

## Memorandum 2009-33

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

---

At the April 2009, meeting, the Commission directed the staff to revise the Commission's proposed recodification of the Davis-Stirling Common Interest Development Act ("Davis-Stirling Act"), as follows:

- (1) Noncontroversial substantive improvements will be retained.
- (2) Changes in wording that are necessary to clarify unclear language in existing law will be retained.
- (3) Improvements to the structural organization of the Davis-Stirling Common Interest Development Act will be retained.
- (4) The attempt to integrate applicable elements of the Corporations Code into the Davis-Stirling Common Interest Development Act will be abandoned. Where appropriate, cross-references to relevant provisions of the Corporations Code may be added to the proposed law, in statutory or Comment language.
- (5) The general attempt to make the language of existing law simpler and easier to understand will be abandoned. But see (2) above.

Minutes (April 2009), p. 3.

The staff has completed a draft of the revised proposal, consistent with the decisions set out above. It is attached for the Commission's review.

If the draft is acceptable, the staff will develop it into a draft tentative recommendation for presentation at a later meeting.

The draft tentative recommendation will include a narrative introduction that describes the purpose and main features of the proposed law. It will also include "conforming revisions" (i.e., statutory revisions to update existing cross-references to the provisions of the Davis-Stirling Act). The staff will also expand the Comments that follow each section of the proposed law, to include cross-references to applicable definitions and other related provisions.

The main features of the attached draft are summarized below. Unless otherwise indicated, all statutory references in this memorandum are to the Civil Code.

## OVERVIEW OF THE ATTACHED DRAFT

The attached draft does not break any new policy ground. All of the substantive reforms in the proposed law have already been reviewed and approved by the Commission, after extensive public review and comment.

To the extent that the language used in the draft differs from the prior version of the proposed law (as expressed in last year's AB 1921 (Saldaña)), it has been changed to hew more closely to the language of existing law.

For those reasons, the most significant question presented by the attached draft is whether it contains any technical errors. The staff has proceeded very carefully to avoid such errors, and has proofed the resulting draft multiple times. Where existing law is retained verbatim (as it is in much of the draft), it was copied and pasted directly from the Legislative Counsel's online statute compilation, thereby reducing the likelihood of transcription errors.

Nonetheless, in any project of this size and complexity there is a risk of typographical errors, digit transposition, and other technical problems. It is therefore important that the draft be carefully reviewed by *all* interested persons, and compared with the existing statute. **Any person who discovers a technical problem in the draft should contact the staff.**

The staff respectfully requests that reviewers focus on whether the draft contains technical defects. **It is very unlikely that any new proposal for substantive reform of the Davis-Stirling Act, to resolve an existing problem in the law, could be incorporated into the proposed law under discussion here.** Any such proposals would need to be studied later, as part of a separate project.

## ORGANIZATION OF THE PROPOSED LAW

One of the principal benefits of the proposed law is that it would take the existing provisions of the Davis-Stirling Act and reorganize them into a more straightforward and accessible structure. This would be accomplished by breaking up long sections into their component parts, and then organizing the component parts into a larger number of smaller sections, with those sections organized on the basis of their subject matter.

### **Short, Simple Sections**

A number of sections of the Davis-Stirling Act are unnecessarily long and complex. See, e.g., Sections 1351 (definitions), 1363.03 (elections), 1363.05 (board

meetings), 1365 (annual reports), 1365.2 (record inspection), 1365.5 (board duties), 1367.1 (assessment collection), 1367.4 (assessment collection)

Excessively long sections can obscure relevant details of law. A better approach is to divide the law into a larger number of smaller sections, with each section limited to a single subject. Short sections have numerous advantages. They enhance readability and understanding of the law, and make it easier to locate and refer to pertinent material. In contrast to a long section, a short section can be amended without undue technical difficulties and new material can be inserted where logically appropriate, facilitating sound development of the law.

The use of short sections is the preferred drafting technique of the California Code Commission (California Code Commission, *Drafting Rules and Principles for Use of California Code Commission Draftsmen*, 1947-48 Report, app. G, at 4), the Legislature (Senate & Assembly Joint Rule 8 (May 14, 2009)), the Legislative Counsel (Legislative Counsel of California, *Legislative Drafting Manual* 26-28 (1975)), and the Law Revision Commission (Memorandum 76-24 (Feb. 17, 1976); First Supplement to Memorandum 85-64 (May 31, 1985)).

For all of the reasons discussed above, the proposed law would divide lengthy sections into shorter and simpler provisions. The number of sections would more than double (from 88 sections in existing law to 197 in the proposed law). Despite that, the proposed law would be a few hundred words *shorter* than the existing Davis-Stirling Act (which has approximately 40,000 words).

### **Improved Organization**

The existing Davis-Stirling Act has developed incrementally, through numerous piecemeal reforms spanning more than 20 years. That process of unplanned development has led to a statute that is somewhat jumbled in its organization.

In some cases, language governing a single substantive issue is scattered across multiple noncontiguous sections of the Act. See, e.g., the reserve study and planning provisions in Sections 1365(a)(2)-(4), 1365.2.5, and 1365.5(e). In other cases, a single substantive issue is addressed by multiple overlapping sections, which must be read together to fully understand the applicable law. See, e.g., the assessment collection provisions in Sections 1367, 1367.1, and 1367.4.

These sorts of organizational problems make it difficult for a reader (especially a non-lawyer homeowner), to find and understand all of the statutory law governing a specific issue.

The lack of a clear and consistent organizational scheme also complicates future legislative development of the law. When there is no single obvious location for a provision on a particular topic, new provisions on that topic may be located in an inconsistent way, reinforcing the underlying organizational problem.

The proposed law would address those problems by reorganizing the provisions of existing law into a coherent subject matter scheme, divided into chapters and articles as appropriate. Similar provisions would be co-located. Substantive provisions that are currently embedded in definitions would be broken out and grouped with other related substantive provisions. Overlapping provisions would be restructured to minimize confusion.

The proposed organizational structure would be as follows:

CHAPTER 1. GENERAL PROVISIONS

Article 1. Preliminary Provisions

Article 2. Definitions

CHAPTER 2. GOVERNING DOCUMENTS

Article 1. General Provisions

Article 2. Declaration

Article 3. Articles of Incorporation

Article 4. Condominium Plan

Article 5. Operating Rules

CHAPTER 3. OWNERSHIP AND TRANSFER OF INTERESTS

Article 1. Ownership Rights and Interests

Article 2. Transfer Disclosure

Article 3. Transfer Fee

Article 4. Restrictions on Transfers

Article 5. Transfer of Separate Interest

CHAPTER 4. PROPERTY USE AND MAINTENANCE

Article 1. Use of Separate Interest

Article 2. Modification of Separate Interest

Article 3. Maintenance

CHAPTER 5. ASSOCIATION GOVERNANCE

Article 1. Association Existence and Powers

Article 2. Board Meeting

Article 3. Member Meeting

Article 4. Member Election

Article 5. Record Inspection

Article 6. Record Keeping

Article 7. Annual Reports

Article 8. Conflict of Interest

Article 9. Managing Agent  
Article 10. Government Assistance

#### CHAPTER 6. FINANCES

Article 1. Accounting  
Article 2. Use of Reserve Funds  
Article 3. Reserve Planning  
Article 4. Assessment Setting  
Article 5. Assessment Payment and Delinquency  
Article 6. Assessment Collection

#### CHAPTER 7. INSURANCE AND LIABILITY

#### CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT

Article 1. Disciplinary Action  
Article 2. Internal Dispute Resolution  
Article 3. Alternative Dispute Resolution Prerequisite to  
Civil Action  
Article 4. Civil Actions

#### CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

Another advantage of reorganizing the statute is the opportunity that it presents to create more room for expansion in the section numbering. The Davis-Stirling Act is currently located within a relatively narrow range of section numbers (Sections 1350-1378). Some parts of the Act are so crowded in their numbering that decimal numbers must be used to insert new material. In extreme cases, double decimals have been used (e.g., Section 1365.2.5) or varying numbers of decimal digits (e.g., Section 1363.001 precedes Section 1363.03). That sort of numbering complexity makes the law harder to use.

The proposed law would place the Davis-Stirling Act at the end of the Civil Code, where there is plenty of room for the addition of material on new subjects. In addition, the attached draft generally follows a more open numbering scheme. Individual sections are mostly numbered by fives (e.g., proposed Section 4020 is followed by proposed Section 4025) and larger numbering gaps are left after articles or chapters that are likely to see future expansion (e.g., the one-section article on member meetings is numbered as Section 5000, with the next article beginning on Section 5100). This more open numbering scheme should permit future development of the law without the need to use ever smaller decimal distinctions to shoehorn in new sections.

## Transitional Costs

Inevitably, there are transitional burdens that follow from reorganization and renumbering of an existing body of law. Those who are already familiar with the existing numbering scheme will need to learn new numbers. Documents that reference the current numbers will need to be updated. Case-law research will be complicated by the need to use a disposition table to interpret references to the former section numbers.

However, transitional burdens pass with time (as was the case when the Commission drafted the Family Code, Probate Code, etc.), and there are steps that can be taken to mitigate those burdens:

- (1) Careful and detailed documentation of the relationship between old and new sections can simplify research and eliminate ambiguity. **The proposed law would accomplish this in two ways:**

Official Comments following each section would detail the derivation of the new provisions, and a disposition table included in the final recommendation would correlate the former provisions with the new provisions that continue them. These materials would be authoritative, as courts have long held that Commission Comments and recommendations are evidence of legislative intent.

- (2) The established practice in drafting a recodification of the type proposed here is to include statutory language expressly providing that a provision that continues a former provision is not a new enactment, but is a restatement of the former provision. This preserves the applicability of court precedents that preceded the recodification. It also makes clear that a statutory reference to a former provision is deemed to be a reference to the provision that continues it.

**Standard language of that type is included in the draft as proposed Section 4010.** That provision goes one step beyond the standard language, by also expressly providing that a reference to a former provision, *in an association's governing documents*, is to be treated as a reference to the provision that continues the former provision. That eliminates any legal necessity to amend the association's governing documents to update cross-references.

- (3) Despite the fact that there would be no legal need to update cross-references in an association's governing documents, those documents would be clearer and easier to use if they are updated. In some cases, amendment of the governing documents can be difficult and costly. **To minimize that difficulty and expense, proposed Section 4235 would provide a simplified procedure for**

**governing document amendments that are limited to correcting statutory cross-references.**

It should also be noted that the Davis-Stirling Act is unusual in the high number of non-experts who must read and understand it. That is because association boards are run by volunteer homeowners, many of whom are not lawyers and may not have the assistance of counsel in carrying out their duties (recall that half of all associations have 25 or fewer units). Furthermore, the Davis-Stirling Act affects the rights of every person owning property within a CID. Many of those owners will need to read and understand the Davis-Stirling Act in order to participate in self-governance or protect their rights.

It is therefore likely that many (if not most) persons who must read and understand the Davis-Stirling Act will have little or no knowledge of the Act. They will not have the existing section numbering memorized. For those users of the Act, it is more important that the law be organized in a clear and accessible way, than that the existing section numbers be preserved.

UNCHANGED PROVISIONS

In many provisions of the attached draft, the staff preserved the language of existing law verbatim, except where revisions were necessary to resolve minor stylistic issues (like subdivision numbering and gender neutralization).

In the attached draft, those provisions are labeled “(UNCHANGED)” in their section headings. The Comments to those provisions identify any technical changes made to the existing language.

**The staff does not intend to discuss those provisions at the meeting, unless an issue is raised by the Commission or a member of the public.**

NONSUBSTANTIVE IMPROVEMENTS

Despite the general preference to preserve existing language verbatim, there were a number of instances where some language revision was called for (e.g., to correct technical reference errors, clarify confusing language, or adjust a relocated provision to reflect its new location).

In the attached draft, those provisions are labeled “(REVISED)” in their section headings. The Comments to those provisions identify any technical changes made to the existing language. Staff notes following the provisions provide additional explanation or background.

**Because the revisions are nonsubstantive, the staff does not intend to discuss those provisions at the meeting, unless an issue is raised by the Commission or a member of the public.**

To simplify public review, the provisions containing nonsubstantive revisions are listed below:

4074 (application of definitions)	5000 (member meeting)
4095 (“common area”)	5200 (record inspection definitions)
4120 (“condominium plan”)	5205 (redaction)
4155 (“managing agent”)	5210 (record inspection time periods)
4165 (“operating rule”)	5240 (application of record inspection provisions)
4170 (“person”)	5560 (reserve funding plan)
4175 (“planned development”)	5565 (summary of reserves)
4177 (“reserve accounts”)	5620 (exemption from execution)
4178 (“reserve account requirements”)	5660 (pre-lien notice)
4180 (“rule change”)	5680 (lien priority)
4255 (disclosures in declaration)	5720 (limitation on foreclosure)
4275 (judicial authorization of declaration amendment)	5725 (property damage and fines)
4290 (recordation of condominium plan)	5730 (statement of collection procedure)
4510 (access to separate interest)	5735 (assignment or pledge)
4525 (disclosure to purchaser)	5740 (application of collection provisions)
4580 (exemption from transfer fee limitations)	5865 (no effect on authority of board)
4605 (civil action to enforce Section 4600)	5920 (notice of internal dispute resolution process)
4780 (wood destroying pests)	5965 (notice of ADR requirement)
4935 (executive session)	
4950 (minutes)	
4955 (civil action to enforce board meeting requirements)	

#### SUBSTANTIVE IMPROVEMENTS

In developing the proposed law, the Commission included a number of minor substantive improvements that were believed to be uncontroversial. As a general practice, controversial reform proposals were set aside for later consideration.

In preparing the attached draft, *no new substantive reforms were added*. Consequently, the Commission has already reviewed and approved every

substantive reform that is included in the revised draft. Those proposals were also circulated for extensive public review and comment.

While no new reforms were added, *some previously proposed reforms were removed*, either in response to substantive policy objections discussed in Memorandum 2008-43, or as a consequence of the decision to remove language that had been imported from the Corporations Code.

Sections of the proposed law that contain substantive reforms are identified as “(NEW)” or “(REVISED)” in their section headings. **Because those reforms have all been analyzed and approved at prior meetings, the staff does not intend to discuss them in connection with this memorandum, unless an issue is raised by the Commission or a member of the public.**

To simplify public review of the substantive changes that are preserved in the attached draft, those changes are listed below:

4005 (effect of headings)	4600 (grant of exclusive use)
4010 (continuation of prior law)	4700 (property use rights)
4030 (stock cooperative without declaration)	4730 (marketing restrictions)
4035 (delivery of notice to association)	4760 (improvement of separate interest)
4040 (delivery of “individual notice”)	4790 (nonmetallic “wiring”)
4045 (delivery of “general notice”)	4920 (notice of board meeting)
4050 (time of delivery)	4925 (open board meetings)
4065 (approval by majority of members)	4930 (board meeting notice)
4070 (approval by majority of quorum)	5100 (application of election procedure)
4090 (“board meeting”)	5120 (counting ballots)
4145 (nonmetallic “wiring”)	5125 (ballot custody)
4200 (document authority)	5135 (campaign information)
4225 (restrictive covenants)	5140 (voting rights)
4235 (amendment of governing documents to correct statutory cross-reference)	5200 (record inspection)
4260 (declaration amendment procedure)	5250 (record retention)
4265 (declaration amendment procedure)	5255 (record retention periods)
4270 (declaration amendment procedure)	5300 (annual budget report)
4355 (election rules)	5305 (review of financial statement)
	5310 (annual policy notice)
	5320 (notice of report availability)
	5350 (director conflict of interest)
	5520 (use of reserve funds)
	5605 (assessment increase)

5615 (notice of assessment increase)  
5655 (payments)  
5685 (lien release)  
5700 (collection generally)  
5725 (property damage and fines)  
5850 (schedule of monetary penalties)

5855 (member discipline)  
5860 (responsibility for guest, invitee, tenant or resident)  
5900 (internal dispute resolution)  
5960 (attorneys fees and ADR)  
5980 (civil action to enforce Davis-Stirling Act)

## CONCLUSION

**The staff recommends that the Commission approve the attached draft, with or without any changes, for inclusion in a tentative recommendation.**

As discussed above, the attached draft does not present any new substantive issues. The principal question presented is whether the draft contains any technical drafting problems. Answering that question will take time, as interested persons and groups (including the State Bar Real Property Section working group) carefully review the draft. Although we are not yet to the stage of releasing a tentative recommendation, the staff recommends that interested persons and groups begin reviewing the draft now, as it is unlikely to change significantly before its release as a tentative recommendation.

Respectfully Submitted,

Brian Hebert  
Executive Secretary

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

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

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

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

**(NEW).** A section with this description will be largely new. A boxed “Staff Note” following the Section’s Comment will explain its purpose.

DETAILED CONTENTS

16

17 PART 5. COMMON INTEREST DEVELOPMENTS .....7

18 CHAPTER 1. GENERAL PROVISIONS .....7

19 Article 1. Preliminary Provisions.....7

20 § 4000 (UNCHANGED). Short title .....7

21 § 4005 (REVISED). Effect of headings.....7

22 § 4010 (NEW). Continuation of prior law .....7

23 § 4015 (UNCHANGED). Application of part.....8

24 § 4020 (UNCHANGED). Construction of zoning ordinance .....8

25 § 4025 (REVISED). Nonresidential development .....8

26 § 4030 (REVISED). Creation of common interest development .....9

27 § 4035 (NEW). “Delivered to the association” .....9

28 § 4040 (NEW). “Individual notice” .....9

29 § 4045 (NEW). “General notice” .....10

30 § 4050 (NEW). Time and proof of delivery .....11

31 § 4065 (NEW). Approved by majority of all members .....11

32 § 4070 (NEW). Approved by majority of quorum of members .....11

33 Article 2. Definitions .....12

34 § 4075 (REVISED). Application of definitions .....12

35 § 4080 (UNCHANGED). “Association” .....12

36 § 4090 (REVISED). “Board meeting” .....12

37 § 4095 (REVISED). “Common area” .....12

38 § 4100 (UNCHANGED). “Common interest development” .....13

39 § 4105 (UNCHANGED). “Community apartment project” .....13

40 § 4110 (UNCHANGED). “Community service organization or similar entity” .....13

41 § 4120 (REVISED). “Condominium plan” .....13

42 § 4125 (UNCHANGED). “Condominium project” .....14

43 § 4130 (UNCHANGED). “Declarant” .....14

1	§ 4135 (UNCHANGED). “Declaration” .....	14
2	§ 4145 (REVISED). “Exclusive use common area” .....	15
3	§ 4150 (UNCHANGED). “Governing documents” .....	15
4	§ 4155 (REVISED). “Managing agent” .....	15
5	§ 4165 (REVISED). “Operating rule” .....	16
6	§ 4170 (NEW). “Person” .....	16
7	§ 4175 (REVISED). “Planned development” .....	16
8	§ 4177 (REVISED). “Reserve accounts” .....	17
9	§ 4178 (REVISED). “Reserve account requirements” .....	17
10	§ 4180 (REVISED). “Rule change” .....	17
11	§ 4185 (UNCHANGED). “Separate interest” .....	17
12	§ 4190 (UNCHANGED). “Stock cooperative” .....	18
13	CHAPTER 2. GOVERNING DOCUMENTS .....	18
14	Article 1. General Provisions .....	18
15	§ 4200 (NEW). Document authority .....	18
16	§ 4205 (UNCHANGED). Record notice of agent to receive payments .....	19
17	§ 4215 (UNCHANGED). Liberal construction of instruments.....	19
18	§ 4220 (UNCHANGED). Boundaries of units.....	20
19	§ 4225 (REVISED). Deletion of unlawful restrictive covenants .....	20
20	§ 4230 (UNCHANGED). Deletion of developer provisions in governing documents .....	21
21	§ 4235 (NEW). Correction of statutory cross-reference.....	22
22	Article 2. Declaration.....	22
23	§ 4250 (UNCHANGED). Content of declaration .....	22
24	§ 4255 (REVISED). Special disclosures .....	22
25	§ 4260 (REVISED). Amendment authorized .....	23
26	§ 4265 (REVISED). Amendment to extend term of declaration authorized .....	24
27	§ 4270 (REVISED). Amendment procedure .....	24
28	§ 4275 (REVISED). Judicial authorization of amendment .....	25
29	Article 3. Articles of Incorporation.....	27
30	§ 4280 (UNCHANGED). Content of articles.....	27
31	Article 4. Condominium Plan .....	27
32	§ 4290 (REVISED). Recordation of condominium plan .....	27
33	§ 4295 (UNCHANGED). Amendment or revocation of condominium plan.....	28
34	Article 5. Operating Rules .....	28
35	§ 4350 (UNCHANGED). Requirements for validity and enforceability .....	28
36	§ 4355 (REVISED). Application of rulemaking procedures.....	28
37	§ 4360 (UNCHANGED). Approval of rule change by board .....	29
38	§ 4365 (UNCHANGED). Reversal of rule change by members .....	30
39	§ 4370 (UNCHANGED). Applicability of article to changes commenced before and after	
40	January 1, 2004.....	31
41	CHAPTER 3. OWNERSHIP AND TRANSFER OF INTERESTS.....	31
42	Article 1. Ownership Rights and Interests.....	31
43	§ 4500 (UNCHANGED). Ownership of common area .....	31
44	§ 4505 (UNCHANGED). Appurtenant rights and easements .....	31
45	§ 4510 (REVISED). Access to separate interest property .....	32
46	Article 2. Transfer Disclosure .....	32
47	§ 4525 (REVISED). Disclosure to prospective purchaser.....	32
48	§ 4530 (UNCHANGED). Information to be provided by association.....	33
49	§ 4535 (UNCHANGED). Related requirements .....	34
50	§ 4540 (UNCHANGED). Enforcement of article .....	34
51	§ 4545 (UNCHANGED). Validity of title unaffected .....	34

1	Article 3. Transfer Fee .....	34
2	§ 4575 (UNCHANGED). Transfer fee .....	34
3	§ 4580 (REVISED). Exemption from transfer fee limitations .....	35
4	Article 4. Restrictions on Transfers .....	35
5	§ 4600 (REVISED). Grant of exclusive use .....	35
6	§ 4605 (REVISED). Civil action to enforce Section 4600 .....	36
7	§ 4610 (UNCHANGED). Partition of condominium project.....	37
8	§ 4615 (UNCHANGED). Lien for work performed in condominium project.....	37
9	Article 5. Transfer of Separate Interest .....	38
10	§ 4625 (UNCHANGED). Community apartment project .....	38
11	§ 4630 (UNCHANGED). Condominium project.....	38
12	§ 4635 (UNCHANGED). Planned development .....	38
13	§ 4640 (UNCHANGED). Stock cooperative .....	38
14	§ 4645 (UNCHANGED). Transfer of exclusive use common area.....	38
15	§ 4650 (UNCHANGED). Severability of interests .....	39
16	CHAPTER 4. PROPERTY USE AND MAINTENANCE .....	39
17	Article 1. Use of Separate Interest .....	39
18	§ 4700 (NEW). Application of article.....	39
19	§ 4705 (UNCHANGED). Display of U.S. flag .....	39
20	§ 4710 (UNCHANGED). Noncommercial sign.....	40
21	§ 4715 (UNCHANGED). Pets .....	40
22	§ 4720 (UNCHANGED). Roofing materials .....	41
23	§ 4725 (UNCHANGED). Television antenna or satellite dish .....	41
24	§ 4730 (REVISED). Marketing restriction .....	42
25	§ 4755 (UNCHANGED). Low water-using plants .....	43
26	Article 2. Modification of Separate Interest.....	43
27	§ 4760 (REVISED). Improvements to separate interest.....	43
28	§ 4765 (UNCHANGED). Architectural review and decision making .....	44
29	Article 3. Maintenance .....	45
30	§ 4775 (UNCHANGED). Maintenance responsibility generally.....	45
31	§ 4780 (REVISED). Wood-destroying pests or organisms .....	45
32	§ 4785 (UNCHANGED). Temporary removal of occupant to perform treatment of wood-	
33	destroying pests .....	46
34	§ 4790 (REVISED). Exclusive use communication wiring .....	46
35	CHAPTER 5. ASSOCIATION GOVERNANCE.....	47
36	Article 1. Association Existence and Powers .....	47
37	§ 4800 (UNCHANGED). Association.....	47
38	§ 4805 (UNCHANGED). Association powers.....	47
39	§ 4810 (UNCHANGED). Standing.....	47
40	§ 4815 (UNCHANGED). Comparative fault .....	48
41	§ 4820 (UNCHANGED). Joint neighborhood association .....	48
42	Article 2. Board Meeting .....	49
43	§ 4900 (UNCHANGED). Short title.....	49
44	§ 4920 (REVISED). Notice of board meeting.....	49
45	§ 4925 (REVISED). Board meeting open .....	49
46	§ 4930 (REVISED). Limitation on meeting content.....	50
47	§ 4935 (REVISED). Executive session .....	51
48	§ 4950 (REVISED). Minutes .....	52
49	§ 4955 (REVISED). Civil action to enforce article .....	52
50	Article 3. Member Meeting .....	53
51	§ 5000 (REVISED). Member meeting.....	53

1	Article 4. Member Election .....	53
2	§ 5100 (REVISED). Application of article .....	53
3	§ 5105 (UNCHANGED). Election rules .....	54
4	§ 5110 (UNCHANGED). Election inspector .....	55
5	§ 5115 (UNCHANGED). Voting procedure .....	56
6	§ 5120 (REVISED). Counting ballots .....	57
7	§ 5125 (REVISED). Ballot custody and inspection.....	57
8	§ 5130 (UNCHANGED). Proxies.....	58
9	§ 5135 (REVISED). Campaign-related information.....	58
10	§ 5140 (NEW). Voting rights .....	59
11	§ 5145 (UNCHANGED). Judicial enforcement.....	60
12	Article 5. Record Inspection.....	60
13	§ 5200 (REVISED). Definitions .....	60
14	§ 5205 (REVISED). Inspection and copying of association records.....	62
15	§ 5210 (REVISED). Time periods .....	63
16	§ 5215 (UNCHANGED). Withholding and redaction.....	64
17	§ 5220 (UNCHANGED). Membership list opt out .....	65
18	§ 5225 (UNCHANGED). Membership list request .....	65
19	§ 5230 (UNCHANGED). Restriction on use of records .....	66
20	§ 5235 (UNCHANGED). Enforcement.....	66
21	§ 5240 (REVISED). Application of article .....	66
22	Article 6. Record Keeping.....	68
23	§ 5250 (NEW). Duty to maintain records.....	68
24	§ 5255 (NEW). Record retention periods .....	68
25	Article 7. Annual Reports.....	69
26	§ 5300 (REVISED). Annual budget report .....	69
27	§ 5305 (REVISED). Review of financial statement .....	72
28	§ 5310 (REVISED). Policy notice .....	72
29	§ 5320 (REVISED). Notice of availability.....	73
30	Article 8. Conflict of Interest .....	74
31	§ 5350 (REVISED). Interested director.....	74
32	Article 9. Managing Agent.....	74
33	§ 5375 (UNCHANGED). Prospective managing agent disclosure .....	74
34	§ 5380 (UNCHANGED). Trust fund account.....	75
35	Article 10. Government Assistance .....	77
36	§ 5400 (UNCHANGED). Director training course.....	77
37	§ 5405 (UNCHANGED). State registry .....	77
38	CHAPTER 6. FINANCES.....	78
39	Article 1. Accounting.....	78
40	§ 5500 (UNCHANGED). Board review.....	78
41	Article 2. Use of Reserve Funds .....	79
42	§ 5510 (UNCHANGED). Use of reserve funds .....	79
43	§ 5515 (UNCHANGED). Temporary transfer of reserve funds .....	79
44	§ 5520 (REVISED). Use of reserve funds for litigation.....	80
45	Article 3. Reserve Planning.....	80
46	§ 5550 (UNCHANGED). Inspection of major components.....	80
47	§ 5555 (UNCHANGED). Study.....	81
48	§ 5560 (REVISED). Reserve funding plan .....	81
49	§ 5565 (REVISED). Summary of association reserves .....	82
50	§ 5570 (UNCHANGED). Assessment and reserve funding disclosure summary .....	83
51	§ 5580 (REVISED). Community service organization report.....	85

1	Article 4. Assessment Setting .....	86
2	§ 5600 (UNCHANGED). Levy of assessment.....	86
3	§ 5605 (REVISED). Assessment approval requirements .....	86
4	§ 5610 (UNCHANGED). Emergency exception to assessment approval requirements .....	87
5	§ 5615 (REVISED). Notice of assessment increase .....	87
6	§ 5620 (REVISED). Exemption from execution .....	88
7	Article 5. Assessment Payment and Delinquency .....	88
8	§ 5650 (UNCHANGED). Assessment debt and delinquency .....	88
9	§ 5655 (REVISED). Payments .....	89
10	§ 5658 (UNCHANGED). Payment under protest.....	89
11	§ 5660 (REVISED). Pre-lien notice.....	90
12	§ 5665 (UNCHANGED). Payment plan.....	91
13	§ 5670 (UNCHANGED). Pre-lien dispute resolution .....	91
14	§ 5673 (UNCHANGED). Decision to lien .....	91
15	§ 5675 (UNCHANGED). Notice of delinquent assessment.....	92
16	§ 5680 (REVISED). Lien priority .....	93
17	§ 5685 (REVISED). Lien release .....	93
18	Article 6. Assessment Collection .....	94
19	§ 5700 (REVISED). Collection generally .....	94
20	§ 5705 (UNCHANGED). Decision to foreclose .....	94
21	§ 5710 (UNCHANGED). Foreclosure.....	95
22	§ 5715 (UNCHANGED). Right of redemption after trustee sale .....	96
23	§ 5720 (REVISED). Limitation on foreclosure.....	96
24	§ 5725 (REVISED). Property damage and fines.....	98
25	§ 5730 (REVISED). Statement of collection procedure.....	99
26	§ 5735 (REVISED). Assignment or pledge.....	102
27	§ 5740 (NEW). Application of article.....	102
28	CHAPTER 7. INSURANCE AND LIABILITY .....	103
29	§ 5800 (UNCHANGED). Limitation of director and officer liability .....	103
30	§ 5805 (UNCHANGED). Limitation of member liability .....	104
31	§ 5810. Notice of change in coverage.....	104
32	CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT .....	105
33	Article 1. Disciplinary Action .....	105
34	§ 5850 (REVISED). Schedule of monetary penalties .....	105
35	§ 5855 (REVISED). Disciplinary process .....	105
36	§ 5860 (NEW). Responsibility for guest, invitee, tenant, or resident .....	106
37	§ 5865 (REVISED). No effect on authority of board .....	106
38	Article 2. Internal Dispute Resolution .....	107
39	§ 5900 (REVISED). Application of article .....	107
40	§ 5905 (UNCHANGED). Fair, reasonable, and expeditious dispute resolution procedure	
41	required .....	107
42	§ 5910 (UNCHANGED). Minimum requirements of association procedure .....	107
43	§ 5915 (UNCHANGED). Default meet and confer procedure .....	108
44	§ 5920 (REVISED). Notice in member handbook.....	109
45	Article 3. Alternative Dispute Resolution Prerequisite to Civil Action .....	109
46	§ 5925 (UNCHANGED). Definitions.....	109
47	§ 5930 (UNCHANGED). ADR prerequisite to enforcement action .....	109
48	§ 5935 (UNCHANGED). Request for resolution .....	110
49	§ 5940 (UNCHANGED). ADR process .....	110
50	§ 5945 (UNCHANGED). Tolling of statute of limitations .....	110
51	§ 5950 (UNCHANGED). Certification of efforts to resolve dispute .....	111

1	§ 5955 (UNCHANGED). Stay of litigation for dispute resolution .....	111
2	§ 5960 (REVISED). Attorney’s fees .....	111
3	§ 5965 (REVISED). Notice in annual policy notice .....	112
4	Article 4. Civil Actions .....	112
5	§ 5975 (UNCHANGED). Enforcement of governing documents .....	112
6	§ 5980 (NEW). Enforcement of this part .....	112
7	CHAPTER 9. CONSTRUCTION DEFECT LITIGATION .....	113
8	§ 6000 (UNCHANGED). Actions for damages .....	113
9	§ 6050 (UNCHANGED). Action following pre-filing dispute resolution .....	121
10	§ 6100 (UNCHANGED). Notice of resolution .....	124
11	§ 6150 (UNCHANGED). Notice of civil action .....	125
12	Uncodified (added). Operative date .....	126
13	DISPOSITION OF FORMER LAW .....	126

1           PART 5. COMMON INTEREST DEVELOPMENTS

2                           CHAPTER 1. GENERAL PROVISIONS

3   Article 1. Preliminary Provisions

4   **§ 4000 (UNCHANGED). Short title**

5       4000. This part shall be known and may be cited as the Davis-Stirling Common  
6 Interest Development Act.

