

## Memorandum 2005-32

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

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In this study, the Commission is working on the reorganization and simplification of common interest development law. Memorandum 2005-25 presented the first installment of a staff draft tentative recommendation, which included preliminary provisions and material relating to the governing documents of a common interest development ("CID").

This memorandum presents additional material, relating to homeowner association member rights and duties. That material is organized as a separate chapter, as follows:

CHAPTER 2. RIGHTS AND DUTIES OF MEMBERS

Article 1. Bill of Rights [Reserved]

Article 2. Limitation of Association Authority to Regulate  
Property Use

Article 3. Inspection of Records

Article 4. Actions Requiring Member Approval

Article 5. Member Duties

Article 1 will be reserved for future substantive study. Articles 2 and 3 are included in the attached draft. Articles 4 and 5 will be addressed in the next installment of this study.

The attached draft includes the new material that is discussed in this memorandum as well as previously reviewed material (for context). The draft includes notes requesting public comment on various issues.

Except where otherwise indicated, a statutory reference in this memorandum is to the Civil Code.

LIMITATION OF ASSOCIATION AUTHORITY TO REGULATE PROPERTY USE

It is common for the governing documents of a CID to limit or prohibit certain types of property use. For example, the governing documents may impose architectural controls or prohibit the operation of a home business.

There are a number of existing sections that limit the authority of the governing documents to regulate certain uses. To varying degrees, these

provisions exempt the protected use from association control. For example, an association's governing documents may not prohibit the display of the flag of the United States. See Section 1353.5.

The proposed law would gather such provisions into a single article for convenience. Issues relating to these provisions are discussed below.

### **Scope of Article**

There are some property use provisions that apply to *any* type of deed-restricted property, including a CID. For example, Health and Safety Code Section 1597.40 provides in part that:

every restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.

That would apply to a CID's governing documents, but would also apply to a restriction applicable to a home that is not part of a CID.

It would not be appropriate to move these general provisions into the Davis-Stirling Act, which only governs CIDs.

Instead, the new article would include a provision making clear that other applicable property use protections exist and would provide a nonexclusive list of such provisions:

#### **§ 4300. Application of article**

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

- (a) Sections 712 and 713, relating to the display of signs.
- (b) Sections 714 and 714.1, relating to solar energy systems.
- (c) Section 714.5, relating to structures that are constructed offsite and moved to the property in sections or modules.
- (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the Government Code, relating to racial restrictions.
- (e) Section 12927 of the Government Code, relating to the modification of property to accommodate a disability.
- (f) Section 1597.40 of the Health and Safety Code, relating to the operation of a family day care home.

**Comment.** Section 4300 is new. It provides a non-exclusive of provisions outside of this title that limit the authority of an association’s governing documents to restrict property use.

A note following Section 4300 requests comment on whether there are any other sections that should be added to the list of cross-references.

### **Noncommercial Display**

There are two provisions in the Davis-Stirling Act that limit an association’s authority to regulate noncommercial displays. They overlap to a considerable extent, but have some differences. The sections are set out below, with substantively important differences highlighted in bold:

#### **Civ. Code § 1353.5. Display of U.S. Flag**

1353.5. (a) Except as required for the protection of the public health or safety, no declaration or other governing document shall limit or prohibit, or be construed to limit or prohibit, the display of the flag of the United States by an owner on or in the owner’s separate interest **or within the owner’s exclusive use common area**, as defined in Section 1351.

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

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

#### **Civ. Code § 1553.6. Noncommercial display**

1353.6. (a) The governing documents, including the operating rules, may not prohibit posting or displaying of noncommercial signs, posters, flags, or banners on or in an owner’s separate interest, except as required for the protection of public health or safety **or if the posting or display would violate a local, state, or federal law.**

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

**(c) An association may prohibit noncommercial signs and posters that are more than 9 square feet in size and**

**noncommercial flags or banners that are more than 15 square feet in size.**

Considering the degree of overlap between the two sections, it would make sense to combine them. However, in doing so the Commission should avoid giving the impression that the special status afforded the flag of the United States is being diluted.

With that in mind, there are two provisions in Section 1353.6 that should *perhaps* be applied to the U.S. flag as well as any other noncommercial display:

- (1) *The provision allowing the association to restrict a noncommercial display that conflicts with governing law.* For example, suppose that a homeowner wishes to build a 30 foot flag pole in order to display a U.S. Flag. Local planning law prohibits a pole of that height. Shouldn't the association be able to use its authority to enforce that restriction?
- (2) *The provision setting a 15 square foot maximum size for flags.* While a car dealership along a freeway might reasonably fly a flag larger than three feet by five, so that it can be seen from a great distance off, one might reasonably argue that the display of a very large flag is not appropriate in a residential community.

**Proposed Section 4305 would generalize both of those rules, thus:**

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

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

- (1) The display endangers public health or safety.
- (2) The display violates a local, state, or federal statute or regulation.
- (3) The display includes the painting of architectural surfaces, or includes lights, roofing, siding, paving materials, plants, or balloons, or any other building, landscaping, or architectural materials.
- (4) The display is more than 9 square feet in size, or if the display is a flag, is more than 15 square feet in size.

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

**Comment.** Section 4305 continues former Sections 1355.5 and 1353.6 without substantive change, except that paragraphs (b)(2) and (b)(4) now apply to a flag of the United States.

That approach would implement reasonable reforms, in a single provision. However, it may turn out that even a relatively modest diminution of the right to display the Flag of the United States would be politically infeasible. If the proposed changes turn out to be controversial, the section could be revised to exempt the U.S. flag from one or both of paragraphs (b)(2) and (b)(4).

The reference in subdivision (b) to Government Code Section 434.5(b) is necessary because that provision is more protective of the right to display the flag:

(b)(1) No person, private entity, or governmental agency shall adopt any rule, regulation, or ordinance, or enter into any agreement or covenant, that prevents any person or private entity that would otherwise have the legal right to display a Flag of the United States on private property from exercising that right, unless it is used as, or in conjunction with, an advertising display.

(2) Nothing in this subdivision shall be construed to prevent a city, county, or city and county from imposing reasonable restrictions as to the time, place, and manner of placement or display of a Flag of the United States when necessary for the preservation of the public's health, safety, or order.

Section 1353.5 was probably intended to supersede Government Code Section 434.5. It is the more recently enacted provision and the more specific rule. Proposed Section 4305(b) states that result expressly, in order to avoid any uncertainty on the point.

## **Pets**

Existing Section 1360.5 provides that governing documents created or amended after January 1, 2001, may not prohibit the ownership of at least one pet. That provision is continued in proposed Section 4310.

There are two minor problems with this section that are worth discussing.

### *Meaning of "Pet"*

Section 1360.5(b) defines "pet" as "any domesticated bird, cat, dog, aquatic animal kept within an aquarium, or other animal as agreed to between the association and the homeowner." That definition seems a bit narrow. For

example, it would exclude common domesticated rodent pets, such as a hamster or guinea pig.

We could perhaps add domesticated rodents to the list. Or we could recast the definition in broad terms, i.e., “any domesticated animal other than livestock.” Either approach would be reasonable, given the apparent purpose of the section to allow a homeowner to keep at least one ordinary companion animal.

However, any perceived broadening of the pet override may be controversial. **The staff is inclined to leave existing law on this point unchanged.**

#### *Grandparent Clause*

Existing Section 1360.5(e) provides:

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

This is a fairly straightforward “grandparent clause.” If you keep a pet that complies with the rules, and the rules are changed to preclude your keeping the pet, the new rule doesn’t apply to your pet. However, there are some minor issues relating to this provision that might be worth addressing:

(1) What is meant by “rule or regulation”? The proposed law replaces that ambiguous term with the defined term “governing documents.”

(2) Why is the provision limited to a rule change that limits the *number* of pets that a member may keep? Suppose that the prior rule allowed an owner to keep one pet. Consistent with that rule, an owner keeps a hamster in her separate interest. The rule is then amended to prohibit hamsters, without affecting the *number* of pets that may be kept. By its terms, the grandparent clause would not protect the owner’s right to keep her hamster.

The staff sees no policy reason why a rule limiting the *number* of pets should be subject to a grandparent clause, while a rule limiting the *kinds* of pets is not.

The proposed law would revise the grandparent clause to apply to any rule change that would restrict the right to keep a pet.

**Consistent with the foregoing, proposed Section 4310(c) would provide:**

(c) If the governing documents are amended to restrict the right to keep a pet in the common interest development, the new restriction shall not apply to an existing pet so long as the pet is kept in compliance with the governing documents as they existed before the addition of the new restriction.

### **Modification of Separate Interest**

Existing Section 1360 relates to modification of separate interest property. The section is set out below, with language relevant to the discussion that follows highlighted in bold:

1360. (a) **Subject to the provisions of the governing documents** and other applicable provisions of law, **if the boundaries of the separate interest are contained within a building**, the owner of the separate interest may do the following:

(1) Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

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

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

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

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

(D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

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

### *Limitation to Self-Contained Units*

Subdivision (a) is limited in application to a separate interest that is contained within the boundaries of a building. Subdivision (a)(1) is then further limited, to a self-contained unit in a condominium project. It isn't clear why these limitations exist.

Subdivision (a)(1) makes clear that a modification of a separate interest may not "impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development." Wouldn't that concern apply equally in any CID? For example, a row of townhouses may not be entirely contained within a building (i.e., they may have yards), but may still share common walls, ceilings, plumbing, and wiring. Why shouldn't such homes be governed by subdivision (a)(1)?

Subdivision (a)(2) provides rules for a property change made to accommodate a disability. Again, why wouldn't concerns about disability accommodation apply equally to the hypothetical townhomes, or even to fully detached homes?

**If the Commission decides to preserve the substance of subdivision (a), the staff would recommend that the limitations on its application be removed.**

### *Relation to Governing Documents*

At first glance, Section 1360(a) might appear to guarantee a member's right to modify a separate interest in a unit that is wholly within a building's envelope. Subdivision (a)(1) guarantees the right to make any kind of internal modification, so long as it does not interfere with common structures, systems, or support. Subdivision (a)(2) guarantees the right to make a modification necessary to accommodate a disability, so long as it does not interfere with other residents' access to their units.

However, in each case the right to modify the separate interest is expressly subordinate to any restrictions imposed by the governing documents. Subdivision (a) is introduced with the clause "Subject to the provisions of the governing documents and other applicable provisions of law...." Subdivision (a)(2)(B) provides that a modification to accommodate a disability must be "consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics." Subdivision (a)(2)(D) expressly requires association approval of a modification to accommodate a disability. The

association may not disapprove the change without “good cause” but “good cause” apparently includes purely aesthetic considerations.

If the modifications described in Section 1360(a) are subject to the requirements of the governing documents, then they are no different from any other proposed modification of a member’s separate interest property.

