in subdivision (a) or (d) of
10 Section 12955 of the Government Code, as those bases are defined in Sections
11 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
12 12955, and Section 12955.2 of the Government Code.

13 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
14 (a) shall not be construed to apply to housing for older persons, as defined in
15 Section 12955.9 of the Government Code. With respect to familial status, nothing
16 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
17 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
18 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
19 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
20 apply to subdivision (a).

21 **Comment.** Subdivision (b) of Section 35811 is amended to correct an obsolete reference to
22 former Civil Code Section 1360.

23 **Health & Safety Code § 37630 (amended). Prohibition of discrimination in financing,**
24 **contract, and subcontract of rehabilitated property**

25 SEC. _____. Section 37630 of the Health and Safety Code is amended to read:

26 37630. (a) The local agency shall require that any property that is rehabilitated
27 with financing obtained under this part shall be open, upon sale or rental of any
28 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of
29 Section 12955 of the Government Code, as those bases are defined in Sections
30 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
31 12955, and Section 12955.2 of the Government Code. The local agency shall also
32 require that contractors and subcontractors engaged in historical rehabilitation
33 financed under this part provide equal opportunity for employment, without
34 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
35 Government Code, as those bases are defined in Sections 12926 and 12926.1 of
36 the Government Code, and except as otherwise provided in Section 12940 of the
37 Government Code. All contracts and subcontracts for historical rehabilitation
38 financed under this part shall be let without discrimination as to any basis listed in
39 subdivision (a) of Section 12940 of the Government Code, as those bases are
40 defined in Sections 12926 and 12926.1 of the Government Code, and except as
41 otherwise provided in Section 12940 of the Government Code.

1 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
2 (a) shall not be construed to apply to housing for older persons, as defined in
3 Section 12955.9 of the Government Code. With respect to familial status, nothing
4 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
5 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
6 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
7 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
8 apply to subdivision (a).

9 **Comment.** Subdivision (b) of Section 37630 is amended to correct an obsolete reference to
10 former Civil Code Section 1360.

11 **Health & Safety Code § 37923 (amended). Open housing and equal opportunity in**
12 **employment and contract of rehabilitated property**

13 SEC. _____. Section 37923 of the Health and Safety Code is amended to read:

14 37923. (a) The local agency shall require that any residence that is rehabilitated,
15 constructed, or acquired with financing obtained under this part shall be open,
16 upon sale or rental of any portion thereof, to all regardless of any basis listed in
17 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
18 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
19 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.
20 The local agency shall also require that contractors and subcontractors engaged in
21 residential rehabilitation financed under this part provide equal opportunity for
22 employment, without discrimination as to any basis listed in subdivision (a) of
23 Section 12940 of the Government Code, as those bases are defined in Sections
24 12926 and 12926.1 of the Government Code, and except as otherwise provided in
25 Section 12940 of the Government Code. All contracts and subcontracts for
26 residential rehabilitation financed under this part shall be let without
27 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
28 Government Code, as those bases are defined in Sections 12926 and 12926.1 of
29 the Government Code, and except as otherwise provided in Section 12940 of the
30 Government Code. It shall be the policy of the local agency financing residential
31 rehabilitation under this part to encourage participation by minority contractors,
32 and the local agency shall adopt rules 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~~ 5760 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.** Subdivision (b) of Section 37923 is amended to correct an obsolete reference to
42 former Civil Code Section 1360.

1 **Health & Safety Code § 50955 (amended). Equal opportunity without discrimination in**
2 **management, construction, and rehabilitation of housing development**

3 SEC. _____. Section 50955 of the Health and Safety Code is amended to read:

4 50955. (a) The agency and every housing sponsor shall require that occupancy
5 of housing developments assisted under this part shall be open to all regardless of
6 any basis listed in subdivision (a) or (d) of Section 12955 of the Government
7 Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and
8 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
9 Government Code, that contractors and subcontractors engaged in the construction
10 of housing developments shall provide an equal opportunity for employment,
11 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
12 the Government Code, as those bases are defined in Sections 12926 and 12926.1
13 of the Government Code, and except as otherwise provided in Section 12940 of
14 the Government Code, and that contractors and subcontractors shall submit and
15 receive approval of an affirmative action program prior to the commencement of
16 construction or rehabilitation. Affirmative action requirements respecting
17 apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070)
18 of Division 3 of the Labor Code.

19 All contracts for the management, construction, or rehabilitation of housing
20 developments, and contracts let by housing sponsors, contractors, and
21 subcontractors in the performance of management, construction or rehabilitation,
22 shall be let without discrimination as to any basis listed in subdivision (a) of
23 Section 12940 of the Government Code, as those bases are defined in Sections
24 12926 and 12926.1 of the Government Code, except as otherwise provided in
25 Section 12940 of the Government Code, and pursuant to an affirmative action
26 program, which shall be at not less than the Federal Housing Administration
27 affirmative action standards unless the board makes a specific finding that the
28 particular requirement would be unworkable. The agency shall periodically review
29 implementation of affirmative action programs required by this section.

30 It shall be the policy of the agency and housing sponsors to encourage
31 participation with respect to all projects by minority developers, builders, and
32 entrepreneurs in all levels of construction, planning, financing, and management
33 of housing developments. In areas of minority concentration the agency shall
34 require significant participation of minorities in the sponsorship, construction,
35 planning, financing, and management of housing developments. The agency shall
36 (1) require that, to the greatest extent feasible, opportunities for training and
37 employment arising in connection with the planning, construction, rehabilitation,
38 and operation of housing developments financed pursuant to this part be given to
39 persons of low income residing in the area of that housing, and (2) determine and
40 implement means to secure the participation of small businesses in the
41 performance of contracts for work on housing developments and to develop the
42 capabilities of these small businesses to more efficiently and competently
43 participate in the economic mainstream. In order to achieve this participation by

1 small businesses, the agency may, among other things, waive retention
2 requirements otherwise imposed on contractors or subcontractors by regulation of
3 the agency and may authorize or make advance payments for work to be
4 performed. The agency shall develop relevant selection criteria for the
5 participation of small businesses to ensure that, to the greatest extent feasible, the
6 participants possess the necessary nonfinancial capabilities. The agency may, with
7 respect to these small businesses, waive bond requirements otherwise imposed
8 upon contractors or subcontractors by regulation of the agency, but the agency
9 shall in that case substantially reduce the risk through (1) a pooled-risk bonding
10 program, (2) a bond program in cooperation with other federal or state agencies, or
11 (3) development of a self-insured bonding program with adequate reserves.