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

8   **§ 4005 (REVISED). Effect of headings**

9       4005. Division, part, title, chapter, article, and section headings do not in any  
10 manner affect the scope, meaning, or intent of this part.

11       **Comment.** Section 4005 continues former Section 1350.5 without change, except that “article”  
12 has been added to the list of headings and the last word of the sentence is replaced with “part.”

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

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

17   **§ 4010 (NEW). Continuation of prior law**

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

23       (b) A reference in an association’s governing documents, to a former provision  
24 that is restated and continued in this part, is deemed to include a reference to the  
25 provision of this part that restates and continues the former provision.

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

33       Subdivision (b) adapts the general principle of subdivision (a) to a statutory reference in an  
34 association’s governing documents.

35 **☞ Staff Note.** This is a standard transitional provision. It clarifies that a new provision that  
36 restates the substance of a former provision is to be treated as a continuation of that former  
37 provision, and not as a new enactment. Thus, a reference to the former provision in a court  
38 opinion is to be treated as a reference to the provision that continues the former provision.

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

3 **§ 4015 (UNCHANGED). Application of part**

4 4015. Nothing in this part may be construed to apply to a development wherein  
5 there does not exist a common area as defined in Section 4095. This section is  
6 declaratory of existing law.

7 **Comment.** Section 4015 continues former Section 1374 without change except that the term  
8 "title" is replaced with "part" and a cross-reference is updated to reflect the new location of the  
9 referenced provision.

10 **§ 4020 (UNCHANGED). Construction of zoning ordinance**

11 4020. Unless a contrary intent is clearly expressed, a local zoning ordinance is  
12 construed to treat like structures, lots, parcels, areas, or spaces in like manner  
13 regardless of whether the common interest development is a community apartment  
14 project, condominium project, planned development, or stock cooperative.

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

16 **§ 4025 (REVISED). Nonresidential development**

17 4025. (a) The following provisions do not apply to a common interest  
18 development that is limited to industrial or commercial uses by zoning or by a  
19 declaration of covenants, conditions, and restrictions that has been recorded in the  
20 official records of each county in which the common interest development is  
21 located:

22 (1) Section 4275.

23 (2) Article 5 (commencing with Section 4350) of Chapter 2.

24 (3) Article 2 (commencing with Section 4525), and Article 3 (commencing with  
25 Section 4575), of Chapter 3.

26 (4) Section 4600.

27 (5) Section 4765.

28 (6) Sections 5300, 5305, 5565, and 5810, and paragraph (7) of subdivision (a) of  
29 Section 5310.

30 (7) Sections 5500 through 5560, inclusive.

31 (8) Subdivision (b) of Section 5600.

32 (9) Subdivision (b) of Section 5605.

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

38 **Comment.** Section 4025 continues former Section 1373 without change, except that: (1)  
39 Former Section 1373(a)(3) is superfluous and is not continued. (2) Cross-references are updated  
40 to reflect the new location of the referenced provisions. (3) Subdivision (a)(4) is added to  
41 continue the substance of former Section 1363.07(a)(3)(F).

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

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

10 **§ 4030 (REVISED). Creation of common interest development**

11 4030. (a) This title applies and a common interest development is created  
12 whenever a separate interest coupled with an interest in the common area or  
13 membership in the association is, or has been, conveyed, provided, all of the  
14 following are recorded:

15 (1) A declaration.

16 (2) A condominium plan, if any exists.

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

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

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

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

25 **☞ Staff Note.** Proposed Section 4030(b) is new. It preserves the application of the Davis-  
26 Stirling Act to a stock cooperative in the fairly common circumstance where a coop lacks a  
27 recorded declaration.

28 **§ 4035 (NEW). “Delivered to the association”**

29 4035. If a provision of this part requires that a document be “delivered to the  
30 association,” the document shall be delivered by first-class mail, postage prepaid,  
31 to the person designated in the annual policy notice (Section 5310) to receive  
32 documents on behalf of the association. If no person has been designated to  
33 receive documents, the document shall be delivered to the president or secretary of  
34 the association.

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

37 **☞ Staff Note.** Proposed Section 4035 is new. It would provide a clear rule for official  
38 communication with the association.

39 **§ 4040 (NEW). “Individual notice”**

40 4040. (a) If a provision of this part requires “individual notice,” the notice shall  
41 be delivered to the person to be notified by one of the following methods:

42 (1) Personal delivery.

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

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

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

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

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

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

16 Subdivision (c) continues former Section 1350.7(d). It precludes use of electronic delivery  
17 methods when the recipient has not consented to use of those methods or has withdrawn such  
18 consent.

19 **Staff Note.** Proposed Section 4040 is new. It is drawn from and generalizes much of the  
20 substance of existing Section 1350.7.

21 **§ 4045 (NEW). “General notice”**

22 4045. (a) If a provision of this part requires “general notice,” the notice shall be  
23 provided by one or more of the following methods:

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

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

27 (3) Posting in a location that is accessible to all members, including on an  
28 Internet website, if the location has been designated in the annual policy notice  
29 (Section 5310) for the posting of general notices by the association.

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

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

35 (b) Notwithstanding subdivision (a), if a member requests to receive general  
36 notices by individual delivery, a general notice to that member shall be delivered  
37 pursuant to Section 4040. The option provided in this subdivision shall be  
38 described in the annual policy notice (Section 5310).

39 **Comment.** Section 4045 is new. It specifies acceptable methods for delivery of a notice to the  
40 membership generally, as distinguished from a notice that is to be delivered to a specific member.  
41 See Section 4040 (individual notice).

42 Subdivision (b) reserves the right of any member, on request, to receive general notices by the  
43 delivery methods provided for delivery of an individual notice. Thus, in an association that posts

1 general notices to its website, individual members would still have the right, on request, to  
2 receive those notices by mail.

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

6 **§ 4050 (NEW). Time and proof of delivery**

7 4050. (a) This section governs the delivery of a document pursuant to this part.

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

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

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

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

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

18 **§ 4065 (NEW). Approved by majority of all members**

19 4065. If a provision of this part requires that an action be approved by a majority  
20 of all members, the action shall be approved or ratified by an affirmative vote of  
21 members representing more than 50 percent of the total voting power of the  
22 association, or if the governing documents of an association divide the members  
23 into two or more classes for the purposes of voting, by an affirmative vote of  
24 members representing more than 50 percent of the voting power in each class that  
25 is required to approve the action.

26 **Comment.** Section 4065 is new. It is added for drafting convenience.

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

29 **§ 4070 (NEW). Approved by majority of quorum of members**

30 4070. If a provision of this part requires that an action be approved by a majority  
31 of a quorum of the members, the action shall be approved or ratified by an  
32 affirmative vote of members representing more than 50 percent of the votes cast in  
33 an election at which a quorum is achieved, or if the governing documents of an  
34 association divide the members into two or more classes for the purposes of  
35 voting, by an affirmative vote of members representing more than 50 percent of  
36 the votes cast in an election at which a quorum is achieved, in each class that is  
37 required to approve the action.

38 **Comment.** Section 4070 is new. It is added for drafting convenience.

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

4 Article 2. Definitions

5 **§ 4075 (REVISED). Application of definitions**

6 4075. The definitions in this article govern the construction of this part.

7 **Comment.** Section 4075 restates the substance of the introductory clause of former Section  
8 1351.

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

11 **§ 4080 (UNCHANGED). “Association”**

12 4080. “Association” means a nonprofit corporation or unincorporated  
13 association created for the purpose of managing a common interest development.

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

15 **§ 4090 (REVISED). “Board meeting”**

16 4090. “Board meeting” includes any congregation at the same time and place, of  
17 a sufficient number of members of the board to establish a quorum of the board, to  
18 hear, discuss, or deliberate upon any item of business scheduled to be heard by the  
19 board, except those matters that may be discussed in executive session.

20 **Comment.** Section 4090 continues former Section 1363.05(j) without change, with the  
21 following exceptions: (1) The term “board meeting” is used in place of the more general  
22 “meeting,” to distinguish between a board meeting and member meeting. (2) The number of  
23 directors required to establish a board meeting has been changed from a majority of the members  
24 to a number constituting a quorum.

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

30 **§ 4095 (REVISED). “Common area”**

31 4095. (a) “Common area” means the entire common interest development  
32 except the separate interests therein. The estate in the common area may be a fee,  
33 a life estate, an estate for years, or any combination of the foregoing.

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

37 **Comment.** Subdivision (a) of Section 4095 continues the first sentence of former Section  
38 1351(b) without change.

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

1 **Staff Note.** Proposed Section 4095(b) would restate the second sentence of existing Section  
2 1351(b), to improve its clarity without changing its meaning.

3 **§ 4100 (UNCHANGED). “Common interest development”**

4 4100. “Common interest development” means any of the following:

- 5 (a) A community apartment project.
- 6 (b) A condominium project.
- 7 (c) A planned development.
- 8 (d) A stock cooperative.

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

10 **§ 4105 (UNCHANGED). “Community apartment project”**

11 4105. “Community apartment project” means a development in which an  
12 undivided interest in land is coupled with the right of exclusive occupancy of any  
13 apartment located thereon.

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

15 **§ 4110 (UNCHANGED). “Community service organization or similar entity”**

16 4110. (a) “Community service organization or similar entity” means a nonprofit  
17 entity, other than an association, that is organized to provide services to residents  
18 of the common interest development or to the public in addition to the residents, to  
19 the extent community common areas or facilities are available to the public.

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

24 **Comment.** Section 4110 continues former Section 1368(c)(3) without change except that it has  
25 been divided into subdivisions.

26 **§ 4120 (REVISED). “Condominium plan”**

27 4120. “Condominium plan” means a plan consisting of:

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

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

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

36 **Comment.** Section 4120 continues the introduction of former Section 1351(e) without change,  
37 except that: (1) The enumerated items are set out as subdivisions. (2) A reference to “this title”  
38 has been changed to “this part.” (3) The list of persons who must sign and acknowledge the  
39 certificate consenting to recordation of the condominium plan has been replaced with a reference  
40 to the section governing the creation and recordation of a condominium plan.

1 **Staff Note.** Proposed Section 4120 would include only the definition of the term  
2 “condominium plan.” Procedural provisions in Section 1351, relating to the creation or  
3 amendment of a condominium plan, would be located elsewhere. See proposed Sections 4290 and  
4 4295.

5 **§ 4125 (UNCHANGED). “Condominium project”**

6 4125. (a) A “condominium project” means a development consisting of  
7 condominiums.

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

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

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

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

30 **§ 4130 (UNCHANGED). “Declarant”**

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

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

37 **§ 4135 (UNCHANGED). “Declaration”**

38 4135. “Declaration” means the document, however denominated, that contains  
39 the information required by Sections 4250 and 4255.

1 **Comment.** Section 4135 continues former Section 1351(h) without change except that the  
2 word “which” has been replaced with “that” and the cross-reference has been updated to reflect  
3 the new location of the referenced provision.

4 **§ 4145 (REVISED). “Exclusive use common area”**

5 4145. (a) “Exclusive use common area” means a portion of the common areas  
6 designated by the declaration for the exclusive use of one or more, but fewer than  
7 all, of the owners of the separate interests and which is or will be appurtenant to  
8 the separate interest or interests.

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

15 (c) Notwithstanding the provisions of the declaration, internal and external  
16 telephone wiring designed to serve a single separate interest, but located outside  
17 the boundaries of the separate interest, are exclusive use common areas allocated  
18 exclusively to that separate interest. For the purposes of this section, “wiring”  
19 includes nonmetallic transmission lines.

20 **Comment.** Section 4145 restates former Section 1351(i) without change, except that the last  
21 sentence of subdivision (c) is new. It is added to accommodate changes in wiring technology.

22  **Staff Note.** The last sentence of proposed Section 4145(c) is new.

23 **§ 4150 (UNCHANGED). “Governing documents”**

24 4150. “Governing documents” means the declaration and any other documents,  
25 such as bylaws, operating rules of the association, articles of incorporation, or  
26 articles of association, which govern the operation of the common interest  
27 development or association.

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

29 **§ 4155 (REVISED). “Managing agent”**

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

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

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

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

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

38 **Comment.** Subdivisions (a) and (b)(1)-(2) of Section 4155 continue former Section 1363.1(b)  
39 without change, except that its application is generalized so that it applies to the entire part.

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

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

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

8 **§ 4165 (REVISED). “Operating rule”**

9 4165. “Operating rule” means a regulation adopted by the board of directors of  
10 the association that applies generally to the management and operation of the  
11 common interest development or the conduct of the business and affairs of the  
12 association.

13 **Comment.** Section 4165 continues former Section 1357.100(a) without change, except that it  
14 is generalized to apply to the entire part.

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

18 **§ 4170 (NEW). “Person”**

19 4170. “Person” means an individual, corporation, government or governmental  
20 subdivision or agency, business trust, estate, trust, partnership, limited liability  
21 company, association, or other entity.

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

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

25 **§ 4175 (REVISED). “Planned development”**

26 4175. “Planned development” means a development (other than a community  
27 apartment project, a condominium project, or a stock cooperative) having either or  
28 both of the following features:

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

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

36 **Comment.** Section 4175 continues former Section 1351(k) without change except that: (1) The  
37 cross-reference has been updated to reflect the new location of the lien provisions of former  
38 Section 1367.1. (2) “Which” has been changed to “that” for grammatical purposes.

39 **Staff Note.** Proposed Section 4175(b) replaces the existing reference to “Section 1367 or  
40 1367.1” with a reference to “Article 5 (commencing with Section 5650) of Chapter 6.” That  
41 reference encompasses all of the provisions of former Sections 1367 and 1367.1 under which an  
42 “assessment ... may become a lien.”

1 § 4177 (REVISED). “Reserve accounts”

2 4177. “Reserve accounts” means both of the following:

3 (a) Moneys that the association’s board of directors has identified for use to  
4 defray the future repair or replacement of, or additions to, those major components  
5 that the association is obligated to maintain.

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

11 **Comment.** Section 4177 continues former Section 1365.5(f) without change except that the:  
12 (1) The definition is generalized so that it applies to the entire part. (2) A cross-reference has been  
13 updated to reflect the new location of the referenced provisions.

14 **Staff Note.** Proposed Section 4177 would generalize a definition that currently only applies  
15 to Section 1365.5.

16 § 4178 (REVISED). “Reserve account requirements”

17 4178. “Reserve account requirements” means the estimated funds that the  
18 association’s board of directors has determined are required to be available at a  
19 specified point in time to repair, replace, or restore those major components that  
20 the association is obligated to maintain.

21 **Comment.** Section 4178 continues former Section 1365.5(g) without change except that the:  
22 the definition is generalized so that it applies to the entire part.

23 **Staff Note.** Proposed Section 4178 would generalize a definition that currently only applies  
24 to Section 1365.5.

25 § 4180 (REVISED). “Rule change”

26 4180. “Rule change” means the adoption, amendment, or repeal of an operating  
27 rule by the board of directors of the association.

28 **Comment.** Section 4180 continues former Section 1357.100(b), except that the definition is  
29 generalized so that it applies to the entire part.

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

33 § 4185 (UNCHANGED). “Separate interest”

34 4185. (a) “Separate interest” has the following meanings:

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

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

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

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

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

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

11 **Comment.** Section 4185 continues former Section 1351(l) without change, except that the last  
12 two unnumbered paragraphs of former Section 1351(l) have been designated as subdivisions (b)  
13 and (c), and cross-references have been updated to reflect the new location of referenced  
14 provisions.

15 **§ 4190 (UNCHANGED). “Stock cooperative”**

16 4190. (a) “Stock cooperative” means a development in which a corporation is  
17 formed or availed of, primarily for the purpose of holding title to, either in fee  
18 simple or for a term of years, improved real property, and all or substantially all of  
19 the shareholders of the corporation receive a right of exclusive occupancy in a  
20 portion of the real property, title to which is held by the corporation. The owners’  
21 interest in the corporation, whether evidenced by a share of stock, a certificate of  
22 membership, or otherwise, shall be deemed to be an interest in a common interest  
23 development and a real estate development for purposes of subdivision (f) of  
24 Section 25100 of the Corporations Code.

25 (b) A “stock cooperative” includes a limited equity housing cooperative which is  
26 a stock cooperative that meets the criteria of Section 33007.5 of the Health and  
27 Safety Code.

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

30 **CHAPTER 2. GOVERNING DOCUMENTS**

31 **Article 1. General Provisions**

32 **§ 4200 (NEW). Document authority**

33 4200. (a) The articles of incorporation may not include a provision that is  
34 inconsistent with the declaration. To the extent of any inconsistency between the  
35 articles of incorporation and the declaration, the declaration controls.

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

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

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

6 **Comment.** Section 4200 is new.

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

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

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

13 **Staff Note.** Proposed Section 4200 is new. It would provide guidance in resolving conflicts  
14 between different governing documents.

15 **§ 4205 (UNCHANGED). Record notice of agent to receive payments**

16 4205. (a) In order to facilitate the collection of regular assessments, special  
17 assessments, transfer fees, and similar charges, the board of directors of any  
18 association is authorized to record a statement or amended statement identifying  
19 relevant information for the association. This statement may include any or all of  
20 the following information:

21 (1) The name of the association as shown in the conditions, covenants, and  
22 restrictions or the current name of the association, if different.

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

26 (3) A daytime telephone number of the authorized party identified in paragraph  
27 (2) if a telephone number is available.

28 (4) A list of separate interests subject to assessment by the association, showing  
29 the assessor's parcel number or legal description, or both, of the separate interests.

30 (5) The recording information identifying the declaration or declarations of  
31 covenants, conditions, and restrictions governing the association.

32 (6) If an amended statement is being recorded, the recording information  
33 identifying the prior statement or statements which the amendment is superseding.

34 (b) The county recorder is authorized to charge a fee for recording the document  
35 described in subdivision (a), which fee shall be based upon the number of pages in  
36 the document and the recorder's per-page recording fee.

37 **Comment.** Section 4205 continues former Section 1366.2 without change.

38 **§ 4215 (UNCHANGED). Liberal construction of instruments**

39 4215. Any deed, declaration, or condominium plan for a common interest  
40 development shall be liberally construed to facilitate the operation of the common  
41 interest development, and its provisions shall be presumed to be independent and  
42 severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of

1 Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the  
2 governing documents of a common interest development.

3 **Comment.** Section 4215 continues former Section 1370 without change, except that “this  
4 division” has been replaced with “Division 2.”

5 **§ 4220 (UNCHANGED). Boundaries of units**

6 4220. In interpreting deeds and condominium plans, the existing physical  
7 boundaries of a unit in a condominium project, when the boundaries of the unit are  
8 contained within a building, or of a unit reconstructed in substantial accordance  
9 with the original plans thereof, shall be conclusively presumed to be its boundaries  
10 rather than the metes and bounds expressed in the deed or condominium plan, if  
11 any exists, regardless of settling or lateral movement of the building and  
12 regardless of minor variance between boundaries shown on the plan or in the deed  
13 and those of the building.

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

15 **§ 4225 (REVISED). Deletion of unlawful restrictive covenants**

16 4225. (a) No declaration or other governing document shall include a restrictive  
17 covenant in violation of Section 12955 of the Government Code.

18 (b) Notwithstanding any other provision of law or provision of the governing  
19 documents, the board of directors of an association, without approval of the  
20 owners, shall amend any declaration or other governing document that includes a  
21 restrictive covenant prohibited by this section to delete the restrictive covenant,  
22 and shall restate the declaration or other governing document without the  
23 restrictive covenant but with no other change to the declaration or governing  
24 document.

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

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

37 **Comment.** Section 4225 continues former Section 1352.5 without change, except that  
38 subdivision (c) is added, and subdivision (d) is revised to include a reference to the provision  
39 governing notice to an association (Section 4035).

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

1 § 4230 (UNCHANGED). Deletion of developer provisions in governing documents

2 4230. (a) Notwithstanding any provision of the governing documents of a  
3 common interest development to the contrary, the board of directors of the  
4 association may, after the developer of the common interest development has  
5 completed construction of the development, has terminated construction activities,  
6 and has terminated marketing activities for the sale, lease, or other disposition of  
7 separate interests within the development, adopt an amendment deleting from any  
8 of the governing documents any provision which is unequivocally designed and  
9 intended, or which by its nature can only have been designed or intended, to  
10 facilitate the developer in completing the construction or marketing of the  
11 development. However, provisions of the governing documents relative to a  
12 particular construction or marketing phase of the development may not be deleted  
13 under the authorization of this subdivision until that construction or marketing  
14 phase has been completed.

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

20 (c) At least 30 days prior to taking action pursuant to subdivision (a), the board  
21 of directors of the association shall mail to all owners of the separate interests, by  
22 first-class mail, (1) a copy of all amendments to the governing documents  
23 proposed to be adopted under subdivision (a) and (2) a notice of the time, date,  
24 and place the board of directors will consider adoption of the amendments. The  
25 board of directors of an association may consider adoption of amendments to the  
26 governing documents pursuant to subdivision (a) only at a meeting which is open  
27 to all owners of the separate interests in the common interest development, who  
28 shall be given opportunity to make comments thereon. All deliberations of the  
29 board of directors on any action proposed under subdivision (a) shall only be  
30 conducted in such an open meeting.

31 (d) The board of directors of the association may not amend the governing  
32 documents pursuant to this section without the approval of the owners, casting a  
33 majority of the votes at a meeting or election of the association constituting a  
34 quorum and conducted in accordance with Chapter 5 (commencing with Section  
35 7510) of Part 3 of Division 2 of Title 1 of, and Section 7613 of, the Corporations  
36 Code. For the purposes of this section, “quorum” means more than 50 percent of  
37 the owners who own no more than two separate interests in the development.

38 **Comment.** Section 4230 continues former Section 1355.5 without change, except that: (1) The  
39 phrase “his or her” is not continued in subdivision (a). (2) Subdivision (b) has been revised to use  
40 numerals to number the listed items, rather than letters.

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

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

8 **Comment.** Section 4235 is new. It is intended to provide a simplified method to correct  
9 statutory cross-references in an association's governing documents. No other amendment can be  
10 made under this section.

11 **Staff Note.** Proposed Section 4235 is new. It would provide a simplified method to update  
12 statutory cross-references in the governing documents, when a referenced provision is repealed  
13 and continued in a new section. This would reduce the transitional complications resulting from  
14 the proposed recodification of the Davis-Stirling Act.

15 **Article 2. Declaration**

16 **§ 4250 (UNCHANGED). Content of declaration**

17 4250. (a) A declaration, recorded on or after January 1, 1986, shall contain a  
18 legal description of the common interest development, and a statement that the  
19 common interest development is a community apartment project, condominium  
20 project, planned development, stock cooperative, or combination thereof. The  
21 declaration shall additionally set forth the name of the association and the  
22 restrictions on the use or enjoyment of any portion of the common interest  
23 development that are intended to be enforceable equitable servitudes.

24 (b) The declaration may contain any other matters the original signator of the  
25 declaration or the owners consider appropriate.

26 **Comment.** Subdivision (a) of Section 4250 continues the first two sentences of former Section  
27 1353(a)(1) without change.

28 Subdivision (b) continues former Section 1353(b) without change.

29 **§ 4255 (REVISED). Special disclosures**

30 4255. (a) If a common interest development is located within an airport  
31 influence area, a declaration, recorded after January 1, 2004, shall contain the  
32 following statement:

33 **NOTICE OF AIRPORT IN VICINITY**

34 This property is presently located in the vicinity of an airport, within what  
35 is known as an airport influence area. For that reason, the property may be  
36 subject to some of the annoyances or inconveniences associated with  
37 proximity to airport operations (for example: noise, vibration, or odors).  
38 Individual sensitivities to those annoyances can vary from person to person.  
39 You may wish to consider what airport annoyances, if any, are associated

1 with the property before you complete your purchase and determine whether  
2 they are acceptable to you.

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

8 (d) If a common interest development is within the San Francisco Bay  
9 Conservation and Development Commission jurisdiction, as described in Section  
10 66610 of the Government Code, a declaration recorded on or after January 1,  
11 2006, shall contain the following notice:

12 NOTICE OF SAN FRANCISCO BAY CONSERVATION AND  
13 DEVELOPMENT COMMISSION JURISDICTION

14 This property is located within the jurisdiction of the San Francisco Bay  
15 Conservation and Development Commission. Use and development of  
16 property within the commission’s jurisdiction may be subject to special  
17 regulations, restrictions, and permit requirements. You may wish to  
18 investigate and determine whether they are acceptable to you and your  
19 intended use of the property before you complete your transaction.

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

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

29  **Staff Note.** The language of proposed Section 4255 differs slightly from its source, primarily  
30 to accommodate making the provision a stand-alone section. The changes would be  
31 nonsubstantive.

32 **§ 4260 (REVISED). Amendment authorized**

33 4260. Except to the extent that a declaration provides by its express terms that it  
34 is not amendable, in whole or in part, a declaration which fails to include  
35 provisions permitting its amendment at all times during its existence may be  
36 amended at any time.

37 **Comment.** Section 4260 continues the first sentence of former Section 1355(b) without  
38 change.

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

5 **§ 4265 (REVISED). Amendment to extend term of declaration authorized**

6 4265. (a) The Legislature finds that there are common interest developments that  
7 have been created with deed restrictions which do not provide a means for the  
8 property owners to extend the term of the declaration. The Legislature further  
9 finds that covenants and restrictions, contained in the declaration, are an  
10 appropriate method for protecting the common plan of developments and to  
11 provide for a mechanism for financial support for the upkeep of common areas  
12 including, but not limited to, roofs, roads, heating systems, and recreational  
13 facilities. If declarations terminate prematurely, common interest developments  
14 may deteriorate and the housing supply of affordable units could be impacted  
15 adversely. The Legislature further finds and declares that it is in the public interest  
16 to provide a vehicle for extending the term of the declaration if owners having  
17 more than 50 percent of the votes in the association choose to do so.

18 (b) A declaration that specifies a termination date, but that contains no provision  
19 for extension of the termination date, may be extended by the approval of owners  
20 pursuant to Section 4270.

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

24 **Comment.** Subdivision (a) of Section 4265 continues former Section 1357(a) without change.

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

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

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

31 **Staff Note.** Proposed Section 4265 continues the authority to amend a declaration to extend  
32 its term, but does not continue the procedure specified for doing so. Instead, the extension would  
33 be made using the general procedure for amending a declaration provided in proposed Section  
34 4270.

35 **§ 4270 (REVISED). Amendment procedure**

36 4270. (a) A declaration may be amended pursuant to the governing documents  
37 or this part. Except as provided in Section 4275, an amendment is effective after  
38 (1) the approval of the percentage of owners required by the governing documents  
39 has been given, (2) that fact has been certified in a writing executed and  
40 acknowledged by the officer designated in the declaration or by the association for  
41 that purpose, or if no one is designated, by the president of the association, and (3)  
42 that writing has been recorded in each county in which a portion of the common  
43 interest development is located.

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

4 **Comment.** Subdivision (a) of Section 4270 continues former Section 1355(a) without change,  
5 except that the first word is replaced with “a,” and “title” is replaced with “part.”

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

7 **Staff Note.** Proposed Section 4270(b) would provide a default rule on member approval of an  
8 amendment where the governing documents are silent on the matter. That rule is drawn from  
9 Sections 1355(b) and 1357.

10 **§ 4275 (REVISED). Judicial authorization of amendment**

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

25 (1) The governing documents.

26 (2) A complete text of the amendment.

27 (3) Copies of any notice and solicitation materials utilized in the solicitation of  
28 owner approvals.

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

30 (5) Any other documentation relevant to the court’s determination.

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

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

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

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

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

3 (4) Owners having more than 50 percent of the votes, in a single class voting  
4 structure, voted in favor of the amendment. In a voting structure with more than  
5 one class, where the declaration requires a majority of more than one class to vote  
6 in favor of the amendment, owners having more than 50 percent of the votes of  
7 each class required by the declaration to vote in favor of the amendment voted in  
8 favor of the amendment.

9 (5) The amendment is reasonable.

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

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

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

19 (1) Would change provisions in the declaration requiring the approval of owners  
20 having more than 50 percent of the votes in more than one class to vote in favor of  
21 an amendment, unless owners having more than 50 percent of the votes in each  
22 affected class approved the amendment.

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

25 (3) Would impair the security interest of a mortgagee of a mortgage or the  
26 beneficiary of a deed of trust without the approval of the percentage of the  
27 mortgagees and beneficiaries specified in the declaration, if the declaration  
28 requires the approval of a specified percentage of the mortgagees and  
29 beneficiaries.