Subdivision (b) states that a change to the exterior of a unit must be consistent with the governing documents and controlling law. Again, that’s true of any change to a separate interest.

Section 1360 doesn’t seem to add anything substantively. What’s more, it may be misleading, giving a false impression that it creates a right to make some types of architectural changes without association approval.

#### *Relation to Other Disability Provisions*

Section 1360 seems to be primarily concerned with facilitating a property change that is necessary to accommodate a disability. That concern is also addressed, more comprehensively, in Section 1378(a)(3):

A decision on a proposed change [to separate interest property] shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code.

The Commission Comment to that provision elaborates:

An association decision on a proposed physical change must be consistent with governing law. For example, the Fair Employment and Housing Act prohibits discrimination “through public or private land use practices, decisions, and authorizations.” Gov’t Code § 12955(l). See also Gov’t Code § 12927(c)(1) (“Discrimination” includes “refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled person, if the modifications may be necessary to afford the disabled person full enjoyment of the premises ... and includes refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.”).

Section 1378 seems superior to Section 1360. It applies to any CID unit and not just to a unit that is wholly contained within a building. It does not subordinate the disabled person’s right to mere aesthetic concerns (though those concerns might well be taken into account in determining whether a proposed

modification is “reasonable”). What’s more, fair housing law is a mature body of law. It seems preferable to simply cross-refer to that law, rather than to try to articulate a handful of related principles, as Section 1360 seems to do.

#### *Recommendation*

**The staff recommends that Section 1360 not be continued in its present form. Instead, we should add the following Commission note following proposed Section 4300:**

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

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

#### INSPECTION OF RECORDS

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

#### **Existing Law**

Until recently, record inspection rights were addressed exclusively by Corporations Code Sections 8330-8338. Those sections provide for member access to the membership list and “accounting books and records” of the association, as well as minutes of meetings. The right to inspect the membership list is limited to a noncommercial use of the list that is reasonably related to the member’s interest as a member. Corp. Code § 8338. Inspection may be limited in order to protect members’ privacy rights. Corp. Code § 8332. The inspection right can be enforced in the superior court. Corp. Code § 8336. Costs and expenses, including reasonable attorney’s fees, may be awarded to the member if the association acted unlawfully in denying inspection. Corp. Code § 8337.

The Davis-Stirling Act expressly incorporates those provisions. See Section 1363(f). As a result, they apply to any association, even one that is unincorporated.

In 2003, the Legislature added a section to the Davis-Stirling Act to further elaborate the record inspection right. See Section 1365.2; 2003 Cal. Stat. ch. 375.

Section 1365.2 adds rules on the place and manner of inspection of records, including rules for redaction of private or privileged information. It expressly provides for disclosure of employee and contractor salaries (by position rather than by named individual). An association that unreasonably denies access to records is now subject to a civil penalty of up to \$500.

### **Pending Legislation**

A pending bill, AB 1098 (Jones), would significantly rework the rules for record inspection. It would repeal existing Section 1365.2 and add a new section with the same number (“pending Section 1365.2”). Pending Section 1365.2 addresses a wide range of record inspection issues. By its own terms, it would preempt inconsistent provisions of Corporations Code Sections 8330 and 8333.

The bill was approved by both houses, with wide margins, and is currently on its way to the Governor’s desk. Informal staff inquiries suggest that the bill will be enacted.

The operation of AB 1098 is contingent on enactment of SB 61 (Battin), which would add provisions regulating CID elections. That bill was approved unanimously in both houses and is also expected to be enacted.

Given the likelihood that AB 1098 will be enacted and will take effect on July 1, 2006 (it has a deferred operative date), the attached draft takes it as a starting point. The proposed law would implement the substance of the bill with some technical and organizational changes to conform to the overall style of the proposed law.

If AB 1098 or SB 61 is vetoed, then we will need to revisit the draft to make any necessary adjustments.

### **Preemption of Corporations Code**

Pending Section 1365.2(m) expressly preempts Corporations Code Sections 8330 and 8333, to the extent of any inconsistency. That leaves a high degree of overlap between the Davis-Stirling Act and the Nonprofit Mutual Benefit Corporation Law, along with some uncertainty as to which provisions of pending Section 1365.2 are “inconsistent” with the Corporations Code.

**Given the complexity that will result from this overlap, the staff recommends that the proposed law completely preempt the Corporations Code provisions on record inspection.** This will provide a single, clear, comprehensive source of law on the topic. That is the approach taken in the attached draft. See proposed Section 4560(c).

### **Deadlines**

Pending Section 1365.2(j) sets out a series of time frames for response to a record inspection request:

The timeframes in which access to specified records shall be provided to a requesting member is as follows:

(1) Association records prepared during the current fiscal year, within 10 business days following the association's receipt of the request.

(2) Association records prepared during the previous two fiscal years, within 30 calendar days following the association's receipt of the request.

(3) Any record or statement available pursuant to Section 1365 or 1368, within the timeframe specified therein.

(4) Minutes of member and board meetings, within the timeframe specified in subdivision (d) of Section 1363.05.

(5) Minutes of meetings of committees with decision-making authority for meetings commencing on or after January 1, 2007, within 15 calendar days following approval.

(6) Membership list, within the timeframe specified in Section 8330 of the Corporations Code.

Presumably, the deadline periods reflect the fact that there will be some time required to process a request, locate the requested document, make any necessary redactions (see proposed Section 4510), and make the document available. This is especially true of an association that does not have a management company handling its document inspection requests; the work involved would need to be completed by a volunteer.

The general rules provided in pending subdivision (j)(1)-(2) are fairly straightforward. For current documents, the period is 10 business days. For older records, the deadline is 30 calendar days. That makes sense. Older documents may need to be pulled from storage.

**However, the special rules provided for specific types of documents should probably be simplified.**

Proposed Section 4505(b) provides:

(b) Except as provided in Sections 4510, 4515 and 4525, the association shall make the requested record available for inspection according to the following deadlines:

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

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

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

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

This would continue most of the substance of the existing time frames, while adding an exception for a document that has not yet been prepared.

### **Scope of Inspection Right**

Pending Section 1365.2 spells out which types of records are subject to inspection. Proposed Section 4500 continues the substance of those provisions, with a few minor refinements:

#### *Interim Unaudited Financial Statements*

The list of association records subject to member inspection includes the following (in pending Section 1365.2(a)(1)(C)):

Interim unaudited financial statements, periodic or as compiled, containing any of the following:

(i) Balance sheet.

(ii) Income and expense statement.

(iii) Budget comparison.

(iv) General ledger. A “general ledger” is a report that shows all transactions that occurred in an association account over a specified period of time.

The records described in this paragraph shall be prepared in accordance with generally accepted accounting principles.

The staff is not sure of the purpose served by the introductory clause above. Is it a limitation? That is, does it exempt a financial statement that is not “interim” or “unaudited” from member inspection?

The staff feels that there is a legitimate member interest in final and audited documents as well. **The limiting introductory clause is not continued in the attached draft.**

Note that the final sentence, relating to the use of accepted accounting standards, is extraneous to the question of what records are subject to member

inspection. **It is not included in this part of the proposed law.** The staff has made a note to revisit the provision when we get to financial matters generally.

### **Redaction**

Pending Section 1365.2 provides some protection against identity theft, fraud, and invasion of privacy by listing certain types of information that an association may redact before allowing inspection of a record.

It isn't clear why the redaction provision is optional. It would probably be best that the association never disclose such things as a member's social security number or checking account number.

**The attached draft would make redaction mandatory.** The staff invites comments on the merits of that change.

Note that pending Section 1365.2 limits the liability of the association and its officers and agents for a breach of the duty to redact personal information. That rule is continued in proposed Section 4550. A note following that section asks whether the liability limitation should be strengthened.

### **Membership List**

Existing law limits member access to the association's membership list. The purpose of the inspection request must be noncommercial and reasonably related to the member's interest as a member. Corp. Code § 8330. Thus, a membership list could be requested in order to circulate a director recall petition, but could not be used to solicit donations for a charitable group or to promote a home business.

If the association reasonably believes that the list will be used for an impermissible purpose, it may deny the request. *Id.* A decision to deny access to the list may lead to judicial enforcement proceedings. Enforcement is discussed below.

Note that an association may offer an alternative to disclosure of the membership list. For example, the association could offer to mail materials for the requesting member in order to achieve the purpose of the request without actually providing the member a copy of the membership list. Corp. Code § 8330(c). An offer of a reasonable alternative can be raised as legal justification for a decision to deny a request to inspect the list. Corp. Code § 8331(f)(2).

An association may also petition the court to limit disclosure of the membership list where limitation is necessary to protect any member's constitutional rights (e.g., the right to privacy). Corp. Code § 8332. If the court

grants the petition, it may order implementation of a reasonable alternative method of achieving the member's purpose (e.g., association mailing of material).

Privacy concerns are also addressed by pending Section 1365.2. It would provide an opt-out mechanism. A member who does not want his or her name and address provided to other members may file a written request to that effect with the association. The association will then exclude that member's information from any membership list provided to a member. Instead, the association will mail the requesting members' materials to those who have opted out. That approach helps to protect member privacy.

**The attached draft continues the existing privacy protections.**

### **Judicial Enforcement**

Existing law provides the following judicial proceedings relating to member inspection of association records:

- (1) *Action to Set Aside Request for Membership List.* If an association believes in good faith and with a substantial basis that the member requesting the membership list will misuse the list or if the association offers a reasonable alternative method to achieve the requesting member's purpose (e.g., association mailing of materials), the association may initiate an action in the superior court to set aside the request. Corp. Code § 8331(a).

The association must file its petition within ten days after receipt of the request or rejection of the association's proposed alternative (whichever is later). In cases of justified delay, the filing may take place up to 30 days after the request or rejection (whichever is later). If the association fails to file within that period it must comply with the demand and cannot file an action under Section 8331. Corp. Code § 8331(c), (e).

If the association proves that there is a reasonable probability of misuse of the list or that its proposed alternative would reasonably achieve the requesting member's purpose, the court shall issue a final order setting aside the demand. The order can include an order that an alternative method of distributing materials be used. Corp. Code § 8331(f)-(g).

A member who successfully defends against an action to set aside the demand is entitled to reasonable costs and expenses, including reasonable attorney's fees. Corp. Code § 8331(h).

- (2) *Writ of Mandamus to Compel Production of Membership List.* If an association has not complied with a demand for the membership list and there is no judicial stay or protective order preventing

production of the list, the member making the request may petition for a writ of mandamus to compel production of the list. The court may not inquire into the purpose of the inspection request. If the court issues the writ, it may award the member reasonable costs and expenses, including reasonable attorney's fees. Corp. Code § 8331(i).