12 The agency shall adopt rules and regulations to implement this section.

13 Prior to commitment of a mortgage loan, the agency shall require each housing
14 sponsor, except with respect to mutual self-help housing, to submit an affirmative
15 marketing program that meets standards set forth in regulations of the agency. The
16 agency shall require ~~such a~~ the housing sponsor to conduct the affirmative
17 marketing program so approved. Additionally, the agency shall supplement the
18 efforts of individual housing sponsors by conducting affirmative marketing
19 programs with respect to housing at the state level.

20 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
21 (a) shall not be construed to apply to housing for older persons, as defined in
22 Section 12955.9 of the Government Code. With respect to familial status, nothing
23 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
24 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
25 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
26 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
27 apply to subdivision (a).

28 **Comment.** Section 50955 is amended to correct an obsolete reference to former Civil Code
29 Section 1360 and to make a stylistic revision.

30 **Health & Safety Code § 51602 (amended). Requirement of open housing and equal**
31 **opportunity for loan insurance**

32 SEC. ____. Section 51602 of the Health and Safety Code is amended to read:

33 51602. (a) The agency shall require that occupancy of housing for which a loan
34 is insured pursuant to this part shall be open to all regardless of any basis listed in
35 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
36 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
37 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,
38 and that contractors and subcontractors engaged in the construction or
39 rehabilitation of housing funded by a loan insured pursuant to this part shall
40 provide an equal opportunity for employment without discrimination as to any
41 basis listed in subdivision (a) of Section 12940 of the Government Code, as those

1 bases are defined in Sections 12926 and 12926.1 of the Government Code, and
2 except as otherwise provided in Section 12940 of the Government Code.

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 of the Civil Code, relating to housing for senior citizens.
8 Subdivision (d) of Section 51 and Section ~~1360~~ 5760 of the Civil Code and
9 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
10 apply to subdivision (a).

11 (c) A qualified developer shall certify compliance with this section and Section
12 50955 according to requirements specified by the pertinent criteria of the agency.

13 **Comment.** Subdivision (b) of Section 51602 is amended to correct an obsolete reference to
14 former Civil Code Section 1360.

15 **Health & Safety Code § 116048 (amended). Swimming pool records**

16 SEC. _____. Section 116048 of the Health and Safety Code is amended to read:

17 116048. (a) On or after January 1, 1987, for public swimming pools in any
18 common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code,
19 that consists of fewer than 25 separate interests, as defined in ~~subdivision (l) of~~
20 ~~Section 1351~~ Section 4185 of the Civil Code, the person operating ~~each such a~~
21 pool open for use shall be required to keep a record of the information required by
22 subdivision (a) of Section 65523 of Title 22 of the California Administrative
23 Code, except that the information shall be recorded at least two times per week
24 and at intervals no greater than four days apart.

25 (b) On or after January 1, 1987, any rule or regulation of the department that is
26 in conflict with subdivision (a) is invalid.

27 **Comment.** Section 116048 is amended to correct obsolete references to former Civil Code
28 Sections 1351 and 1351(l) and to make a stylistic revision.

29 **Ins. Code § 790.031 (amended). Application of certain requirements**

30 SEC. _____. Section 790.031 of the Insurance Code is amended to read:

31 790.031. The requirements of subdivision (b) of Section 790.034, and Sections
32 2071.1 and 10082.3 shall apply only to policies of residential property insurance
33 as defined in Section 10087, policies and endorsements containing those
34 coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1
35 of Division 2, policies issued by the California Earthquake Authority pursuant to
36 Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies
37 and endorsements that insure against property damage and are issued to common
38 interest developments or to associations managing common interest developments,
39 as those terms are defined in ~~Section 1351~~ Sections 4100 and 4080 of the Civil
40 Code, and to policies issued pursuant to Section 120 that insure against property

1 damage to residential units or contents thereof owned by one or more persons
2 located in this state.

3 **Comment.** Section 790.031 is amended to correct an obsolete reference to former Civil Code
4 Section 1351.

5 **Rev. & Tax Code § 2188.6 (amended). Assessment of separate condominium unit**

6 SEC. _____. Section 2188.6 of the Revenue and Taxation Code is amended to
7 read:

8 2188.6. (a) Unless a request for exemption has been recorded pursuant to
9 subdivision (d), prior to the creation of a condominium as defined in Section 783
10 of the Civil Code, the county assessor may separately assess each individual unit
11 ~~which that~~ that is shown on the condominium plan of a proposed condominium project
12 when all of the following documents have been recorded as required by law:

13 (1) A subdivision final map or parcel map, as described in Sections 66434 and
14 66445, respectively, of the Government Code.

15 (2) A condominium plan, as defined in ~~subdivision (e) of Section 1351~~ Section
16 4120 of the Civil Code.

17 (3) A declaration, as defined in ~~subdivision (h) of Section 1351~~ Section 4135 of
18 the Civil Code.

19 (b) The tax due on each individual unit shall constitute a lien solely on that unit.

20 (c) The lien created pursuant to this section shall be a lien on an undivided
21 interest in a portion of real property coupled with a separate interest in space
22 called a unit as described in ~~subdivision (f) of Section 1351~~ Section 4125 of the
23 Civil Code.

24 (d) The record owner of the real property may record with the condominium
25 plan a request that the real property be exempt from separate assessment pursuant
26 to this section. If a request for exemption is recorded, separate assessment of a
27 condominium unit shall be made only in accordance with Section 2188.3.

28 (e) This section shall become operative on January 1, 1990, and shall apply to
29 condominium projects for which a condominium plan is recorded after that date.

30 **Comment.** Subdivision (a) of Section 2188.6 is amended to correct an obsolete reference to
31 former Civil Code Sections 1351(c) and 1351(h) and to make a stylistic revision.

32 Subdivision (c) of Section 2188.6 is amended to correct an obsolete reference to former Civil
33 Code Section 1351(f).