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

40 (g) Within a reasonable time after the amendment is recorded the association  
41 shall deliver to each member of the association, by individual notice (Section  
42 4040), a copy of the amendment, together with a statement that the amendment  
43 has been recorded.

1 **Comment.** Section 4275 continues former Section 1356 without change, except that  
2 subdivision (g) is revised to specify the procedure for delivery of individual notice.

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

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

7 Article 3. Articles of Incorporation

8 **§ 4280 (UNCHANGED). Content of articles**

9 4280. (a) The articles of incorporation of a common interest development  
10 association filed with the Secretary of State on or after January 1, 1995, shall  
11 include a statement, which shall be in addition to the statement of purposes of the  
12 corporation, that does all of the following:

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

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

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

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

24 **Comment.** Section 4280 continues former Section 1363.5 without change, except that a cross  
25 reference to the definition of “managing agent” has not been continued. Now see Section 4155  
26 (“managing agent”). See also Corp. Code §§ 1502 (annual statement), 7130-7135 (content of  
27 articles of incorporation), 7810-7820 (amendment of articles of incorporation), 7150-7153  
28 (content and amendment of bylaws).

29 Article 4. Condominium Plan

30 **§ 4290 (REVISED). Recordation of condominium plan**

31 4290. (a) A certificate consenting to the recordation of a condominium plan  
32 shall be signed and acknowledged by all of the following persons:

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

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

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

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

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

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

8 **Comment.** Section 4290 restates former Section 1351(e)(3) without substantive change, except  
9 that the last paragraph is not continued. That paragraph is continued without substantive change  
10 in Section 4295.

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

13 **§ 4295 (UNCHANGED). Amendment or revocation of condominium plan**

14 4295. A condominium plan may be amended or revoked by a recorded  
15 instrument that is acknowledged and signed by all the persons whose signatures  
16 are required pursuant to Section 4290.

17 **Comment.** Section 4295 continues the last paragraph of former Section 1351(e) without  
18 change, except that the cross-reference is updated to reflect the new location of the referenced  
19 provision.

20 **Article 5. Operating Rules**

21 **§ 4350 (UNCHANGED). Requirements for validity and enforceability**

22 4350. An operating rule is valid and enforceable only if all of the following  
23 requirements are satisfied:

24 (a) The rule is in writing.

25 (b) The rule is within the authority of the board of directors of the association  
26 conferred by law or by the declaration, articles of incorporation or association, or  
27 bylaws of the association.

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

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

32 (e) The rule is reasonable.

33 **Comment.** Section 4350 continues former Section 1357.110 without change.

34 **§ 4355 (REVISED). Application of rulemaking procedures**

35 4355. (a) Sections 4360 and 4365 only apply to an operating rule that relates to  
36 one or more of the following subjects:

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

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

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

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

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

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

8 (7) Procedures for elections.

9 (b) Sections 4360 and 4365 do not apply to the following actions by the board of  
10 directors of an association:

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

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

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

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

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

18 **Comment.** Section 4355 continues former Section 1357.120 without change, except that  
19 subdivision (a)(7) is new.

20 **Staff Note.** Proposed Section 4355(a)(7) is new. It is added to conform to the requirements of  
21 Section 1363.03.

22 **§ 4360 (UNCHANGED). Approval of rule change by board**

23 4360. (a) The board of directors shall provide general notice (Section 4045) of a  
24 proposed rule change to the members at least 30 days before making the rule  
25 change. The notice shall include the text of the proposed rule change and a  
26 description of the purpose and effect of the proposed rule change. Notice is not  
27 required under this subdivision if the board of directors determines that an  
28 immediate rule change is necessary to address an imminent threat to public health  
29 or safety or imminent risk of substantial economic loss to the association.

30 (b) A decision on a proposed rule change shall be made at a meeting of the  
31 board of directors, after consideration of any comments made by association  
32 members.

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

39 (d) If the board of directors determines that an immediate rule change is required  
40 to address an imminent threat to public health or safety, or an imminent risk of  
41 substantial economic loss to the association, it may make an emergency rule  
42 change; and no notice is required, as specified in subdivision (a). An emergency

1 rule change is effective for 120 days, unless the rule change provides for a shorter  
2 effective period. A rule change made under this subdivision may not be readopted  
3 under this subdivision.

4 **Comment.** Section 4360 restates former Section 1357.130 without change, except that the  
5 reference to former Section 1357.130(e) is replaced with references to the provision governing  
6 general notice.

7 **§ 4365 (UNCHANGED). Reversal of rule change by members**

8 4365. (a) Members of an association owning five percent or more of the separate  
9 interests may call a special meeting of the members to reverse a rule change.

10 (b) A special meeting of the members may be called by delivering a written  
11 request to the president or secretary of the board of directors, after which the board  
12 shall deliver individual notice (Section 4040) of the meeting to the association's  
13 members and hold the meeting in conformity with Section 7511 of the  
14 Corporations Code. The written request may not be delivered more than 30 days  
15 after the members of the association are notified of the rule change. Members are  
16 deemed to have been notified of a rule change on delivery of notice of the rule  
17 change, or on enforcement of the resulting rule, whichever is sooner.

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

24 (d) The rule change may be reversed by the affirmative vote of a majority of a  
25 quorum of the members (Section 4070), or if the declaration or bylaws require a  
26 greater proportion, by the affirmative vote or written ballot of the proportion  
27 required. In lieu of calling the meeting described in this section, the board may  
28 distribute a written ballot to every member of the association in conformity with  
29 the requirements of Section 7513 of the Corporations Code.

30 (e) Unless otherwise provided in the declaration or bylaws, for the purposes of  
31 this section, a member may cast one vote per separate 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 of directors from adopting a different rule on the same subject  
38 as the rule change that has been reversed.

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

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

3 **Comment.** Section 4365 continues former Section 1357.140 without change, except that cross-  
4 references are updated to reflect the new location of referenced provisions, and a reference to  
5 former Section 1350.7 is replaced with a reference to the provision governing general notice  
6 (Section 4045).

7 **§ 4370 (UNCHANGED). Applicability of article to changes commenced before and after**  
8 **January 1, 2004**

9 4370. (a) This article applies to a rule change commenced on or after January 1,  
10 2004.

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

13 (c) For the purposes of this section, a rule change is commenced when the board  
14 of directors of the association takes its first official action leading to adoption of  
15 the rule change.

16 **Comment.** Section 4370 continues former Section 1357.150 without change. See Section 4180  
17 (“rule change”).

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

19 **Article 1. Ownership Rights and Interests**

20 **§ 4500 (UNCHANGED). Ownership of common area**

21 4500. Unless the declaration otherwise provides, in a condominium project, or in  
22 a planned development in which the common areas are owned by the owners of  
23 the separate interests, the common areas are owned as tenants in common, in equal  
24 shares, one for each unit or lot.

25 **Comment.** Section 4500 restates former Section 1362 without change.

26 **§ 4505 (UNCHANGED). Appurtenant rights and easements**

27 4505. Unless the declaration otherwise provides:

28 (a) In a community apartment project and condominium project, and in those  
29 planned developments with common areas owned in common by the owners of the  
30 separate interests, there are appurtenant to each separate interest nonexclusive  
31 rights of ingress, egress, and support, if necessary, through the common areas. The  
32 common areas are subject to these rights.

33 (b) In a stock cooperative, and in a planned development with common areas  
34 owned by the association, there is an easement for ingress, egress, and support, if  
35 necessary, appurtenant to each separate interest. The common areas are subject to  
36 these easements.

37 **Comment.** Section 4505 restates former Section 1361 without change.

1 **§ 4510 (REVISED). Access to separate interest property**

2 4510. Except as otherwise provided in law, an order of the court, or an order  
3 pursuant to a final and binding arbitration decision, an association may not deny  
4 an owner or occupant physical access to the owner's or occupant's separate  
5 interest, either by restricting access through the common areas to the separate  
6 interest, or by restricting access solely to the separate interest.

7 **Comment.** Section 4510 continues former Section 1361.5 without change, except that: (1) The  
8 phrase "his or her" has been replaced with "the owner's or occupant's." (2) References to the  
9 "owner's" separate interest have been revised to omit the word "owner's." This will help to avoid  
10 any implication that the reference does not also apply to an "occupant" of a separate interest.

11 **Staff Note.** Although it is clear that Section 1361.5 is intended to protect both owners and  
12 occupants of separate interests, that section twice refers to the "owner's separate interest,"  
13 without any reference to an occupant. That could create the impression that the Legislature  
14 intended to draw some sort of distinction between owners and occupants, with the staff does not  
15 believe to be the case. Proposed Section 4510 would adjust the language of Section 1361.5 to  
16 avoid that implication.

17 **Article 2. Transfer Disclosure**

18 **§ 4525 (REVISED). Disclosure to prospective purchaser**

19 4525. As soon as practicable before the transfer of title to a separate interest or  
20 the execution of a real property sales contract for a separate interest, as defined in  
21 Section 2985, the owner of the separate interest, other than an owner subject to the  
22 requirements of Section 11018.6 of the Business and Professions Code, shall  
23 provide the following documents to the prospective purchaser:

24 (a) A copy of the governing documents of the common interest development,  
25 including any operating rules, and including a copy of the association's articles of  
26 incorporation, or, if not incorporated, a statement in writing from an authorized  
27 representative of the association that the association is not incorporated.

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

33 (c) A copy of the most recent documents distributed pursuant to Article 7  
34 (commencing with Section 5300) of Chapter 5.

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

1 interest in a common interest development pursuant to Article 5 (commencing  
2 with Section 5650) of Chapter 6.

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

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

18 (g) A copy of the latest information provided for in Section 6100.

19 (h) Any change in the association's current regular and special assessments and  
20 fees which have been approved by the association's board of directors, but have  
21 not become due and payable as of the date disclosure is provided pursuant to this  
22 subdivision.

23 **Comment.** The introductory clause of Section 4525 restates the substance of former Section  
24 1368(a) without change.

25 Subdivisions (a)-(h) continue paragraphs (1) to (8) of subdivision (a) of former Section 1368  
26 without change, except that cross-references are updated to reflect the new location of the  
27 referenced provisions.

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

32 **Staff Note.** The first paragraph of proposed Section 4525 restates the first paragraph of  
33 Section 1368(a), to improve its clarity.

34 Subdivision (d) replaces the existing reference to "Section 1367 or 1367.1" with a reference to  
35 "Article 5 (commencing with Section 5650) of Chapter 6." That reference encompasses all of the  
36 provisions of former Sections 1367 and 1367.1 under which assessment debt and related charges  
37 "may be made a lien."

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

39 **§ 4530 (UNCHANGED). Information to be provided by association**

40 4530. (a) Upon written request, an association shall, within 10 days of the  
41 mailing or delivery of the request, provide the owner of a separate interest with a  
42 copy of the requested items specified in Section 4525.

43 (b) The items required to be made available pursuant to this section may be  
44 maintained in electronic form and requesting parties shall have the option of

1 receiving them by electronic transmission or machine readable storage media if  
2 the association maintains these items in electronic form.

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

5 **Comment.** Section 4530 continues former Section 1368(b) without change, except that  
6 subdivisions are added and a cross-reference is updated to reflect the location of the referenced  
7 provision.

8 **§ 4535 (UNCHANGED). Related requirements**

9 4535. In addition to the requirements of this article, an owner transferring title to  
10 a separate interest shall comply with applicable requirements of Sections 1133 and  
11 1134.

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

14 **§ 4540 (UNCHANGED). Enforcement of article**

15 4540. Any person or entity who willfully violates this article is liable to the  
16 purchaser of a separate interest that is subject to this section for actual damages  
17 occasioned thereby and, in addition, shall pay a civil penalty in an amount not to  
18 exceed five hundred dollars (\$500). In an action to enforce this liability, the  
19 prevailing party shall be awarded reasonable attorneys' fees.

20 **Comment.** Section 4540 restates former Section 1368(d) without change, except that "section"  
21 is replaced with "article."

22 **§ 4545 (UNCHANGED). Validity of title unaffected**

23 4545. Nothing in this article affects the validity of title to real property  
24 transferred in violation of this article.

25 **Comment.** Section 4545 restates former Section 1368(e) without change, except that "section"  
26 is replaced with "article."

27 **Article 3. Transfer Fee**

28 **§ 4575 (UNCHANGED). Transfer fee**

29 4575. Subject to the provisions of Section 4580, neither an association nor a  
30 community service organization or similar entity may impose or collect any  
31 assessment, penalty, or fee in connection with a transfer of title or any other  
32 interest except for the following:

33 (a) An amount not to exceed the association's actual costs to change its records.

34 (b) An amount authorized by Section 4530.

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

1 **§ 4580 (REVISED). Exemption from transfer fee limitations**

2 4580. Section 4575 does not apply to a community service organization or  
3 similar entity of either of the following types:

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

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

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

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

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

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

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

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

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

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

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

25 **Article 4. Restrictions on Transfers**

26 **§ 4600 (REVISED). Grant of exclusive use**

27 4600. (a) Unless the governing documents specify a different percentage, the  
28 affirmative vote of members owning at least 67 percent of the separate interests in  
29 the common interest development shall be required before the board of directors  
30 may grant exclusive use of any portion of the common area to a member.

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

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

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

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

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

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

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

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

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

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

17 **Comment.** Section 4600 restates former Section 1363.07 without change, with the following  
18 exceptions: (1) The section is no longer limited in its application to a common area that the  
19 association owns or in which the association has an easement right. It now also applies to  
20 common area that is owned by the members as tenants in common. (2) An introductory clause is  
21 added in subdivision (b), to introduce the list of exceptions. (3) The substance of former  
22 subdivision (a)(3)(F) is continued in Section 4025.

23 **Staff Note.** Proposed Section 4600 is revised to expand its scope, improve its organization,  
24 and to relocate an exemption for nonresidential CIDs (to proposed Section 4025).

25 **§ 4605 (REVISED). Civil action to enforce Section 4600**

26 4605. (a) A member of an association may bring a civil action for declaratory or  
27 equitable relief for a violation of Section 4600 by the association, including, but  
28 not limited to, injunctive relief, restitution, or a combination thereof, within one  
29 year of the date the cause of action accrues.

30 (b) A member who prevails in a civil action to enforce the member's rights  
31 pursuant to Section 4600 shall be entitled to reasonable attorney's fees and court  
32 costs, and the court may impose a civil penalty of up to five hundred dollars  
33 (\$500) for each violation, except that each identical violation shall be subject to  
34 only one penalty if the violation affects each member of the association equally. A  
35 prevailing association shall not recover any costs, unless the court finds the action  
36 to be frivolous, unreasonable, or without foundation.

37 **Comment.** Section 4605 restates former Section 1363.09(a)-(b) without change, except that:  
38 (1) The phrase "an association of which he or she is a member" has been replaced with "the  
39 association." (2) "This article" has been replaced with "Section 4600." (3) The phrase "his or her"  
40 has been replaced with "the member's." (4) The second sentence of former Section 1363.09(a)  
41 has not been continued because it is irrelevant to judicial enforcement of this article.

42 **Staff Note.** Proposed Section 4605 would generally continue the judicial enforcement  
43 provisions of existing Section 1363.09 as they apply to existing Section 1363.07, but it would not

1 continue provisions specific to member elections (the second sentence of Section 1363.09(a), and  
2 all of subdivision (c)).

3 **§ 4610 (UNCHANGED). Partition of condominium project**

4 4610. (a) Except as provided in this section, the common areas in a  
5 condominium project shall remain undivided, and there shall be no judicial  
6 partition thereof. Nothing in this section shall be deemed to prohibit partition of a  
7 cotenancy in a condominium.

8 (b) The owner of a separate interest in a condominium project may maintain a  
9 partition action as to the entire project as if the owners of all of the separate  
10 interests in the project were tenants in common in the entire project in the same  
11 proportion as their interests in the common areas. The court shall order partition  
12 under this subdivision only by sale of the entire condominium project and only  
13 upon a showing of one of the following:

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

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

21 (3) The project has been in existence more than 50 years, is obsolete and  
22 uneconomic, and owners of separate interests holding in the aggregate more than a  
23 50-percent interest in the common area oppose repair or restoration of the project.

24 (4) The conditions for such a sale, set forth in the declaration, have been met.

25 **Comment.** Section 4610 continues former Section 1359 without change.

26 **§ 4615 (UNCHANGED). Lien for work performed in condominium project**

27 4615. (a) In a condominium project, no labor performed or services or materials  
28 furnished with the consent of, or at the request of, an owner in the condominium  
29 project or the owners' agent or contractor shall be the basis for the filing of a lien  
30 against any other property of any other owner in the condominium project unless  
31 that other owner has expressly consented to or requested the performance of the  
32 labor or furnishing of the materials or services. However, express consent shall be  
33 deemed to have been given by the owner of any condominium in the case of  
34 emergency repairs thereto.

35 (b) Labor performed or services or materials furnished for the common areas, if  
36 duly authorized by the association, shall be deemed to be performed or furnished  
37 with the express consent of each condominium owner.

38 (c) The owner of any condominium may remove the owner's condominium  
39 from a lien against two or more condominiums or any part thereof by payment to  
40 the holder of the lien of the fraction of the total sum secured by the lien which is  
41 attributable to the owner's condominium.



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

3 **Comment.** Section 4645 continues the next to last paragraph of former Section 1358 without  
4 change, except that “section” is replaced with “article.”

5 **§ 4650 (UNCHANGED). Severability of interests**

6 4650. Any restrictions upon the severability of the component interests in real  
7 property which are contained in the declaration shall not be deemed conditions  
8 repugnant to the interest created within the meaning of Section 711. However,  
9 these restrictions shall not extend beyond the period in which the right to partition  
10 a project is suspended under Section 4610.

11 **Comment.** Section 4650 continues the last paragraph of former Section 1358 without change,  
12 except that: (1) A superfluous reference to the “Civil Code” is omitted. (2) The cross-reference is  
13 updated to reflect the new location of the referenced provision.

14 **CHAPTER 4. PROPERTY USE AND MAINTENANCE**

15 **Article 1. Use of Separate Interest**

16 **§ 4700 (NEW). Application of article**

17 4700. This article includes provisions that limit the authority of an association to  
18 regulate the use of a member’s separate interest. Nothing in this article is intended  
19 to affect the application of any other provision that limits the authority of an  
20 association to regulate the use of a member’s separate interest, including, but not  
21 limited to, the following provisions:

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

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

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

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

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

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

32 **Comment.** Section 4700 is new. It provides a non-exclusive list of provisions outside of this  
33 part that limit the authority of an association to regulate separate interest property use.

34 **Staff Note.** Proposed Section 4700 is new. It introduces the article and lists other provisions  
35 that protect separate interest use rights.

36 **§ 4705 (UNCHANGED). Display of U.S. flag**

37 4705. (a) Except as required for the protection of the public health or safety, no  
38 declaration or other governing document shall limit or prohibit, or be construed to

1 limit or prohibit, the display of the flag of the United States by an owner on or in  
2 the owner's separate interest or within the owner's exclusive use common area.

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

8 (c) In any action to enforce this section, the prevailing party shall be awarded  
9 reasonable attorneys' fees and costs.

10 **Comment.** Section 4705 continues former Section 1353.5 without change, except that a  
11 superfluous cross-reference to governing definitions is omitted.

12 **§ 4710 (UNCHANGED). Noncommercial sign**

13 4710. (a) The governing documents, including the operating rules, may not  
14 prohibit posting or displaying of noncommercial signs, posters, flags, or banners  
15 on or in an owner's separate interest, except as required for the protection of  
16 public health or safety or if the posting or display would violate a local, state, or  
17 federal law.

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

24 (c) An association may prohibit noncommercial signs and posters that are more  
25 than 9 square feet in size and noncommercial flags or banners that are more than  
26 15 square feet in size.

27 **Comment.** Section 4710 continues former Section 1353.6 without change.  
28

29 **§ 4715 (UNCHANGED). Pets**

30 4715. (a) No governing documents shall prohibit the owner of a separate interest  
31 within a common interest development from keeping at least one pet within the  
32 common interest development, subject to reasonable rules and regulations of the  
33 association. This section may not be construed to affect any other rights provided  
34 by law to an owner of a separate interest to keep a pet within the development.

35 (b) For purposes of this section, "pet" means any domesticated bird, cat, dog,  
36 aquatic animal kept within an aquarium, or other animal as agreed to between the  
37 association and the homeowner.

38 (c) If the association implements a rule or regulation restricting the number of  
39 pets an owner may keep, the new rule or regulation shall not apply to prohibit an  
40 owner from continuing to keep any pet that the owner currently keeps in the

1 owner's separate interest if the pet otherwise conforms with the previous rules or  
2 regulations relating to pets.

3 (d) For the purposes of this section, "governing documents" shall include, but  
4 are not limited to, the conditions, covenants, and restrictions of the common  
5 interest development, and the bylaws, rules, and regulations of the association.

6 (e) This section shall become operative on January 1, 2001, and shall only apply  
7 to governing documents entered into, amended, or otherwise modified on or after  
8 that date.

9 **Comment.** Section 4715 continues former Section 1360.5 without change, except that "his or  
10 her" has been replaced with "the owner's" in subdivision (c).

11 **§ 4720 (UNCHANGED). Roofing materials**

12 4720. (a) No common interest development may require a homeowner to install  
13 or repair a roof in a manner that is in violation of Section 13132.7 of the Health  
14 and Safety Code.

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

23 **Comment.** Section 4720 continues former Section 1353.7 without change. See also Section  
24 4765(a)(3) ("Notwithstanding a contrary provision of the governing documents, a decision on a  
25 proposed change may not violate any governing provision of law, including, but not limited to,  
26 the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3  
27 of Title 2 of the Government Code), or a building code or other applicable law governing land use  
28 or public safety.").

29 **§ 4725 (UNCHANGED). Television antenna or satellite dish**

30 4725. (a) Any covenant, condition, or restriction contained in any deed, contract,  
31 security instrument, or other instrument affecting the transfer or sale of, or any  
32 interest in, a common interest development that effectively prohibits or restricts  
33 the installation or use of a video or television antenna, including a satellite dish, or  
34 that effectively prohibits or restricts the attachment of that antenna to a structure  
35 within that development where the antenna is not visible from any street or  
36 common area, except as otherwise prohibited or restricted by law, is void and  
37 unenforceable as to its application to the installation or use of a video or television  
38 antenna that has a diameter or diagonal measurement of 36 inches or less.

39 (b) This section shall not apply to any covenant, condition, or restriction, as  
40 described in subdivision (a), that imposes reasonable restrictions on the  
41 installation or use of a video or television antenna, including a satellite dish, that  
42 has a diameter or diagonal measurement of 36 inches or less. For purposes of this

1 section, “reasonable restrictions” means those restrictions that do not significantly  
2 increase the cost of the video or television antenna system, including all related  
3 equipment, or significantly decrease its efficiency or performance and include all  
4 of the following:

5 (1) Requirements for application and notice to the association prior to the  
6 installation.

7 (2) Requirement of the owner of a separate interest, as defined in Section 4185,  
8 to obtain the approval of the association for the installation of a video or television  
9 antenna that has a diameter or diagonal measurement of 36 inches or less on a  
10 separate interest owned by another.

11 (3) Provision for the maintenance, repair, or replacement of roofs or other  
12 building components.

13 (4) Requirements for installers of a video or television antenna to indemnify or  
14 reimburse the association or its members for loss or damage caused by the  
15 installation, maintenance, or use of a video or television antenna that has a  
16 diameter or diagonal measurement of 36 inches or less.

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

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

25 **Comment.** Section 4725 restates former Section 1376 without change. See also 47 C.F.R. §  
26 1.4000.

27 **Staff Note:** In prior comments, it has been suggested that existing Section 1376 is largely  
28 preempted by the FCC regulation cited in the Comment above and should not be continued. See  
29 Memorandum 2008-43, p. 43. The staff requests public comment on the merits of that suggestion.

30 **§ 4730 (REVISED). Marketing restriction**

31 4730. (a) Any governing document of an association that arbitrarily or  
32 unreasonably restricts an owner’s ability to market the owner’s interest in a  
33 common interest development is void.

34 (b) No association may adopt, enforce, or otherwise impose any governing  
35 document that does either of the following:

36 (1) Imposes an assessment or fee in connection with the marketing of an  
37 owner’s interest in an amount that exceeds the association’s actual or direct costs.  
38 That assessment or fee shall be deemed to violate the limitation set forth in  
39 subdivision (b) of Section 5600.

40 (2) Establishes an exclusive relationship with a real estate broker through which  
41 the sale or marketing of interests in the development is required to occur. The  
42 limitation set forth in this paragraph does not apply to the sale or marketing of

1 separate interests owned by the association or to the sale or marketing of common  
2 areas by the association.

3 (c) For purposes of this section, “market” and “marketing” mean listing,  
4 advertising, or obtaining or providing access to show the owner’s interest in the  
5 development.

6 (d) This section does not apply to rules or regulations made pursuant to Section  
7 712 or 713 regarding real estate signs.

8 **Comment.** Section 4730 continues former Section 1368.1 without change, except that: (1) The  
9 phrase “rule or regulation” has been replaced with “governing document.” This broadens the  
10 application of the section so that it governs any provision in the governing documents and not just  
11 an operating rule. (2) The phrase “his or her” has been replaced with “the owner’s” in subdivision  
12 (a).

13 **Staff Note.** Proposed Section 4730 would be broadened to apply to any governing document,  
14 and not just to a “rule or regulation” (which is unclear and may only encompass an operating  
15 rule).

16 **§ 4755 (UNCHANGED). Low water-using plants**

17 4755. The architectural guidelines of a common interest development shall not  
18 prohibit or include conditions that have the effect of prohibiting the use of low  
19 water-using plants as a group.

20 **Comment.** Section 4755 continues former Section 1353.8 without change.

21 **Article 2. Modification of Separate Interest**

22 **§ 4760 (REVISED). Improvements to separate interest**

23 4760. (a) Subject to the governing documents and applicable law, the owner of a  
24 separate interest may do the following:

25 (1) Make any improvement or alteration within the boundaries of the separate  
26 interest that do not impair the structural integrity or mechanical systems or lessen  
27 the support of any portions of the common interest development.

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

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

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

39 (C) Modifications external to the dwelling shall not prevent reasonable passage  
40 by other residents, and shall be removed by the owner when the separate interest is

1 no longer occupied by persons requiring those modifications who are blind,  
2 visually handicapped, deaf, or physically disabled.

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

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

10 **Comment.** Section 4760 continues former Section 1360 without change, except that: (1) The  
11 scope of the provision is broadened to apply to any separate interest, and not just a unit in a  
12 condominium project. (2) The phrase “his or her” is not continued in subdivision (a)(2)(D).

13 See also Section 4765 (association decision on modification of separate interest must comply  
14 with Fair Employment and Housing Act); Gov’t Code § 12927 (accommodation of disability  
15 under Fair Employment and Housing Act).

16 **Staff Note.** Proposed Section 4760 broadens the scope of Section 1360 to include all CIDs,  
17 and not just condominiums. References to “units” are replaced with references to “separate  
18 interests.” References to condominium associations are changed to refer to associations generally.

19 **§ 4765 (UNCHANGED). Architectural review and decision making**

20 4765. (a) This section applies if an association’s governing documents require  
21 association approval before an owner of a separate interest may make a physical  
22 change to the owner’s separate interest or to the common area. In reviewing and  
23 approving or disapproving a proposed change, the association shall satisfy the  
24 following requirements:

25 (1) The association shall provide a fair, reasonable, and expeditious procedure  
26 for making its decision. The procedure shall be included in the association’s  
27 governing documents. The procedure shall provide for prompt deadlines. The  
28 procedure shall state the maximum time for response to an application or a request  
29 for reconsideration by the board of directors.

30 (2) A decision on a proposed change shall be made in good faith and may not be  
31 unreasonable, arbitrary, or capricious.

32 (3) Notwithstanding a contrary provision of the governing documents, a decision  
33 on a proposed change may not violate any governing provision of law, including,  
34 but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing  
35 with Section 12900) of Division 3 of Title 2 of the Government Code), or a  
36 building code or other applicable law governing land use or public safety.

37 (4) A decision on a proposed change shall be in writing. If a proposed change is  
38 disapproved, the written decision shall include both an explanation of why the  
39 proposed change is disapproved and a description of the procedure for  
40 reconsideration of the decision by the board of directors.

41 (5) If a proposed change is disapproved, the applicant is entitled to  
42 reconsideration by the board of directors of the association that made the decision,  
43 at an open meeting of the board. This paragraph does not require reconsideration

1 of a decision that is made by the board of directors or a body that has the same  
2 membership as the board of directors, at a meeting that satisfies the requirements  
3 of Article 2 (commencing with Section 4900) of Chapter 5. Reconsideration by the  
4 board does not constitute dispute resolution within the meaning of Section 5905.

5 (b) Nothing in this section authorizes a physical change to the common area in a  
6 manner that is inconsistent with an association's governing documents, unless the  
7 change is required by law.

8 (c) An association shall annually provide its members with notice of any  
9 requirements for association approval of physical changes to property. The notice  
10 shall describe the types of changes that require association approval and shall  
11 include a copy of the procedure used to review and approve or disapprove a  
12 proposed change.

13 **Comment.** Section 4765 continues former Section 1378 without change.

### 14 Article 3. Maintenance

#### 15 § 4775 (UNCHANGED). Maintenance responsibility generally

16 4775. (a) Unless otherwise provided in the declaration of a common interest  
17 development, the association is responsible for repairing, replacing, or maintaining  
18 the common areas, other than exclusive use common areas, and the owner of each  
19 separate interest is responsible for maintaining that separate interest and any  
20 exclusive use common area appurtenant to the separate interest.

21 (b) The costs of temporary relocation during the repair and maintenance of the  
22 areas within the responsibility of the association shall be borne by the owner of the  
23 separate interest affected.

24 **Comment.** Subdivision (a) of Section 4775 continues former Section 1364(a) without change.

25 Subdivision (b) continues former Section 1364(c) without change.

#### 26 § 4780 (REVISED). Wood-destroying pests or organisms

27 4780. (a) In a community apartment project, condominium project, or stock  
28 cooperative, unless otherwise provided in the declaration, the association is  
29 responsible for the repair and maintenance of the common area occasioned by the  
30 presence of wood-destroying pests or organisms.

31 (b) In a planned development, unless a different maintenance scheme is  
32 provided in the declaration, each owner of a separate interest is responsible for the  
33 repair and maintenance of that separate interest as may be occasioned by the  
34 presence of wood-destroying pests or organisms. Upon approval of the majority of  
35 all members of the association (Section 4065), that responsibility may be  
36 delegated to the association, which shall be entitled to recover the cost thereof as a  
37 special assessment.