- (3) *Petition to Limit Disclosure of Membership List on Constitutional Grounds.* An association or any member may petition the court to limit inspection of the membership list in order to protect the constitutional rights of any member. If granted, the order may provide for an alternative method of distributing materials. Corp. Code § 8332.
- (4) *General Action to Enforce Inspection Right.* If an association refuses a lawful demand to inspect association records, the requesting member may petition the superior court to enforce the demand. Corp. Code § 8336. The court may enforce the demand and can appoint an inspector or accountant to audit the financial statements. The court's order is enforceable by punishment for contempt. The costs associated with the investigation are generally to be borne by the requesting member, but the court may order that they be paid or shared by the association. *Id.*

Note that the Davis-Stirling Act adds a provision authorizing a civil penalty against an association of up to \$500 per violation. Section 1365.2(e). Pending Section 1365.2(f) would make clear that an action of this type could be brought in small claims court. It also adds a provision authorizing an award to the association of reasonable costs and expenses, including reasonable attorney's fees, if the court finds that the member's action was "frivolous, unreasonable, or without foundation."

- (5) *Order to Postpone.* In addition to other remedies, if a requesting member's purpose is frustrated by delay in complying with an inspection request, the member may petition for a court order to postpone a scheduled member meeting by a period equal to the period of delay. Corp. Code § 8335.
- (6) *General Fee Shifting Provision.* In any of the proceedings described above, if the court determines that the association's failure to comply with a lawful inspection request was unjustified, it can award reasonable costs and expenses, including reasonable attorney's fees, to the requesting member. Corp. Code § 8337.
- (7) *Action for Misuse of Membership List.* A person who misuses a membership list is liable for damages, must disgorge any profits derived from the misuse, and may be subject to exemplary damages. The association may also seek an injunction to restrain the misuse. In such an action, the court may award reasonable costs and expenses, including reasonable attorney's fees, to the association. Corp. Code § 8338(b).

- (8) *Action for Misuse of Other Records.* Rules equivalent to those governing an action for misuse of a membership list have been added in the Davis-Stirling Act to provide an action for misuse of accounting books and records and minutes. Section 1365.2(d).

The attached draft simplifies the provisions for judicial enforcement. It also expressly incorporates the existing internal dispute resolution mechanism.

Proposed Section 4525 states the substantive limitations on use of association records and authorizes the association to deny a request when it reasonably believes that the records will be misused or that disclosure would violate a member's constitutional rights.

Proposed Section 4530 provides a procedure for denial of a record inspection request. It requires a formal notice of denial, which includes an offer to use the association's internal dispute resolution process. If the member objects to the denial decision, then the association must either comply with the request or commence a proceeding to set aside the request. If the member does not object in the time provided, then the request is nullified and the association need do nothing further.

Proposed Section 4535 authorizes an action, brought by the association, to set aside a record inspection request. It is a simplified synthesis of existing procedures:

4535. (a) An association that has complied with Section 4530 may file a petition to set aside a record inspection request. The petition shall be filed within 10 business days after the requesting member delivers a timely objection pursuant to subdivision (c) of Section 4530. Notwithstanding the other provisions of this subdivision, the association may file a petition within 30 days after delivery of the objection if it can show that the delay was caused by excusable neglect.

(b) In an action to set aside a record inspection request, the association bears the burden of proving that it is reasonably likely that disclosure of the requested record would lead to misuse of the record, that disclosure would violate a member's constitutional rights, or that inspection of the record is not required under this article.

(c) If the court finds that it is reasonably likely that disclosure of the requested record would lead to misuse of the record or would violate a member's constitutional rights, or that inspection of the record is not required under this article, it may order that the record inspection request be set aside.

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

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

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

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

(4) The appointment of an investigator or accountant to inspect or audit association records on behalf of the requesting member. The cost of investigation shall ordinarily be paid by the requesting member, but the court may order that the association pay or share in the cost.

(e) If the court does not set the record inspection request aside, it shall award reasonable costs and expenses, including reasonable attorney's fees, to the requesting member.

(f) Nothing in this section limits the right of the association to bring an action under Section 4545.

There are three noteworthy differences between existing law and proposed Section 4535:

- (1) Existing law includes an "order to show cause" mechanism that is not continued in proposed Section 4535. The staff feels that this procedural simplification is appropriate in dealing with such a relatively straightforward type of dispute. This is especially true if the homeowner is self-represented (as many homeowners requesting association documents will be).
- (2) Existing law recognizes three grounds to set aside a record request: probable misuse of the record, infringement on member constitutional rights, and the reasonableness of any alternative to inspection proposed by the association. Proposed Section 4535 does not continue the third ground.

A rule allowing judicial action based on a proposed alternative to inspection invites association evasion and foot dragging. An association that does not wish to comply can simply offer an alternative and then file an action to set the request aside. If the member cannot or chooses not to participate in litigation, then the inspection right is stymied, however legitimate the member's purpose.

Under the proposed law, an association is free to offer an alternative to inspection, which the member is free to accept. However, the offer of an alternative does not provide grounds for litigation.

- (3) Proposed Section 4535 adds a third ground to set aside a record inspection request: that the requested record is not subject to inspection under the record inspection article.

Proposed Section 4540 authorizes an action, brought by the requesting member, to compel compliance with a record inspection request. This presents a small number of fairly straightforward factual questions: is the requested record subject to inspection, did the requesting member follow procedures, is an action pending to set the request aside, or was the request in fact set aside by the court? Those matters could be resolved in the small claims court if the member chooses that forum. (Pending Section 1365.2 provides for use of the small claims court to enforce the inspection right.)

4540. (a) If an association has not complied with a document inspection request within the time provided, and that failure is not excused under subdivision (c), the requesting member may file an action in small claims court or in the superior court to compel compliance.

(b) If the court finds that the failure to comply with the record inspection request is not excused, it shall order compliance. The court may order any other relief appropriate to the circumstances, including the following relief:

(1) Imposition of a civil penalty of up to \$500 against the association.

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

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

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

(c) Failure to comply with a record inspection request is excused if one of the following conditions is satisfied:

(1) The request was nullified as a result of the requesting member's failure to deliver a timely objection to the board.

(2) An action is pending under Section 4535.

(3) The record inspection request was set aside by a court pursuant to Section 4535.

(4) The requested record is not subject to disclosure under this article.

(d) If the court orders compliance with the record inspection request, it shall award reasonable costs and expenses, including

reasonable attorney's fees, to the requesting member. If the court does not order compliance with the record inspection request and it finds that the claim for enforcement was frivolous, unreasonable, or without foundation, it may award reasonable costs and expenses, including reasonable attorney's fees, to the association.

The Comments and note following these provisions highlight differences from existing law and raise a substantive question about the provision for costs and fees in proposed Section 4540.

### **Record Retention**

Pending Section 1365.2 provides for inspection of records prepared in the current fiscal year and in the two preceding fiscal years. Subdivision (l) of that section provides:

There shall be no liability pursuant to this section for an association that fails to retain records for the periods specified in subdivision (i) that were created prior to January 1, 2006.

The final clause of that provision implies that there *may* be liability for failure to retain records created on or after January 1, 2006. However, it does not state an affirmative duty to maintain records for any period of time or specify what the potential scope of liability would be.

**The record retention liability provision is not included in the attached draft.** Instead, the staff has made a note to consider recordkeeping issues when working with the material on general board duties.

Respectfully submitted,

Brian Hebert  
Assistant Executive Secretary

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## PROPOSED LEGISLATION

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

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

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

### PART 5. COMMON INTEREST DEVELOPMENTS

#### CHAPTER 1. PRELIMINARY PROVISIONS

##### Article 1. General Provisions

###### § 4000. Short title

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

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

###### § 4005. Effect of headings

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

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

###### § 4010. Continuation of prior law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 42 § 4015. Application of part

43 4015. (a) This part applies to a common interest development.

44 (b) Nothing in this part may be construed to apply to a development wherein  
45 there does not exist a common area.

46 **Comment.** Subdivision (a) of Section 4015 continues part of the substance of former Section  
47 1352. The part of former Section 1352 that is not continued in this section is continued in Section  
48 6000 (creation of common interest development).

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

50 See also Section 4090 (“common area”), 4095 (“common interest development”).

1 **Staff Notes.** (1) The language in subdivision (b) is consistent with Senate Bill 853 (Kehoe),  
2 which would amend Section 1374 to remove unnecessary language.

3 (2) Is subdivision (b) necessary, given that the definition of “common interest development”  
4 requires the existence of common area? See proposed Section 4095.

5 **§ 4020. Nonresidential development**

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

10 (1) [Section 1356.]

11 (2) Article 5 (commencing with Section 6100) of Chapter 5.

12 (3) [Subdivision (b) of Section 1363.]

13 (4) [Section 1365.]

14 (5) [Section 1365.5.]

15 (6) [Subdivision (b) of Section 1366.]

16 (7) [Section 1366.1.]

17 (8) [Section 1368.]

18 (9) [Section 1378.]

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

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

25 See also Section 4095 (“common interest development”).

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

27 4025. (a) An association that is incorporated is governed by this part and by the  
28 Corporations Code.

29 (b) An association that is not incorporated is governed by this part and by any  
30 provision of the Corporations Code that is applicable pursuant to this part.

31 (c) If a provision of this part conflicts with a provision of the Corporations  
32 Code, the provision of this part prevails to the extent of the inconsistency.

33 **Comment.** Section 4025 is new.

34 See also Section 4080 (“association”).

35 **§ 4030. Construction of zoning ordinance**

36 4030. Unless a contrary intent is clearly expressed, a local zoning ordinance  
37 shall be construed to treat like structures, lots, parcels, areas, or spaces in like  
38 manner regardless of whether the common interest development is a community  
39 apartment project, condominium project, planned development, or stock  
40 cooperative.

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

1 See also Sections 4095 (“common interest development”), 4115 (“condominium project”),  
2 4165 (“planned development”), 4180 (“stock cooperative”).

3 **§ 4035. “Delivered to the board”**

4 4035. Where a provision of this part requires that a document be “delivered to  
5 the board” the document shall be delivered by first-class mail, postage prepaid, to  
6 the person designated in the annual statement (Section \_\_\_) to receive documents  
7 on behalf of the association. If no person has been designated to receive  
8 documents, the document shall be delivered to the president of the association.  
9 Delivery is deemed to be complete on deposit into the United States mail.

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

12 See also Sections 4080 (“association”), 4085 (“board”), 4160 (“person”).

13 **Staff Note.** The staff intends, in a future installment of the proposed law, to add a  
14 provision consolidating all of the various annual reporting requirements. See, e.g., existing  
15 Sections 1365 (financial statement), 1369.590 (ADR requirements), 1378(c) (architectural review  
16 requirements). The incomplete reference in Section 4035 will be completed at that time.

17 **§ 4040. “Individual notice”**

18 4040. (a) Where a provision of this part requires “individual notice,” the notice  
19 shall be delivered by one of the following methods:

20 (1) Personal delivery.