34 **Veh. Code § 21107.7 (amended). Private road not open to public use**

35 SEC. _____. Section 21107.7 of the Vehicle Code is amended to read:

36 21107.7. (a) Any city or county may, by ordinance or resolution, find and
37 declare that there are privately owned and maintained roads as described in the
38 ordinance or resolution within the city or county that are not generally held open
39 for use of the public for purposes of vehicular travel but, by reason of their
40 proximity to or connection with highways, the interests of any residents residing
41 along the roads and the motoring public will best be served by application of the
42 provisions of this code to those roads. No ordinance or resolution shall be enacted

1 unless there is first filed with the city or county a petition requesting it by a
2 majority of the owners of any privately owned and maintained road, or by at least
3 a majority of the board of directors of a common interest development, as defined
4 by Section ~~1351~~ 4100 of the Civil Code, that is responsible for maintaining the
5 road, and without a public hearing thereon and 10 days' prior written notice to all
6 owners of the road or all of the owners in the development. Upon enactment of the
7 ordinance or resolution, the provisions of this code shall apply to the privately
8 owned and maintained road if appropriate signs are erected at the entrance to the
9 road of the size, shape, and color as to be readily legible during daylight hours
10 from a distance of 100 feet, to the effect that the road is subject to the provisions
11 of this code. The city or county may impose reasonable conditions and may
12 authorize the owners, or board of directors of the common interest development, to
13 erect traffic signs, signals, markings, and devices ~~which~~ that conform to the
14 uniform standards and specifications adopted by the Department of
15 Transportation.

16 (b) The department shall not be required to provide patrol or enforce any
17 provisions of this code on any privately owned and maintained road subjected to
18 the provisions of this code under this section, except those provisions applicable to
19 private property other than by action under this section.

20 (c) As used in this section, "privately owned and maintained roads" includes
21 roads owned and maintained by a city, county or district that are not dedicated to
22 use by the public or are not generally held open for use of the public for purposes
23 of vehicular travel.

24 **Comment.** Subdivision (a) of Section 21107.7 is amended to correct an obsolete reference to
25 former Civil Code Section 1351 and to make a stylistic revision.

26 **Veh. Code § 22651 (amended). Circumstances permitting removal**

27 SEC. ____ . Section 22651 of the Vehicle Code is amended to read:

28 22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section
29 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried
30 employee, who is engaged in directing traffic or enforcing parking laws and
31 regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is
32 located, may remove a vehicle located within the territorial limits in which the
33 officer or employee may act, under any of the following circumstances:

34 (a) When any vehicle is left unattended upon any bridge, viaduct, or causeway
35 or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

36 (b) When any vehicle is parked or left standing upon a highway in a position so
37 as to obstruct the normal movement of traffic or in a condition so as to create a
38 hazard to other traffic upon the highway.

39 (c) When any vehicle is found upon a highway or any public lands and a report
40 has previously been made that the vehicle has been stolen or a complaint has been
41 filed and a warrant thereon issued charging that the vehicle has been embezzled.

1 (d) When any vehicle is illegally parked so as to block the entrance to a private
2 driveway and it is impractical to move the vehicle from in front of the driveway to
3 another point on the highway.

4 (e) When any vehicle is illegally parked so as to prevent access by firefighting
5 equipment to a fire hydrant and it is impracticable to move the vehicle from in
6 front of the fire hydrant to another point on the highway.

7 (f) When any vehicle, except any highway maintenance or construction
8 equipment, is stopped, parked, or left standing for more than four hours upon the
9 right-of-way of any freeway which has full control of access and no crossings at
10 grade and the driver, if present, cannot move the vehicle under its own power.

11 (g) When the person or persons in charge of a vehicle upon a highway or any
12 public lands are, by reason of physical injuries or illness, incapacitated to an extent
13 so as to be unable to provide for its custody or removal.

14 (h)(1) When an officer arrests any person driving or in control of a vehicle for
15 an alleged offense and the officer is, by this code or other law, required or
16 permitted to take, and does take, the person into custody.

17 (2) When an officer serves a notice of an order of suspension or revocation
18 pursuant to Section 13388.

19 (i)(1) When any vehicle, other than a rented vehicle, is found upon a highway or
20 any public lands, or is removed pursuant to this code, and it is known that the
21 vehicle has been issued five or more notices of parking violations to which the
22 owner or person in control of the vehicle has not responded within 21 calendar
23 days of notice of citation issuance or citation issuance or 14 calendar days of the
24 mailing of a notice of delinquent parking violation to the agency responsible for
25 processing notices of parking violation or the registered owner of the vehicle is
26 known to have been issued five or more notices for failure to pay or failure to
27 appear in court for traffic violations for which no certificate has been issued by the
28 magistrate or clerk of the court hearing the case showing that the case has been
29 adjudicated or concerning which the registered owner's record has not been
30 cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17,
31 the vehicle may be impounded until that person furnishes to the impounding law
32 enforcement agency all of the following:

33 (A) Evidence of his or her identity.

34 (B) An address within this state at which he or she can be located.

35 (C) Satisfactory evidence that all parking penalties due for the vehicle and any
36 other vehicle registered to the registered owner of the impounded vehicle, and all
37 traffic violations of the registered owner, have been cleared.

38 (2) The requirements in subparagraph (C) of paragraph (1) shall be fully
39 enforced by the impounding law enforcement agency on and after the time that the
40 Department of Motor Vehicles is able to provide access to the necessary records.

41 (3) A notice of parking violation issued for an unlawfully parked vehicle shall
42 be accompanied by a warning that repeated violations may result in the
43 impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full

1 amount of parking penalties or bail has been deposited, that person may demand to
2 be taken without unnecessary delay before a magistrate, for traffic offenses, or a
3 hearing examiner, for parking offenses, within the county in which the offenses
4 charged are alleged to have been committed and who has jurisdiction of the
5 offenses and is nearest or most accessible with reference to the place where the
6 vehicle is impounded. Evidence of current registration shall be produced after a
7 vehicle has been impounded, or, at the discretion of the impounding law
8 enforcement agency, a notice to appear for violation of subdivision (a) of Section
9 4000 shall be issued to that person.

10 (4) A vehicle shall be released to the legal owner, as defined in Section 370, if
11 the legal owner does all of the following:

12 (A) Pays the cost of towing and storing the vehicle.

13 (B) Submits evidence of payment of fees as provided in Section 9561.