38 **Comment.** Subdivision (a) of Section 4780 continues former Section 1364(b)(1) without  
39 change, except that a superfluous cross-reference to governing definitions has not been continued.

1 Subdivision (b) continues former Section 1364(b)(2) without change, except that: (1) A  
2 superfluous cross-reference to a governing definition has not been continued. (2) A cross-  
3 reference to Section 4065 is added. (3) The last sentence is revised to avoid use of the word  
4 “such.”

5 **☞ Staff Note.** The last sentence of Section 1364(b)(2) has been restated, in proposed Section  
6 4780(b), to avoid use of the word “such.” Standard legislative drafting practice is to avoid the use  
7 of “such” as a shorthand reference for a previously described thing.

8 **§ 4785 (UNCHANGED). Temporary removal of occupant to perform treatment of wood-**  
9 **destroying pests**

10 4785. (a) The association may cause the temporary, summary removal of any  
11 occupant of a common interest development for such periods and at such times as  
12 may be necessary for prompt, effective treatment of wood-destroying pests or  
13 organisms.

14 (b) The association shall give notice of the need to temporarily vacate a separate  
15 interest to the occupants and to the owners, not less than 15 days nor more than 30  
16 days prior to the date of the temporary relocation. The notice shall state the reason  
17 for the temporary relocation, the date and time of the beginning of treatment, the  
18 anticipated date and time of termination of treatment, and that the occupants will  
19 be responsible for their own accommodations during the temporary relocation.

20 (c) Notice by the association shall be deemed complete upon either:

21 (1) Personal delivery of a copy of the notice to the occupants, and sending a  
22 copy of the notice to the owners, if different than the occupants, by first-class  
23 mail, postage prepaid at the most current address shown on the books of the  
24 association.

25 (2) By sending a copy of the notice to the occupants at the separate interest  
26 address and a copy of the notice to the owners, if different than the occupants, by  
27 first-class mail, postage prepaid, at the most current address shown on the books  
28 of the association.

29 (d) For purposes of this section, “occupant” means an owner, resident, guest,  
30 invitee, tenant, lessee, sublessee, or other person in possession on the separate  
31 interest.

32 **Comment.** Section 4785 continues former Section 1364(d)-(e) without change.

33 **§ 4790 (REVISED). Exclusive use communication wiring**

34 4790. (a) Notwithstanding the provisions of the declaration, the owner of a  
35 separate interest is entitled to reasonable access to the common areas for the  
36 purpose of maintaining the internal and external communication wiring made part  
37 of the exclusive use common areas of a separate interest pursuant to subdivision  
38 (c) of Section 4145. The access shall be subject to the consent of the association,  
39 whose approval shall not be unreasonably withheld, and which may include the  
40 association’s approval of telephone wiring upon the exterior of the common areas,  
41 and other conditions as the association determines reasonable.

1 (b) For the purposes of this section, “wiring” includes nonmetallic transmission  
2 lines.

3 **Comment.** Subdivision (a) of Section 4790 continues former Section 1364(f) without change,  
4 except that: (1) The reference to “telephone wiring” has been generalized to accommodate non-  
5 telephonic communication wiring. (2) A cross-reference is updated to reflect the new location of  
6 the referenced provision.

7 Subdivision (b) is new.

8  **Staff Note.** Proposed Section 4790 would expand the scope of Section 1364(f) slightly, to  
9 include non-telephonic communication wiring (e.g., Ethernet) and non-metallic lines (e.g., fiber-  
10 optic).

11 CHAPTER 5. ASSOCIATION GOVERNANCE

12 Article 1. Association Existence and Powers

13 § 4800 (UNCHANGED). Association

14 4800. A common interest development shall be managed by an association that  
15 may be incorporated or unincorporated. The association may be referred to as a  
16 community association.

17 **Comment.** Section 4800 continues former Section 1363(a) without change.

18 § 4805 (UNCHANGED). Association powers

19 4805. (a) Unless the governing documents provide otherwise, and regardless of  
20 whether the association is incorporated or unincorporated, the association may  
21 exercise the powers granted to a nonprofit mutual benefit corporation, as  
22 enumerated in Section 7140 of the Corporations Code, except that an  
23 unincorporated association may not adopt or use a corporate seal or issue  
24 membership certificates in accordance with Section 7313 of the Corporations  
25 Code.

26 (b) The association, whether incorporated or unincorporated, may exercise the  
27 powers granted to an association in this part.

28 **Comment.** Section 4805 restates former Section 1363(c) without change, except that  
29 subdivisions are added and “title” is replaced with “part.”

30 § 4810 (UNCHANGED). Standing

31 4810. An association established to manage a common interest development has  
32 standing to institute, defend, settle, or intervene in litigation, arbitration,  
33 mediation, or administrative proceedings in its own name as the real party in  
34 interest and without joining with it the individual owners of the common interest  
35 development, in matters pertaining to the following:

36 (a) Enforcement of the governing documents.

37 (b) Damage to the common area.

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

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

6 **Comment.** Section 4810 continues former Section 1368.3 without change.

7 **§ 4815 (UNCHANGED). Comparative fault**

8 4815. (a) In an action maintained by an association pursuant to subdivision (b),  
9 (c), or (d) of Section 4810, the amount of damages recovered by the association  
10 shall be reduced by the amount of damages allocated to the association or its  
11 managing agents in direct proportion to their percentage of fault based upon  
12 principles of comparative fault. The comparative fault of the association or its  
13 managing agents may be raised by way of defense, but shall not be the basis for a  
14 cross-action or separate action against the association or its managing agents for  
15 contribution or implied indemnity, where the only damage was sustained by the  
16 association or its members. It is the intent of the Legislature in enacting this  
17 subdivision to require that comparative fault be pleaded as an affirmative defense,  
18 rather than a separate cause of action, where the only damage was sustained by the  
19 association or its members.

20 (b) In an action involving damages described in subdivision (b), (c), or (d) of  
21 Section 4810, the defendant or cross-defendant may allege and prove the  
22 comparative fault of the association or its managing agents as a setoff to the  
23 liability of the defendant or cross-defendant even if the association is not a party to  
24 the litigation or is no longer a party whether by reason of settlement, dismissal, or  
25 otherwise.

26 (c) Subdivisions (a) and (b) apply to actions commenced on or after January 1,  
27 1993.

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

31 **Comment.** Section 4815 continues former Section 1368.4 without change.

32 **§ 4820 (UNCHANGED). Joint neighborhood association**

33 4820. Whenever two or more associations have consolidated any of their  
34 functions under a joint neighborhood association or similar organization, members  
35 of each participating association shall be (1) entitled to attend all meetings of the  
36 joint association other than executive sessions, (2) given reasonable opportunity  
37 for participation in those meetings, and (3) entitled to the same access to the joint  
38 association's records as they are to the participating association's records.

39 **Comment.** Section 4820 continues former Section 1363(i) without change.

Article 2. Board Meeting

§ 4900 (UNCHANGED). Short title

4900. This article shall be known and may be cited as the Common Interest Development Open Meeting Act.

**Comment.** Section 4900 continues former Section 1363.05(a) without change, except that “section” is changed to “article.”

§ 4920 (REVISED). Notice of board meeting

4920. (a) Unless the time and place of meeting is fixed by the governing documents, or unless the governing documents provide for a longer period of notice, members shall be given notice of the time and place of a board meeting, except for an emergency meeting, at least four days prior to the meeting. Notice shall be given by general delivery (Section 4045). The notice shall contain the agenda for the meeting.

(b) An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by this section.

(c) If the association is organized as a nonprofit mutual benefit corporation, notice of a board meeting is also governed by Section 7211 of the Corporations Code.

**Comment.** Subdivision (a) of Section 4920 continues former Section 1363.05(f) without change, except that: (1) References to the definition of “meeting” have been replaced with the defined term “board meeting.” (2) References to “bylaws” have been replaced with references to “governing documents,” to broaden the scope of the provision. (3) Specific rules on delivery of notice are replaced with a functionally equivalent requirement that notice be given by “general delivery,” pursuant to Section 4045.

Subdivision (b) restates former Section 1363.05(g) without change.

Subdivision (c) is new.

**Staff Note.** Proposed Section 4920 would make three minor changes to the rules governing notice of a board meeting: (1) The operation of existing Section 1363.05(f) is conditioned on whether the board meeting schedule is fixed in the association’s bylaws. Proposed Section 4920 would expand the scope of that condition, to include any governing document that fixes the board’s meeting schedule. That should better reflect the fact that documents other than the bylaws can be used to address such matters. (2) Existing Section 1363.05(f) specifies detailed procedures for delivery of notice. Those procedures are functionally equivalent to the requirements specified for general delivery of notices in proposed Section 4045. The specific details are replaced with a reference to the requirements of that section. (3) A cross-reference is added to alert readers that an incorporated association will also need to consider applicable provisions of the Corporations Code when giving notice of a board meeting.

§ 4925 (REVISED). Board meeting open

4925. (a) Any member of the association may attend meetings of the board of directors of the association, except when the board adjourns to executive session.

1 (b) The board of directors of the association shall permit any member of the  
2 association to speak at any meeting of the association or the board of directors,  
3 except for meetings of the board held in executive session. A reasonable time limit  
4 for all members of the association to speak to the board of directors or before a  
5 meeting of the association shall be established by the board of directors.

6 **Comment.** Subdivision (a) of Section 4925 continues part of the first sentence of former  
7 Section 1363.05(b), without substantive change. It does not continue language specifying when a  
8 board may meet in executive session. The substance of that language is continued in Section  
9 4935.

10 Subdivision (b) continues former Section 1363.05(h) without change.

11 **Staff Note.** (1) Proposed Sections 4925(a) would continue only part of the substance of the  
12 first sentence of existing Section 1363.05(b). The remaining substance, relating to closed  
13 sessions, would be continued in proposed Section 4935.

14 (2) Specific notice posting requirements would be replaced with a reference to the provision  
15 governing general notice delivery. That accomplishes the same objective, with greater flexibility.

16 **§ 4930 (REVISED). Limitation on meeting content**

17 4930. (a) Except as described in paragraphs (b) to (e), inclusive, the board of  
18 directors of the association may not discuss or take action on any item at a  
19 nonemergency meeting unless the item was placed on the agenda included in the  
20 notice that was distributed pursuant to subdivision (a) of Section 4920. This  
21 subdivision does not prohibit a resident who is not a member of the board from  
22 speaking on issues not on the agenda.

23 (b) Notwithstanding subdivision (a), a member of the board of directors, a  
24 managing agent or other agent of the board of directors, or a member of the staff  
25 of the board of directors, may do any of the following:

26 (1) Briefly respond to statements made or questions posed by a person speaking  
27 at a meeting as described in subdivision (b) of Section 4925.

28 (2) Ask a question for clarification, make a brief announcement, or make a brief  
29 report on the person's own activities, whether in response to questions posed by a  
30 member of the association or based upon the person's own initiative.

31 (c) Notwithstanding subdivision (a), the board of directors or a member of the  
32 board of directors, subject to rules or procedures of the board of directors, may do  
33 any of the following:

34 (1) Provide a reference to, or provide other resources for factual information to,  
35 its managing agent or other agents or staff.

36 (2) Request its managing agent or other agents or staff to report back to the  
37 board of directors at a subsequent meeting concerning any matter, or take action to  
38 direct its managing agent or other agents or staff to place a matter of business on a  
39 future agenda.

40 (3) Direct its managing agent or other agents or staff to perform administrative  
41 tasks that are necessary to carry out this section.

1 (d) Notwithstanding subdivision (a), the board of directors may take action on  
2 any item of business not appearing on the agenda distributed pursuant to Section  
3 subdivision (a) of Section 4920 under any of the following conditions:

4 (1) Upon a determination made by a majority of the board of directors present at  
5 the meeting that an emergency situation exists. An emergency situation exists if  
6 there are circumstances that could not have been reasonably foreseen by the board,  
7 that require immediate attention and possible action by the board, and that, of  
8 necessity, make it impracticable to provide notice.

9 (2) Upon a determination made by the board by a vote of two-thirds of the  
10 members present at the meeting, or, if less than two-thirds of total membership of  
11 the board is present at the meeting, by a unanimous vote of the members present,  
12 that there is a need to take immediate action and that the need for action came to  
13 the attention of the board after the agenda was distributed pursuant to subdivision  
14 (a) of Section 4920.

15 (3) The item appeared on an agenda that was distributed pursuant to subdivision  
16 (a) of Section 4920 for a prior meeting of the board of directors that occurred not  
17 more than 30 calendar days before the date that action is taken on the item and, at  
18 the prior meeting, action on the item was continued to the meeting at which the  
19 action is taken.

20 (e) Before discussing any item pursuant to subdivision (d), the board of directors  
21 shall openly identify the item to the members in attendance at the meeting.

22 **Comment.** Section 4930 continues former Section 1363.05(i) without change, except that: (1)  
23 References to “posting” of notice has been omitted throughout. Section 4920 does not require that  
24 notice be “posted.” (2) The numbering of the paragraphs of the former provision has been  
25 simplified. (3) Statutory references have been updated to reflect the new location of the  
26 referenced provision. (4) The phrase “his or her” has been replaced in subdivision (b)(2) with “the  
27 person’s.”

28 **Staff Note.** Existing Section 1363.05 requires that meeting notice be “posted.” Proposed  
29 Section 4920 would provide greater flexibility, replacing the “posting” requirement with a  
30 requirement that a meeting notice be distributed pursuant to the rules governing a general notice.  
31 Consistent with that minor change, proposed Section 4930(a) does not continue references to  
32 “posting” of the meeting notice.

33 **§ 4935 (REVISED). Executive session**

34 4935. (a) The board may meet in executive session to consider litigation, matters  
35 relating to the formation of contracts with third parties, member discipline,  
36 personnel matters, or to meet with a member, upon the member’s request,  
37 regarding the member’s payment of assessments, as specified in Section 5665.

38 (b) The board of directors of the association shall meet in executive session, if  
39 requested by a member who may be subject to a fine, penalty, or other form of  
40 discipline, and the member shall be entitled to attend the executive session.

41 (c) The board of directors of the association shall meet in executive session to  
42 discuss a payment plan pursuant to Section 5665.

1 (d) The board of directors of the association shall meet in executive session to  
2 decide whether to foreclose on a lien pursuant to subdivision (b) of Section 5705.

3 (e) Any matter discussed in executive session shall be generally noted in the  
4 minutes of the immediately following meeting that is open to the entire  
5 membership.

6 **Comment.** Subdivision (a) of Section 4935 continues part of the first sentence of former  
7 Section 1363.05(b), without substantive change. The remainder of the former sentence is  
8 continued without substantive change in Section 4925(a).

9 Subdivision (b) continues the second sentence of former Section 1363.05(b) without change.

10 Subdivision (c) is new. It provides a cross-reference to a provision requiring that the board  
11 meet in executive session when discussing a proposed payment plan.

12 Subdivision (d) is new. It provides a cross-reference to a provision requiring that the board  
13 meet in executive session when deciding on whether to foreclose on a lien for overdue  
14 assessments.

15 Subdivision (e) continues former Section 1363.05(c) without change.

16 **Staff Note.** Subdivisions (c) and (d) of proposed Section 4935 are added to highlight two  
17 circumstances in which an executive session is mandatory.

18 **§ 4950 (REVISED). Minutes**

19 4950. (a) The minutes, minutes proposed for adoption that are marked to  
20 indicate draft status, or a summary of the minutes, of any meeting of the board of  
21 directors of an association, other than an executive session, shall be available to  
22 members within 30 days of the meeting. The minutes, proposed minutes, or  
23 summary minutes shall be distributed to any member of the association upon  
24 request and upon reimbursement of the association's costs for making that  
25 distribution.

26 (b) The annual policy notice (Section 5310) shall inform the members of their  
27 right to obtain copies of board meeting minutes and shall describe the procedure  
28 for obtaining a copy of the minutes.

29 **Comment.** Subdivision (a) of Section 4950 continues former Section 1363.05(d) without  
30 change.

31 Subdivision (b) is consistent with the substance of former Section 1363.05(e), but recasts it to  
32 be consistent with the annual distribution of the policy notice pursuant to Section 5310.

33 **Staff Note.** Subdivision (b) has been adjusted to conform to proposed Section 5310. See the  
34 Staff Note following that section.

35 **§ 4955 (REVISED). Civil action to enforce article**

36 4955. (a) A member of an association may bring a civil action for declaratory or  
37 equitable relief for a violation of this article by the association, including, but not  
38 limited to, injunctive relief, restitution, or a combination thereof, within one year  
39 of the date the cause of action accrues.

40 (b) A member who prevails in a civil action to enforce the member's rights  
41 pursuant to this article shall be entitled to reasonable attorney's fees and court  
42 costs, and the court may impose a civil penalty of up to five hundred dollars  
43 (\$500) for each violation, except that each identical violation shall be subject to

1 only one penalty if the violation affects each member of the association equally. A  
2 prevailing association shall not recover any costs, unless the court finds the action  
3 to be frivolous, unreasonable, or without foundation.

4 **Comment.** Section 4955 restates former Section 1363.09(a)-(b) without change, except that:  
5 (1) The phrase “an association of which he or she is a member” has been replaced with “the  
6 association.” (2) The second sentence of former 1363.09(a) has not been continued because it is  
7 irrelevant to judicial enforcement of this article. (3) The phrase “his or her” has been replaced in  
8 subdivision (b) with “the member’s.”

9  **Staff Note.** Proposed Section 4955 would generally continue the judicial enforcement  
10 provisions of existing Section 1363.09 as they apply to the open meeting requirements, but it  
11 would not continue provisions specific to member elections (the second sentence of Section  
12 1363.09(a), and all of subdivision (c)).

13 Article 3. Member Meeting

14 **§ 5000 (REVISED). Member meeting**

15 5000. (a) Meetings of the membership of the association shall be conducted in  
16 accordance with a recognized system of parliamentary procedure or any  
17 parliamentary procedures the association may adopt.

18 (b) Notwithstanding any other provision of law, notice of meetings of the  
19 members shall specify those matters the board intends to present for action by the  
20 members, but, except as otherwise provided by law, any proper matter may be  
21 presented at the meeting for action.

22 (c) If an association is organized as a nonprofit mutual benefit corporation, a  
23 member meeting is also governed by Sections 7510 through 7527 of the  
24 Corporations Code, inclusive.

25 **Comment.** Subdivision (a) of Section 5000 continues former Section 1363(d) without change.  
26 Subdivision (b) continues former Section 1363(e) without change.  
27 Subdivision (c) is new.

28  **Staff Note.** Proposed Section 5000(c) is added to alert readers that an incorporated  
29 association will also need to consider applicable provisions of the Corporations Code when  
30 conducting a member meeting.

31 Article 4. Member Election

32 **§ 5100 (REVISED). Application of article**

33 5100. (a) Notwithstanding any other law or provision of the governing  
34 documents, elections regarding assessments legally requiring a vote, election and  
35 removal of members of the association board of directors, amendments to the  
36 governing documents, or the grant of exclusive use of common area property  
37 pursuant to Section 4600 shall be held by secret ballot in accordance with the  
38 procedures set forth in this article.

39 (b) This article also governs an election on any topic that is expressly identified  
40 in the operating rules as being governed by this article.

1 (c) The provisions of this article apply to both incorporated and unincorporated  
2 associations, notwithstanding any contrary provision of the governing documents.

3 (d) The procedures set forth in this article shall apply to votes cast directly by  
4 the membership, but do not apply to votes cast by delegates or other elected  
5 representatives.

6 (e) In the event of a conflict between this article and the provisions of the  
7 Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section  
8 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the  
9 provisions of this article shall prevail.

10 **Comment.** Subdivision (a) of Section 5100 continues the first sentence of former Section  
11 1363.03(b) without change, except that: (1) “Section” is replaced with “article.” (2) A cross-  
12 reference is updated to reflect the new location of the referenced provision.

13 Subdivision (b) is new. It permits an association to adopt an operating rule applying the  
14 requirements of this article to an election that would not otherwise be governed by this article.

15 Subdivisions (c)-(e) continue former Section 1363.03(l)-(n), respectively, without change,  
16 except that “section” is replaced with “article” throughout.

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

19 **Staff Note.** Proposed Section 5100(b) is new. It would permit an association to adopt an  
20 operating rule applying the requirements of this article to an election that would not otherwise be  
21 governed by this article. This gives the association, acting through its operating rules, the  
22 discretion to expand (but not narrow) the application of this article.

23 **§ 5105 (UNCHANGED). Election rules**

24 5105. (a) An association shall adopt rules, in accordance with the procedures  
25 prescribed by Article 5 (commencing with Section 4350) of Chapter 2, that do all  
26 of the following:

27 (1) Ensure that if any candidate or member advocating a point of view is  
28 provided access to association media, newsletters, or Internet Web sites during a  
29 campaign, for purposes that are reasonably related to that election, equal access  
30 shall be provided to all candidates and members advocating a point of view,  
31 including those not endorsed by the board, for purposes that are reasonably related  
32 to the election. The association shall not edit or redact any content from these  
33 communications, but may include a statement specifying that the candidate or  
34 member, and not the association, is responsible for that content.

35 (2) Ensure access to the common area meeting space, if any exists, during a  
36 campaign, at no cost, to all candidates, including those who are not incumbents,  
37 and to all members advocating a point of view, including those not endorsed by  
38 the board, for purposes reasonably related to the election.

39 (3) Specify the qualifications for candidates for the board of directors and any  
40 other elected position, and procedures for the nomination of candidates, consistent  
41 with the governing documents. A nomination or election procedure shall not be  
42 deemed reasonable if it disallows any member of the association from nominating  
43 himself or herself for election to the board of directors.

1 (4) Specify the qualifications for voting, the voting power of each membership,  
2 the authenticity, validity, and effect of proxies, and the voting period for elections,  
3 including the times at which polls will open and close, consistent with the  
4 governing documents.

5 (5) Specify a method of selecting one or three independent third parties as  
6 inspector, or inspectors, of election utilizing one of the following methods:

7 (A) Appointment of the inspector or inspectors by the board.

8 (B) Election of the inspector or inspectors by the members of the association.

9 (C) Any other method for selecting the inspector or inspectors.

10 (6) Allow the inspector, or inspectors, to appoint and oversee additional persons  
11 to verify signatures and to count and tabulate votes as the inspector or inspectors  
12 deem appropriate, provided that the persons are independent third parties.

13 (b) Notwithstanding any other provision of law, the rules adopted pursuant to  
14 this section may provide for the nomination of candidates from the floor of  
15 membership meetings or nomination by any other manner. Those rules may permit  
16 write-in candidates for ballots.

17 **Comment.** Subdivision (a) of Section 5105 continues former Section 1363.03(a) without  
18 change.

19 Subdivision (b) continues former Section 1363.03(j) without change.

20 **§ 5110 (UNCHANGED). Election inspector**

21 5110. (a) The association shall select an independent third party or parties as an  
22 inspector of election. The number of inspectors of election shall be one or three.

23 (b) For the purposes of this section, an independent third party includes, but is  
24 not limited to, a volunteer poll worker with the county registrar of voters, a  
25 licensee of the California Board of Accountancy, or a notary public. An  
26 independent third party may be a member of the association, but may not be a  
27 member of the board of directors or a candidate for the board of directors or  
28 related to a member of the board of directors or a candidate for the board of  
29 directors. An independent third party may not be a person, business entity, or  
30 subdivision of a business entity who is currently employed or under contract to the  
31 association for any compensable services unless expressly authorized by rules of  
32 the association adopted pursuant to paragraph (5) of subdivision (a) of Section  
33 5105.

34 (c) The inspector or inspectors of election shall do all of the following:

35 (1) Determine the number of memberships entitled to vote and the voting power  
36 of each.

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

38 (3) Receive ballots.

39 (4) Hear and determine all challenges and questions in any way arising out of or  
40 in connection with the right to vote.

41 (5) Count and tabulate all votes.

1 (6) Determine when the polls shall close, consistent with the governing  
2 documents.

3 (7) Determine the tabulated results of the election.

4 (8) Perform any acts as may be proper to conduct the election with fairness to all  
5 members in accordance with this article, the Corporations Code, and all applicable  
6 rules of the association regarding the conduct of the election that are not in conflict  
7 with this article.

8 (d) An inspector of election shall perform all duties impartially, in good faith, to  
9 the best of the inspector of election's ability, and as expeditiously as is practical. If  
10 there are three inspectors of election, the decision or act of a majority shall be  
11 effective in all respects as the decision or act of all. Any report made by the  
12 inspector or inspectors of election is prima facie evidence of the facts stated in the  
13 report.

14 **Comment.** Section 5110 continues former Section 1363.03(c) without change, except that: (1)  
15 "Section" is replaced with "article" throughout. (2) A cross-reference is updated to reflect the  
16 new location of the referenced provision. (3) The phrase "his or her" has been replaced in  
17 subdivision (d).

18 **§ 5115 (UNCHANGED). Voting procedure**

19 5115. (a) Ballots and two preaddressed envelopes with instructions on how to  
20 return ballots shall be mailed by first-class mail or delivered by the association to  
21 every member not less than 30 days prior to the deadline for voting. In order to  
22 preserve confidentiality, a voter may not be identified by name, address, or lot,  
23 parcel, or unit number on the ballot. The association shall use as a model those  
24 procedures used by California counties for ensuring confidentiality of voter  
25 absentee ballots, including all of the following:

26 (1) The ballot itself is not signed by the voter, but is inserted into an envelope  
27 that is sealed. This envelope is inserted into a second envelope that is sealed. In  
28 the upper left hand corner of the second envelope, the voter shall sign the voter's  
29 name, indicate the voter's name, and indicate the address or separate interest  
30 identifier that entitles the voter to vote.

31 (2) The second envelope is addressed to the inspector or inspectors of election,  
32 who will be tallying the votes. The envelope may be mailed or delivered by hand  
33 to a location specified by the inspector or inspectors of election. The member may  
34 request a receipt for delivery.

35 (b) A quorum shall be required only if so stated in the governing documents of  
36 the association or other provisions of law. If a quorum is required by the  
37 governing documents, each ballot received by the inspector of elections shall be  
38 treated as a member present at a meeting for purposes of establishing a quorum.

39 (c) An association shall allow for cumulative voting using the secret ballot  
40 procedures provided in this section, if cumulative voting is provided for in the  
41 governing documents.

1 (d) Except for the meeting to count the votes required in subdivision (a) of  
2 Section 5120, an election may be conducted entirely by mail unless otherwise  
3 specified in the governing documents.

4 **Comment.** Subdivision (a) of Section 5115 continues former Section 1363.03(e) without  
5 change, except that the phrase “his or her” has been replaced throughout.

6 Subdivision (b) continues the second and third sentences of former Section 1363.03(b) without  
7 change.

8 Subdivision (c) continues the fourth sentence of former Section 1363.03(b) without change.

9 Subdivision (d) continues former Section 1363.03(k) without change, except that a cross-  
10 reference is updated to reflect the new location of the referenced provision.

11 **§ 5120 (REVISED). Counting ballots**

12 5120. (a) All votes shall be counted and tabulated by the inspector of election, or  
13 the inspector of election’s designee, in public at a properly noticed open meeting  
14 of the board of directors or members. Any candidate or other member of the  
15 association may witness the counting and tabulation of the votes. No person,  
16 including a member of the association or an employee of the management  
17 company, shall open or otherwise review any ballot prior to the time and place at  
18 which the ballots are counted and tabulated. The inspector of election, or the  
19 inspector of election’s designee, may verify the member’s information and  
20 signature on the outer envelope prior to the meeting at which ballots are tabulated.  
21 Once a secret ballot is received by the inspector of elections, it shall be  
22 irrevocable.

23 (b) The tabulated results of the election shall be promptly reported to the board  
24 of directors of the association and shall be recorded in the minutes of the next  
25 meeting of the board of directors and shall be available for review by members of  
26 the association. Within 15 days of the election, the board shall give general notice  
27 (Section 4045) of the tabulated results of the election.

28 **Comment.** Section 5120 restates former Section 1363.03(f)-(g) without change, except that:  
29 (1) The phrase “his or her designee” has been replaced with “the inspector of election’s designee”  
30 throughout. (2) The last sentence replaces ambiguous language requiring that election results be  
31 “publicized” with a reference to the requirements for giving general notice (Section 4045).

32 **Staff Note.** The last sentence of proposed Section 5120(b) would replace ambiguous  
33 language requiring that election results be “publicized” with a more precise requirement that  
34 general notice be given (Section 4045).

35 **§ 5125 (REVISED). Ballot custody and inspection**

36 5125. (a) The sealed ballots at all times shall be in the custody of the inspector  
37 or inspectors of election or at a location designated by the inspector or inspectors  
38 until after the tabulation of the vote, and until the time allowed by Section 5145  
39 for challenging the election has expired, at which time custody shall be transferred  
40 to the association. If there is a recount or other challenge to the election process,  
41 the inspector or inspectors of election shall, upon written request, make the ballots  
42 available for inspection and review by an association member or the member’s

1 authorized representative. Any recount shall be conducted in a manner that  
2 preserves the confidentiality of the vote.

3 (b) After the transfer of the ballots to the association, the ballots shall be stored  
4 by the association in a secure place for no less than one year after the date of the  
5 election.

6 **Comment.** Section 5125 restates former Section 1363.03(h)-(i) without change, except that:  
7 (1) The reference to the time for filing an action under Corporations Code Section 7527 is  
8 replaced with a reference to the time for filing an action under Section 5145. (2) The phrase “his  
9 or her” has been replaced with “the members” in subdivision (a).

10 **Staff Note.** Existing Section 1363.03(h) requires that the election inspector maintain custody  
11 of ballots “until the time allowed by Section 7527 of the Corporations Code for challenging the  
12 election has expired...” That time is nine months after the election. By contrast, Section 1363.09  
13 permits a CID election to be contested within one year after the election. If the purpose of Section  
14 1363.03(h) is to require that the election inspector maintain custody of the ballots during the time  
15 in which the election may be contested, then it is an error to reference the nine-month limitations  
16 period in the Corporations Code. Proposed Section 5125 would correct that error, by referencing  
17 the 12-month period used in the Davis-Stirling Act.

18 **§ 5130 (UNCHANGED). Proxies**

19 5130. (a) For purposes of this article, the following definitions shall apply:

20 (1) “Proxy” means a written authorization signed by a member or the authorized  
21 representative of the member that gives another member or members the power to  
22 vote on behalf of that member.

23 (2) “Signed” means the placing of the member’s name on the proxy (whether by  
24 manual signature, typewriting, telegraphic transmission, or otherwise) by the  
25 member or authorized representative of the member.