21 (2) First-class mail, postage prepaid, addressed to a member at the address last  
22 shown on the books of the association or otherwise provided by the member.  
23 Delivery is deemed to be complete on deposit into the United States mail.

24 (3) E-mail, facsimile, or other electronic means, if the recipient has agreed to  
25 that method of delivery. If a document is delivered by electronic means, delivery  
26 is complete at the time of transmission.

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

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

32 **Comment.** Section 4040 is new.

33 See also Sections 4080 (“association”), 4140 (“governing documents”), 4150 (“member”).

34 **§ 4045. “General notice”**

35 4045. (a) Where a provision of this part requires “general notice,” the notice  
36 shall be provided to all members by one or more of the following methods:

37 (1) Personal delivery.

38 (2) First-class mail, postage prepaid, addressed to a member at the address last  
39 shown on the books of the association or otherwise provided by the member.  
40 Delivery is deemed to be complete on deposit into the United States mail.

1 (3) E-mail, facsimile, or other electronic means, if the recipient has agreed to  
2 that method of delivery. If a document is delivered by electronic means, delivery  
3 is complete at the time of transmission.

4 (4) By publication in a periodical that is circulated primarily to members of the  
5 association.

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

9 (6) Any other method of delivery, provided that the recipient has agreed to that  
10 method of delivery.

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

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

16 **Comment.** Section 4045 restates former Section 1350.7.

17 See also Sections 4080 (“association”), 4140 (“governing documents”), 4150 (“member”).

18 **§ 4050. Approved by the board**

19 4050. Where a provision of this part requires that an action be approved by the  
20 board, the action shall be approved or ratified by the vote of the board or by the  
21 vote of a committee authorized to exercise the powers of the board, at a meeting  
22 that is open to the members and at which members may comment on the proposed  
23 amendment.

24 **Comment.** Section 4050 is comparable to Corporations Code Section 5032. It is added for  
25 drafting convenience.

26 See also Sections 4085 (“board”), 4150 (“member”).

27 **Staff Note.** Consistent with existing open meeting requirements, Section 4050 requires that  
28 an action be approved by the board or a committee at an open meeting. As new material is added  
29 to the proposed law, the staff will consider whether any circumstances exist in which board  
30 approval should occur in executive session.

31 **§ 4055. Approved by a majority of all members**

32 4055. Where a provision of this part requires that an action be approved by a  
33 majority of all members, the action shall be approved or ratified by an affirmative  
34 vote of members representing more than 50 percent of the total voting power of  
35 the association, or if the governing documents of an association divide the  
36 members into two or more classes for the purposes of voting, by an affirmative  
37 vote of members representing more than 50 percent of the voting power in each  
38 class that is required to approve the action.

39 **Comment.** Section 4055 is comparable to Corporations Code Section 5033. It is added for  
40 drafting convenience.

41 See also Sections 4080 (“association”), 4140 (“governing documents”), 4150 (“member”).



1 as part of the definition of the term. It will be located with other provisions that relate to the form  
2 of title in a CID. See, e.g., Civ. Code § 1362.

3 **§ 4095. “Common interest development”**

4 4095. (a) “Common Interest development” means a real property development  
5 in which a separate interest is coupled with either of the following:

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

8 (b) In a development where there is no common area other than that established  
9 by mutual or reciprocal easement rights appurtenant to the separate interests,  
10 “common interest development” means a development in which a separate interest  
11 is coupled with membership in an association with the power to enforce an  
12 obligation of an owner of a separate interest with respect to the beneficial use and  
13 enjoyment of common area by means of an assessment that may become a lien  
14 upon the separate interest.

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

- 17 (1) A community apartment project.  
18 (2) A condominium project.  
19 (3) A planned development.  
20 (4) A stock cooperative.

21 **Comment.** Section 4095 restates the definition of “common interest development” to improve  
22 its clarity, without substantive change. See former Sections 1351(c), (d), (f), (k), (m); 1352.

23 See also Sections 4080 (“association”), 4090 (“common area”), 4115 (“condominium  
24 project”), 4165 (“planned development”), 4175 (“separate interest”), 4180 (“stock cooperative”).

25 **§ 4100. “Community apartment project”**

26 4100. “Community apartment project” means a real property development in  
27 which a right of exclusive occupancy of a specified part of the development is  
28 coupled with an undivided interest in the development as a whole.

29 **Comment.** Section 4100 continues former Section 1351(d) without substantive change.

30 **§ 4105. “Condominium”**

31 4105. “Condominium” means a separate interest in a condominium project,  
32 coupled with an undivided interest in all or part of the common area of the  
33 condominium project.

34 **Comment.** Section 4105 restates the definition of “condominium” in former Section 1351(f),  
35 without substantive change.

36 See also Sections 4090 (“common area”), 4115 (“condominium project”), 4175 (“separate  
37 interest”).

38 **§ 4110. “Condominium plan”**

39 4110. “Condominium plan” means a plan of the type described in Section 6075.

40 **Comment.** Section 4110 is new. It is added for drafting convenience.

1    **§ 4115. “Condominium project”**

2       4115. (a) “Condominium project” means a real property development in which  
3 separate ownership of a specified part of the development is coupled with an  
4 undivided interest in all or part of the common area.

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

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

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

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

20       **Comment.** Section 4115 restates former Section 1351(f), without substantive change, except  
21 that the definition of “condominium” has been relocated to Section 4105.

22       See also Sections 4090 (“common area”), 4105 (“condominium”), 4110 (“condominium  
23 plan”), 4175 (“separate interest”).

24       ☞ **Staff Notes.** (1) Proposed Section 4115 restates existing Section 1351(f) in order to parallel  
25 the language and construction used in proposed Sections 4100 (“community apartment project”),  
26 4165 (“planned development”), and 4180 (“stock cooperative”). The section also eliminates  
27 duplicative language and makes fuller use of defined terms. These changes are intended to  
28 improve clarity and are not intended to affect the substance of the existing definition of  
29 “condominium project.” The Commission requests public input on whether any of the drafting  
30 changes would have a substantive effect.

31       (2) The content of subdivision (d) has been left unchanged because its purpose is unclear. Does  
32 the provision merely reflect the fact that a separate interest may include noncontiguous parcels of  
33 land (e.g., a residential unit and a boat slip)? If so, is it necessary? Does its presence in this  
34 section imply that a separate interest in one of the other types of CIDs must be a single  
35 contiguous parcel?

36    **§ 4120. “Declarant”**

37       4120. “Declarant” means the person or group of persons designated in the  
38 declaration as declarant, or if no declarant is designated, the person or group of  
39 persons who sign the original declaration or who succeed to special rights,  
40 preferences, or privileges designated in the declaration as belonging to the person  
41 who signed the original declaration.

42       **Comment.** Section 4120 continues former Section 1351(g) without substantive change.

43       See also Section 4125 (“declaration”), 4160 (“person”).

1 § 4125. “Declaration”

2 4125. “Declaration” means the document, however denominated, that contains  
3 information that is substantially equivalent to the information required by Section  
4 6025.

5 **Comment.** Section 4125 continues former Section 1351(h) without substantive change except  
6 that exact equivalence with the requirements of Section 6025 is not required. A declaration  
7 recorded prior to January 1, 1986 may not contain all of the information required by Section  
8 6025.

9  **Staff Note.** The staff invites comment on whether the proposed change to Section 1351(h)  
10 would cause any problems.

11 § 4130. “Director”

12 4130. “Director” means a natural person elected, designated, or selected to serve  
13 on the board.

14 **Comment.** Section 4130 is new. It is added for drafting convenience. See Corp. Code §§ 7220,  
15 7224-7225, 7520-7527 (election or selection of director).

16 See also Section 4085 (“board”).

17 § 4135. “Exclusive use common area”

18 4135. (a) “Exclusive use common area” means a part of the common area  
19 designated by the declaration to be used exclusively by one or more, but fewer  
20 than all, of the members. The right of exclusive use is appurtenant to the separate  
21 interests of those members.

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

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

32 **Comment.** Section 4135 restates former Section 1351(i) without substantive change, except  
33 that the reference in subdivision (c) to “telephone” wiring is generalized.

34 See also Sections 4090 (“common area”), 4125 (“declaration”), 4150 (“member”), 4175  
35 (“separate interest”).

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

1    **§ 4140. “Governing documents”**

2    4140. “Governing documents” means the declaration, bylaws, articles of  
3    incorporation or association, and any other document that governs the operation of  
4    the common interest development or its association.

5    **Comment.** Section 4140 continues former Section 1351(j) without substantive change.

6    See also Sections 4080 (“association”), 4095 (“common interest development”), 4125  
7    (“declaration”).

8    **§ 4145. “Managing agent”**

9    4145. (a) “Managing agent” means a person who, for compensation or in  
10    expectation of compensation, exercises control over the assets of a common  
11    interest development.

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

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

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

16    **Comment.** Section 4145 generalizes former Section 1363.1(b).

17    See also Sections 4080 (“association”), 4095 (“common interest development”), 4160  
18    (“person”).

19    **§ 4150. “Member”**

20    4150. “Member” means an owner of a separate interest in a common interest  
21    development.

22    **Comment.** Section 4150 is new. It is added for drafting convenience.

23    See also Section 4095 (“common interest development”), 4175 (“separate interest”).

24    **§ 4155. “Operating rule**

25    4155. “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 4155 generalizes former Section 1357.100(a) without substantive change.

29    See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common interest  
30    development”).

31    **§ 4160. “Person”**

32    4160. “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 4160 is new. It is added for drafting convenience.

36    **§ 4165. “Planned development”**

37    4165. “Planned development” means a real property development of any of the  
38    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 [Section 1367 or 1367.1].

15 **Comment.** Section 4165 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”), 4090 (“common area”), 4115 (“condominium  
18 project”), 4175 (“separate interest”).

19 **§ 4170. “Rule change”**

20 4170. “Rule change” means the adoption, amendment, or repeal of an operating  
21 rule by the board.

22 **Comment.** Section 4170 generalizes former Section 1357.100(b).

23 See also Sections 4085 (“board”), 4155 (“operating rule”).

24 **§ 4175. “Separate interest”**

25 4175. (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 **Comment.** Section 4175 restates former Section 1351(l) without substantive change, except  
35 that language providing that “[the] estate in a separate interest may be a fee, a life estate, an estate  
36 for years, or any combination of the foregoing” is continued in Section \_\_\_\_.

37 See also Sections 4090 (“common area”), 4110 (“condominium plan”), 4115 (“condominium  
38 project”), 4125 (“declaration”), 4165 (“planned development”), 4180 (“stock cooperative”).

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

1    **§ 4180. “Stock cooperative”**

2       4180. (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.

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

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

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

14       **Comment.** Section 4180 continues former Section 1351(m) without substantive change, except  
15 that language providing that the corporation’s ownership of the development may be “either in  
16 fee simple or for a term of years” is continued in Section \_\_\_\_.