14 (C) Completes an affidavit in a form acceptable to the impounding law
15 enforcement agency stating that the vehicle was not in possession of the legal
16 owner at the time of occurrence of the offenses relating to standing or parking. A
17 vehicle released to a legal owner under this subdivision is a repossessed vehicle
18 for purposes of disposition or sale. The impounding agency shall have a lien on
19 any surplus that remains upon sale of the vehicle to which the registered owner is
20 or may be entitled, as security for the full amount of the parking penalties for all
21 notices of parking violations issued for the vehicle and for any local administrative
22 charges imposed pursuant to Section 22850.5. The legal owner shall promptly
23 remit to, and deposit with, the agency responsible for processing notices of
24 parking violations from that surplus, on receipt thereof, full amount of the parking
25 penalties for all notices of parking violations issued for the vehicle and for any
26 local administrative charges imposed pursuant to Section 22850.5.

27 (5) The impounding agency that has a lien on the surplus that remains upon the
28 sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4)
29 has a deficiency claim against the registered owner for the full amount of the
30 parking penalties for all notices of parking violations issued for the vehicle and for
31 any local administrative charges imposed pursuant to Section 22850.5, less the
32 amount received from the sale of the vehicle.

33 (j) When any vehicle is found illegally parked and there are no license plates or
34 other evidence of registration displayed, the vehicle may be impounded until the
35 owner or person in control of the vehicle furnishes the impounding law
36 enforcement agency evidence of his or her identity and an address within this state
37 at which he or she can be located.

38 (k) When any vehicle is parked or left standing upon a highway for 72 or more
39 consecutive hours in violation of a local ordinance authorizing removal.

40 (l) When any vehicle is illegally parked on a highway in violation of any local
41 ordinance forbidding standing or parking and the use of a highway, or a portion
42 thereof, is necessary for the cleaning, repair, or construction of the highway, or for
43 the installation of underground utilities, and signs giving notice that the vehicle

1 may be removed are erected or placed at least 24 hours prior to the removal by
2 local authorities pursuant to the ordinance.

3 (m) Wherever the use of the highway, or any portion thereof, is authorized by
4 local authorities for a purpose other than the normal flow of traffic or for the
5 movement of equipment, articles, or structures of unusual size, and the parking of
6 any vehicle would prohibit or interfere with that use or movement, and signs
7 giving notice that the vehicle may be removed are erected or placed at least 24
8 hours prior to the removal by local authorities pursuant to the ordinance.

9 (n) Whenever any vehicle is parked or left standing where local authorities, by
10 resolution or ordinance, have prohibited parking and have authorized the removal
11 of vehicles. No vehicle may be removed unless signs are posted giving notice of
12 the removal.

13 (o)(1) When any vehicle is found or operated upon a highway, any public lands,
14 or an offstreet parking facility with a registration expiration date in excess of six
15 months before the date it is found or operated on the highway, public lands, or the
16 offstreet parking facility. However, whenever the vehicle is occupied, only a peace
17 officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
18 2 of the Penal Code, may remove the vehicle. For the purposes of this subdivision,
19 the vehicle shall be released to the owner or person in control of the vehicle only
20 after the owner or person furnishes the storing law enforcement agency with proof
21 of current registration and a currently valid driver's license to operate the vehicle.

22 (2) As used in this subdivision, "offstreet parking facility" means any offstreet
23 facility held open for use by the public for parking vehicles and includes any
24 publicly owned facilities for offstreet parking, and privately owned facilities for
25 offstreet parking where no fee is charged for the privilege to park and which are
26 held open for the common public use of retail customers.

27 (p) When the peace officer issues the driver of a vehicle a notice to appear for a
28 violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5,
29 or 14604 and the vehicle has not been impounded pursuant to Section 22655.5.
30 Any vehicle so removed from the highway or any public lands, or from private
31 property after having been on a highway or public lands, shall not be released to
32 the registered owner or his or her agent, except upon presentation of the registered
33 owner's or his or her agent's currently valid driver's license to operate the vehicle
34 and proof of current vehicle registration, or upon order of a court.

35 (q) Whenever any vehicle is parked for more than 24 hours on a portion of
36 highway ~~which~~ that is located within the boundaries of a common interest
37 development, as defined in ~~subdivision (c) of Section 1351~~ Section 4100 of the
38 Civil Code, and signs, as required by Section 22658.2, have been posted on that
39 portion of highway providing notice to drivers that vehicles parked thereon for
40 more than 24 hours will be removed at the owner's expense, pursuant to a
41 resolution or ordinance adopted by the local authority.

42 (r) When any vehicle is illegally parked and blocks the movement of a legally
43 parked vehicle.

1 (s)(1) When any vehicle, except highway maintenance or construction
2 equipment, an authorized emergency vehicle, or a vehicle ~~which~~ that is properly
3 permitted or otherwise authorized by the Department of Transportation, is stopped,
4 parked, or left standing for more than eight hours within a roadside rest area or
5 viewpoint.

6 (2) For purposes of this subdivision, a roadside rest area or viewpoint is a
7 publicly maintained vehicle parking area, adjacent to a highway, utilized for the
8 convenient, safe stopping of a vehicle to enable motorists to rest or to view the
9 scenery. If two or more roadside rest areas are located on opposite sides of the
10 highway, or upon the center divider, within seven miles of each other, then that
11 combination of rest areas is considered to be the same rest area.

12 (t) When a peace officer issues a notice to appear for a violation of Section
13 25279.

14 **Comment.** Subdivision (q) of Section 22651 is amended to correct an obsolete reference to
15 former Civil Code Section 1351(c) and to make a stylistic revision.

16 Subdivision (s) is amended to make a stylistic revision.

17 **Veh. Code § 22651.05 (amended). Circumstances permitting trained volunteers to remove**
18 **vehicle**

19 SEC. ____. Section 22651.05 of the Vehicle Code is amended to read:

20 22651.05. (a) A trained volunteer of a state or local law enforcement agency,
21 who is engaged in directing traffic or enforcing parking laws and regulations, of a
22 city, county, or jurisdiction of a state agency in which a vehicle is located, may
23 remove or authorize the removal of a vehicle located within the territorial limits in
24 which an officer or employee of that agency may act, under any of the following
25 circumstances:

26 (1) When a vehicle is parked or left standing upon a highway for 72 or more
27 consecutive hours in violation of a local ordinance authorizing the removal.