26 (b) Proxies shall not be construed or used in lieu of a ballot. An association may  
27 use proxies if permitted or required by the bylaws of the association and if those  
28 proxies meet the requirements of this article, other laws, and the association’s  
29 governing documents, but the association shall not be required to prepare or  
30 distribute proxies pursuant to this article.

31 (c) Any instruction given in a proxy issued for an election that directs the  
32 manner in which the proxyholder is to cast the vote shall be set forth on a separate  
33 page of the proxy that can be detached and given to the proxyholder to retain. The  
34 proxyholder shall cast the member’s vote by secret ballot. The proxy may be  
35 revoked by the member prior to the receipt of the ballot by the inspector of  
36 elections as described in Section 7613 of the Corporations Code.

37 **Comment.** Section 5130 continues former Section 1363.03(d) without change, except that  
38 “section” has been replaced with “article” throughout.

39 **§ 5135 (REVISED). Campaign-related information**

40 5135. (a) Association funds shall not be used for campaign purposes in  
41 connection with any association board election. Funds of the association shall not  
42 be used for campaign purposes in connection with any other association election

1 except to the extent necessary to comply with duties of the association imposed by  
2 law.

3 (b) For the purposes of this section, “campaign purposes” includes, but is not  
4 limited to, the following:

5 (1) Expressly advocating the election or defeat of any candidate that is on the  
6 association election ballot.

7 (2) Including the photograph or prominently featuring the name of any candidate  
8 on a communication from the association or its board, excepting the ballot, ballot  
9 materials, or a communication that is legally required, within 30 days of an  
10 election. This is not a campaign purpose if the communication is one for which  
11 subdivision (a) of Section 5105 requires that equal access be provided to another  
12 candidate or advocate.

13 **Comment.** Section 5135 continue former Section 1363.04 without change, except that (1) a  
14 cross-reference in former Section 1363.04(b)(2) is updated to reflect the new location of the  
15 referenced provision, and (2) an exception is added to the definition of “campaign purposes” for  
16 the inclusion of a candidate’s name or photograph in a communication that is legally required.  
17 For example, preparation of meeting minutes would not be barred merely because the minutes  
18 include the name of a candidate in a pending election. See Section 4950 (board meeting minutes).

19 **Staff Note.** Existing Section 1363.04 restricts the use of association funds for “campaign  
20 purposes” in connection with a pending board election. “Campaign purposes” is defined to  
21 include, with exceptions not relevant here, a communication that features the name or photograph  
22 of a candidate. Read literally, that could preclude numerous communications that are required in  
23 ordinary administration (e.g., delivery of a monthly assessment bill to a candidate). Fixing that  
24 problem would require more redrafting than is consistent with the conservative approach being  
25 taken in this revision of the proposed law. However, the problem can be partially fixed by  
26 preserving a substantive improvement that was included in the original version of the proposed  
27 law. Specifically, language has been added to proposed Section 5135(b)(2) to make clear that  
28 legally required communications are not prohibited campaign communications. For example, an  
29 association would not be barred from distributing board meeting minutes, merely because a  
30 candidate’s name is in the minutes.

31 **§ 5140 (NEW). Voting rights**

32 5140. Unless the governing documents provide otherwise:

33 (a) A member who is entitled to vote may cast one vote for each separate  
34 interest that the member owns.

35 (b) If a separate interest is owned by more than one person, each owner shall be  
36 a member of the association, but their joint ownership has no effect on the number  
37 of votes cast for that separate interest.

38 **Comment.** Section 5140 is drawn from 10 Cal. Code Regs. § 2792.18(a). It states default rules  
39 that can be overridden by the governing documents. See also Corp. Code § 7312(d).

40 Subdivision (b) makes clear that joint owners of a separate interest share the voting rights that  
41 are appurtenant to ownership of a separate interest. The law does not address how the joint  
42 owners will decide how to cast their shared vote. That issue could be addressed in the  
43 association’s election rules, pursuant to Section 5105.

44 **Staff Note.** Proposed Section 5140 is new. It is intended to provide useful guidance on two  
45 common issues involving voting power. Because the rules are expressly subordinated to the

1 governing documents, they would serve as default rules only. An association would remain free  
2 to adopt a different approach, if it chooses to do so.

3 **§ 5145 (UNCHANGED). Judicial enforcement**

4 5145. (a) A member of an association may bring a civil action for declaratory or  
5 equitable relief for a violation of this article by the association, including, but not  
6 limited to, injunctive relief, restitution, or a combination thereof, within one year  
7 of the date the cause of action accrues. Upon a finding that the election procedures  
8 of this article, or the adoption of and adherence to rules provided by Article 5  
9 (commencing with Section 4350) of Chapter 2, were not followed, a court may  
10 void any results of the election.

11 (b) A member who prevails in a civil action to enforce the member's rights  
12 pursuant to this article shall be entitled to reasonable attorney's fees and court  
13 costs, and the court may impose a civil penalty of up to five hundred dollars  
14 (\$500) for each violation, except that each identical violation shall be subject to  
15 only one penalty if the violation affects each member of the association equally. A  
16 prevailing association shall not recover any costs, unless the court finds the action  
17 to be frivolous, unreasonable, or without foundation.

18 (c) A cause of action under Sections 5100 to 5130, inclusive, with respect to  
19 access to association resources by a candidate or member advocating a point of  
20 view, the receipt of a ballot by a member, or the counting, tabulation, or reporting  
21 of, or access to, ballots for inspection and review after tabulation may be brought  
22 in small claims court if the amount of the demand does not exceed the jurisdiction  
23 of that court.

24 **Comment.** Subdivision (a) of Section 5145 continues former Section 1363.09(a) without  
25 change, except that: (1) A cross-reference is updated to reflect the new location of the referenced  
26 provision. (2) The phrase "an association of which he or she is a member" has been replaced with  
27 "the association."

28 Subdivision (b) continues former Section 1363.09(b) without change, except that the phrase  
29 "his or her" has been replaced with "the member's."

30 Subdivision (c) continues former Section 1363.09(c) without change, except that a cross-  
31 reference is updated to reflect the new location of the referenced provision.

32 **Article 5. Record Inspection**

33 **§ 5200 (REVISED). Definitions**

34 5200. For the purposes of this article, the following definitions shall apply:

35 (a) "Association records" means all of the following:

36 (1) Any financial document required to be provided to a member in Article 7  
37 (commencing with Section 5300) or in Sections 5565 and 5810.

38 (2) Any financial document or statement required to be provided in Article 2  
39 (commencing with Section 4525) of Chapter 3.

40 (3) Interim financial statements, periodic or as compiled, containing any of the  
41 following:

- 1 (A) Balance sheet.
- 2 (B) Income and expense statement.
- 3 (C) Budget comparison.
- 4 (D) General ledger. A “general ledger” is a report that shows all transactions that
- 5 occurred in an association account over a specified period of time.

6 The records described in this paragraph shall be prepared in accordance with an

7 accrual or modified accrual basis of accounting.

- 8 (4) Executed contracts not otherwise privileged under law.
- 9 (5) Written board approval of vendor or contractor proposals or invoices.
- 10 (6) State and federal tax returns.
- 11 (7) Reserve account balances and records of payments made from reserve
- 12 accounts.
- 13 (8) Agendas and minutes of meetings of the members, the board of directors and
- 14 any committees appointed by the board of directors pursuant to Section 7212 of
- 15 the Corporations Code; excluding, however, agendas, minutes, and other
- 16 information from executive sessions of the board of directors as described in
- 17 Article 2 (commencing with Section 4900).
- 18 (9) Membership lists, including name, property address, and mailing address.
- 19 (10) Check registers.
- 20 (11) The governing documents.
- 21 (12) An “enhanced association record” as defined in subdivision (b).

22 (b) “Enhanced association records” means invoices, receipts and canceled

23 checks for payments made by the association, purchase orders approved by the

24 association, credit card statements for credit cards issued in the name of the

25 association, statements for services rendered, and reimbursement requests

26 submitted to the association.

27 **Comment.** Subdivision (a) of Section 5200 continues former Section 1365.2(a)(1) without

28 change, except that: (1) “Section” is replaced with “article” in the introductory clause. (2) Cross-

29 references are updated to reflect the new location of the referenced provision. (3) Paragraphs

30 (a)(11) and (a)(12) are new. (4) Substantive limitations on access to the membership are not

31 appropriate for inclusion in a definition and have been relocated, without substantive change, to

32 Section 5225.

33 Subdivision (b) continues former Section 1365.2(a)(2) without change, except that a

34 substantive rule providing that a person submitting a reimbursement request is “solely responsible

35 for removing all personal identification information from the request” is not appropriate for

36 inclusion in a definition and has been relocated, without substantive change, to Section 5205(g).

37 **Staff Note.** Proposed Section 5200 would continue Section 1365.2(a), with two substantive

38 changes and a number of nonsubstantive changes. The nonsubstantive changes are described in

39 the Comment above. The substantive changes would be as follows:

40 (1) Proposed Section 5200(a)(11) would expand the definition of “association records” to include

41 all governing documents of the association.

42 (2) Proposed Section 5200(a)(12) would make clear that the general term “association records”

43 includes the set of records defined as “enhanced association records” in proposed Section

44 5200(b). This change is necessary to avoid the implication that provisions that reference

45 “association records” without also referencing “enhanced association records” do not apply to

1 enhanced association records. See, e.g., Civ. Code § 1365.2(b)(2), (c)(1)-(4), (e)-(f), (i). That  
2 problematic implication is reinforced by Civil Code Section 1365.2(b)(1), which expressly  
3 references *both* “association records” and “enhanced association records.”

4 **§ 5205 (REVISED). Inspection and copying of association records**

5 5205. (a) The association shall make available association records for the time  
6 periods and within the timeframes provided in Section 5210 for inspection and  
7 copying by a member of the association, or the member’s designated  
8 representative. The association may bill the requesting member for the direct and  
9 actual cost of copying requested documents. The association shall inform the  
10 member of the amount of the copying costs before copying the requested  
11 documents.

12 (b) A member of the association may designate another person to inspect and  
13 copy the specified association records on the member’s behalf. The member shall  
14 make this designation in writing.

15 (c) The association shall make the specified association records available for  
16 inspection and copying in the association’s business office within the common  
17 interest development.

18 (d) If the association does not have a business office within the development, the  
19 association shall make the specified association records available for inspection  
20 and copying at a place that the requesting member and the association agree upon.

21 (e) If the association and the requesting member cannot agree upon a place for  
22 inspection and copying pursuant to subdivision (d) or if the requesting member  
23 submits a written request directly to the association for copies of specifically  
24 identified records, the association may satisfy the requirement to make the  
25 association records available for inspection and copying by mailing copies of the  
26 specifically identified records to the member by first-class mail within the  
27 timeframes set forth in subdivision (b) of Section 5210.

28 (f) The association may bill the requesting member for the direct and actual cost  
29 of copying and mailing requested documents. The association shall inform the  
30 member of the amount of the copying and mailing costs, and the member shall  
31 agree to pay those costs, before copying and sending the requested documents.

32 (g) In addition to the direct and actual costs of copying and mailing, the  
33 association may bill the requesting member an amount not in excess of ten dollars  
34 (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written  
35 request, for the time actually and reasonably involved in redacting the enhanced  
36 association record. If the enhanced association records includes a reimbursement  
37 request, the person submitting the reimbursement request shall be solely  
38 responsible for removing all personal identification information from the request.  
39 The association shall inform the member of the estimated costs, and the member  
40 shall agree to pay those costs, before retrieving the requested documents.

41 (h) Requesting parties shall have the option of receiving specifically identified  
42 records by electronic transmission or machine-readable storage media as long as

1 those records can be transmitted in a redacted format that does not allow the  
2 records to be altered. The cost of duplication shall be limited to the direct cost of  
3 producing the copy of a record in that electronic format. The association may  
4 deliver specifically identified records by electronic transmission or machine-  
5 readable storage media as long as those records can be transmitted in a redacted  
6 format that prevents the records from being altered.

7 **Comment.** Subdivisions (a) through (g) of Section 5205, inclusive, continue former Section  
8 1365.2(b)-(c) without change except that: (1) Cross-references are updated to reflect the new  
9 location of the referenced provisions. (2) A superfluous reference to “enhanced association  
10 records” is not continued in subdivision (a). See Section 5200(a)(12) (“association records”  
11 includes “enhanced association records”). (3) The second sentence of Section 5205(g) is added to  
12 restate the last clause of former Section 1365.2(a)(2) without substantive change.

13 Subdivision (h) continues former Section 1365.2(h) without change.

14  **Staff Note.** (1) The second sentence of proposed Section 5205(g) is drawn from existing  
15 Section 1365.2(a)(2). It states a substantive rule regarding redaction responsibility, and is better  
16 located in proposed Section 5206, with other redaction rules, rather than being buried in a  
17 definition as it is in existing law.

18 (2) Existing Section 1365.2(c)(5) permits the association to bill for redaction of “enhanced  
19 association records as provided in paragraph (2) of subdivision (a)...” The last clause appears to  
20 be a superfluous reference to the definition of the term “enhanced association records.” It is not  
21 necessary to reference a definition that is generally applicable. The reference is not continued.

22 **§ 5210 (REVISED). Time periods**

23 5210. (a) Association records are subject to member inspection for the following  
24 time periods:

25 (1) For the current fiscal year and for each of the previous two fiscal years.

26 (2) Notwithstanding paragraph (1), minutes of member and board meetings are  
27 subject to inspection permanently. If a committee has decision making authority,  
28 minutes of the meetings of that committee shall be made available commencing  
29 January 1, 2007, and shall thereafter be permanently subject to inspection.

30 (b) When a member properly requests access to association records, access to  
31 the requested records shall be granted within the following time periods:

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

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

36 (3) Any record or statement available pursuant to Article 2 (commencing with  
37 Section 4525) of Chapter 3, Article 7 (commencing with Section 5300) of this  
38 chapter, Section 5565, or Section 5810, within the timeframe specified therein.

39 (4) Minutes of member and board meetings, within the timeframe specified in  
40 subdivision (a) of Section 4950.

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

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

3 (c) There shall be no liability pursuant to this article for an association that fails  
4 to retain records for the periods specified in subdivision (a) that were created prior  
5 to January 1, 2006.

6 **Comment.** Subdivisions (a) and (b) of Section 5210 restate former Section 1365.2(i)-(j)  
7 without substantive change.

8 Subdivision (c) continues former Section 1365.2(k) without change, except that: (1) “Section”  
9 is changed to “article.” (2) A cross-reference is updated to reflect the new location of the  
10 referenced provision.

11 **Staff Note.** Proposed Section 5210 would restate Section 1365.2(i)-(j) without making any  
12 change in its substance. The restatement is necessary because existing law is potentially  
13 confusing. It does not draw a clear enough distinction between the time during which records are  
14 subject to inspection, and the time, after receipt of a proper inspection request, when access to the  
15 requested records must be granted. The existing provision uses similar wording in framing both  
16 issues (*compare* subdivision (i) (“The time periods for which specified records shall be provided  
17 is as follows:”), *with* subdivision (j) (“The timeframes in which access to specified records shall  
18 be provided to a requesting member is as follows:”).

19 Proposed Section 5210 would draw the distinction more clearly.

20 **§ 5215 (UNCHANGED). Withholding and redaction**

21 5215. (a) Except as provided in subdivision (b), the association may withhold or  
22 redact information from the association records if any of the following are true:

23 (1) The release of the information is reasonably likely to lead to identity theft.  
24 For the purposes of this section, “identity theft” means the unauthorized use of  
25 another person’s personal identifying information to obtain credit, goods, services,  
26 money, or property. Examples of information that may be withheld or redacted  
27 pursuant to this paragraph include bank account numbers of members or vendors,  
28 social security or tax identification numbers, and check, stock, and credit card  
29 numbers.

30 (2) The release of the information is reasonably likely to lead to fraud in  
31 connection with the association.

32 (3) The information is privileged under law. Examples include documents  
33 subject to attorney-client privilege or relating to litigation in which the association  
34 is or may become involved, and confidential settlement agreements.

35 (4) The release of the information is reasonably likely to compromise the  
36 privacy of an individual member of the association.

37 (5) The information contains any of the following:

38 (A) Records of a-la-carte goods or services provided to individual members of  
39 the association for which the association received monetary consideration other  
40 than assessments.

41 (B) Records of disciplinary actions, collection activities, or payment plans of  
42 members other than the member requesting the records.

1 (C) Any person’s personal identification information, including, without  
2 limitation, social security number, tax identification number, driver’s license  
3 number, credit card account numbers, bank account number, and bank routing  
4 number.

5 (D) Agendas, minutes, and other information from executive sessions of the  
6 board of directors as described in Article 2 (commencing with Section 4900),  
7 except for executed contracts not otherwise privileged. Privileged contracts shall  
8 not include contracts for maintenance, management, or legal services.

9 (E) Personnel records other than the payroll records required to be provided  
10 under subdivision (b).

11 (F) Interior architectural plans, including security features, for individual homes.

12 (b) Except as provided by the attorney-client privilege, the association may not  
13 withhold or redact information concerning the compensation paid to employees,  
14 vendors, or contractors. Compensation information for individual employees shall  
15 be set forth by job classification or title, not by the employee’s name, social  
16 security number, or other personal information.

17 (c) No association, officer, director, employee, agent or volunteer of an  
18 association shall be liable for damages to a member of the association or any third  
19 party as the result of identity theft or other breach of privacy because of the failure  
20 to withhold or redact that member’s information under this subdivision unless the  
21 failure to withhold or redact the information was intentional, willful, or negligent.

22 (d) If requested by the requesting member, an association that denies or redacts  
23 records shall provide a written explanation specifying the legal basis for  
24 withholding or redacting the requested records.

25 **Comment.** Section 5215 continues former Section 1365.2(d) without change, except that a  
26 cross-reference is updated to reflect the new location of the referenced provision.

27 **§ 5220 (UNCHANGED). Membership list opt out**

28 5220. A member of the association may opt out of the sharing of the member’s  
29 name, property address, and mailing address by notifying the association in  
30 writing that the member prefers to be contacted via the alternative process  
31 described in subdivision (c) of Section 8330 of the Corporations Code. This opt-  
32 out shall remain in effect until changed by the member.

33 **Comment.** Section 5215 continues former Section 1365.2(a)(1)(I)(iii) without change, except  
34 that “his or her” has been replaced with “the member’s” throughout.

35 **§ 5225 (UNCHANGED). Membership list request**

36 5225. A member requesting the membership list shall state the purpose for  
37 which the list is requested which purpose shall be reasonably related to the  
38 requester’s interest as a member. If the association reasonably believes that the  
39 information in the list will be used for another purpose, it may deny the member  
40 access to the list. If the request is denied, in any subsequent action brought by the  
41 member under Section 5235, the association shall have the burden to prove that

1 the member would have allowed use of the information for purposes unrelated to  
2 the member's interest as a member.

3 **Comment.** Section 5225 continues former Section 1365.2(a)(1)(I)(ii) without change, except  
4 that: (1) "The member requesting the list" has been replaced with "A member requesting the  
5 membership list," to improve clarity. (2) A cross-reference is updated to reflect the new location  
6 of the referenced provision. (3) "His or her" is replaced with "the member's."

7 **§ 5230 (UNCHANGED). Restriction on use of records**

8 5230. (a) The association records, and any information from them, may not be  
9 sold, used for a commercial purpose, or used for any other purpose not reasonably  
10 related to a member's interest as a member. An association may bring an action  
11 against any person who violates this article for injunctive relief and for actual  
12 damages to the association caused by the violation.

13 (b) This article may not be construed to limit the right of an association to  
14 damages for misuse of information obtained from the association records pursuant  
15 to this article or to limit the right of an association to injunctive relief to stop the  
16 misuse of this information.

17 (c) An association shall be entitled to recover reasonable costs and expenses,  
18 including reasonable attorney's fees, in a successful action to enforce its rights  
19 under this article.

20 **Comment.** Section 5230 continues former Section 1365.2(e) without change, except that: (1)  
21 "The member requesting the list" has been replaced with "A member requesting the membership  
22 list," to improve clarity. (2) A cross-reference is updated to reflect the new location of the  
23 referenced provision. (3) "His or her" is replaced with "the member's." (4) "This section" has  
24 been replaced with "this article" throughout.

25 **§ 5235 (UNCHANGED). Enforcement**

26 5235. (a) A member of an association may bring an action to enforce the  
27 member's right to inspect and copy the association records. If a court finds that the  
28 association unreasonably withheld access to the association records, the court shall  
29 award the member reasonable costs and expenses, including reasonable attorney's  
30 fees, and may assess a civil penalty of up to five hundred dollars (\$500) for the  
31 denial of each separate written request.

32 (b) A cause of action under this section may be brought in small claims court if  
33 the amount of the demand does not exceed the jurisdiction of that court.

34 (c) A prevailing association may recover any costs if the court finds the action to  
35 be frivolous, unreasonable, or without foundation.

36 **Comment.** Section 5235 continues former Section 1365.2(f) without change, except that the  
37 provision has been divided into subdivisions for ease of reference.

38 **§ 5240 (REVISED). Application of article**

39 5240. (a) As applied to an association and its members, the provisions of this  
40 article are intended to supersede the provisions of Sections 8330 and 8333 of the  
41 Corporations Code to the extent those sections are inconsistent.

1 (b) Except as provided in subdivision (a), members of the association shall have  
2 access to association records, including accounting books and records and  
3 membership lists, in accordance with Article 3 (commencing with Section 8330)  
4 of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code.

5 (c) The provisions of this article apply to any community service organization or  
6 similar entity that is related to the association, and this article shall operate to give  
7 a member of the community service organization or similar entity a right to  
8 inspect and copy the records of that organization or entity equivalent to that  
9 granted to association members by this article.

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

21 **Comment.** Subdivision (a) of Section 5240 continues former Section 1365.2(l) without  
22 change, except that “section” has been changed to “article.”

23 Subdivision (b) continues the first sentence of former Section 1363(f) without change, except  
24 that the introductory clause has been added to clarify the relationship between this provision and  
25 subdivision (a). The second sentence of former Section 1363(f) is not continued. That provision is  
26 unnecessary because its substance is subsumed within Section 5200(a)(11), which guarantees  
27 access to all governing documents, and not just the operating rules.

28 Subdivision (c) continues former Section 1365.2(g) without change, except that: (1) “Section”  
29 has been replaced with “article” throughout. (2) A superfluous reference to the definition of  
30 “community service organization” has not been continued. See Section 4110 (“community  
31 service organization”).

32 Subdivision (d) continues former Section 1365.2(m) without change, except that “section” has  
33 been replaced with “article” throughout.

34 **Staff Note.** (1) The first sentence of Section 1363(f) provides that association members have  
35 the same access to records that is granted to members of a nonprofit mutual benefit corporation  
36 under the Corporations Code. Section 1365.2(l) expressly subordinates the Corporations Code  
37 record provisions to the rules provided in that section, to the extent of any inconsistency. Those  
38 provisions would be continued in proposed Section 5240(a) and (b). An introductory clause  
39 would be added in subdivision (b), to provide better guidance on the intended relationship  
40 between the two provisions.

41 (2) The second sentence of Section 1363(f) provides for member access to an association’s  
42 operating rules. That rule is subsumed in proposed Section 5200(a)(11), which would provide for  
43 access to *all* of an association’s governing documents, including the operating rules. See  
44 proposed Section 4150 (“governing documents” defined).

Article 6. Record Keeping

§ 5250 (NEW). Duty to maintain records

5250. (a) An association shall maintain at least one copy of the following association records, for the periods specified in Section 5255:

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

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

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

(4) A report prepared pursuant to Article 7 (commencing with Section 5300).

(5) Books and records of account.

(6) A tax return or other tax-related record.

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

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

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

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

(11) An employment or payroll record.

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

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

(14) A loan document.

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

(16) A reserve funding study.

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

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

**Comment.** Section 5250 is new.

 **Staff Note.** Proposed Section 5250 is new. It is intended to provide guidance on an issue that is not adequately addressed by existing law.

§ 5255 (NEW). Record retention periods

5255. (a) Unless a longer period is required by law or by the governing documents, an association shall retain a record listed in Section 5250 for at least four years after its date of creation, except that a record with continuing legal or

1 operational effect shall be retained during the period of its effect and for at least  
2 four years after the termination of its effect.

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

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

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

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

10 (4) A record that relates to the design, construction, or physical condition of the  
11 common interest development.

12 (c) A ballot cast in a member election shall be retained for the period provided  
13 in Section 5125.

14 (d) This section does not apply to a record that is discarded or destroyed before  
15 January 1, 2010.

16 **Comment.** Section 5255 is new. Subdivision (a) states a default retention period, but makes  
17 clear that other law or an association's governing documents may impose a longer retention  
18 period. A special rule is provided for records that have "continuing legal or operational effect."  
19 Such records might include a lease or other contract with a fixed term. Associations should  
20 determine whether administrative agencies, such as the Franchise Tax Board or Internal Revenue  
21 Service, impose longer retention requirements for some records.

22 Subdivision (c) reflects the rule provided in Section 5125 (ballot custody).

23 Subdivision (d) provides that the requirements of this section only apply to a record held by an  
24 association at the time that the section became operative. Note that other record retention  
25 requirements may govern documents that were held by the association before that date. See, e.g.,  
26 Section 5210 (period during which records must be made available for member inspection); 22  
27 Cal. Code Regs. § 1085-2 (four-year period for retention of employment records); 26 C.F.R. §  
28 1.6001-1 (retention of federal tax records while material to assessment or collection of tax); 29  
29 C.F.R. § 516.5 (three-year period for retention of payroll records).

30 **Staff Note.** Proposed Section 5255 is new. It is intended to provide guidance on an issue that  
31 is not adequately addressed by existing law.

## 32 Article 7. Annual Reports

### 33 § 5300 (REVISED). Annual budget report

34 5300. (a) Notwithstanding a contrary provision in the governing documents, an  
35 association shall prepare and distribute an annual budget report, 30 to 90 days  
36 before the end of its fiscal year.

37 (b) Unless the governing documents impose more stringent standards, the annual  
38 budget report shall include all of the following information:

39 (1) A pro forma operating budget, showing the estimated revenue and expenses  
40 on an accrual basis.

41 (2) A summary of the association's reserves, prepared pursuant to Section 5565.

42 (3) Commencing January 1, 2009, a summary of the reserve funding plan  
43 adopted by the board of directors of the association, as specified in subdivision (d)

1 of Section 5555. The summary shall include notice to members that the full  
2 reserve study plan is available upon request, and the association shall provide the  
3 full reserve plan to any member upon request.

4 (4) A statement as to whether the board of directors of the association has  
5 determined to defer or not undertake repairs or replacement of any major  
6 component with a remaining life of 30 years or less, including a justification for  
7 the deferral or decision not to undertake the repairs or replacement.

8 (5) A statement as to whether the board of directors of the association, consistent  
9 with the reserve funding plan adopted pursuant to Section 5560 has determined or  
10 anticipates that the levy of one or more special assessments will be required to  
11 repair, replace, or restore any major component or to provide adequate reserves  
12 therefor. If so, the statement shall also set out the estimated amount,  
13 commencement date, and duration of the assessment.

14 (6) A statement as to the mechanism or mechanisms by which the board of  
15 directors will fund reserves to repair or replace major components, including  
16 assessments, borrowing, use of other assets, deferral of selected replacements or  
17 repairs, or alternative mechanisms.

18 (7) A general statement addressing the procedures used for the calculation and  
19 establishment of those reserves to defray the future repair, replacement, or  
20 additions to those major components that the association is obligated to maintain.  
21 The report shall include, but need not be limited to, reserve calculations made  
22 using the formula described in paragraph (4) of subdivision (b) of Section 5570,  
23 and may not assume a rate of return on cash reserves in excess of 2 percent above  
24 the discount rate published by the Federal Reserve Bank of San Francisco at the  
25 time the calculation was made.

26 (8) A statement as to whether the association has any outstanding loans with an  
27 original term of more than one year, including the payee, interest rate, amount  
28 outstanding, annual payment, and when the loan is scheduled to be retired.

29 (9) A summary of the association's property, general liability, earthquake, flood,  
30 and fidelity insurance policies. For each policy, the summary shall include the  
31 name of the insurer, the type of insurance, the policy limit, and the amount of any  
32 deductible, if any. To the extent that any of the required information is specified in  
33 the insurance policy declaration page, the association may meet its obligation to  
34 disclose that information by making copies of that page and distributing it with the  
35 annual budget report. The summary distributed pursuant to this paragraph shall  
36 contain, in at least 10-point boldface type, the following statement:

37 "This summary of the association's policies of insurance provides only certain  
38 information, as required by Section 5300 of the Civil Code, and should not be  
39 considered a substitute for the complete policy terms and conditions contained in  
40 the actual policies of insurance. Any association member may, upon request and  
41 provision of reasonable notice, review the association's insurance policies and,  
42 upon request and payment of reasonable duplication charges, obtain copies of

1 those policies. Although the association maintains the policies of insurance  
2 specified in this summary, the association’s policies of insurance may not cover  
3 your property, including personal property or, real property improvements to or  
4 around your dwelling, or personal injuries or other losses that occur within or  
5 around your dwelling. Even if a loss is covered, you may nevertheless be  
6 responsible for paying all or a portion of any deductible that applies. Association  
7 members should consult with their individual insurance broker or agent for  
8 appropriate additional coverage.”

9 (c) The annual budget report shall be made available to the members pursuant to  
10 Section 5320.

11 (d) The summary of the association’s reserves disclosed pursuant to paragraph  
12 (2) of subdivision (b) shall not be admissible in evidence to show improper  
13 financial management of an association, provided that other relevant and  
14 competent evidence of the financial condition of the association is not made  
15 inadmissible by this provision.

16 (e) The Assessment and Reserve Funding Disclosure Summary form, prepared  
17 pursuant to Section 5570, shall accompany each annual budget report or summary  
18 of the annual budget report that is delivered pursuant to this article.

19 **Comment.** Subdivision (a) of Section 5300 continues the last paragraph of former Section  
20 1365(a) without substantive change.

21 Subdivision (b)(1) continues former Section 1365(a)(1) without substantive change.

22 Subdivision (b)(2) continues the introduction of former Section 1365(a)(2) without substantive  
23 change. The remainder of former Section 1365(a)(2) is continued in Section 5565.

24 Subdivision (b)(3) continues former Section 1365(b) without change.

25 Subdivision (b)(4) continues former Section 1365(a)(3)(A) without change, except that the  
26 introductory clause has been added.

27 Subdivision (b)(5) continues former Section 1365(a)(3)(B) without change, except that the  
28 introductory clause has been added.