17       See also Section 4095 (“common interest development”)

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

22                                    **CHAPTER 2. MEMBER RIGHTS AND DUTIES**

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

24                                    **Article 2. Limitation of Association Authority**  
25                                    **to Regulate Property Use**

26    **§ 4300. Application of article**

27       4300. This article includes provisions that limit the authority of an association to  
28 regulate the use of a member’s separate interest. Nothing in this article is intended  
29 to affect the application of any other provision that limits the authority of an  
30 association to regulate the use of a member’s separate interest, including, but not  
31 limited to, the following provisions:

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

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

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

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

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

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

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

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

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

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

#### 16 § 4305. Noncommercial display

17 4305. (a) Except as otherwise provided in this section, the governing documents  
18 of an association may not prohibit the display of the flag of the United States or  
19 any other noncommercial sign, poster, flag, or banner within a member's separate  
20 interest or exclusive use common area.

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

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

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

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

30 (4) The display is more than 9 square feet in size, or if the display is a flag, is  
31 more than 15 square feet in size.

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

35 **Comment.** Section 4305 continues former Sections 1355.5 and 1353.6 without substantive  
36 change, except that subdivisions (b)(2) and (b)(4) now apply to a flag of the United States.

#### 37 § 4310. Pets

38 4310. (a) The governing documents of an association may not prohibit a  
39 member from keeping at least one pet within the member's separate interest or  
40 exclusive use common area, subject to reasonable rules and regulations of the  
41 association. This section does not affect any other provision of law governing the  
42 right of a member to keep a pet.

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

4 (c) If the governing documents are amended to restrict the right to keep a pet in  
5 the common interest development, the new restriction shall not apply to an  
6 existing pet so long as the pet is kept in compliance with the governing documents  
7 as they existed before the addition of the new restriction.

8 (d) This section only applies to governing document that are created or amended  
9 on or after January 1, 2001.

10 **Comment.** Subdivisions (a)-(b) of Section 4310 continue former Section 1360.5(a)-(b) without  
11 substantive change.

12 Subdivision (c) continues the substance of former Section 1360.5(c) except that it is expanded  
13 to apply to any new restriction on pet ownership and not just a restriction on the number of pets  
14 that can be kept.

15 **§ 4315. Roofing materials**

16 4315. (a) An association may not require that a homeowner install or repair a  
17 roof in a manner that is in violation of Section 13132.7 of the Health and Safety  
18 Code.

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

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

33 **Staff Note.** The Comment to proposed Section 4315 quotes Section 1378(a)(3). The quoted  
34 text reflects the 2005 amendment of that section. See 2005 Cal. Stat. ch. 37, § 4.

35 **§ 4320. Television antenna or satellite dish**

36 4320. (a) Except as otherwise provided in this section, a provision of the  
37 governing documents is void to the extent that it would prohibit or restrict the use  
38 or installation of an antenna.

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

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

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

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

6 (4) A requirement that the association approve the installation before installation  
7 takes place.

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

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

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

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

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

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

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

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

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

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

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

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

1 Article 3. Inspection of Records

2 **☞ Staff Note.** The provisions of this article address a member’s right to inspect an association  
3 record. They do not establish the association’s duty to maintain records. That issue will be  
4 addressed later in the proposed law, in connection with board duties generally.

5 **§ 4500. Scope of inspection right**

6 4500. (a) Except as otherwise provided in this article, a member may inspect the  
7 following association records:

8 (1) The governing documents.

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

11 (3) The agenda and minutes of a meeting of the members, the board, or any  
12 committee appointed by the board.

13 (4) Any notice, report, or other document that is required to be provided to the  
14 members as a general notice (Section 4045).

15 (5) Any balance sheet, income and expense statement, budget comparison, or  
16 general ledger. A “general ledger” is a report that shows all transactions that  
17 occurred in an association account over a specified period of time.

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

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

22 (8) Any executed contract.

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

24 (10) Any state or federal tax return.

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

30 (12) Information required by the member to comply with [Section 1368].

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

33 (1) Any record that was prepared three or more fiscal years prior to the fiscal  
34 year in which the inspection request is delivered. This paragraph does not apply to  
35 the minutes of a board, committee, or member meeting. Minutes must be made  
36 available for inspection permanently.

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

40 (3) The agenda or minutes of an executive session meeting held by the board or  
41 by a committee appointed by the board pursuant to [Section 1363.05].

1 (4) Any record of a disciplinary action, collection activity, or a payment plan for  
2 overdue assessments, that involves a person other than the person making the  
3 request.

4 (5) Any interior architectural plan of a separate interest.

5 (6) Any plan showing any security features of a separate interest.

6 (7) Any record of a good or service provided to a member for a fee.

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

9 **Comment.** Subdivisions (a)-(b) of Section 4500 continue the substance of former Section  
10 1356.2(a)-(b), except for the following changes:

11 Subdivision (a)(1) is new.

12 Subdivision (a)(2) includes an electronic mail address in the information that must be provided  
13 as part of the membership list. The substantive limitations on use of a membership list are not  
14 included in this section. They are continued in Sections 4515 and 4525.

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

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

21 Subdivision (a)(8) does not limit the inspection of executed contracts to those that are not  
22 privileged. A general exemption for privileged documents is provided in subdivision (b)(2).

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

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

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

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

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

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

29 Subdivision (c) is drawn from Corporations Code Section 8311.

30 **Staff Notes.** Proposed Section 4500 restates portions of pending Section 1365.2 that define  
31 the scope of the record inspection right. The Commission requests comment on the following  
32 issues relating to this section:

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

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

43 (3) The concept of “enhanced association records” established in pending Section 1365.2(a)(2)  
44 is not continued. The only application of that definition occurs in pending Section 1365.2(c)(5),  
45 which authorizes billing for time spent redacting personal information from “enhanced  
46 association records.” The proposed law broadens that provision. Any redaction that is required, in  
47 any type of document, imposes costs and should be compensated.

48 (4) Pending Section 1365.2(a)(1)(D) and (d)(1)(E)(iv) provide that a contract is not subject to  
49 inspection if it is privileged. In what situation would a contract be privileged? Pending Section  
50 1365.2(d)(1)(E)(iv) purports to provide that “privileged contracts shall not include contracts for  
51 maintenance, management, or legal services.” Is this intended as an override of the otherwise

1 applicable law governing evidentiary privileges? Is such an override proper? Given the breadth of  
2 that override, what sorts of contracts might remain privileged?

3 **§ 4505. Inspection procedure**

4 4505. (a) A member may deliver to the board (Section 4035) a written request to  
5 inspect an association record. The request shall identify the record to be inspected  
6 and shall state a purpose for the inspection that is reasonably related to the  
7 member's interest as a member. The request may designate an agent to inspect the  
8 record on the member's behalf.

9 (b) Except as provided in Sections 4510, 4515 and 4525, the association shall  
10 make the requested record available for inspection according to the following  
11 deadlines:

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

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

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

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

19 (c) If the association has a business office in the common interest development,  
20 the requested record shall be made available for inspection in that office. If the  
21 association does not have a business office in the common interest development,  
22 the record shall be made available for inspection at a location agreed to by the  
23 association and the member who submitted the request.

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

30 **Comment.** Subdivision (a) of Section 4505 establishes a procedure to request the inspection of  
31 association records.

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

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

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

41 **§ 4510. Redaction**

42 4510. (a) Before making a record available for inspection, the association shall  
43 redact all of the following information from the record:

- 1 (1) Any financial account number.  
2 (2) Any password or personal identification number.  
3 (3) Any social security number or taxpayer identification number.  
4 (4) Any driver's license number.  
5 (5) Any other information that is reasonably likely to lead to unauthorized use of  
6 a person's identity or financial resources, or to other fraud.

7 (b) Before providing a membership list, the association shall redact the name  
8 and address of any person who has elected to have that information redacted from  
9 the membership list pursuant to Section 4515.

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

12 **Comment.** Section 4510 restates former Section 1365.2(d)(2) except that the duty to redact  
13 certain information has been made mandatory.

14 **Staff Note.** Under pending Section 1365.2(d)(2), redaction of personal information is  
15 optional. It is not clear why an association board member should have discretion in this regard.  
16 Proposed Section 4510 would make redaction mandatory. The Commission invites comment on  
17 this proposed change.

18 **§ 4515. Optional exclusion from membership list**

19 4515. (a) A member may elect, in writing, to have the member's name and  
20 address redacted from the membership list.

21 (b) A member who requests the membership list may also request that the  
22 association deliver material to any member whose information will be redacted  
23 from the membership list. The association shall deliver the material to those  
24 members by individual delivery (Section 4040), within 10 business days after  
25 delivery of the request.

26 **Comment.** Section 4515 restates former Section 1356.2(a)(1)(I)(iii).

27 **§ 4520. Fees**

28 4520. (a) The association may charge a fee to recover the direct and actual cost  
29 to copy or deliver a record. The association shall inform the member of the fee  
30 amount, and the member shall agree to pay the fee, before a copy is made or a  
31 record delivered.

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

37 **Comment.** Section 4520 continues former Section 1356.2(c)(4)-(5) without substantive  
38 change, except that the authority to charge a fee for redaction has been generalized.

39 **§ 4525. Denial of request**

40 4525. (a) A member may only inspect and use an association record for a  
41 purpose that is reasonably related to the requesting member's interest as a

1 member. A member may not inspect or use an association record for a commercial  
2 purpose.

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

7 **Comment.** Subdivision (a) of Section 4525 continues the substance of former Section  
8 1365.2(e). See also Corp. Code § 8338 (use of membership list).

9 Subdivision (b) generalizes Corporations Code Sections 8331(a) and 8332 so that they apply to  
10 any record and not just the association's membership list.

11 **§ 4530. Denial process**

12 4530. (a) An association that denies a request for records under this article shall  
13 provide the requesting member a notice of denial, by individual delivery (Section  
14 4040), within 10 business days after delivery of the inspection request.

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

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

17 (2) An offer to attempt to resolve the matter through the association's internal  
18 dispute resolution procedure provided pursuant to [Article 5 (commencing with  
19 Section 133.810) of Chapter 4]. The offer may include an alternative proposal for  
20 achieving the member's purpose.

21 (3) A description of the procedure provided in subdivision (c) for objection to  
22 the denial decision, and the applicable deadline.

23 (c) A member may deliver to the board (Section 4035) a written objection to the  
24 denial decision, within 10 business days after delivery of the notice of denial.  
25 Failure to deliver a timely objection nullifies the record inspection request.

26 (d) If a member delivers a timely objection to a decision to deny a record  
27 inspection request, the association shall either comply with the record inspection  
28 request or shall petition the superior court for an order setting aside the request.

29 **Comment.** Section 4530 is new. See also Corp. Code § 8330(c) (offer of alternative to  
30 disclosure of membership list).