28 (2) When a vehicle is illegally parked or left standing on a highway in violation
29 of a local ordinance forbidding standing or parking and the use of a highway, or a
30 portion thereof, is necessary for the cleaning, repair, or construction of the
31 highway, or for the installation of underground utilities, and signs giving notice
32 that the vehicle may be removed are erected or placed at least 24 hours prior to the
33 removal by local authorities pursuant to the ordinance.

34 (3) Wherever the use of the highway, or a portion thereof, is authorized by local
35 authorities for a purpose other than the normal flow of traffic or for the movement
36 of equipment, articles, or structures of unusual size, and the parking of a vehicle
37 would prohibit or interfere with that use or movement, and signs giving notice that
38 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 (4) Whenever a vehicle is parked or left standing where local authorities, by
41 resolution or ordinance, have prohibited parking and have authorized the removal

1 of vehicles. A vehicle may not be removed unless signs are posted giving notice of
2 the removal.

3 (5) Whenever a vehicle is parked for more than 24 hours on a portion of
4 highway that is located within the boundaries of a common interest development,
5 as defined in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code, and
6 signs, as required by Section 22658.2, have been posted on that portion of
7 highway providing notice to drivers that vehicles parked thereon for more than 24
8 hours will be removed at the owner's expense, pursuant to a resolution or
9 ordinance adopted by the local authority.

10 (b) The provisions of this chapter that apply to a vehicle removed pursuant to
11 Section 22651 apply to a vehicle removed pursuant to subdivision (a).

12 (c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his
13 or her own free will, provides services, without any financial gain, to a local or
14 state law enforcement agency, and who is duly trained and certified to remove a
15 vehicle by a local or state law enforcement agency.

16 **Comment.** Subdivision (a) of Section 22651.05 is amended to correct an obsolete reference to
17 former Civil Code Section 1351(c).

18 **Veh. Code § 22658 (amended). Towing charge**

19 SEC. ____. Section 22658 of the Vehicle Code is amended to read:

20 22658. (a) The owner or person in lawful possession of private property,
21 including an association of a common interest development as defined in ~~Section~~
22 ~~1351~~ Sections 4080 and 4100 of the Civil Code, may cause the removal of a
23 vehicle parked on the property to a storage facility that meets the requirements of
24 subdivision (n) under any of the following circumstances:

25 (1) There is displayed, in plain view at all entrances to the property, a sign not
26 less than 17 inches by 22 inches in size, with lettering not less than one inch in
27 height, prohibiting public parking and indicating that vehicles will be removed at
28 the owner's expense, and containing the telephone number of the local traffic law
29 enforcement agency and the name and telephone number of each towing company
30 that is a party to a written general towing authorization agreement with the owner
31 or person in lawful possession of the property. The sign may also indicate that a
32 citation may also be issued for the violation.

33 (2) The vehicle has been issued a notice of parking violation, and 96 hours have
34 elapsed since the issuance of that notice.

35 (3) The vehicle is on private property and lacks an engine, transmission, wheels,
36 tires, doors, windshield, or any other major part or equipment necessary to operate
37 safely on the highways, the owner or person in lawful possession of the private
38 property has notified the local traffic law enforcement agency, and 24 hours have
39 elapsed since that notification.

40 (4) The lot or parcel upon which the vehicle is parked is improved with a single-
41 family dwelling.

1 (b) The tow truck operator removing the vehicle, if the operator knows or is able
2 to ascertain from the property owner, person in lawful possession of the property,
3 or the registration records of the Department of Motor Vehicles the name and
4 address of the registered and legal owner of the vehicle, shall immediately give, or
5 cause to be given, notice in writing to the registered and legal owner of the fact of
6 the removal, the grounds for the removal, and indicate the place to which the
7 vehicle has been removed. If the vehicle is stored in a storage facility, a copy of
8 the notice shall be given to the proprietor of the storage facility. The notice
9 provided for in this section shall include the amount of mileage on the vehicle at
10 the time of removal and the time of the removal from the property. If the tow truck
11 operator does not know and is not able to ascertain the name of the owner or for
12 any other reason is unable to give the notice to the owner as provided in this
13 section, the tow truck operator shall comply with the requirements of subdivision
14 (c) of Section 22853 relating to notice in the same manner as applicable to an
15 officer removing a vehicle from private property.

16 (c) This section does not limit or affect any right or remedy that the owner or
17 person in lawful possession of private property may have by virtue of other
18 provisions of law authorizing the removal of a vehicle parked upon private
19 property.

20 (d) The owner of a vehicle removed from private property pursuant to
21 subdivision (a) may recover for any damage to the vehicle resulting from any
22 intentional or negligent act of a person causing the removal of, or removing, the
23 vehicle.

24 (e)(1) An owner or person in lawful possession of private property, or an
25 association of a common interest development, causing the removal of a vehicle
26 parked on that property is liable for double the storage or towing charges
27 whenever there has been a failure to comply with paragraph (1), (2), or (3) of
28 subdivision (a) or to state the grounds for the removal of the vehicle if requested
29 by the legal or registered owner of the vehicle as required by subdivision (f).

30 (2) A property owner or owner's agent or lessee who causes the removal of a
31 vehicle parked on that property pursuant to the exemption set forth in
32 subparagraph (A) of paragraph (1) of subdivision (l) and fails to comply with that
33 subdivision is guilty of an infraction, punishable by a fine of one thousand dollars
34 (\$1,000).

35 (f) An owner or person in lawful possession of private property, or an
36 association of a common interest development, causing the removal of a vehicle
37 parked on that property shall notify by telephone or, if impractical, by the most
38 expeditious means available, the local traffic law enforcement agency within one
39 hour after authorizing the tow. An owner or person in lawful possession of private
40 property, an association of a common interest development, causing the removal
41 of a vehicle parked on that property, or the tow truck operator who removes the
42 vehicle, shall state the grounds for the removal of the vehicle if requested by the
43 legal or registered owner of that vehicle. A towing company that removes a

1 vehicle from private property in compliance with subdivision (I) is not responsible
2 in a situation relating to the validity of the removal. A towing company that
3 removes the vehicle under this section shall be responsible for the following:

4 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

5 (2) The removal of a vehicle other than the vehicle specified by the owner or
6 other person in lawful possession of the private property.