29 Subdivision (b)(6) continues former Section 1365(a)(3)(C) without change, except that the  
30 introductory clause has been added.

31 Subdivision (b)(7) continues the first paragraph of former Section 1365(a)(4) without change,  
32 except that a cross-reference is updated to reflect the new location of the referenced provision.

33 Subdivision (b)(8) continues former Section 1365(a)(3)(D) without change, except that the  
34 introductory clause has been added.

35 Subdivision (b)(9) continues former Section 1365(f)(1), (3)-(4) without change.

36 Subdivision (c) is consistent with former Section 1365(d).

37 Subdivision (d) continues the second paragraph of former Section 1365(a)(4) without change,  
38 except that a cross-reference is updated to reflect the new location of the referenced provision.

39 Subdivision (e) restates former Section 1365.2.5(b)(3) without substantive change.

40 **Staff Note.** The annual budget report would continue much of the substance of existing  
41 Section 1365, but would make the following organizational changes, to simplify compliance:

42 (1) Non-budgetary information that is currently required to be distributed annually would not  
43 be part of the annual budget report. Instead, it would be collected into an annual “policy  
44 statement,” and distributed pursuant to proposed Section 5310. This would not result in any  
45 change in the information provided to the membership, but it would organize it into two  
46 documents rather than one. That would make it easier for members to request the information of  
47 interest to them, and would create an opportunity for cost reduction.

1 (2) Provisions of Section 1365(a)(2) that describe the required *content* of the “summary of  
2 association reserves” would be relocated to proposed Section 5565 (in proximity to the other  
3 reserve study and planning provisions).

4 (3) The requirement that a review of the financial statement be distributed to the members,  
5 pursuant to Section 1365(c), is relocated to proposed Section 5305. That provision requires  
6 distribution of information *after* the end of the fiscal year, and so it cannot be included with the  
7 annual budget report, which is distributed *before* the end of the fiscal year.

8 **§ 5305 (REVISED). Review of financial statement**

9 5305. (a) A review of the financial statement of the association shall be prepared  
10 in accordance with generally accepted accounting principles by a licensee of the  
11 California Board of Accountancy for any fiscal year in which the gross income to  
12 the association exceeds seventy-five thousand dollars (\$75,000). A copy of the  
13 review of the financial statement shall be distributed within 120 days after the  
14 close of each fiscal year.

15 (b) The review required by this section shall be made available to the members  
16 pursuant to Section 5320.

17 **Comment.** Subdivision (a) of Section 5305 continues former Section 1365(c) without change.  
18 Subdivision (b) is new.

19 **Staff Note.** Proposed Section 5305(b) would extend the existing “summary” distribution  
20 option, which currently applies to the annual budget report, so that it would *also* apply to  
21 distribution of the review of the financial statement required under Section 1365(c). See proposed  
22 Section 5320.

23 **§ 5310 (REVISED). Policy notice**

24 5310. (a) Within 120 days after the end of the fiscal year, the board shall prepare  
25 an annual policy statement that provides the members with information about  
26 association policies. The annual policy statement shall include all of the following  
27 information:

28 (1) The name and address of the person designated to receive official  
29 communications to the association, pursuant to Section 4035.

30 (2) A statement explaining that a member may submit a request to have notices  
31 sent to up to two different specified addresses, pursuant to subdivision (b) of  
32 Section 4040 and subdivision (f) of Section 5675.

33 (3) The location, if any, designated for posting of a general notice, pursuant to  
34 paragraph (3) of subdivision (a) of Section 4045.

35 (4) Notice of a member’s option to receive general notices by individual  
36 delivery, pursuant to subdivision (b) of Section 4045.

37 (5) Notice of a member’s right to receive copies of meeting minutes, pursuant to  
38 subdivision (b) of Section 4950.

39 (6) The statement of assessment collection policies required by Section 5730.

40 (7) A statement describing the association’s policies and practices in enforcing  
41 lien rights or other legal remedies for default in the payment of assessments.

1 (8) A statement describing the association’s discipline policy, if any, including  
2 any schedule of penalties for violations of the governing documents pursuant to  
3 Section 5850.

4 (9) A summary of alternative dispute resolution procedures, pursuant to Sections  
5 5920 and 5965.

6 (10) A summary of any requirements for association approval of a physical  
7 change to property, pursuant to Section 4765.

8 (11) Any other information that is required by law or the governing documents  
9 or that the board determines to be appropriate for inclusion.

10 (b) The board shall promptly deliver a copy of the most recent annual policy  
11 statement to any new member, at no cost to the member.

12 (c) The annual policy statement shall be made available to the members pursuant  
13 to Section 5320.

14 **Comment.** Section 5310 is new. It aggregates the annual non-budgetary disclosures that are  
15 required under various provisions of this part.

16 **Staff Note.** (1) See the first Staff Note following proposed Section 5300.  
17 (2) Proposed Section 5310(c) would extend the existing “summary” distribution option, which  
18 currently applies to the annual budget report, so that it would *also* apply to distribution of the  
19 annual policy statement. See proposed Section 5320.

20 **§ 5320 (REVISED). Notice of availability**

21 5320. (a) When a report is prepared pursuant to Section 5300, 5305, or 5310, the  
22 association shall deliver one of the following documents to all members, by  
23 individual delivery (Section 4040):

24 (1) The full report.

25 (2) A summary of the report. The summary shall include a general description of  
26 the content of the report and instructions on how to request a complete copy of the  
27 report at no cost to the member.

28 (b) Notwithstanding subdivision (a), if a member has requested to receive all  
29 reports in full, the association shall deliver the full report to that member, rather  
30 than a summary of the report.

31 **Comment.** Subdivision (a) of Section 5320 generalizes former Section 1365(d), so that the  
32 former optional “summary” approach to distributing the annual pro forma budget is extended to  
33 other annually distributed reports. Nothing in this section would prevent an association from  
34 combining multiple reports or summaries of reports in a single mailing.

35 Subdivision (b) is new.

36 **Staff Note.** Proposed Section 5320 generalizes the existing rule that governs distribution of  
37 the annual pro forma budget, so that it also applies to other annual reporting requirements. This  
38 provides an *optional* alternative approach that could help some associations to reduce costs.  
39 Proposed subdivision (b) would improve on the existing approach, by allowing a member who  
40 wishes to receive all reports in full to make that request once (rather than requiring the member to  
41 make the same request every year, as would seem to be required under Section 1365(d)).

Article 8. Conflict of Interest

§ 5350 (REVISED). Interested director

5350. (a) Notwithstanding any other law, and regardless of whether an association is incorporated or unincorporated, the provisions of Sections 7223 and 7224 of the Corporations Code shall apply to any contract or other transaction authorized, approved, or ratified by the board or a committee of the board.

(b) A director or member of a committee shall not vote or otherwise act on behalf of the association with respect to any of the following matters:

(1) Discipline of the director or committee member.

(2) An assessment against the director or committee member for damage to the common area or facilities.

(3) A request, by the director or committee member, for a payment plan for overdue assessments.

(4) A decision whether to foreclose on a lien on the separate interest of the director or committee member.

(5) Review of a proposed physical change to the separate interest of the director or committee member.

(6) A grant of exclusive use common area to the director or committee member.

(c) Nothing in this section limits any other provision of law or the governing documents that governs a decision in which a director may have an interest.

**Comment.** Subdivision (a) of Section 5350 continues former Section 1365.6 without substantive change, except that the reference to Corporations Code Section 310, which governs for-profit corporations, has been replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent rules for nonprofit mutual benefit corporations.

Subdivisions (b) and (c) are new.

**Staff Note.** (1) Proposed Section 5350(a) would correct an apparently erroneous reference to Corporations Code Section 310, which governs for-profit corporations. The reference would be replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent rules for nonprofit mutual benefit corporations.

(2) Subdivision (b) is added to provide simplified guidance to homeowner association board members on impermissible conflicts. Subdivision (c) makes clear that the section is not intended as a complete codification of the law governing director conflicts of interest.

Article 9. Managing Agent

§ 5375 (UNCHANGED). Prospective managing agent disclosure

5375. A prospective managing agent of a common interest development shall provide a written statement to the board of directors of the association of a common interest development as soon as practicable, but in no event more than 90 days, before entering into a management agreement which shall contain all of the following information concerning the managing agent:

(a) The names and business addresses of the owners or general partners of the managing agent. If the managing agent is a corporation, the written statement shall

1 include the names and business addresses of the directors and officers and  
2 shareholders holding greater than 10 percent of the shares of the corporation.

3 (b) Whether or not any relevant licenses such as architectural design,  
4 construction, engineering, real estate, or accounting have been issued by this state  
5 and are currently held by the persons specified in subdivision (a). If a license is  
6 currently held by any of those persons, the statement shall contain the following  
7 information:

8 (1) What license is held.

9 (2) The dates the license is valid.

10 (3) The name of the licensee appearing on that license.

11 (c) Whether or not any relevant professional certifications or designations such  
12 as architectural design, construction, engineering, real property management, or  
13 accounting are currently held by any of the persons specified in subdivision (a),  
14 including, but not limited to, a professional common interest development  
15 manager. If any certification or designation is held, the statement shall include the  
16 following information:

17 (1) What the certification or designation is and what entity issued it.

18 (2) The dates the certification or designation is valid.

19 (3) The names in which the certification or designation is held.

20 **Comment.** Section 5375 continues former Section 1363.1(a) without change.

21 **§ 5380 (UNCHANGED). Trust fund account**

22 5380. (a) A managing agent of a common interest development who accepts or  
23 receives funds belonging to the association shall deposit all any funds that are not  
24 placed into an escrow account with a bank, savings association, or credit union or  
25 into an account under the control of the association, into a trust fund account  
26 maintained by the managing agent in a bank, savings association, or credit union  
27 in this state. All funds deposited by the managing agent in the trust fund account  
28 shall be kept in this state in a financial institution, as defined in Section 31041 of  
29 the Financial Code, which is insured by the federal government, and shall be  
30 maintained there until disbursed in accordance with written instructions from the  
31 association entitled to the funds.

32 (b) At the written request of the board of directors of the association, the funds  
33 the managing agent accepts or receives on behalf of the association shall be  
34 deposited into an interest-bearing account in a bank, savings association, or credit  
35 union in this state, provided all of the following requirements are met:

36 (1) The account is in the name of the managing agent as trustee for the  
37 association or in the name of the association.

38 (2) All of the funds in the account are covered by insurance provided by an  
39 agency of the federal government.

40 (3) The funds in the account are kept separate, distinct, and apart from the funds  
41 belonging to the managing agent or to any other person or entity for whom the

1 managing agent holds funds in trust except that the funds of various associations  
2 may be commingled as permitted pursuant to subdivision (d).

3 (4) The managing agent discloses to the board of directors of the association the  
4 nature of the account, how interest will be calculated and paid, whether service  
5 charges will be paid to the depository and by whom, and any notice requirements  
6 or penalties for withdrawal of funds from the account.

7 (5) No interest earned on funds in the account shall inure directly or indirectly to  
8 the benefit of the managing agent or the managing agent's employees.

9 (c) The managing agent shall maintain a separate record of the receipt and  
10 disposition of all funds described in this section, including any interest earned on  
11 the funds.

12 (d) The managing agent shall not commingle the funds of the association with  
13 the managing agent's own money or with the money of others that the managing  
14 agent receives or accepts, unless all of the following requirements are met:

15 (1) The managing agent commingled the funds of various associations on or  
16 before February 26, 1990, and has obtained a written agreement with the board of  
17 directors of each association that the managing agent will maintain a fidelity and  
18 surety bond in an amount that provides adequate protection to the associations as  
19 agreed upon by the managing agent and the board of directors of each association.

20 (2) The managing agent discloses in the written agreement whether the  
21 managing agent is deriving benefits from the commingled account or the bank,  
22 credit union, or savings institution where the moneys will be on deposit.

23 (3) The written agreement provided pursuant to this subdivision includes, but is  
24 not limited to, the name and address of the bonding companies, the amount of the  
25 bonds, and the expiration dates of the bonds.

26 (4) If there are any changes in the bond coverage or the companies providing the  
27 coverage, the managing agent discloses that fact to the board of directors of each  
28 affected association as soon as practical, but in no event more than 10 days after  
29 the change.

30 (5) The bonds assure the protection of the association and provide the  
31 association at least 10 days' notice prior to cancellation.

32 (6) Completed payments on the behalf of the association are deposited within 24  
33 hours or the next business day and do not remain commingled for more than 10  
34 calendar days.

35 (e) The prevailing party in an action to enforce this section shall be entitled to  
36 recover reasonable legal fees and court costs.

37 (f) As used in this section, "completed payment" means funds received that  
38 clearly identify the account to which the funds are to be credited.

39 **Comment.** Subdivision (a) of Section 5380 continues former Section 1363.2(a) without  
40 change, except that "such" is replaced with "any" to conform to standard legislative drafting  
41 practice.

42 Subdivisions (b) and (c) continue former Section 1363.2(b)-(c) without change, except that the  
43 phrase "his or her" has been replaced with "the managing agent's."

1 Subdivision (d) continues former Section 1363.2(d) without change, except that “he or she”  
2 and “his or her” have been replaced with “the managing agent” or “the managing agent’s”  
3 throughout.

4 Subdivision (e) continues former Section 1363.2(e) without change.

5 Subdivision (f) continues former Section 1363.2(g) without change, except that “which” is  
6 replaced with “that.”

7 Article 10. Government Assistance

8 **§ 5400 (UNCHANGED). Director training course**

9 5400. To the extent existing funds are available, the Department of Consumer  
10 Affairs and the Department of Real Estate shall develop an on-line education  
11 course for the board of directors of an association regarding the role, duties, laws,  
12 and responsibilities of board members and prospective board members, and the  
13 nonjudicial foreclosure process.

14 **Comment.** Section 5400 continues former Section 1363.001 without substantive change.

15 **§ 5405 (UNCHANGED). State registry**

16 5405. (a) To assist with the identification of common interest developments,  
17 each association, whether incorporated or unincorporated, shall submit to the  
18 Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that  
19 the Secretary of State shall prescribe, the following information concerning the  
20 association and the development that it manages:

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

23 (2) The name of the association.

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

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

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

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

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

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

39 (9) The type of common interest development, as defined in Section 4100,  
40 managed by the association.

1 (10) The number of separate interests, as defined in Section 4185, in the  
2 development.

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

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

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

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

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

22 (e) The Secretary of State shall make the information submitted pursuant to  
23 paragraph (4) of subdivision (a) available only for governmental purposes and  
24 only to Members of the Legislature and the Business, Transportation and Housing  
25 Agency, upon written request. All other information submitted pursuant to this  
26 section shall be subject to public inspection pursuant to the California Public  
27 Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title  
28 1 of the Government Code. The information submitted pursuant to this section  
29 shall be made available for governmental or public inspection, as the case may be,  
30 on or before July 1, 2004, and thereafter.

31 **Comment.** Section 5405 continues former Section 1363.6 without change, except that cross-  
32 references are updated to reflect the new location of the referenced provisions.

33 CHAPTER 6. FINANCES

34 Article 1. Accounting

35 § 5500 (UNCHANGED). Board review

36 5500. Unless the governing documents impose more stringent standards, the  
37 board of directors of the association shall do all of the following:

38 (a) Review a current reconciliation of the association's operating accounts on at  
39 least a quarterly basis.

1 (b) Review a current reconciliation of the association's reserve accounts on at  
2 least a quarterly basis.

3 (c) Review, on at least a quarterly basis, the current year's actual reserve  
4 revenues and expenses compared to the current year's budget.

5 (d) Review the latest account statements prepared by the financial institutions  
6 where the association has its operating and reserve accounts.

7 (e) Review an income and expense statement for the association's operating and  
8 reserve accounts on at least a quarterly basis.

9 **Comment.** Section 5500 continues former Section 1365.5(a) without change.

## 10 Article 2. Use of Reserve Funds

### 11 § 5510 (UNCHANGED). Use of reserve funds

12 5510. (a) The signatures of at least two persons, who shall be members of the  
13 association's board of directors, or one officer who is not a member of the board  
14 of directors and a member of the board of directors, shall be required for the  
15 withdrawal of moneys from the association's reserve accounts.

16 (b) The board of directors shall not expend funds designated as reserve funds for  
17 any purpose other than the repair, restoration, replacement, or maintenance of, or  
18 litigation involving the repair, restoration, replacement, or maintenance of, major  
19 components that the association is obligated to repair, restore, replace, or maintain  
20 and for which the reserve fund was established.

21 **Comment.** Subdivision (a) of Section 5510 continues former Section 1365.5(b) without  
22 change.

23 Subdivision (b) continues former Section 1365.5(c)(1) without change.

### 24 § 5515 (UNCHANGED). Temporary transfer of reserve funds

25 5515. (a) Notwithstanding Section 5510, the board may authorize the temporary  
26 transfer of moneys from a reserve fund to the association's general operating fund  
27 to meet short-term cashflow requirements or other expenses, if the board has  
28 provided notice of the intent to consider the transfer in a notice of meeting, which  
29 shall be provided as specified in Section 4920.

30 (b) The notice shall include the reasons the transfer is needed, some of the  
31 options for repayment, and whether a special assessment may be considered.

32 (c) If the board authorizes the transfer, the board shall issue a written finding,  
33 recorded in the board's minutes, explaining the reasons that the transfer is needed,  
34 and describing when and how the moneys will be repaid to the reserve fund.

35 (d) The transferred funds shall be restored to the reserve fund within one year of  
36 the date of the initial transfer, except that the board may, after giving the same  
37 notice required for considering a transfer, and, upon making a finding supported  
38 by documentation that a temporary delay would be in the best interests of the  
39 common interest development, temporarily delay the restoration.

1 (e) The board shall exercise prudent fiscal management in maintaining the  
2 integrity of the reserve account, and shall, if necessary, levy a special assessment  
3 to recover the full amount of the expended funds within the time limits required by  
4 this section. This special assessment is subject to the limitation imposed by  
5 Section 5605. The board may, at its discretion, extend the date the payment on the  
6 special assessment is due. Any extension shall not prevent the board from  
7 pursuing any legal remedy to enforce the collection of an unpaid special  
8 assessment.

9 **Comment.** Section 5515 continues former Section 1365.5(c)(2) without change, except that:  
10 (1) Subdivisions are added. (2) Cross-references are updated to reflect the new location of the  
11 referenced provisions. (3) The introductory word “however” was replaced with “Notwithstanding  
12 Section 5510.”

13 **§ 5520 (REVISED). Use of reserve funds for litigation**

14 5520. (a) When the decision is made to use reserve funds or to temporarily  
15 transfer moneys from the reserve fund to pay for litigation, the association shall  
16 provide general notice (Section 4045) of that decision, and of the availability of an  
17 accounting of those expenses.

18 (b) Unless the governing documents impose more stringent standards, the  
19 association shall make an accounting of expenses related to the litigation on at  
20 least a quarterly basis. The accounting shall be made available for inspection by  
21 members of the association at the association’s office.

22 **Comment.** Section 5520 continues former Section 1365.5(d) without change, except that: (1)  
23 Subdivisions are added. (2) A reference to notice pursuant to Corporations Code Section 5016 has  
24 been replaced with a requirement of general notice pursuant to Section 4045.

25 See also Sections 4080 (“association”), 4085 (“board”), 4160 (“member”).

26 **Staff Note.** Section 1365.5(d) requires notice pursuant to Corporations Code Section 5015,  
27 which requires notice in a “newsletter, magazine or other organ regularly sent to members....”  
28 Not all associations distribute periodicals of those types. Proposed Section 5520 would replace  
29 that requirement with a requirement of general notice under Section 4045.

30 **Article 3. Reserve Planning**

31 **§ 5550 (UNCHANGED). Inspection of major components**

32 5550. At least once every three years, the board of directors shall cause to be  
33 conducted a reasonably competent and diligent visual inspection of the accessible  
34 areas of the major components that the association is obligated to repair, replace,  
35 restore, or maintain as part of a study of the reserve account requirements of the  
36 common interest development, if the current replacement value of the major  
37 components is equal to or greater than one-half of the gross budget of the  
38 association, excluding the association’s reserve account for that period. The board  
39 shall review this study, or cause it to be reviewed, annually and shall consider and  
40 implement necessary adjustments to the board’s analysis of the reserve account  
41 requirements as a result of that review.

1 **Comment.** Section 5550 continues the first paragraph of former Section 1365.5(e) without  
2 change.

3 **§ 5555 (UNCHANGED). Study**

4 5555. The study required by Section 5550 shall include, at a minimum:

5 (a) Identification of the major components that the association is obligated to  
6 repair, replace, restore, or maintain that, as of the date of the study, have a  
7 remaining useful life of less than 30 years.

8 (b) Identification of the probable remaining useful life of the components  
9 identified in subdivision (a) as of the date of the study.

10 (c) An estimate of the cost of repair, replacement, restoration, or maintenance of  
11 the components identified in subdivision (a).

12 (d) An estimate of the total annual contribution necessary to defray the cost to  
13 repair, replace, restore, or maintain the components identified in subdivision (a)  
14 during and at the end of their useful life, after subtracting total reserve funds as of  
15 the date of the study.

16 (e) A reserve funding plan that indicates how the association plans to fund the  
17 contribution identified in subdivision (d) to meet the association's obligation for  
18 the repair and replacement of all major components with an expected remaining  
19 life of 30 years or less, not including those components that the board has  
20 determined will not be replaced or repaired.

21 **Comment.** Subdivisions (a)-(d) of Section 5555 continue former Section 1365.5(e)(1)-(4)  
22 without change, except that cross-references are updated to reflect the new location of the  
23 referenced provisions.

24 Subdivision (e) continues the first sentence of former Section 1365.5(e)(5) without change.

25 **§ 5560 (REVISED). Reserve funding plan**

26 5560. (a) The reserve funding plan required by subdivision (e) of Section 5555  
27 shall include a schedule of the date and amount of any change in regular or special  
28 assessments that would be needed to sufficiently fund the reserve funding plan.

29 (b) The plan shall be adopted by the board of directors at an open meeting  
30 before the membership of the association as described in Article 2 (commencing  
31 with Section 4900) of Chapter 5.

32 (c) If the board of directors determines that an assessment increase is necessary  
33 to fund the reserve funding plan, any increase shall be approved in a separate  
34 action of the board that is consistent with the procedure described in Section 5605.

35 **Comment.** Section 5560 continues the second, third, and fourth sentences of former Section  
36 1365.5(e)(5) without change, except that: (1) The introductory clause has been restated, without  
37 substantive change. (2) Cross-references are updated to reflect the new location of the referenced  
38 provisions.

39 **Staff Note.** The introductory clause of Section 1365.5(e)(5) has been restated without  
40 substantive change in proposed Section 5560(a), to reflect the separation of this provision from  
41 the first sentence of Section 1365.5(e)(5).

1 § 5565 (REVISED). Summary of association reserves

2 5565. The summary of the association’s reserves required by paragraph (2) of  
3 subdivision (b) of Section 5300 shall be based on the most recent review or study  
4 conducted pursuant to Sections 5550 and 5555, shall be based only on assets held  
5 in cash or cash equivalents, shall be printed in boldface type and shall include all  
6 of the following:

7 (a) The current estimated replacement cost, estimated remaining life, and  
8 estimated useful life of each major component.

9 (b) As of the end of the fiscal year for which the study is prepared:

10 (1) The current estimate of the amount of cash reserves necessary to repair,  
11 replace, restore, or maintain the major components.

12 (2) The current amount of accumulated cash reserves actually set aside to repair,  
13 replace, restore, or maintain major components.

14 (3) If applicable, the amount of funds received from either a compensatory  
15 damage award or settlement to an association from any person or entity for  
16 injuries to property, real or personal, arising out of any construction or design  
17 defects, and the expenditure or disposition of funds, including the amounts  
18 expended for the direct and indirect costs of repair of construction or design  
19 defects. These amounts shall be reported at the end of the fiscal year for which the  
20 study is prepared as separate line items under cash reserves pursuant to paragraph  
21 (2). Instead of complying with the requirements set forth in this paragraph, an  
22 association that is obligated to issue a review of their financial statement pursuant  
23 to Section 5305 may include in the review a statement containing all of the  
24 information required by this paragraph.

25 (c) The percentage that the amount determined for purposes of paragraph (2) of  
26 subdivision (b) equals the amount determined for purposes of paragraph (1) of  
27 subdivision (b).

28 (d) The current deficiency in reserve funding expressed on a per unit basis. The  
29 figure shall be calculated by subtracting the amount determined for purposes of  
30 paragraph (2) of subdivision (b) from the amount determined for purposes of  
31 paragraph (1) of subdivision (b) and then dividing the result by the number of  
32 separate interests within the association, except that if assessments vary by the size  
33 or type of ownership interest, then the association shall calculate the current  
34 deficiency in a manner that reflects the variation.

35 **Comment.** Section 5565 continues former Section 1365(a)(2) without change, except that: (1)  
36 The introductory clause is revised to reflect the organization of this provision as a separate  
37 section and to make minor grammatical improvements. (2) Subdivision (b)(3) corrects an  
38 erroneous cross-reference (to the financial statement required under Section 5305). (3) Cross-  
39 references are updated to reflect the new location of the referenced provisions.

40 **Staff Note.** Proposed Section 5565 would continue former Section 1365(a)(2), which  
41 describes the required content of the “summary of association reserves” that must be included in  
42 the annual budget distributed to the members. In addition to making minor changes to reflect the  
43 organization of the provision as a separate section and to update cross-references, the proposed  
44 section would also correct an erroneous cross-reference.

Existing Section 1365(a)(2)(B)(iii) refers to the financial statement prepared “pursuant to subdivision (b).” That cross-reference used to be correct, but in 2006 a bill was enacted that inserted a new subdivision (b) and renumbered the financial statement provision as subdivision (c). See 2006 Cal. Stat. ch. 181, § 1. The cross-reference should have been corrected at that time, but was apparently overlooked. Proposed Section 5565 would correct that error.

**§ 5570 (UNCHANGED). Assessment and reserve funding disclosure summary**

5570. (a) The disclosures required by this article with regard to an association or a property shall be summarized on the following form:

**ASSESSMENT AND RESERVE FUNDING DISCLOSURE SUMMARY**

(1) The current regular assessment per ownership interest is \$\_\_\_\_\_ per \_\_\_\_\_.  
 Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page \_\_\_\_\_ of the attached summary.

(2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment will be due:	Amount per ownership interest per month or year (If assessments are variable, see note immediate below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page \_\_\_\_\_ of the attached report.

(3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association’s obligation for repair and/or replacement of major components during the next 30 years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members.

Approximate date assessments will be due:	Amount per ownership interest per month or year:
	Total:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

(5) All major components are included in the reserve study and are included in its calculations.

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570, the estimated amount required in the reserve fund at the end of the current fiscal year is \$\_\_\_\_, based in whole or in part on the last reserve study or update prepared by \_\_\_\_ as of \_\_\_\_ (month), \_\_\_\_ (year). The projected reserve fund cash balance at the end of the current fiscal year is \$\_\_\_\_, resulting in reserves being \_\_\_\_ percent funded at this date.

If an alternate, but generally accepted, method of calculation is also used, the required reserve amount is \$\_\_\_\_. (See attached explanation)

(7) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570 of the Civil Code, the estimated amount required in the reserve fund at the end of each of the next five budget years is \$\_\_\_\_, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is \$\_\_\_\_, leaving the reserve at \_\_\_\_ percent funding. If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years will be \$\_\_\_\_, leaving the reserve at \_\_\_\_ percent funding.

Note: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change.

(b) For the purposes of preparing a summary pursuant to this section:

(1) “Estimated remaining useful life” means the time reasonably calculated to remain before a major component will require replacement.

(2) “Major component” has the meaning used in Section 5550. Components with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

(3) The form set out in subdivision (a) shall accompany each annual budget report or summary thereof that is delivered pursuant to Section 5300. The form may be supplemented or modified to clarify the information delivered, so long as the minimum information set out in subdivision (a) is provided.

1 (4) For the purpose of the report and summary, the amount of reserves needed  
2 to be accumulated for a component at a given time shall be computed as the  
3 current cost of replacement or repair multiplied by the number of years the  
4 component has been in service divided by the useful life of the component. This  
5 shall not be construed to require the board to fund reserves in accordance with this  
6 calculation.

7 **Comment.** Section 5570 continues former Section 1365.2.5 without change, except that a  
8 reference to distribution of the pro forma operating budget has been changed to refer to the annual  
9 budget report distributed pursuant to Section 5300.

10 **§ 5580 (REVISED). Community service organization report**

11 5580. (a) Unless the governing documents impose more stringent standards, any  
12 community service organization whose funding from the association or its  
13 members exceeds 10 percent of the organization’s annual budget shall prepare and  
14 distribute to the association a report that meets the requirements of Section 5012  
15 of the Corporations Code, and that describes in detail administrative costs and  
16 identifies the payees of those costs in a manner consistent with the provisions of  
17 Article 5 (commencing with Section 5200).

18 (b) If the community service organization does not comply with the standards,  
19 the report shall disclose the noncompliance in detail. If a community service  
20 organization is responsible for the maintenance of major components for which an  
21 association would otherwise be responsible, the community service organization  
22 shall supply to the association the information regarding those components that the  
23 association would use to complete disclosures and reserve reports required under  
24 this article and Section 5300. An association may rely upon information received  
25 from a community service organization, and shall provide access to the  
26 information pursuant to the provisions of Article 5 (commencing with Section  
27 5200).

28 **Comment.** Section 5580 restates former Section 1365.3 without change, except that: (1) Cross-  
29 references are updated to reflect the new location of the referenced provisions. (2) The section is  
30 divided into subdivisions for ease of reference. (3) A superfluous cross-reference to the definition  
31 of “community service organization” is not continued.

32 **Staff Note.** Proposed Section 5580 uses the exact language of Section 1365.3 (except as  
33 indicated in the Comment above). That language includes some significant ambiguities that are  
34 left unaddressed because the staff does not understand the intended meaning. The staff invites  
35 public comment on the following questions:

36 (1) What is meant by the requirement that the payees of administrative costs be identified “in a  
37 manner consistent with the provisions of Section 1365.2?”

38 (2) What is meant by “If the community service organization does not comply with the  
39 standards, the report shall disclose the noncompliance in detail”? What standards are being  
40 referenced here?

Article 4. Assessment Setting

§ 5600 (UNCHANGED). Levy of assessment

5600. (a) Except as provided in Section 5605, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title.

(b) An association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

**Comment.** Subdivision (a) of Section 5600 continues the first sentence of former Section 1366(a) without substantive change, except that a cross-reference is updated to reflect the new location of the referenced provision.

Subdivision (b) continues former Section 1366.1 without substantive change.