31 **§ 4535. Action to set aside request**

32 4535. (a) An association that has complied with Section 4530 may file a petition  
33 to set aside a record inspection request. The petition shall be filed within 10  
34 business days after the requesting member delivers a timely objection pursuant to  
35 subdivision (c) of Section 4530. Notwithstanding the other provisions of this  
36 subdivision, the association may file a petition within 30 days after delivery of the  
37 objection if it can show that the delay was caused by excusable neglect.

38 (b) In an action to set aside a record inspection request, the association bears the  
39 burden of proving that it is reasonably likely that disclosure of the requested  
40 record would lead to misuse of the record, that disclosure would violate a  
41 member's constitutional rights, or that inspection of the record is not required  
42 under this article.

1 (c) If the court finds that it is reasonably likely that disclosure of the requested  
2 record would lead to misuse of the record or would violate a member's  
3 constitutional rights, or that inspection of the record is not required under this  
4 article, it may order that the record inspection request be set aside.

5 (d) The court may order any other relief appropriate to the circumstances,  
6 including the following relief:

7 (1) An order requiring that the association distribute material to the membership  
8 on behalf of the requesting member, in lieu of disclosing the membership list.

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

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

14 (4) The appointment of an investigator or accountant to inspect or audit  
15 association records on behalf of the requesting member. The cost of investigation  
16 shall ordinarily be paid by the requesting member, but the court may order that the  
17 association pay or share in the cost.

18 (e) If the court does not set the record inspection request aside, it shall award  
19 reasonable costs and expenses, including reasonable attorney's fees, to the  
20 requesting member.

21 (f) Nothing in this section limits the right of the association to bring an action  
22 under Section 4545.

23 **Comment.** Subdivision (a) of Section 4535 is comparable to Corporations Code Section  
24 8331(b)-(c).

25 Subdivision (b) continues part of the substance of former Section 1365.2(a)(1)(I)(ii) but  
26 generalizes it to apply to all records and not just to a membership list.

27 Subdivision (c) is comparable to Corporations Code Sections 8331(f)(1) and 8332, except that  
28 it applies to all records and not just to a membership list.

29 Subdivision (d)(1) is comparable to Corporations Code Sections 8331(g) and 8332.

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

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

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

41 Subdivision (e) is comparable to Corporations Code Section 8331(h).

42 Subdivision (f) is comparable to Corporations Code Section 8331(j).

43 **§ 4540. Action to compel compliance**

44 4540. (a) If an association has not complied with a document inspection request  
45 within the time provided, and that failure is not excused under subdivision (c), the

1 requesting member may file an action in small claims court or in the superior court  
2 to compel compliance.

3 (b) If the court finds that the failure to comply with the record inspection request  
4 is not excused, it shall order compliance. The court may order any other relief  
5 appropriate to the circumstances, including the following relief:

6 (1) Imposition of a civil penalty of up to \$500 against the association.

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

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

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

16 (c) Failure to comply with a record inspection request is excused if one of the  
17 following conditions is satisfied:

18 (1) The request was nullified as a result of the requesting member's failure to  
19 deliver a timely objection to the board.

20 (2) An action is pending under Section 4535.

21 (3) The record inspection request was set aside by a court pursuant to Section  
22 4535.

23 (4) The requested record is not subject to disclosure under this article.

24 (d) If the court orders compliance with the record inspection request, it shall  
25 award reasonable costs and expenses, including reasonable attorney's fees, to the  
26 requesting member. If the court does not order compliance with the record  
27 inspection request and it finds that the claim for enforcement was frivolous,  
28 unreasonable, or without foundation, it may award reasonable costs and expenses,  
29 including reasonable attorney's fees, to the association.

30 **Comment.** Section 4540 is comparable to former Section 1365.2(f) and Corporations Code  
31 Sections 8336 (action to enforce inspection right) and 8337 (costs and expenses).

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

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

42 Subdivision (b)(4) is comparable to Corporations Code Section 8336.

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

44 **Staff Note.** Pending Section 1365.2(f) provides for an award of costs and expenses to an  
45 association in an action to enforce the record inspection right, if the court finds that the requesting  
46 member's action is "frivolous, unreasonable, or without foundation." That seems to be aimed at

1 limiting an award of association fees to a case involving a frivolous claim. However, the language  
2 may be too broad for that purpose. It allows for an award of fees where the action was “without  
3 foundation.” The meaning of that phrase is unclear, but it could be read to encompass any case in  
4 which the court finds against the plaintiff. The Commission requests comment on whether it  
5 might be better to use language drawn from Code of Civil Procedure Section 1038, which  
6 governs an award of fees in a frivolous case brought under the Tort Claims Act. For example:  
7 “The court may award reasonable costs and expenses, including reasonable attorney’s fees, to the  
8 association if it finds that the action was not brought in good faith and with reasonable cause.”

9 **§ 4545. Action to enjoin improper use of records**

10 4545. An association may bring an action for injunctive relief and actual  
11 damages against any person who misuses association records. In addition, a court  
12 in its discretion may award exemplary damages for a fraudulent or malicious  
13 misuse of association records. If the association prevails in an action brought  
14 under this section, the court shall award the association reasonable costs and  
15 expenses, including reasonable attorney’s fees.

16 **Comment.** Section 4545 is comparable to Corporations Code Section 8338(b)-(d).

17 **§ 4550. Limited liability**

18 4550. 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 4550 restates the substance of former Section 1356.2(d)(3).

23 **☞ Staff Note.** Former Section 1356.2(d)(3) immunizes the association and its officers and  
24 agents from some liability for damages resulting from a breach of the duty to withhold or redact  
25 certain personal information. However, that provision seems to allow for liability where the  
26 breach was merely negligent. Should the liability limitation provision be strengthened or  
27 otherwise modified, especially if the duty to redact is made mandatory? See proposed Section  
28 4510 and note. For example, broader protection could be given to individuals by eliminating mere  
29 negligence as a basis for personal liability.

30 **§ 4555. Inspection by director**

31 4555. A director shall have the absolute right at any reasonable time to inspect  
32 all books, records, and documents of every kind and to inspect the common area.

33 **Comment.** Section 4555 is comparable to Corporations Code Section 8334.

34 **§ 4560. Application of article**

35 4560. (a) For the purposes of this article, a community service organization or  
36 similar entity, as defined in [paragraph (3) of subdivision (c) of Section 1368], is  
37 deemed to be an association, and a member of the community service organization  
38 or similar entity is deemed to be a member of an association.

39 (b) This article does not apply to common interest development in which  
40 separate interests are being offered for sale by a subdivider under the authority of a  
41 public report issued by the Department of Real Estate, so long as the subdivider or

1 all subdividers offering those separate interests for sale, or any employees of those  
2 subdividers or any other person who receives direct or indirect compensation from  
3 any of those subdividers, comprise a majority of the members of the board of  
4 directors of the association. Notwithstanding the foregoing this article shall apply  
5 to a common interest development no later than 10 years after the close of escrow  
6 for the first sale of a separate interest to a member of the general public pursuant  
7 to the public report issued for the first phase of the development.

8 (c) Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of  
9 Division 2 of the Corporations Code does not apply to a common interest  
10 development.

11 **Comment.** Subdivision (a) of Section 4560 continues the substance of former Section  
12 1365.2(g).

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

14 Subdivision (c) continues former Section 1356.2(m) without substantive change, except that  
15 Corporations Code Section 8332, 8334-8338 are also superseded.

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

## 22 Article 4. Actions Requiring Member Approval

## 23 Article 5. Member Duties

## 24 CHAPTER 3. COMMUNITY ASSOCIATION [RESERVED]

## 25 CHAPTER 4. FINANCES AND MAINTENANCE [RESERVED]

## 26 CHAPTER 5. GOVERNING DOCUMENTS

### 27 Article 1. General Provisions

#### 28 § 6000. Creation of common interest development

29 6000. For the purposes of this part, a common interest development is created  
30 when a separate interest coupled with an interest in the common area or  
31 membership in the association is, or has been, conveyed, provided that all of the  
32 following are recorded:

33 (a) A declaration.

34 (b) A condominium plan, if any exists.

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

4 **Comment.** Section 6000 continues part of the substance of former Section 1352. It governs the  
5 application of this part and is not intended to govern the date of creation of a common interest  
6 development for other purposes. See *City of West Hollywood v. Beverly Towers, Inc.* 52 Cal. 3d  
7 1184, 278 Cal. Rptr. 375, 805 P.2d 329 (1991) (failure to convey a unit not determinative of  
8 whether condominium project exists for purposes of local planning law).

9 See also Sections 4080 (“association”), 4090 (“common area”), 4095 (“common interest  
10 development”), 4110 (“condominium plan”), 4125 (“declaration”), 4175 (“separate interest”).

11 **§ 6005. Document authority**

12 6005. (a) The articles of incorporation may not include a provision that is  
13 inconsistent with the declaration. To the extent of any inconsistency between the  
14 articles of incorporation and the declaration, the declaration controls.

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

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

23 **Comment.** Section 6005 is new. Subdivision (b) is consistent with Corporations Code Section  
24 7151(c) providing that the bylaws shall be consistent with the articles of incorporation.  
25 Subdivision (c) is consistent with Section 6100(c) providing that an operating rule may not be  
26 inconsistent with the declaration, articles of incorporation, or bylaws of the association.

27 See also Sections 4080 (“association”), 4125 (“declaration”), 4155 (“operating rule”).

28 **Article 2. Declaration**

29 **§ 6025. Content of declaration**

30 6025. A declaration, recorded on or after January 1, 1986, shall contain all of the  
31 following:

32 (a) A legal description of the common interest development.

33 (b) A statement that the common interest development is a community  
34 apartment project, condominium project, planned development, stock cooperative,  
35 or combination thereof.

36 (c) The name of the association.

37 (d) Any restriction on the use or enjoyment of any portion of the common  
38 interest development that is intended to be an enforceable equitable servitude.

39 (e) Any other matter that the declarant or the members consider appropriate.

40 **Comment.** Section 6025 continues part of former Sections 1353(a)(1) and (b) without  
41 substantive change. The remainder of former Section 1353(a)(1) is continued without substantive  
42 change in Section 6030.

1 See also Sections 4080 (“association”), 4095 (“common interest development”), 4115  
2 (“condominium project”), 4125 (“declaration”), 4150 (“member”), 4165 (“planned  
3 development”), 4180 (“stock cooperative”).

4 **☞ Staff Note.** The defined term “declarant” is substituted for the existing phrase “original  
5 signator of the declaration” in proposed 6025(e). The Commission invites comment on whether  
6 this would cause any problem.

7 **§ 6030. Disclosure of airport in vicinity**

8 6030. (a) If a common interest development is located within an airport  
9 influence area and its declaration is recorded after January 1, 2004, the declaration  
10 shall contain the following statement:

11 “NOTICE OF AIRPORT IN VICINITY

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

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

25 (c) A statement in a declaration acknowledging that a property is located in an  
26 airport influence area is not a title defect, lien, or encumbrance.