7 (g)(1)(A) Possession of a vehicle under this section shall be deemed to arise
8 when a vehicle is removed from private property and is in transit.

9 (B) Upon the request of the owner of the vehicle or that owner's agent, the
10 towing company or its driver shall immediately and unconditionally release a
11 vehicle that is not yet removed from the private property and in transit.

12 (C) A person failing to comply with subparagraph (B) is guilty of a
13 misdemeanor.

14 (2) If a vehicle is released to a person in compliance with subparagraph (B) of
15 paragraph (1), the vehicle owner or authorized agent shall immediately move that
16 vehicle to a lawful location.

17 (h) A towing company may impose a charge of not more than one-half of the
18 regular towing charge for the towing of a vehicle at the request of the owner, the
19 owner's agent, or the person in lawful possession of the private property pursuant
20 to this section if the owner of the vehicle or the vehicle owner's agent returns to
21 the vehicle after the vehicle is coupled to the tow truck by means of a regular
22 hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by
23 means of a conventional trailer, and before it is removed from the private property.
24 The regular towing charge may only be imposed after the vehicle has been
25 removed from the property and is in transit.

26 (i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section
27 is excessive if the charge exceeds the greater of the following:

28 (i) That which would have been charged for that towing or storage, or both,
29 made at the request of a law enforcement agency under an agreement between a
30 towing company and the law enforcement agency that exercises primary
31 jurisdiction in the city in which is located the private property from which the
32 vehicle was, or was attempted to be, removed, or if the private property is not
33 located within a city, then the law enforcement agency that exercises primary
34 jurisdiction in the county in which the private property is located.

35 (ii) That which would have been charged for that towing or storage, or both,
36 under the rate approved for that towing operator by the California Highway Patrol
37 for the jurisdiction in which the private property is located and from which the
38 vehicle was, or was attempted to be, removed.

39 (B) A towing operator shall make available for inspection and copying his or her
40 rate approved by the California Highway Patrol, if any, within 24 hours of a
41 request without a warrant to law enforcement, the Attorney General, district
42 attorney, or city attorney.

1 (2) If a vehicle is released within 24 hours from the time the vehicle is brought
2 into the storage facility, regardless of the calendar date, the storage charge shall be
3 for only one day. Not more than one day's storage charge may be required for a
4 vehicle released the same day that it is stored.

5 (3) If a request to release a vehicle is made and the appropriate fees are tendered
6 and documentation establishing that the person requesting release is entitled to
7 possession of the vehicle, or is the owner's insurance representative, is presented
8 within the initial 24 hours of storage, and the storage facility fails to comply with
9 the request to release the vehicle or is not open for business during normal
10 business hours, then only one day's storage charge may be required to be paid
11 until after the first business day. A business day is any day in which the lienholder
12 is open for business to the public for at least eight hours. If a request is made more
13 than 24 hours after the vehicle is placed in storage, charges may be imposed on a
14 full calendar day basis for each day, or part thereof, that the vehicle is in storage.

15 (j)(1) A person who charges a vehicle owner a towing, service, or storage charge
16 at an excessive rate, as described in subdivision (h) or (i), is civilly liable to the
17 vehicle owner for four times the amount charged.

18 (2) A person who knowingly charges a vehicle owner a towing, service, or
19 storage charge at an excessive rate, as described in subdivision (h) or (i), or who
20 fails to make available his or her rate as required in subparagraph (B) of paragraph
21 (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more
22 than two thousand five hundred dollars (\$2,500), or by imprisonment in the county
23 jail for not more than three months, or by both that fine and imprisonment.

24 (k)(1) A person operating or in charge of a storage facility where vehicles are
25 stored pursuant to this section shall accept a valid credit card or cash for payment
26 of towing and storage by a registered owner or the owner's agent claiming the
27 vehicle. "Credit card" means "credit card" as defined in subdivision (a) of Section
28 1747.02 of the Civil Code, except for the purposes of this section, credit card does
29 not include a credit card issued by a retail seller.

30 (2) A person described in paragraph (1) shall conspicuously display, in that
31 portion of the storage facility office where business is conducted with the public, a
32 notice advising that all valid credit cards and cash are acceptable means of
33 payment.

34 (3) A person operating or in charge of a storage facility who refuses to accept a
35 valid credit card or who fails to post the required notice under paragraph (2) is
36 guilty of a misdemeanor, punishable by a fine of not more than two thousand five
37 hundred dollars (\$2,500), or by imprisonment in the county jail for not more than
38 three months, or by both that fine and imprisonment.

39 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is
40 civilly liable to the registered owner of the vehicle or the person who tendered the
41 fees for four times the amount of the towing and storage charges.

1 (5) A person operating or in charge of the storage facility shall have sufficient
2 moneys on the premises of the primary storage facility during normal business
3 hours to accommodate, and make change in, a reasonable monetary transaction.

4 (6) Credit charges for towing and storage services shall comply with Section
5 1748.1 of the Civil Code. Law enforcement agencies may include the costs of
6 providing for payment by credit when making agreements with towing companies
7 as described in subdivision (i).

8 (l)(1)(A) A towing company shall not remove or commence the removal of a
9 vehicle from private property without first obtaining the written authorization from
10 the property owner or lessee, including an association of a common interest
11 development, or an employee or agent thereof, who shall be present at the time of
12 removal and verify the alleged violation, except that presence and verification is
13 not required if the person authorizing the tow is the property owner, or the owner's
14 agent who is not a tow operator, of a residential rental property of 15 or fewer
15 units that does not have an onsite owner, owner's agent or employee, and the
16 tenant has verified the violation, requested the tow from that tenant's assigned
17 parking space, and provided a signed request or electronic mail, or has called and
18 provides a signed request or electronic mail within 24 hours, to the property owner
19 or owner's agent, which the owner or agent shall provide to the towing company
20 within 48 hours of authorizing the tow. The signed request or electronic mail shall
21 contain the name and address of the tenant, and the date and time the tenant
22 requested the tow. A towing company shall obtain within 48 hours of receiving the
23 written authorization to tow a copy of a tenant request required pursuant to this
24 subparagraph. For the purpose of this subparagraph, a person providing the written
25 authorization who is required to be present on the private property at the time of
26 the tow does not have to be physically present at the specified location of where
27 the vehicle to be removed is located on the private property.