§ 5605 (REVISED). Assessment approval requirements

5605. (a) Annual increases in regular assessments for any fiscal year shall not be imposed unless the board has complied with Section 5300 with respect to that fiscal year, or has obtained the approval of a majority of a quorum of members (Section 4070) at a member meeting or election.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of a majority of a quorum of members (Section 4070) at a member meeting or election.

(c) For the purposes of this section, "quorum" means more than 50 percent of the owners of an association.

**Comment.** Subdivision (a) of Section 5605 continues the second sentence of former Section 1366(a) without change, except that: (1) Language requiring approval of a majority of members casting a vote at meeting at which a quorum is established has been replaced with a reference to the standard provision on approval of a majority of a quorum of members (Section 4070). (2) A reference to an assessment increase "as authorized by subdivision (b)" is superfluous and potentially confusing, and is not continued. (3) Language requiring that a meeting or election be conducted pursuant to the Corporations Code is inconsistent with former Section 1363.03 and has not been continued. (4) A cross-reference to former Section 1366(a) has been replaced with a cross-reference to Section 5300, which continues former Section 1366(a)-(b), and (f).

Subdivision (b) continues the first sentence of former Section 1366(b) without change, except that: (1) Language requiring approval of a majority of members casting a vote at meeting at which a quorum is established has been replaced with a reference to the standard provision on approval of a majority of a quorum of members (Section 4070). (2) Language requiring that a meeting or election be conducted pursuant to the Corporations Code is inconsistent with former Section 1363.03 and has not been continued.

Subdivision (c) continues the last sentence of former Section 1366(a) and the second sentence of former Section 1366(b) without change.

**Staff Notes:** (1) Section 1366(a) and (b) require that member approval of an assessment increase be obtained "at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations

1 Code and Section 7613 of the Corporations Code.” That requirement is plainly contradicted by  
2 Section 1363.03, which expressly supersedes the Corporations Code election provisions. That  
3 error would be corrected in proposed Section 5605, which would not continue the references to  
4 the election or meeting requirements of the Corporations Code.

5 (2) Existing Section 1366(a) requires member approval of an assessment increase if the board  
6 has not complied with Section 1365(a) for the fiscal year. Section 1365(a) requires the  
7 distribution of the annual pro forma budget.

8 In proposed Section 5605, the reporting requirement is broadened slightly, to simplify its  
9 application. It would require member approval of an assessment increase if the board does not  
10 distribute the “annual budget report” pursuant to proposed Section 5300. That report includes all  
11 of the elements of the existing pro forma budget, plus two related items that are currently not  
12 within the scope of Section 1366(a): the reserve funding plan distributed pursuant to Section  
13 1366(b) and the insurance coverage notice distributed pursuant to Section 1366(f).

14 **§ 5610 (UNCHANGED). Emergency exception to assessment approval requirements**

15 5610. Section 5605 does not limit assessment increases necessary for emergency  
16 situations. For purposes of this section, an emergency situation is any one of the  
17 following:

18 (a) An extraordinary expense required by an order of a court.

19 (b) An extraordinary expense necessary to repair or maintain the common  
20 interest development or any part of it for which the association is responsible  
21 where a threat to personal safety on the property is discovered.

22 (c) An extraordinary expense necessary to repair or maintain the common  
23 interest development or any part of it for which the association is responsible that  
24 could not have been reasonably foreseen by the board in preparing and distributing  
25 the annual budget report under Section 5300. However, prior to the imposition or  
26 collection of an assessment under this subdivision, the board shall pass a  
27 resolution containing written findings as to the necessity of the extraordinary  
28 expense involved and why the expense was not or could not have been reasonably  
29 foreseen in the budgeting process, and the resolution shall be distributed to the  
30 members with the notice of assessment.

31 **Comment.** Section 5610 continues the third and fourth sentences and paragraphs (1) to (3),  
32 inclusive, of former Section 1366(b), without change, except that: (1) A reference to the “pro  
33 forma operating budget” has been replaced with a reference to the “annual budget report.” (2)  
34 Cross-references are updated to reflect the new location of the referenced provisions.

35 **§ 5615 (REVISED). Notice of assessment increase**

36 5615. The association shall provide individual notice (Section 4040) to the  
37 owners of the separate interests of any increase in the regular or special  
38 assessments of the association, not less than 30 nor more than 60 days prior to the  
39 increased assessment becoming due.

40 **Comment.** Proposed Section 5615 continues former Section 1366(d) without change, except  
41 that a requirement of delivery by first class mail has been replaced with a requirement of  
42 individual notice under Section 4040.

1 **☞ Staff Note.** Proposed Section 5615 would replace the existing first class mail delivery  
2 requirement in Section 1366(d) with the more flexible rule for delivery of individual notice under  
3 Section 4040.

4 **§ 5620 (REVISED). Exemption from execution**

5 5620. (a) Regular assessments imposed or collected to perform the obligations  
6 of an association under the governing documents or this title shall be exempt from  
7 execution by a judgment creditor of the association only to the extent necessary  
8 for the association to perform essential services, such as paying for utilities and  
9 insurance. In determining the appropriateness of an exemption, a court shall  
10 ensure that only essential services are protected under this subdivision.

11 (b) This exemption shall not apply to any consensual pledges, liens, or  
12 encumbrances that have been approved by a majority of a quorum of members  
13 (Section 4070) at a member meeting or election, or to any state tax lien, or to any  
14 lien for labor or materials supplied to the common area.

15 **Comment.** Section 5620 continues former Section 1366(c) without change, except that: (1)  
16 Subdivisions are added. (2) A reference to approval of a majority of members casting a vote at  
17 meeting at which a quorum is established has been replaced with a reference to the standard  
18 provision on approval of a majority of a quorum of members (Section 4070). (3) Quorum-related  
19 language from former Section 1366(b)-(c) is not continued.

20 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing  
21 documents”), 4160 (“member”).

22 **☞ Staff Note.** Both Section 1366(a) and (b) contain the following sentence: “For the purposes  
23 of this section, ‘quorum’ means more than 50 percent of the owners of an association.” Although  
24 those provisions purport to apply to the “section” as a whole, the fact that the sentence is repeated  
25 in subdivisions (a) and (b) suggests that the intention may have been to limit the application of  
26 the sentence to just those subdivisions. If so, then the special quorum rule would not apply to the  
27 reference in Section 1366(c) to “any consensual pledges, liens, or encumbrances that have been  
28 approved by the owners of an association, *constituting a quorum*, casting a majority of the votes  
29 at a meeting or election of the association...” (Emphasis added.) Proposed Section 5620 is  
30 drafted on the basis of that interpretation, and does not include the special quorum rule.

31  
32 **Article 5. Assessment Payment and Delinquency**

33 **§ 5650 (UNCHANGED). Assessment debt and delinquency**

34 5650. (a) A regular or special assessment and any late charges, reasonable fees  
35 and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as  
36 determined in accordance with subdivision (b), shall be a debt of the owner of the  
37 separate interest at the time the assessment or other sums are levied.

38 (b) Regular and special assessments levied pursuant to the governing documents  
39 are delinquent 15 days after they become due, unless the declaration provides a  
40 longer time period, in which case the longer time period shall apply. If an  
41 assessment is delinquent the association may recover all of the following:

42 (1) Reasonable costs incurred in collecting the delinquent assessment, including  
43 reasonable attorney’s fees.

1 (2) A late charge not exceeding 10 percent of the delinquent assessment or ten  
2 dollars (\$10), whichever is greater, unless the declaration specifies a late charge in  
3 a smaller amount, in which case any late charge imposed shall not exceed the  
4 amount specified in the declaration.

5 (3) Interest on all sums imposed in accordance with this section, including the  
6 delinquent assessments, reasonable fees and costs of collection, and reasonable  
7 attorney’s fees, at an annual interest rate not to exceed 12 percent, commencing 30  
8 days after the assessment becomes due, unless the declaration specifies the  
9 recovery of interest at a rate of a lesser amount, in which case the lesser rate of  
10 interest shall apply.

11 (c) Associations are hereby exempted from interest-rate limitations imposed by  
12 Article XV of the California Constitution, subject to the limitations of this section.

13 **Comment.** Subdivision (a) of Section 5650 continues the first sentence of former Section  
14 1367.1(a) without change, except that a cross-reference is updated to reflect the new location of  
15 the referenced provision.

16 Subdivision (b) continues former Section 1366(e) without change.

17 Subdivision (c) continues former Section 1366(f) without change.

18 **§ 5655 (REVISED). Payments**

19 5655. (a) Any payments made by the owner of a separate interest toward  
20 assessments shall first be applied to the assessments owed, and, only after the  
21 assessments owed are paid in full shall the payments be applied to the fees and  
22 costs of collection, attorney’s fees, late charges, or interest.

23 (b) When an owner makes a payment, the owner may request a receipt and the  
24 association shall provide it. The receipt shall indicate the date of payment and the  
25 person who received it.

26 (c) The association shall provide a mailing address for overnight payment of  
27 assessments.

28 **Comment.** Section 5655 continues former Section 1367.1(b) without substantive change,  
29 except that: (1) A reference to assessment debt “set forth, as required in subdivision (a)” is not  
30 continued. (2) Subdivisions are added.

31  **Staff Note.** Existing Section 1367.1(b) refers to payments made toward “the debt set forth, as  
32 required in subdivision (a)...” The purpose of that language is unclear and it is potentially  
33 problematic. It could be understood as limiting the right established in Section 1367.1(b) to debts  
34 that have been properly noticed, pursuant to Section 1367.1(a). In other words, if the association  
35 makes a technical mistake in describing the debt, the member’s right to pay off the principal first  
36 might not apply. The staff sees no policy reason for such a result. The limiting language would  
37 not be continued in proposed Section 5655.

38 **§ 5658 (UNCHANGED). Payment under protest**

39 5658. (a) If a dispute exists between the owner of a separate interest and the  
40 association regarding any disputed charge or sum levied by the association,  
41 including, but not limited to, an assessment, fine, penalty, late fee, collection cost,  
42 or monetary penalty imposed as a disciplinary measure, and the amount in dispute  
43 does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of

1 the Code of Civil Procedure, the owner of the separate interest may, in addition to  
2 pursuing dispute resolution pursuant to Article 3 (commencing with Section 5925)  
3 of Chapter 8, pay under protest the disputed amount and all other amounts levied,  
4 including any fees and reasonable costs of collection, reasonable attorney's fees,  
5 late charges, and interest, if any, pursuant to subdivision (b) of Section 5650, and  
6 commence an action in small claims court pursuant to Chapter 5.5 (commencing  
7 with Section 116.110) of Title 1 of the Code of Civil Procedure.

8 (b) Nothing in this section shall impede an association's ability to collect  
9 delinquent assessments as provided in this article or Article 6 (commencing with  
10 Section 5700).

11 **Comment.** Section 5658 continues former Section 1367.6 without change, except that cross-  
12 references are updated to reflect the new location of the referenced provisions.

13 **§ 5660 (REVISED). Pre-lien notice**

14 5660. At least 30 days prior to recording a lien upon the separate interest of the  
15 owner of record to collect a debt that is past due under Section 5650, the  
16 association shall notify the owner of record in writing by certified mail of the  
17 following:

18 (a) A general description of the collection and lien enforcement procedures of  
19 the association and the method of calculation of the amount, a statement that the  
20 owner of the separate interest has the right to inspect the association records,  
21 pursuant to Section 5205 and the following statement in 14-point boldface type, if  
22 printed, or in capital letters, if typed:

23 “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN  
24 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS,  
25 IT MAY BE SOLD WITHOUT COURT ACTION.”

26 (b) An itemized statement of the charges owed by the owner, including items on  
27 the statement which indicate the amount of any delinquent assessments, the fees  
28 and reasonable costs of collection, reasonable attorney’s fees, any late charges,  
29 and interest, if any.

30 (c) A statement that the owner shall not be liable to pay the charges, interest, and  
31 costs of collection, if it is determined the assessment was paid on time to the  
32 association.

33 (d) The right to request a meeting with the board as provided by Section 5665.

34 (e) The right to dispute the assessment debt by submitting a written request for  
35 dispute resolution to the association pursuant to the association’s “meet and  
36 confer” program required in Article 2 (commencing with Section 5900) of Chapter  
37 8.

38 (f) The right to request alternative dispute resolution with a neutral third party  
39 pursuant to Article 3 (commencing with Section 5925) of Chapter 8 before the  
40 association may initiate foreclosure against the owner’s separate interest, except  
41 that binding arbitration shall not be available if the association intends to initiate a  
42 judicial foreclosure.

1 **Comment.** Section 5660 continues the second sentence of former Section 1367.1(a), and  
2 paragraphs (1) to (6) of that provision, inclusive, without change, except that: (1) The reference to  
3 inspection of records under Corporations Code Section 8333 is replaced with a reference to  
4 inspection of records under Section 5205. (2) Cross-references are updated to reflect the new  
5 location of the referenced provisions.

6 **Staff Note.** The notice required under Section 1367.1(a) includes notice of the right to inspect  
7 records under Corporations Code Section 8333. That right has been superseded by the broader  
8 inspection rights conferred by Section 1365.2. Proposed Section 5660 would refer to the latter  
9 provision, rather than the Corporations Code.

10 **§ 5665 (UNCHANGED). Payment plan**

11 5665. (a) An owner, other than an owner of any interest that is described in  
12 Section 11212 of the Business and Professions Code that is not otherwise exempt  
13 from this section pursuant to subdivision (a) of Section 11211.7, may submit a  
14 written request to meet with the board to discuss a payment plan for the debt  
15 noticed pursuant to Section 5660). The association shall provide the owners the  
16 standards for payment plans, if any exist.

17 (b) The board shall meet with the owner in executive session within 45 days of  
18 the postmark of the request, if the request is mailed within 15 days of the date of  
19 the postmark of the notice, unless there is no regularly scheduled board meeting  
20 within that period, in which case the board may designate a committee of one or  
21 more members to meet with the owner.

22 (c) Payment plans may incorporate any assessments that accrue during the  
23 payment plan period. Additional late fees shall not accrue during the payment plan  
24 period if the owner is in compliance with the terms of the payment plan.

25 (d) Payment plans shall not impede an association's ability to record a lien on  
26 the owner's separate interest to secure payment of delinquent assessments.

27 (e) In the event of a default on any payment plan, the association may resume its  
28 efforts to collect the delinquent assessments from the time prior to entering into  
29 the payment plan.

30 **Comment.** Section 5665 continues former Section 1367.1(c)(3) without change, except that:  
31 (1) Cross-references are updated to reflect the new location of the referenced provisions. (2)  
32 Subdivisions are added.

33 **§ 5670 (UNCHANGED). Pre-lien dispute resolution**

34 5670. Prior to recording a lien for delinquent assessments, an association shall  
35 offer the owner and, if so requested by the owner, participate in dispute resolution  
36 pursuant to the association's "meet and confer" program required in Article 2  
37 (commencing with Section 5900) of Chapter 8.

38 **Comment.** Section 5670 continues former Section 1367.1(c)(1)(A) without change, except that  
39 a cross-reference is updated to reflect the new location of the referenced provision.

40 **§ 5673 (UNCHANGED). Decision to lien**

41 5673. For liens recorded on or after January 1, 2006, the decision to record a lien  
42 for delinquent assessments shall be made only by the board of directors of the

1 association and may not be delegated to an agent of the association. The board  
2 shall approve the decision by a majority vote of the board members in an open  
3 meeting. The board shall record the vote in the minutes of that meeting.

4 **Comment.** Section 5673 continues former Section 1367.1(c)(2) without change.

5 **§ 5675 (UNCHANGED). Notice of delinquent assessment**

6 5675. (a) The amount of the assessment, plus any costs of collection, late  
7 charges, and interest assessed in accordance with subdivision (b) of Section 5650,  
8 shall be a lien on the owner's separate interest in the common interest  
9 development from and after the time the association causes to be recorded with the  
10 county recorder of the county in which the separate interest is located, a notice of  
11 delinquent assessment, which shall state the amount of the assessment and other  
12 sums imposed in accordance with subdivision (b) of Section 5650, a legal  
13 description of the owner's separate interest in the common interest development  
14 against which the assessment and other sums are levied, and the name of the  
15 record owner of the separate interest in the common interest development against  
16 which the lien is imposed.

17 (b) The itemized statement of the charges owed by the owner described in  
18 subdivision (b) of Section 5660 shall be recorded together with the notice of  
19 delinquent assessment.

20 (c) In order for the lien to be enforced by nonjudicial foreclosure as provided in  
21 Sections 5700 through 5710, inclusive, the notice of delinquent assessment shall  
22 state the name and address of the trustee authorized by the association to enforce  
23 the lien by sale.

24 (d) The notice of delinquent assessment shall be signed by the person designated  
25 in the declaration or by the association for that purpose, or if no one is designated,  
26 by the president of the association.

27 (e) A copy of the recorded notice of delinquent assessment shall be mailed by  
28 certified mail to every person whose name is shown as an owner of the separate  
29 interest in the association's records, and the notice shall be mailed no later than 10  
30 calendar days after recordation.

31 (f) Upon receipt of a written request by an owner identifying a secondary  
32 address for purposes of collection notices, the association shall send additional  
33 copies of any notices required by this section to the secondary address provided.  
34 The association shall notify owners of their right to submit secondary addresses to  
35 the association, in the annual policy notice distributed pursuant to Section 5310.  
36 The owner's request shall be in writing and shall be mailed to the association in a  
37 manner that shall indicate the association has received it. The owner may identify  
38 or change a secondary address at any time, provided that, if a secondary address is  
39 identified or changed during the collection process, the association shall only be  
40 required to send notices to the indicated secondary address from the point the  
41 association receives the request.

1 (g) An association that fails to comply with the procedures set forth in this  
2 section shall, prior to recording a lien, recommence the required notice process.  
3 Any costs associated with recommencing the notice process shall be borne by the  
4 association and not by the owner of a separate interest.

5 **Comment.** Subdivisions (a)-(e) of Section 5675 continue the first five sentences of former  
6 Section 1367.1(d) without change, except that cross-references are updated to reflect the new  
7 location of the referenced provisions.

8 Subdivision (f) continues former Section 1367.1(k) without change, except that a reference to  
9 the annual budget has been replaced with a reference to the annual policy notice distributed  
10 pursuant to Section 5310.

11 Subdivision (g) continues former Section 1367.1(l) without change.

12 **§ 5680 (REVISED). Lien priority**

13 5680. A lien created pursuant to Section 5675 shall be prior to all other liens  
14 recorded subsequent to the notice of delinquent assessment, except that the  
15 declaration may provide for the subordination thereof to any other liens and  
16 encumbrances.

17 **Comment.** Section 5680 continues former Section 1367.1(f) without change, except that: (1)  
18 The phrase “notice of assessment” is replaced with the more specific “notice of delinquent  
19 assessment.” (2) A cross-reference is updated to reflect the new location of the referenced  
20 provision.

21  **Staff Note.** Section 1367.1(f) refers to the “notice of assessment.” It appears that the intention  
22 was to refer to the “notice of delinquent assessment” specified in Section 1367.1(d). In order to  
23 avoid any ambiguity, proposed Section 5680 uses the more specific term.

24 **§ 5685 (REVISED). Lien release**

25 5685. (a) Within 21 days of the payment of the sums specified in the notice of  
26 delinquent assessment, the association shall record or cause to be recorded in the  
27 office of the county recorder in which the notice of delinquent assessment is  
28 recorded a lien release or notice of rescission and provide the owner of the  
29 separate interest a copy of the lien release or notice that the delinquent assessment  
30 has been satisfied.

31 (b) If it is determined that a lien previously recorded against the separate interest  
32 was recorded in error, the party who recorded the lien shall, within 21 calendar  
33 days, record or cause to be recorded in the office of the county recorder in which  
34 the notice of delinquent assessment is recorded a lien release or notice of  
35 rescission and provide the owner of the separate interest with a declaration that the  
36 lien filing or recording was in error and a copy of the lien release or notice of  
37 rescission.

38 (c) If it is determined that an association has recorded a lien for a delinquent  
39 assessment in error, the association shall promptly reverse all late charges, fees,  
40 interest, attorney’s fees, costs of collection, costs imposed for the notice prescribed  
41 in Section 5660, and costs of recordation and release of the lien authorized under  
42 subdivision (b) of Section 5720, and pay all costs related to any related dispute  
43 resolution or alternative dispute resolution.

1 **Comment.** Subdivision (a) of Section 5685 continues the sixth sentence of former Section  
2 1367.1(d) without change.

3 Subdivision (b) continues former Section 1367.1(i) without change.

4 Subdivision (c) continues former Section 1367.5 without change, except that: (1) The  
5 requirement that the error be discovered as a result of alternative dispute resolution is not  
6 continued. (2) Cross-references are updated to reflect the new location of the referenced  
7 provisions.

8 **Staff Note.** Section 1367.5 provides for a reversal of costs if it is determined, through  
9 specified forms of alternative dispute resolution, that a lien for delinquent assessments is recorded  
10 in error. There is no obvious policy reason why reversal of costs should be limited to errors  
11 discovered through ADR (thereby omitting errors discovered in any other context). Proposed  
12 Section 5685(c) would not continue the ADR-discovery limitation.

## 13 Article 6. Assessment Collection

### 14 § 5700 (REVISED). Collection generally

15 5700. (a) Except as otherwise provided in this article, after the expiration of 30  
16 days following the recording of a lien created pursuant to Section 5675, the lien  
17 may be enforced in any manner permitted by law, including sale by the court, sale  
18 by the trustee designated in the notice of delinquent assessment, or sale by a  
19 trustee substituted pursuant to Section 2934a.

20 (b) Nothing in Article 5 (commencing with Section 5650) or in subdivision (a)  
21 of Section 726 of the Code of Civil Procedure prohibits actions against the owner  
22 of a separate interest to recover sums for which a lien is created pursuant to Article  
23 5 (commencing with Section 5650) or prohibits an association from taking a deed  
24 in lieu of foreclosure.

25 **Comment.** Subdivision (a) of Section 5700 continues the second sentence of former Section  
26 1367.1(g), except that: (1) The introductory clause has been broadened to recognize the  
27 application of all restrictions on collection that are provided in this article. See, e.g., Sections  
28 5720 (limitation on foreclosure), 5735 (limitation on assignment). (2) Cross-references are  
29 updated to reflect the new location of the referenced provisions.

30 Subdivision (b) continues former Section 1367.1(h) without change, except that cross-  
31 references are updated to reflect the new location of the referenced provisions.

32 **Staff Note.** The rule stated in the second sentence of Section 1367.1(g) is limited by an  
33 express caveat, recognizing the “limitations of this subdivision” (i.e., of Section 1367.1(g)). That  
34 caveat appears to be too narrow. It does not recognize the substantive limitations on foreclosure  
35 imposed by Section 1367.4. For that reason, the introductory clause of proposed Section 5700(a)  
36 is broadened to encompass any exceptions stated in “this article,” which would include the  
37 exceptions provided in Section 1367.4.

### 38 § 5705 (UNCHANGED). Decision to foreclose

39 5705. (a) Notwithstanding any law or any provisions of the governing  
40 documents to the contrary, this section shall apply to debts for assessments that  
41 arise on and after January 1, 2006.

42 (b) Prior to initiating a foreclosure on an owner’s separate interest, the  
43 association shall offer the owner and, if so requested by the owner, participate in

1 dispute resolution pursuant to the association’s “meet and confer” program  
2 required in Article 2 (commencing with Section 5900) of Chapter 8 or alternative  
3 dispute resolution as set forth in Article 3 (commencing with Section 5925) of  
4 Chapter 8. The decision to pursue dispute resolution or a particular type of  
5 alternative dispute resolution shall be the choice of the owner, except that binding  
6 arbitration shall not be available if the association intends to initiate a judicial  
7 foreclosure.

8 (c) The decision to initiate foreclosure of a lien for delinquent assessments that  
9 has been validly recorded shall be made only by the board of directors of the  
10 association and may not be delegated to an agent of the association. The board  
11 shall approve the decision by a majority vote of the board members in an  
12 executive session. The board shall record the vote in the minutes of the next  
13 meeting of the board open to all members. The board shall maintain the  
14 confidentiality of the owner or owners of the separate interest by identifying the  
15 matter in the minutes by the parcel number of the property, rather than the name of  
16 the owner or owners. A board vote to approve foreclosure of a lien shall take place  
17 at least 30 days prior to any public sale.

18 (d) The board shall provide notice by personal service in accordance with the  
19 manner of service of summons in Article 3 (commencing with Section 415.10) of  
20 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an owner of a  
21 separate interest who occupies the separate interest or to the owner’s legal  
22 representative, if the board votes to foreclose upon the separate interest. The board  
23 shall provide written notice to an owner of a separate interest who does not occupy  
24 the separate interest by first-class mail, postage prepaid, at the most current  
25 address shown on the books of the association. In the absence of written  
26 notification by the owner to the association, the address of the owner’s separate  
27 interest may be treated as the owner’s mailing address.

28 **Comment.** Subdivision (a) of Section 5705 continues former Section 1367.4(a), as it related to  
29 the substance of this section, without change.

30 Subdivision (b) continues former Section 1367.4(c)(1) without change, except that cross-  
31 references are updated to reflect the new location of the referenced provisions. Subdivision (b) is  
32 also consistent with former Section 1367.1(c)(1)(B).

33 Subdivision (c) continues former Section 1367.4(c)(2) without change.

34 Subdivision (d) continues former Section 1367.4(c)(3) without change.

35 **§ 5710 (UNCHANGED). Foreclosure**

36 5710. (a) Any sale by the trustee shall be conducted in accordance with Sections  
37 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages  
38 and deeds of trust.

39 (b) In addition to the requirements of Section 2924, a notice of default shall be  
40 served by the association on the owner’s legal representative in accordance with  
41 the manner of service of summons in Article 3 (commencing with Section 415.10)  
42 of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The owner’s legal  
43 representative shall be the person whose name is shown as the owner of a separate

1 interest in the association’s records, unless another person has been previously  
2 designated by the owner as his or her legal representative in writing and mailed to  
3 the association in a manner that indicates that the association has received it.

4 (c) The fees of a trustee may not exceed the amounts prescribed in Sections  
5 2924c and 2924d, plus the cost of service for either of the following:

6 (1) The notice of default pursuant to subdivision (b).

7 (2) The decision of the board to foreclose upon the separate interest of an owner  
8 as described in subdivision (d) of Section 5705.

9 **Comment.** Subdivision (a) Section 5710 continues the third sentence of former Section  
10 1367.1(g) without change.

11 Subdivision (b) continues former section 1367.1(j) without change.

12 Subdivision (c) continues the fourth sentence, and paragraphs (1) and (2), of former Section  
13 1367.1(g) without change, except that cross-references are updated to reflect the new location of  
14 the referenced provisions.

15 **§ 5715 (UNCHANGED). Right of redemption after trustee sale**

16 5715. (a) Notwithstanding any law or any provisions of the governing  
17 documents to the contrary, this section shall apply to debts for assessments that  
18 arise on and after January 1, 2006.

19 (b) A nonjudicial foreclosure by an association to collect upon a debt for  
20 delinquent assessments shall be subject to a right of redemption. The redemption  
21 period within which the separate interest may be redeemed from a foreclosure sale  
22 under this paragraph ends 90 days after the sale. In addition to the requirements of  
23 Section 2924f, a notice of sale in connection with an association’s foreclosure of a  
24 separate interest in a common interest development shall include a statement that  
25 the property is being sold subject to the right of redemption created in this section.

26 **Comment.** Subdivision (a) of Section 5715 continues former Section 1367.4(a), as it related to  
27 the substance of this section, without change.

28 Subdivision (b) continues former Section 1367.4(c)(4) without change, except that “this  
29 paragraph” is replaced with “this section.”

30 **§ 5720 (REVISED). Limitation on foreclosure**

31 5720. (a) Notwithstanding any law or any provisions of the governing  
32 documents to the contrary, this section shall apply to debts for assessments that  
33 arise on and after January 1, 2006.

34 (b) An association that seeks to collect delinquent regular or special assessments  
35 of an amount less than one thousand eight hundred dollars (\$1,800), not including  
36 any accelerated assessments, late charges, fees and costs of collection, attorney’s  
37 fees, or interest, may not collect that debt through judicial or nonjudicial  
38 foreclosure, but may attempt to collect or secure that debt in any of the following  
39 ways:

40 (1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing  
41 with Section 116.110) of Title 1 of the Code of Civil Procedure. An association  
42 that chooses to proceed by an action in small claims court, and prevails, may

1 enforce the judgment as permitted under Article 8 (commencing with Section  
2 116.810) of Title 1 of the Code of Civil Procedure. The amount that may be  
3 recovered in small claims court to collect upon a debt for delinquent assessments  
4 may not exceed the jurisdictional limits of the small claims court and shall be the  
5 sum of the following:

6 (A) The amount owed as of the date of filing the complaint in the small claims  
7 court proceeding.

8 (B) In the discretion of the court, an additional amount to that described in  
9 subparagraph (A) equal to the amount owed for the period from the date the  
10 complaint is filed until satisfaction of the judgment, which total amount may  
11 include accruing unpaid assessments and any reasonable late charges, fees and  
12 costs of collection, attorney's fees, and interest, up to the jurisdictional limits of  
13 the small claims court.

14 (2) By recording a lien on the owner's separate interest upon which the  
15 association may not foreclose until the amount of the delinquent assessments  
16 secured by the lien, exclusive of any accelerated assessments, late charges, fees  
17 and costs of collection, attorney's fees, or interest, equals or exceeds one thousand  
18 eight hundred dollars (\$1,800) or the assessments secured by the lien are more  
19 than 12 months delinquent. An association that chooses to record a lien under  
20 these provisions, prior to recording the lien, shall offer the owner and, if so  
21 requested by the owner, participate in dispute resolution as set forth in Article 2  
22 (commencing with Section 5900) of Chapter 8.

23 (3) Any other manner provided by law, except for judicial or nonjudicial  
24 foreclosure.

25 (c) The limitation on foreclosure of assessment liens for amounts under the  
26 stated minimum in this section does not apply to any of the following:

27 (1) Assessments secured by a lien that are more than 12 months delinquent.

28 (2) Assessments owed by owners of separate interests in timeshare estates, as  
29 defined in subdivision (x) of Section 11212 of the Business and Professions Code.

30 (3) Assessments owed by the declarant.

31 **Comment.** Subdivision (a) of Section 5720 continues former Section 1367.4(a), as it related to  
32 the substance of this section, without change.

33 Subdivision (b) continues former Section 1367.4(b) without change, except that a cross-  
34 reference is updated to reflect the new location of the referenced provision.