27 **Comment.** Section 6030 continues part of former Sections 1353(a)(1)-(2), (4) without  
28 substantive change. The remainder of former Section 1351(a)(1) is continued without substantive  
29 change in Section 6025. See Bus. & Prof. Code § 11010 (disclosure of property within airport  
30 influence area); Pub. Util. Code § 21675 (designation of “airport influence area” by county  
31 airport land use commission).

32 See also Sections 4095 (“common interest development”), 4125 (“declaration”).

33 **§ 6035. Disclosure of BCDC jurisdiction**

34 6035. (a) If a common interest development is within the jurisdiction of the San  
35 Francisco Bay Conservation and Development Commission, as described in  
36 Section 66610 of the Government Code, and its declaration is recorded on or after  
37 January 1, 2006, the declaration shall contain the following notice:

38 “NOTICE OF SAN FRANCISCO BAY CONSERVATION AND  
39 DEVELOPMENT COMMISSION JURISDICTION

40 This property is located within the jurisdiction of the San Francisco Bay  
41 Conservation and Development Commission. Use and development of

1 property within the commission’s jurisdiction may be subject to special  
2 regulations, restrictions, and permit requirements. You may wish to  
3 investigate and determine whether they are acceptable to you and your  
4 intended use of the property before you complete your transaction.”

5 (b) A statement in a declaration acknowledging that a property is located within  
6 the jurisdiction of the San Francisco Bay Conservation and Development  
7 Commission is not a title defect, lien, or encumbrance.

8 **Comment.** Section 6035 continues former Section 1353(a)(3)-(4) without substantive change.  
9 See also Section 4095 (“common interest development”), 4125 (“declaration”).

10 **§ 6040. Amendment authorized**

11 6040. (a) A declaration may be amended at any time, notwithstanding any  
12 contrary provision of the declaration.

13 (b) Any provision of a declaration may be amended, unless the declaration  
14 expressly prohibits amendment of that provision.

15 (c) The Legislature finds that there are common interest developments that have  
16 been created with deed restrictions that do not provide a means for the property  
17 owners to extend the term of the declaration. The Legislature further finds that  
18 covenants and restrictions, contained in the declaration, are an appropriate method  
19 for protecting the common plan of developments and to provide for a mechanism  
20 for financial support for the upkeep of common areas including, but not limited to,  
21 roofs, roads, heating systems, and recreational facilities. If declarations terminate  
22 prematurely, common interest developments may deteriorate and the housing  
23 supply of affordable units could be impacted adversely. The Legislature further  
24 finds and declares that it is in the public interest to provide a vehicle for extending  
25 the term of the declaration if owners having more than 50 percent of the votes in  
26 the association choose to do so.

27 (d) A declaration may be amended to extend the termination date of the  
28 declaration, notwithstanding any contrary provision of the declaration. No single  
29 extension of the term of the declaration made pursuant to this subdivision shall  
30 exceed the initial term of the declaration or 20 years, whichever is less. However,  
31 more than one extension may be made pursuant to this subdivision.

32 **Comment.** Subdivisions (a)-(b) of Section 6040 restate the first sentence of former Section  
33 1355(b) without substantive change.

34 Subdivisions (c)-(d) restate Section 1357 without substantive change except that the procedure  
35 for approving an amendment of a declaration to extend its termination date is not continued. An  
36 amendment under this subdivision would be approved pursuant to Section 6045.

37 See also Sections 4080 (“association”), 4095 (“common interest development”), 4125  
38 (“declaration”).

39 **Staff Notes.** (1) The Commission invites comment on whether the proposed restatement of  
40 the first sentence of Section 1355(b) would cause any substantive change in the law.

41 (2) Existing law acknowledges that a declaration may be drafted so as to limit or prohibit its  
42 amendment. That could result in permanent restrictions that become inappropriate over time, due  
43 to changed circumstances or the changed desires of the property owners. The common law  
44 recognizes a defense to the enforcement of an equitable servitude where “the original purpose for

1 the restrictions has become obsolete and continued enforcement of the restrictions would be  
2 oppressive and inequitable.” H. Miller & M. Starr, California Real Estate § 24:20 (3d ed. 2004).  
3 As a matter of policy, should there be a procedure for amendment of a declaration by the  
4 members of a homeowner association, even if the declaration prohibits its own amendment?

5 **§ 6045. Approval of amendment**

6 6045. (a) If the governing documents provide a procedure for approval of an  
7 amendment of the declaration, an amendment may be approved by that procedure.

8 (b) If the governing documents do not provide a procedure for approval of an  
9 amendment of the declaration, an amendment may be approved by a majority of  
10 all members (Section 4055).

11 (c) The board shall provide individual notice (Section 4040) to all members of  
12 an amendment approved under this section.

13 **Comment.** Section 6045 is comparable to the provisions of former Section 1355 that relate to  
14 approval of an amendment of the declaration. See Sections 4040 (individual notice), 4055  
15 (approved by all members).

16 See also Sections 4085 (“board”), 4125 (“declaration”), 4140 (“governing documents”), 4150  
17 (“member”).

18 **Staff Notes.** (1) The Corporations Code provisions governing the amendment of the articles  
19 of incorporation and bylaws address the possibility that the governing documents may require the  
20 approval of a specific class of voters or of a specified third party in order to amend the governing  
21 documents. See, e.g. Corp. Code § 7150(b), (d). Should similar provisions be applied to  
22 amendment of the declaration? For example, suppose that the declaration provides that a minority  
23 class of voters must approve any action that changes the proportional share of assessments  
24 collected from each class. Should the majority class be able to delete that provision from the  
25 declaration without the approval of a majority of the other class?

26 (2) Civil Code Section 1356 authorizes a director or member to petition the superior court for  
27 an order lowering the number or percentage of affirmative votes required to approve an  
28 amendment of the declaration. A comparable order may be obtained under Corporations Code  
29 Section 7515. The staff does not see the benefit in providing two separate and slightly different  
30 provisions to achieve the same result. For that reason, Section 1356 is not continued in the  
31 proposed law. Instead, the staff intends to restate Section 7515 in the provisions of the proposed  
32 law that will govern election procedures. That general provision would apply to any action that  
33 requires member approval (as Section 7515 currently does). The Commission invites comment on  
34 whether this would create any problems.

35 **§ 6050. Approval of amendment to delete obsolete construction or marketing provision**

36 6050. Notwithstanding Section 6045, the deletion of a provision of the  
37 declaration may be approved by the board (Section 4050) and by a majority of a  
38 quorum of the members (Section 4060) if all of the following conditions are  
39 satisfied:

40 (a) The provision to be deleted is unequivocally designed and intended, or by its  
41 nature can only have been designed or intended, to facilitate the developer in  
42 completing the construction or marketing of the development or of a particular  
43 phase of the development.

44 (b) The provision to be deleted authorizes access by the developer over or across  
45 the common area for the purposes of (1) completion of construction of the

1 development, and (2) the erection, construction, or maintenance of structures or  
2 other facilities designed to facilitate the completion of construction or marketing  
3 of separate interests.

4 (c) The construction or marketing activities governed by the provision to be  
5 deleted have been completed or terminated.

6 **Comment.** Section 6050 is comparable to former Section 1355.5 but applies only to the  
7 amendment of a declaration. The requirement of former Section 1355.5(c), that members be given  
8 notice before the board approves the amendment is not continued. As a general rule, member  
9 notice is required before board meetings and before a member vote is held. See [§ 1363.05(d)];  
10 Corp. Code § 7511.

11 See Sections 4050 (approved by the board), 4060 (approved by majority of quorum of all  
12 members). See also Sections 4085 (“board”), 4090 (“common area”), 4125 (“declaration”), 4150  
13 (“member”), 4175 (“separate interest”).

14 **Staff Notes.** (1) Existing Section 1355.5 provides an optional procedure for deletion of  
15 obsolete developer provisions from any type of governing document, including the articles of  
16 incorporation and bylaws. However, it doesn’t appear that this section serves a useful purpose  
17 when applied to the articles or bylaws. The existing procedures for amendment of those  
18 documents is as expeditious or more expeditious than the procedure provided in Section 1355.5.  
19 See Corp. Code §§ 7151 (amendment of bylaws), 7810-7820 (amendment of articles).

20 (2) Existing Section 1355.5 limits the optional procedure to deletion of provisions that  
21 “[provide] for access by the developer over or across the common area for the purposes of (a)  
22 completion of construction of the development, and (b) the erection, construction, or maintenance  
23 of structures or other facilities designed to facilitate the completion of construction or marketing  
24 of separate interests. Does the use of “and” imply that the provision must satisfy both of the  
25 enumerated criteria? Should “and” be changed to “or”?

26 (3) Is it necessary to continue the requirement that the board approve an amendment under this  
27 section? It seems unlikely that a board would ever oppose such an amendment if it were approved  
28 by the members.

## 29 § 6055. Effective date of amendment

30 6055. Notwithstanding any contrary provision of the governing documents, an  
31 amendment approved pursuant to this article becomes effective once the following  
32 actions have been completed:

33 (a) An officer of the association certifies, in a writing that is signed and  
34 acknowledged by the officer, that the amendment was approved pursuant to this  
35 article. The certifying officer shall be the officer designated for that purpose by the  
36 governing documents, or if no one is designated, the president of the association.

37 (b) The written certification and the amended text of the declaration are recorded  
38 in each county in which a portion of the common interest development is located.

39 **Comment.** Subdivisions (a) and (b) of Section 6055 are comparable to the provisions of  
40 former Section 1355 that relate to certification and recordation of an amendment of the  
41 declaration. See Sections 1180-1207 (acknowledgement of instrument).

42 See also Sections 4080 (“association”), 4095 (“common interest development”), 4125  
43 (“declaration”), 4140 (“governing documents”).

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### Article 3. Articles of Incorporation

#### § 6060. Content of articles

6060. (a) The articles of incorporation of an association that are filed with the Secretary of State on or after January 1, 1995, shall include all of the following:

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

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

(3) If the association has no business or corporate office, or if the business or corporate office is not on the site of the common interest development, the nine-digit ZIP Code, front street, and nearest cross street for the physical location of the common interest development.

(4) The name and address of the association's managing agent.

(b) The statement of principal business activity contained in the annual statement filed by an incorporated association with the Secretary of State pursuant to Section 1502 of the Corporations Code shall also contain the information specified in subdivision (a).

**Comment.** Section 6060 restates former Section 1363.5 without substantive change, except that the requirement to state the location of the common interest development is expanded to apply to an association that has no business or corporate office. See Corp. Code §§ 1502 (annual statement), 7130-7135 (content of articles of incorporation), 7810-7820 (amendment of articles of incorporation), 7150-7153 (content and amendment of bylaws).