28 (B) The written authorization under subparagraph (A) shall include all of the
29 following:

30 (i) The make, model, vehicle identification number, and license plate number of
31 the removed vehicle.

32 (ii) The name, signature, job title, residential or business address and working
33 telephone number of the person, described in subparagraph (A), authorizing the
34 removal of the vehicle.

35 (iii) The grounds for the removal of the vehicle.

36 (iv) The time when the vehicle was first observed parked at the private property.

37 (v) The time that authorization to tow the vehicle was given.

38 (C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing
39 company prior to payment of a towing or storage charge shall provide a photocopy
40 of the written authorization to the vehicle owner or the agent.

41 (ii) If the vehicle was towed from a residential property, the towing company
42 shall redact the information specified in clause (ii) of subparagraph (B) in the

1 photocopy of the written authorization provided to the vehicle owner or the agent
2 pursuant to clause (i).

3 (iii) The towing company shall also provide to the vehicle owner or the agent a
4 separate notice that provides the telephone number of the appropriate local law
5 enforcement or prosecuting agency by stating “If you believe that you have been
6 wrongfully towed, please contact the local law enforcement or prosecuting agency
7 at [insert appropriate telephone number].” The notice shall be in English and in the
8 most populous language, other than English, that is spoken in the jurisdiction.

9 (D) A towing company shall not remove or commence the removal of a vehicle
10 from private property described in subdivision (a) of Section 22953 unless the
11 towing company has made a good faith inquiry to determine that the owner or the
12 property owner’s agent complied with Section 22953.

13 (E)(i) General authorization to remove or commence removal of a vehicle at the
14 towing company’s discretion shall not be delegated to a towing company or its
15 affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire
16 hydrant or in a fire lane, or in a manner which interferes with an entrance to, or
17 exit from, the private property.

18 (ii) In those cases in which general authorization is granted to a towing company
19 or its affiliate to undertake the removal or commence the removal of a vehicle that
20 is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that
21 interferes with an entrance to, or exit from, private property, the towing company
22 and the property owner, or owner’s agent, or person in lawful possession of the
23 private property shall have a written agreement granting that general authorization.

24 (2) If a towing company removes a vehicle under a general authorization
25 described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully
26 parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that
27 interferes with an entrance to, or exit from, the private property, the towing
28 company shall take, prior to the removal of that vehicle, a photograph of the
29 vehicle that clearly indicates that parking violation. Prior to accepting payment,
30 the towing company shall keep one copy of the photograph taken pursuant to this
31 paragraph, and shall present that photograph and provide, without charge, a
32 photocopy to the owner or an agent of the owner, when that person claims the
33 vehicle.

34 (3) A towing company shall maintain the original written authorization, or the
35 general authorization described in subparagraph (E) of paragraph (1) and the
36 photograph of the violation, required pursuant to this section, and any written
37 requests from a tenant to the property owner or owner’s agent required by
38 subparagraph (A) of paragraph (1), for a period of three years and shall make them
39 available for inspection and copying within 24 hours of a request without a
40 warrant to law enforcement, the Attorney General, district attorney, or city
41 attorney.

42 (4) A person who violates this subdivision is guilty of a misdemeanor,
43 punishable by a fine of not more than two thousand five hundred dollars (\$2,500),

1 or by imprisonment in the county jail for not more than three months, or by both
2 that fine and imprisonment.

3 (5) A person who violates this subdivision is civilly liable to the owner of the
4 vehicle or his or her agent for four times the amount of the towing and storage
5 charges.

6 (m)(1) A towing company that removes a vehicle from private property under
7 this section shall notify the local law enforcement agency of that tow after the
8 vehicle is removed from the private property and is in transit.

9 (2) A towing company is guilty of a misdemeanor if the towing company fails to
10 provide the notification required under paragraph (1) within 60 minutes after the
11 vehicle is removed from the private property and is in transit or 15 minutes after
12 arriving at the storage facility, whichever time is less.

13 (3) A towing company that does not provide the notification under paragraph (1)
14 within 30 minutes after the vehicle is removed from the private property and is in
15 transit is civilly liable to the registered owner of the vehicle, or the person who
16 tenders the fees, for three times the amount of the towing and storage charges.

17 (4) If notification is impracticable, the times for notification, as required
18 pursuant to paragraphs (2) and (3), shall be tolled for the time period that
19 notification is impracticable. This paragraph is an affirmative defense.

20 (n) A vehicle removed from private property pursuant to this section shall be
21 stored in a facility that meets all of the following requirements:

22 (1)(A) Is located within a 10-mile radius of the property from where the vehicle
23 was removed.

24 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a
25 towing company has prior general written approval from the law enforcement
26 agency that exercises primary jurisdiction in the city in which is located the
27 private property from which the vehicle was removed, or if the private property is
28 not located within a city, then the law enforcement agency that exercises primary
29 jurisdiction in the county in which is located the private property.

30 (2)(A) Remains open during normal business hours and releases vehicles after
31 normal business hours.

32 (B) A gate fee may be charged for releasing a vehicle after normal business
33 hours, weekends, and state holidays. However, the maximum hourly charge for
34 releasing a vehicle after normal business hours shall be one-half of the hourly tow
35 rate charged for initially towing the vehicle, or less.

36 (C) Notwithstanding any other provision of law and for purposes of this
37 paragraph, “normal business hours” are Monday to Friday, inclusive, from 8 a.m.
38 to 5 p.m., inclusive, except state holidays.

39 (3) Has a public pay telephone in the office area that is open and accessible to
40 the public.

41 (o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to
42 assist vehicle owners or their agents by, among other things, allowing payment by

1 credit cards for towing and storage services, thereby expediting the recovery of
2 towed vehicles and concurrently promoting the safety and welfare of the public.

3 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further
4 the safety of the general public by ensuring that a private property owner or lessee
5 has provided his or her authorization for the removal of a vehicle from his or her
6 property, thereby promoting the safety of those persons involved in ordering the
7 removal of the vehicle as well as those persons removing, towing, and storing the
8 vehicle.

9 (3) It is the intent of the Legislature in the adoption of subdivision (g) to
10 promote the safety of the general public by requiring towing companies to
11 unconditionally release a vehicle that is not lawfully in their possession, thereby
12 avoiding the likelihood of dangerous and violent confrontation and physical injury
13 to vehicle owners and towing operators, the stranding of vehicle owners and their
14 passengers at a dangerous time and location, and impeding expedited vehicle
15 recovery, without wasting law enforcement's limited resources.

16 (p) The remedies, sanctions, restrictions, and procedures provided in this section
17 are not exclusive and are in addition to other remedies, sanctions, restrictions, or
18 procedures that may be provided in other provisions of law, including, but not
19 limited to, those that are provided in Sections 12110 and 34660.

20 **Comment.** Subdivision (a) of Section 22658 is amended to correct an obsolete reference to
21 former Civil Code Section 1351.

DISPOSITION OF FORMER LAW

The table below shows the relationship between the provisions of the existing Davis-Stirling Common Interest Development Act and the corresponding provisions of the proposed law.

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
1350.....	4000	1361.5.....	5810
1350.5.....	4005	1362.....	5800
1350.7.....	4040, 4045	1363(a).....	4400
1351(a).....	4080	1363(b).....	omitted, see 4080
1351(b).....	4095	1363(c).....	4405
1351(c).....	4100	1363(d).....	4575(d)
1351(d).....	4105	1363(e).....	4595(c)
1351(e).....	4120, 6075, 6080	1363(f).....	omitted, see 4700-4750
1351(f).....	4125	1363(g).....	5000, 5015
1351(g).....	4130	1363(h).....	5005
1351(h).....	4135	1363(i).....	4560(b)
1351(i).....	4145	1363(j).....	omitted, see 5000
1351(j).....	4150	1363.001.....	4950
1351(k).....	4175	1363.03(a).....	4630, 4665(a)-(b), 4670
1351(l).....	4185	1363.03(b), (e), (f), (g), (k).....	4635(f), 4640, 4650
1351(m).....	4190	1363.03(c).....	4635
1352.....	4015, 6000	1363.03(d).....	4660
1352.5.....	6150	1363.03(h), (i).....	4655
1353.....	6025, 6030, 6035	1363.03(j).....	4665(b)-(d)
1353.5.....	5730	1363.03(l).....	omitted, see 4080
1353.6.....	5730	1363.03(m).....	4625
1353.7.....	5740	1363.03(n).....	omitted, see 4025
1353.8.....	5755	1363.03(o).....	omitted
1354.....	5125	1363.04.....	4670
1355.....	6040, 6045	1363.05(a).....	4500
1355.5.....	6050	1363.05(b).....	4525(a), 4540
1356.....	4620	1363.05(c)-(e).....	4550
1357.....	6040	1363.05(f).....	4090
1357.100(a).....	4165	1363.05(g).....	4520(a)-(b)
1357.100(b).....	4180	1363.05(h).....	4520(c)
1357.110.....	6100	1363.05(i).....	4525(b)
1357.120.....	6110	1363.07.....	5900
1357.130.....	6115	1363.09.....	4555(a)-(b), 4685
1357.140.....	6120	1363.1.....	4900
1357.150.....	6125	1363.2.....	4905
1358(a).....	5925	1363.5.....	6060
1358(b).....	5930	1363.6.....	4960
1358(c).....	5935	1363.810.....	5050(a)-(b)
1358(d).....	5940	1363.820.....	5055
1358, next to last ¶.....	5945	1363.830.....	5060
1358, last ¶.....	5950	1363.840.....	5065
1359.....	5905	1363.850.....	5070
1360.....	5760	1364(a).....	5700
1360.5.....	5735	1364(b)-(e).....	5705
1361.....	5805		

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
1364(f).....	5710	1367.4(d).....	5650(b)
1365(a).....	4800, 5500(c), 5555(b)-(c), (e), 5560	1367.5.....	5635(c)
1365(b).....	4820	1368(a).....	5825
1365(c).....	4805(b), 5510(a)	1368(b).....	5830
1365(d).....	4820	1368(c)(1).....	5875
1365(e).....	4810(a)(5)	1368(c)(2).....	5880
1365.1.....	4040, 5670	1368(c)(3).....	4110
1365.2.....	4700-4725, 4735, 4745-4750, 4800	1368(d).....	5840
1365.2.5.....	4800, 5555	1368(e).....	5845
1365.3.....	4815	1368(f).....	5835
1365.5.....	5500(d), 5510(b), 5515, 5520, 5550, 5555(a), 5555(b)(1), 5555(b)(3)-(4), 5560	1368(g).....	5850
1365.6.....	4855	1368.1(a).....	5750(a)
1365.7.....	5680	1368.1(b).....	5750(b)-(c)
1365.9.....	5685	1368.1(c).....	5750(d)
1366(a)-(b).....	5575(a), 5580(a)-(c), (e)	1368.1(d).....	5750(e)
1366(c).....	5585	1368.3.....	4410
1366(d).....	5580(d)	1368.4.....	4415
1366(e)-(f).....	5606(a)-(c)	1368.5.....	6215
1366.1.....	5575(b)	1369.....	5910
1366.2.....	5665	1369.510.....	5075
1367(a).....	5605(d)	1369.520.....	5080
1367(b)-(g).....	omitted, see 5675	1369.530.....	5085
1367.1(a).....	5605(d), 5615	1369.540.....	5090
1367.1(b).....	5600	1369.550.....	5095
1367.1(c).....	5620, 5625, 5630(g), 5655(a)	1369.560.....	5100
1367.1(d).....	5630(a)-(e), 5635(a), 5640(a)	1369.570.....	5105
1367.1(e).....	5640(b)	1369.580.....	5110
1367.1(f).....	5630(f)	1369.590.....	5115
1367.1(g).....	5610, 5645(a), 5655(b)	1370.....	6175
1367.1(h).....	5630(h)	1371.....	6180
1367.1(i).....	5635(b)	1372.....	4030
1367.1(j).....	5655(c)	1373.....	4020
1367.1(k).....	4040(b)	1374.....	4015(b)
1367.1(l).....	5630(i)	1375.....	6200
1367.4(a).....	omitted	1375.05.....	6205
1367.4(b).....	5625, 5645(b), 5650(a)	1375.1.....	6210
1367.4(c).....	5655(a), 5660	1376.....	5745
		1378.....	5775