See also Sections 4080 ("association"), 4095 ("common interest development"), 4145 ("managing agent").

### 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 title 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.

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

3 (5) In a conversion of a community apartment project or stock cooperative to a  
4 condominium project that has been approved by the required number of owners,  
5 trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the  
6 Government Code, by those owners, trustees, beneficiaries, and mortgagees who  
7 approved the conversion.

8 (d) A person who owns only a mineral right, easement, right-of-way, or other  
9 nonpossessory interest in the property that is included in the condominium project  
10 does not need to sign the condominium plan.

11 **Comment.** Section 6075 continues former Section 1351(e) without substantive change, except  
12 that last paragraph is not continued. That paragraph is continued without substantive change in  
13 Section 4660.

14 See also Sections 4090 (“common area”), 4110 (“condominium plan”), 4115 (“condominium  
15 project”), 4160 (“person”), 4175 (“separate interest”), 4180 (“stock cooperative”).

16 **§ 6080. Amendment of condominium plan**

17 6080. A condominium plan may be amended or revoked by a recorded  
18 instrument that is acknowledged and signed by all the persons whose signatures  
19 are required pursuant to subdivision (c) of Section 6075.

20 **Comment.** Section 6080 continues the last paragraph of former Section 1351(e) without  
21 substantive change.

22 See also Sections 4110 (“condominium plan”), 4160 (“person”).

23 **Article 5. Operating Rules**

24 **§ 6100. Requirements for validity and enforceability**

25 6100. An operating rule is valid and enforceable only if all of the following  
26 requirements are satisfied:

27 (a) The rule is in writing.

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

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

32 (d) The rule is adopted, amended, or repealed in good faith and in substantial  
33 compliance with the requirements of this chapter.

34 (e) The rule is reasonable.

35 **Comment.** Section 6100 continues former Section 1357.110 without substantive change.

36 See also Sections 4080 (“association”), 4085 (“board”), 4125 (“declaration”), 4155 (“operating  
37 rule”).

38 **§ 6110. Application of rulemaking procedures**

39 6110. (a) Sections 6115 and 6120 only apply to an operating rule that relates to  
40 one or more of the following subjects:

- 1 (1) Use of the common area or of an exclusive use common area.
- 2 (2) Use of a separate interest, including any aesthetic or architectural standards
- 3 that govern alteration of a separate interest.
- 4 (3) Member discipline, including any schedule of monetary penalties for
- 5 violation of the governing documents and any procedure for the imposition of
- 6 penalties.
- 7 (4) Any standards for delinquent assessment payment plans.
- 8 (5) Any procedures adopted by the association for resolution of disputes.
- 9 (6) Any procedures for reviewing and approving or disapproving a proposed
- 10 physical change to a member's separate interest or to the common area.
- 11 (b) Sections 6115 and 6120 do not apply to the following actions by the board:
- 12 (1) A decision regarding maintenance of the common area.
- 13 (2) A decision on a specific matter that is not intended to apply generally.
- 14 (3) A decision setting the amount of a regular or special assessment.
- 15 (4) A rule change that is required by law, if the board has no discretion as to the
- 16 substantive effect of the rule change.
- 17 (5) Issuance of a document that merely repeats existing law or the governing
- 18 documents.
- 19 **Comment.** Section 6110 continues former Section 1357.120 without substantive change.
- 20 See also Sections 4080 ("association"), 4085 ("board"), 4090 ("common area"), 4135
- 21 ("exclusive use common area"), 4140 ("governing documents"), 4150 ("member"), 4155
- 22 ("operating rule"), 4170 ("rule change"), 4175 ("separate interest").

23 **§ 6115. Approval of rule change by board**

24 6115. (a) The board shall provide general notice (Section 4045) of a proposed  
25 rule change at least 30 calendar days before making the rule change. The notice  
26 shall include the text of the proposed rule change and a description of the purpose  
27 and effect of the proposed rule change. Notice is not required under this  
28 subdivision if the board determines that an immediate rule change is necessary to  
29 address an imminent threat to public health or safety or imminent risk of  
30 substantial economic loss to the association.

31 (b) A proposed rule change may be approved by the board (Section 4050).

32 (c) As soon as possible after approving a rule change, but not more than 15  
33 calendar days after approving the rule change, the board shall provide general  
34 notice (Section 4045) of the rule change. If the rule change was an emergency rule  
35 change made under subdivision (d), the notice shall include the text of the rule  
36 change, a description of the purpose and effect of the rule change, and the date that  
37 the rule change expires.

38 (d) If the board determines that an immediate rule change is required to address  
39 an imminent threat to public health or safety, or an imminent risk of substantial  
40 economic loss to the association, the board may approve an emergency rule  
41 change (Section 4050) without providing general notice (Section 4045) of the  
42 proposed rule change. An emergency rule change is effective for 120 calendar

1 days, unless the board provides for a shorter effective period. A rule change made  
2 under this subdivision may not be readopted under this subdivision.

3 **Comment.** Section 6115 restates former Section 1357.130 without substantive change. See  
4 Sections 4045 (general notice), 4050 (approved by the board).

5 See also Sections 4080 (“association”), 4085 (“board”), 4170 (“rule change”).

6 **§ 6120. Reversal of rule change by members**

7 6120. (a) Members of an association owning five percent or more of the separate  
8 interests may call a special meeting of the members to reverse a rule change that  
9 was approved by the board.

10 (b) A special meeting of the members may be called by delivering a request to  
11 the board (Section 4035) that includes the requisite number of member signatures,  
12 after which the board shall provide general notice (Section 4045) of the meeting  
13 and hold the meeting in conformity with Section 7511 of the Corporations Code.  
14 A written request may only be delivered within 30 calendar days after general  
15 notice (Section 4045) of the rule change or enforcement of the resulting rule,  
16 whichever occurs first.

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

23 (d) A decision to reverse a rule change may be approved by a majority of a  
24 quorum of the members (Section 4060), or if the declaration or bylaws require a  
25 greater proportion, by the affirmative vote or written ballot of the proportion  
26 required. In lieu of calling the meeting described in this section, the board may  
27 distribute a written ballot to every member of the association in conformity with  
28 the requirements of Section 7513 of the Corporations Code.

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

32 (f) A meeting called under this section is governed by Chapter 5 (commencing  
33 with Section 7510) of Part 3 of Division 2 of Title 1 of, and Sections 7612 and  
34 7613 of, the Corporations Code.

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

39 (h) As soon as possible after the close of voting, but not more than 15 calendar  
40 days after the close of voting, the board shall provide general notice (Section  
41 4045) of the results of the member vote.

1 (i) This section does not apply to an emergency rule change made under  
2 subdivision (d) of Section 6115.

3 **Comment.** Section 6120 continues former Section 1357.140 without substantive change. See  
4 Sections 4035 (delivered to board) 4045 (general notice), 4065 (approved by majority of quorum  
5 of the members).

6 See also Sections 4080 (“association”), 4085 (“board”), 4125 (“declaration”), 4150  
7 (“member”), 4170 (“rule change”), 4175 (“separate interest”).

8 **Staff Note.** A future installment of the proposed law will address general procedures for  
9 meetings. That installment will reconcile the differences the notice requirements provided in the  
10 proposed law and those provided in the Corporations Code.

11 **§ 6125. Applicability of article to changes commenced before and after January 1, 2004**

12 6125. (a) This article applies to a rule change commenced on or after January 1,  
13 2004.

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

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

18 **Comment.** Section 6125 continues former Section 1357.150 without substantive change.

19 See also Sections 4085 (“board”), 4170 (“rule change”).

20 **Article 6. Unlawful Restrictions**

21 **§ 6150. Discriminatory restriction**

22 6150. (a) No governing document shall include a restrictive covenant in  
23 violation of Section 12955 of the Government Code.

24 (b) Notwithstanding any other provision of law or provision of the governing  
25 documents, the board shall amend the governing documents to delete the unlawful  
26 restrictive covenant and to restate the governing document without the deleted  
27 restrictive covenant. No other person is required to approve the amendment.

28 (c) If the declaration is amended under this section, the board shall record the  
29 restated declaration in each county in which the common interest development is  
30 located. If the articles of incorporation are amended under this section, the board  
31 shall file a certificate of amendment pursuant to Section 7814 of the Corporations  
32 Code.

33 (d) The Department of Fair Employment and Housing, a city or county in which  
34 a common interest development is located, or any other person may provide  
35 written notice to a board (Section 6030) requesting that it comply with this section.  
36 If the board fails to comply with this section within 30 calendar days after delivery  
37 of the notice under this subdivision, the person who sent the notice may bring an  
38 action against the association for injunctive relief to enforce this section. The court  
39 may award attorney’s fees to the prevailing party.

40 **Comment.** Section 6150 restates former Section 1352.5 without substantive change, except  
41 that subdivision (c) is added. See Section 4030 (delivery to board).

1 See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common interest  
2 development”), 4125 (“declaration”), 4140 (“governing documents”), 4160 (“person”).

3 **☞ Staff Note.** The use of the term “restrictive covenant” in existing Section 1352.5 would  
4 seem to limit its scope to a discriminatory provision in the recorded declaration (see Civ. Code §  
5 1468(d) (covenant must be recorded to bind successive owners)). That is contrary to the express  
6 terms of the section, which provide that it applies to a “declaration *or other governing*  
7 *documents.*” Would it be appropriate to replace the term “restrictive covenant” with the broader  
8 term “rule or restriction”?

## 9 Article 7. Construction of Documents

### 10 § 6175. Liberal construction of instruments

11 6175. (a) Any deed, declaration, or condominium plan for a common interest  
12 development shall be liberally construed to facilitate the operation of the common  
13 interest development, and its provisions shall be presumed to be independent and  
14 severable.

15 (b) Nothing in Article 3 (commencing with Section 715) of Chapter 2 of Title 2  
16 of Part 1 of Division 2 shall operate to invalidate any provisions of the governing  
17 documents of a common interest development.

18 **Comment.** Section 6175 continues former Section 1370 without substantive change.

19 See also Sections 4095 (“common interest development”), 4110 (“condominium plan”), 4125  
20 (“declaration”), 4140 (“governing documents”).

### 21 § 6180. Boundaries of units

22 6180. In interpreting a deed or condominium plan, the existing physical  
23 boundaries of a unit in a condominium project, when the boundaries of the unit are  
24 contained within a building, or of a unit reconstructed in substantial accordance  
25 with the original plans thereof, shall be conclusively presumed to be its boundaries  
26 rather than the metes and bounds expressed in the deed or condominium plan, if  
27 any exists, regardless of settling or lateral movement of the building and  
28 regardless of minor variance between boundaries shown on the plan or in the deed  
29 and those of the building.

30 **Comment.** Section 6180 continues former Section 1371 without substantive change.

31 See also Sections 4110 (“condominium plan”), 4115 (“condominium project”).

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