35 Subdivision (c) continues former Section 1367.4(d) without change, except that: (1) The first  
36 paragraph is added to reflect the rule in former Section 1367.4(c). (2) The second paragraph  
37 corrects an erroneous cross-reference. (3) The term "developers" is replaced with "the declarant"  
38 in the third paragraph.

39 **Staff Note.** (1) Section 1367.4(b) prohibits foreclosure to collect assessments that total less  
40 than \$1,800. However, Section 1367.4(c) expressly authorizes foreclosure to collect assessments  
41 if the amount owed is \$1,800 or more *or if the assessments secured by the lien are more than 12*  
42 *months delinquent*. The latter provision was intended as an exception to the prohibition on  
43 foreclosure for amounts less than \$1,800 (i.e., an association can foreclose on any amount, so  
44 long as the assessments are more than 12 months overdue). See Assembly Floor Analysis of SB

1 137 (Sept. 1, 2005), p. 4 (“foreclosure remains an option in all cases where a homeowner is more  
2 than 12 months delinquent in paying any assessment amount.”).

3 It is potentially confusing to have an unqualified prohibition on foreclosure for amounts less  
4 than \$1,800 in Section 1367.4(b), with the 12 month delinquency exception stated indirectly in  
5 Section 1367.4(c). In order to improve understanding of these rules, proposed Section 5720(c)(1)  
6 would state the 12 month delinquency rule directly, as an express exception to the prohibition on  
7 foreclosure for small amounts.

8 (2) The existing reference to Business and Professions Code Section 11112(x) is incorrect.  
9 Proposed Section 5720(c)(2) would correct the error.

10 (3) Read literally, Section 1367.4(d) would exempt assessments paid by any person who is a  
11 developer. It seems likely that the intent was to exempt only the developer of the CID seeking to  
12 collect the assessment. Proposed Section 5720(c)(3) would use the term “the declarant” to avoid  
13 any ambiguity on this point.

14 **§ 5725 (REVISED). Property damage and fines**

15 5725. (a) A monetary charge imposed by the association as a means of  
16 reimbursing the association for costs incurred by the association in the repair of  
17 damage to common areas and facilities caused by a member, a resident of the  
18 member’s separate interest, or the member’s guest, invitee, or tenant may become  
19 a lien against the member’s separate interest enforceable by the sale of the interest  
20 under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is  
21 set forth in the governing documents. It is the intent of the Legislature not to  
22 contravene Section 2792.26 of Title 10 of the California Code of Regulations, as  
23 that section appeared on January 1, 1996, for associations of subdivisions that are  
24 being sold under authority of a subdivision public report, pursuant to Part 2  
25 (commencing with Section 11000) of Division 4 of the Business and Professions  
26 Code.

27 (b) A monetary penalty imposed by the association as a disciplinary measure  
28 for failure of a member to comply with the governing instruments, except for the  
29 late payments, may not be characterized nor treated in the governing documents as  
30 an assessment that may become a lien against the member’s separate interest  
31 enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

32 **Comment.** Subdivision (a) of Section 5725 continues the seventh and eighth sentences of  
33 former Section 1367.1(d) without change, except that the section makes clear that a member may  
34 be liable for damage caused by a resident of the member’s separate interest or an invitee.

35 On January 1, 1996, Section 2792.26 of Title 10 of the California Code of Regulations read as  
36 follows:

37 2792.26. (a) The Association cannot be empowered to cause a forfeiture or abridgement of  
38 an owner’s right to the full use and enjoyment of his individually-owned subdivision interest  
39 on account of the failure by the owner to comply with provisions of the governing  
40 instruments or of duly-enacted rules of operation for common areas and facilities except by  
41 judgment of a court or a decision arising out of an arbitration or on account of a foreclosure  
42 or sale under a power of sale for failure of the owner to pay assessments duly levied by the  
43 Association.

44 (b) The governing instruments shall include provisions which authorize the governing body  
45 to impose monetary penalties, temporary suspensions of an owner’s rights as a member of the  
46 Association or other appropriate discipline for failure to comply with the governing

1 instruments provided that the procedures for notice and hearing, satisfying the minimum  
2 requirements of subdivision (h) of Section 1363 of the Civil Code, are followed with respect  
3 to the accused member before a decision to impose discipline is reached.

4 (c) A monetary penalty imposed by the Association as a disciplinary measure for failure of  
5 a member to comply with the governing instruments or as a means of reimbursing the  
6 Association for costs incurred by the Association in the repair of damage to common areas  
7 and facilities for which the member was allegedly responsible or in bringing the member and  
8 his subdivision interest into compliance with the governing instruments may not be  
9 characterized nor treated in the governing instruments as an assessment which may become a  
10 lien against the member's subdivision interest enforceable by a sale of the interest in  
11 accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

12 (d) The provisions of subdivision (c) do not apply to charges imposed against an owner  
13 consisting of reasonable late payment penalties for delinquent assessments and/or charges to  
14 reimburse the Association for the loss of interest and for costs reasonably incurred (including  
15 attorney's fees) in its efforts to collect delinquent assessments.

16 Subdivision (b) continues former Section 1367.1(e) without change, except that: (1) The  
17 introductory clause "except as indicated in subdivision (d)" is not continued. (2) The undefined  
18 term "governing instruments" is replaced with the defined term "governing documents." (3) The  
19 undefined term "subdivision separate interest" is replaced with the defined term "separate  
20 interest."

21 **Staff Note.** (1) Proposed Section 5725(a) would expand the scope of the existing rule  
22 governing reimbursement of costs incurred for damage caused by an owner or the owner's guest  
23 or tenant, to also include damage caused by an owner's invitee or a resident of the owner's  
24 separate interest.

25 (2) Proposed Section 5725(b) would omit the introductory clause of Section 1367.1(e): "Except  
26 as indicated in subdivision (d)..." The staff sees nothing in Section 1367.1(d) that would operate  
27 as an exception to the rule stated in Section 1367.1(e).

28 (3) Proposed Section 5725(b) would substitute the defined term "governing documents" for the  
29 undefined term "governing instruments."

30 (4) Proposed Section 5725(b) would substitute the defined term "separate interest" for the  
31 undefined term "subdivision separate interest."

32 **§ 5730 (REVISED). Statement of collection procedure**

33 5730. (a) The annual policy notice (Section 5310) shall include the following  
34 statement:

35 "NOTICE ASSESSMENTS AND FORECLOSURE

36 This notice outlines some of the rights and responsibilities of owners of property  
37 in common interest developments and the associations that manage them. Please  
38 refer to the sections of the Civil Code indicated for further information. A portion  
39 of the information in this notice applies only to liens recorded on or after January  
40 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

41 ASSESSMENTS AND FORECLOSURE

42 Assessments become delinquent 15 days after they are due, unless the governing  
43 documents provide for a longer time. The failure to pay association assessments  
44 may result in the loss of an owner's property through foreclosure. Foreclosure may  
45 occur either as a result of a court action, known as judicial foreclosure or without

1 court action, often referred to as nonjudicial foreclosure. For liens recorded on and  
2 after January 1, 2006, an association may not use judicial or nonjudicial  
3 foreclosure to enforce that lien if the amount of the delinquent assessments or  
4 dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees,  
5 interest, and costs of collection, is less than one thousand eight hundred dollars  
6 (\$1,800). For delinquent assessments or dues in excess of one thousand eight  
7 hundred dollars (\$1,800) or more than 12 months delinquent, an association may  
8 use judicial or nonjudicial foreclosure subject to the conditions set forth in Article  
9 6 (commencing with Section 5700) of Chapter 6 of Part 5 of the Civil Code. When  
10 using judicial or nonjudicial foreclosure, the association records a lien on the  
11 owner's property. The owner's property may be sold to satisfy the lien if the  
12 amounts secured by the lien are not paid. (Sections 5700 through 5720 of the Civil  
13 Code, inclusive)

14 In a judicial or nonjudicial foreclosure, the association may recover assessments,  
15 reasonable costs of collection, reasonable attorney's fees, late charges, and  
16 interest. The association may not use nonjudicial foreclosure to collect fines or  
17 penalties, except for costs to repair common areas damaged by a member or a  
18 member's guests, if the governing documents provide for this. (Section 5725 of  
19 the Civil Code)

20 The association must comply with the requirements of Article 5 (commencing  
21 with Section 5650) of Chapter 6 of Part 5 of the Civil Code when collecting  
22 delinquent assessments. If the association fails to follow these requirements, it  
23 may not record a lien on the owner's property until it has satisfied those  
24 requirements. Any additional costs that result from satisfying the requirements are  
25 the responsibility of the association. (Section 5675 of the Civil Code)

26 At least 30 days prior to recording a lien on an owner's separate interest, the  
27 association must provide the owner of record with certain documents by certified  
28 mail, including a description of its collection and lien enforcement procedures and  
29 the method of calculating the amount. It must also provide an itemized statement  
30 of the charges owed by the owner. An owner has a right to review the  
31 association's records to verify the debt. (Section 5660 of the Civil Code)

32 If a lien is recorded against an owner's property in error, the person who  
33 recorded the lien is required to record a lien release within 21 days, and to provide  
34 an owner certain documents in this regard. (Section 5685 of the Civil Code)

35 The collection practices of the association may be governed by state and federal  
36 laws regarding fair debt collection. Penalties can be imposed for debt collection  
37 practices that violate these laws.

## 38 PAYMENTS

39 When an owner makes a payment, he or she may request a receipt, and the  
40 association is required to provide it. On the receipt, the association must indicate  
41 the date of payment and the person who received it. The association must inform

1 owners of a mailing address for overnight payments. (Section 5655 of the Civil  
2 Code)

3 An owner may, but is not obligated to, pay under protest any disputed charge or  
4 sum levied by the association, including, but not limited to, an assessment, fine,  
5 penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary  
6 measure, and by so doing, specifically reserve the right to contest the disputed  
7 charge or sum in court or otherwise.

8 An owner may dispute an assessment debt by submitting a written request for  
9 dispute resolution to the association as set forth in Article 2 (commencing with  
10 Section 5900) of Chapter 8 of Part 5 of the Civil Code. In addition, an association  
11 may not initiate a foreclosure without participating in alternative dispute resolution  
12 with a neutral third party as set forth in Article 3 (commencing with Section 5925)  
13 of Chapter 8 of Part 5 of the Civil Code, if so requested by the owner. Binding  
14 arbitration shall not be available if the association intends to initiate a judicial  
15 foreclosure.

16 An owner is not liable for charges, interest, and costs of collection, if it is  
17 established that the assessment was paid properly on time. (Section 5685 of the  
18 Civil Code)

## 19 MEETINGS AND PAYMENT PLANS

20 An owner of a separate interest that is not a timeshare may request the  
21 association to consider a payment plan to satisfy a delinquent assessment. The  
22 association must inform owners of the standards for payment plans, if any exist.  
23 (Section 5665 of the Civil Code)

24 The board of directors must meet with an owner who makes a proper written  
25 request for a meeting to discuss a payment plan when the owner has received a  
26 notice of a delinquent assessment. These payment plans must conform with the  
27 payment plan standards of the association, if they exist. (Section 5665 of the Civil  
28 Code)”

29 (b) An association distributing the notice required by this section to an owner of  
30 an interest that is described in Section 11212 of the Business and Professions Code  
31 that is not otherwise exempt from this section pursuant to subdivision (a) of  
32 Section 11211.7 may delete from the notice described in subdivision (b) the  
33 portion regarding meetings and payment plans.

34 **Comment.** Section 5730 continues former Section 1365.1 without change, except that: (1) The  
35 introductory clause is revised to reflect distribution of this notice as part of the annual policy  
36 notice. (2) A limited exception for units in time shares is moved to subdivision (b), without any  
37 substantive change. (3) A reference to the application date of former Section 1367.1 (January 1,  
38 2001) is obsolete and is not continued. (4) The substance of former Section 1365.1(c) is  
39 generalized in Section 4040(b) and is not continued in Section 5670. (5) Erroneous references to  
40 “Division 2 of the Civil Code” have been corrected. The references should have been to “Part 2 of  
41 the Civil Code.” (6) An erroneous reference to former Section 1368.810 has been corrected. It  
42 should have referred to former Section 1363.810. (7) An erroneous reference to former Section

1 1367.1 in the last paragraph under the heading “Payments” has been corrected. The reference  
2 should have been to former Section 1367.5. (8) Cross-references are adjusted throughout to  
3 reflect the new location of the referenced provisions.

4 **☞ Staff Note.** Proposed Section 5730 would make minor changes to the language and  
5 organization of Section 1365.1, and correct a number of reference errors, as indicated in the  
6 Comment above.

7 **§ 5735 (REVISED). Assignment or pledge**

8 5735. (a) An association may not voluntarily assign or pledge the association’s  
9 right to collect payments or assessments, or to enforce or foreclose a lien to a third  
10 party, except when the assignment or pledge is made to a financial institution or  
11 lender chartered or licensed under federal or state law, when acting within the  
12 scope of that charter or license, as security for a loan obtained by the association.

13 (b) Nothing in subdivision (a) restricts the right or ability of an association to  
14 assign any unpaid obligations of a former member to a third party for purposes of  
15 collection.

16 **Comment.** Section 5735 continues the first sentence of former Section 1367.1(g) without  
17 change, except that: (1) The provision is divided into subdivisions. (2) An introductory clause is  
18 added in subdivision (b) to make the relationship between the two provisions clearer.

19 **☞ Staff Note.** Proposed Section 5660 would break the first sentence of Section 1367.1(g) into  
20 two subdivisions and add an introductory clause in the second provision, to better define their  
21 relationship. (In existing law the two provisions are joined by a semi-colon and the ambiguous  
22 conjunction “however.”).

23 **§ 5740 (NEW). Application of article**

24 5740. (a) Except as otherwise provided, this article applies to a lien created on or  
25 after January 1, 2003.

26 (b) A lien created before January 1, 2003, is governed by the law in existence at  
27 the time the lien was created.

28 **Comment.** Section 5740 is new. A lien created on or after January 1, 1986, and before January  
29 1, 2003, is governed by former Section 1367.

30 **☞ Staff Note.** Under existing law, Section 1367 governs liens recorded on or after January 1,  
31 1986, but before January 1, 2003. Liens that are recorded on or after January 1, 2003 are  
32 governed by Section 1367.1 (except that inconsistent provisions of Section 1376.4 govern debts  
33 for assessments that arise on or after January 1, 2006). The overlap between these rules is  
34 complicated and confusing.

35 The proposed law would simplify the application scheme, as follows:

36 (1) Section 1367 would be omitted as largely obsolete (but still applicable to older liens,  
37 pursuant to proposed Section 5740(b).

38 (2) Section 1367.1 would be continued in the proposed law, subject to the limitations provided  
39 in proposed Section 5740(a).

40 (3) The provisions continuing Section 1367.4 would be expressly limited to debts for  
41 assessments that arise on or after January 1, 2006. See proposed Sections 5705, 5715 & 5720.

1

CHAPTER 7. INSURANCE AND LIABILITY

2 § 5800 (UNCHANGED). **Limitation of director and officer liability**

3 5800. (a) A volunteer officer or volunteer director of an association which  
4 manages a common interest development that is exclusively residential, shall not  
5 be personally liable in excess of the coverage of insurance specified in paragraph  
6 (4) to any person who suffers injury, including, but not limited to, bodily injury,  
7 emotional distress, wrongful death, or property damage or loss as a result of the  
8 tortious act or omission of the volunteer officer or volunteer director if all of the  
9 following criteria are met:

10 (1) The act or omission was performed within the scope of the officer's or  
11 director's association duties.

12 (2) The act or omission was performed in good faith.

13 (3) The act or omission was not willful, wanton, or grossly negligent.

14 (4) The association maintained and had in effect at the time the act or omission  
15 occurred and at the time a claim is made one or more policies of insurance which  
16 shall include coverage for (A) general liability of the association and (B)  
17 individual liability of officers and directors of the association for negligent acts or  
18 omissions in that capacity; provided, that both types of coverage are in the  
19 following minimum amount:

20 (A) At least five hundred thousand dollars (\$500,000) if the common interest  
21 development consists of 100 or fewer separate interests.

22 (B) At least one million dollars (\$1,000,000) if the common interest  
23 development consists of more than 100 separate interests.

24 (b) The payment of actual expenses incurred by a director or officer in the  
25 execution of the duties of that position does not affect the director's or officer's  
26 status as a volunteer within the meaning of this section.

27 (c) An officer or director who at the time of the act or omission was a declarant,  
28 or who received either direct or indirect compensation as an employee from the  
29 declarant, or from a financial institution that purchased a separate interest at a  
30 judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property,  
31 is not a volunteer for the purposes of this section.

32 (d) Nothing in this section shall be construed to limit the liability of the  
33 association for its negligent act or omission or for any negligent act or omission of  
34 an officer or director of the association.

35 (e) This section shall only apply to a volunteer officer or director who is a tenant  
36 of a separate interest in the common interest development or is an owner of no  
37 more than two separate interests in the common interest development.

38 (f) (1) For purposes of paragraph (1) of subdivision (a), the scope of the officer's  
39 or director's association duties shall include, but shall not be limited to, both of the  
40 following decisions:

1 (A) Whether to conduct an investigation of the common interest development  
2 for latent deficiencies prior to the expiration of the applicable statute of  
3 limitations.

4 (B) Whether to commence a civil action against the builder for defects in design  
5 or construction.

6 (2) It is the intent of the Legislature that this section clarify the scope of  
7 association duties to which the protections against personal liability in this section  
8 apply. It is not the intent of the Legislature that these clarifications be construed to  
9 expand, or limit, the fiduciary duties owed by the directors or officers.

10 **Comment.** Section 5800 continues former Section 1365.7 without change, except that  
11 superfluous cross-references to governing definitions are not continued. See also Corp. Code §  
12 7231 (standard of care and liability of director of nonprofit mutual benefit corporation).

13 **§ 5805 (UNCHANGED). Limitation of member liability**

14 5805. (a) It is the intent of the Legislature to offer civil liability protection to  
15 owners of the separate interests in a common interest development that have  
16 common areas owned in tenancy-in-common if the association carries a certain  
17 level of prescribed insurance that covers a cause of action in tort.

18 (b) Any cause of action in tort against any owner of a separate interest arising  
19 solely by reason of an ownership interest as a tenant in common in the common  
20 area of a common interest development shall be brought only against the  
21 association and not against the individual owners of the separate interests, if both  
22 of the insurance requirements in paragraphs (1) and (2) are met:

23 (1) The association maintained and has in effect for this cause of action, one or  
24 more policies of insurance which include coverage for general liability of the  
25 association.

26 (2) The coverage described in paragraph (1) is in the following minimum  
27 amounts:

28 (A) At least two million dollars (\$2,000,000) if the common interest  
29 development consists of 100 or fewer separate interests.

30 (B) At least three million dollars (\$3,000,000) if the common interest  
31 development consists of more than 100 separate interests.

32 **Comment.** Section 5805 continues former Section 1365.9 without change, except that a  
33 superfluous cross-reference to a governing definition is not continued.

34 **§ 5810. Notice of change in coverage**

35 5810. The association shall, as soon as reasonably practicable, provide  
36 individual notice (Section 4040) to all members if any of the policies described in  
37 the annual budget report pursuant to Section 5300 have lapsed, been canceled, and  
38 are not immediately renewed, restored, or replaced, or if there is a significant  
39 change, such as a reduction in coverage or limits or an increase in the deductible,  
40 as to any of those policies. If the association receives any notice of nonrenewal of  
41 a policy described in the annual budget report pursuant to Section 5300, the

1 association shall immediately notify its members if replacement coverage will not  
2 be in effect by the date the existing coverage will lapse.

3 **Comment.** Section 5810 continues former Section 1365(f)(2) without change, except that (1)  
4 The reference to delivery by first-class mail has been replaced with a reference to individual  
5 delivery pursuant to Section 4040. (2) Cross-references are updated to reflect the new location of  
6 the referenced provisions.

7 CHAPTER 8. DISPUTE RESOLUTION AND ENFORCEMENT

8 Article 1. Disciplinary Action

9 **§ 5850 (REVISED). Schedule of monetary penalties**

10 5850. If an association adopts or has adopted a policy imposing any monetary  
11 penalty, including any fee, on any association member for a violation of the  
12 governing documents, the board of directors shall adopt and distribute to each  
13 member, in the annual policy notice prepared pursuant to Section 5310, a schedule  
14 of the monetary penalties that may be assessed for those violations, which shall be  
15 in accordance with authorization for member discipline contained in the governing  
16 documents.

17 **Comment.** Section 5850 continues the first sentence of former Section 1363(g) without  
18 change, except that: (1) A reference to the “rules of the association” is superfluous and is not  
19 continued. The term “governing documents” encompasses rules. See Section 4150. (2) A  
20 reference to delivery by first class mail has been changed to refer to delivery by inclusion in the  
21 annual policy notice prepared pursuant to Section 5310. (3) “Subdivision” is changed to  
22 “section.” (4) A clause making clear that a violation of the governing documents can include a  
23 violation by a member’s guest or invitee is not continued in this section. The substance of that  
24 clause is continued in Section 5860.

25 **Staff Note.** (1) Proposed Section 5850 would incorporate any “schedule of monetary  
26 penalties” into the annual policy notice distributed pursuant to proposed Section 5310. The  
27 second sentence of Section 1363(g), providing that the schedule only be distributed once (unless  
28 it is amended) is not continued. It would be best if the membership were provided with the  
29 schedule annually, and the cost of incorporating it into the annual policy notice should be  
30 minimal.

31 (2) Existing Section 1363(g) makes clear that a violation of the governing documents includes  
32 a violation by a member’s guest or invitee. That principle would be generalized, to include a  
33 tenant or other resident of a member’s separate interest, in proposed Section 5860.

34 **§ 5855 (REVISED). Disciplinary process**

35 5855. (a) When the board of directors is to meet to consider or impose discipline  
36 upon a member, or to assess costs for damage to the common area, the board shall  
37 notify the member in writing, by either personal delivery or first-class mail, at  
38 least 10 days prior to the meeting.

39 (b) The notification shall contain, at a minimum, the date, time, and place of the  
40 meeting, the nature of the alleged violation for which a member may be  
41 disciplined or the nature of the damage to the common area for which the member

1 may be assessed, and a statement that the member has a right to attend and may  
2 address the board at the meeting. The board of directors of the association shall  
3 meet in executive session if requested by the member being disciplined or assessed  
4 costs.

5 (c) If the board imposes discipline on a member or assesses the member for  
6 damage to the common area, the board shall provide the member a written  
7 notification of the decision, by either personal delivery or first-class mail, within  
8 15 days following the action.

9 (d) A disciplinary action or assessment of costs for damage to the common area  
10 shall not be effective against a member unless the board fulfills the requirements  
11 of this section.

12 **Comment.** Section 5855 continues former Section 1363(h) without change, except that: (1)  
13 Subdivisions are added. (2) The scope of the provision is expanded to include an action to assess  
14 a member for costs for damage to the common area. (3) “Subdivision” is changed to “section.”

15 **Staff Note.** Proposed Section 5855 would expand the scope of the existing disciplinary  
16 process to also encompass board action to assess a member for damage to the common area. In  
17 each case, the member should have an opportunity to address the board and rebut any charges  
18 against the member.

19 **§ 5860 (NEW). Responsibility for guest, invitee, tenant, or resident**

20 5860. For the purposes of this article, a member may be held responsible for a  
21 violation of the governing documents or damage to the common area caused by  
22 the member’s guest, invitee, or tenant, or a resident of the member’s separate  
23 interest.

24 **Comment.** Section 5860 is new. It generalizes a clause of former Section 1363(g), which  
25 provided that a member may be liable for a violation of the governing documents by the  
26 member’s guest or invitee.

27 **Staff Note.** Proposed Section 5860 would fill a gap in existing law, which recognizes a  
28 member’s vicarious liability for conduct of a guest or invitee, but not for a tenant or other resident  
29 of the member’s separate interest.

30 **§ 5865 (REVISED). No effect on authority of board**

31 5865. Nothing in Sections 5850 or 5855 shall be construed to create, expand, or  
32 reduce the authority of the board of directors of an association to impose monetary  
33 penalties on an association member for a violation of the governing documents or  
34 rules of the association.

35 **Comment.** Section 5865 continues former Section 1363(j) without substantive change.

36 **Staff Note.** Existing Section 1363(j) refers to the entirety of Section 1363. Proposed Section  
37 5865 would only refer to the provisions of Section 1363 that relate to member discipline.

Article 2. Internal Dispute Resolution

§ 5900 (REVISED). Application of article

5900. (a) This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the governing documents of the common interest development or association.

(b) This article supplements, and does not replace, Article 3 (commencing with Section 5925), relating to alternative dispute resolution as a prerequisite to an enforcement action.

(c) This article does not apply to a decision made pursuant to Section 5665 or 5855.

**Comment.** Subdivisions (a) and (b) of Section 5900 continue former Section 1363.810 without change, except that a cross-reference is updated to reflect the new location of the referenced provision.

Subdivision (c) is new. It makes clear that the procedure provided in this article is not available to review a decision made pursuant to the specified sections, which provide a formal opportunity to be heard by the board. The subdivision would not preclude the application of this article to a dispute that involves a failure of the association to comply with Section 5665 or 5855. Nor would it preclude the use of this article before a final decision is made under Section 5855. Prior to making a final decision, an association could defer or suspend action under Section 5855 and instead proceed under this article.

**Staff Note.** Proposed Section 5900(c) would provide an express exemption from the internal dispute resolution process for matters that already involve a right to be heard by the board.

§ 5905 (UNCHANGED). Fair, reasonable, and expeditious dispute resolution procedure required

5905. (a) An association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article.

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

(c) If an association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article, the procedure provided in Section 5915 applies and satisfies the requirement of subdivision (a).

**Comment.** Section 5905 continues former Section 1363.820 without change, except that a cross-reference is updated to reflect the new location of the referenced provision.

§ 5910 (UNCHANGED). Minimum requirements of association procedure

5910. A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

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

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

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

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

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

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

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

20 **Comment.** Section 5910 continues former Section 1363.830 without change.

21 **§ 5915 (UNCHANGED). Default meet and confer procedure**

22 5915. (a) This section applies in an association that does not otherwise provide a  
23 fair, reasonable, and expeditious dispute resolution procedure. The procedure  
24 provided in this section is fair, reasonable, and expeditious, within the meaning of  
25 this article.

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

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

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

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

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

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

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

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

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

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

7 **Comment.** Section 5915 continues former Section 1363.840 without change.

8 **§ 5920 (REVISED). Notice in member handbook**

9 5920. The annual policy notice prepared pursuant to Section 5310 shall include  
10 a description of the internal dispute resolution process provided pursuant to this  
11 article.

12 **Comment.** Section 5920 continues former Section 1363.850 without change, except that a  
13 reference to a notice delivered pursuant to former Section 1369.590 has been changed to refer to  
14 distribution as part of the annual policy notice prepared pursuant to Section 5310.

15 **Staff Note.** Proposed Section 5920 would provide for distribution of notice of the internal  
16 dispute resolution process as part of the annual policy notice distributed pursuant to proposed  
17 Section 5310.

18 **Article 3. Alternative Dispute Resolution**  
19 **Prerequisite to Civil Action**

20 **§ 5925 (UNCHANGED). Definitions**

21 5925. As used in this article:

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

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

28 (1) Enforcement of this title.

29 (2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3  
30 commencing with Section 7110) of Division 2 of Title 1 of the Corporations  
31 Code).

32 (3) Enforcement of the governing documents of a common interest  
33 development.

34 **Comment.** Section 5925 continues former Section 1369.510 without change.

35 **§ 5930 (UNCHANGED). ADR prerequisite to enforcement action**

36 5930. (a) An association or an owner or a member of a common interest  
37 development may not file an enforcement action in the superior court unless the  
38 parties have endeavored to submit their dispute to alternative dispute resolution  
39 pursuant to this article.

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

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

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

8 **Comment.** Section 5930 continues former Section 1369.520 without change.

9 **§ 5935 (UNCHANGED). Request for resolution**

10 5935. (a) Any party to a dispute may initiate the process required by Section  
11 5930 by serving on all other parties to the dispute a Request for Resolution. The  
12 Request for Resolution shall include all of the following:

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

14 (2) A request for alternative dispute resolution.

15 (3) A notice that the party receiving the Request for Resolution is required to  
16 respond within 30 days of receipt or the request will be deemed rejected.

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

19 (b) Service of the Request for Resolution shall be by personal delivery, first-  
20 class mail, express mail, facsimile transmission, or other means reasonably  
21 calculated to provide the party on whom the request is served actual notice of the  
22 request.

23 (c) A party on whom a Request for Resolution is served has 30 days following  
24 service to accept or reject the request. If a party does not accept the request within  
25 that period, the request is deemed rejected by the party.

26 **Comment.** Section 5935 continues former Section 1369.530 without change.

27 **§ 5940 (UNCHANGED). ADR process**

28 5940. (a) If the party on whom a Request for Resolution is served accepts the  
29 request, the parties shall complete the alternative dispute resolution within 90 days  
30 after the party initiating the request receives the acceptance, unless this period is  
31 extended by written stipulation signed by both parties.

32 (b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence  
33 Code applies to any form of alternative dispute resolution initiated by a Request  
34 for Resolution under this article, other than arbitration.

35 (c) The costs of the alternative dispute resolution shall be borne by the parties.

36 **Comment.** Section 5940 continues former Section 1369.540 without change.

37 **§ 5945 (UNCHANGED). Tolling of statute of limitations**

38 5945. If a Request for Resolution is served before the end of the applicable time  
39 limitation for commencing an enforcement action, the time limitation is tolled  
40 during the following periods:

1 (a) The period provided in Section 5935 for response to a Request for  
2 Resolution.

3 (b) If the Request for Resolution is accepted, the period provided by Section  
4 5940 for completion of alternative dispute resolution, including any extension of  
5 time stipulated to by the parties pursuant to Section 5940.

6 **Comment.** Section 5945 continues former Section 1369.550 without change, except that cross-  
7 references are updated to reflect the new location of the referenced provisions.

8 **§ 5950 (UNCHANGED). Certification of efforts to resolve dispute**

9 5950. (a) At the time of commencement of an enforcement action, the party  
10 commencing the action shall file with the initial pleading a certificate stating that  
11 one or more of the following conditions is satisfied:

12 (1) Alternative dispute resolution has been completed in compliance with this  
13 article.

14 (2) One of the other parties to the dispute did not accept the terms offered for  
15 alternative dispute resolution.

16 (3) Preliminary or temporary injunctive relief is necessary.

17 (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a  
18 demurrer or a motion to strike unless the court finds that dismissal of the action for  
19 failure to comply with this article would result in substantial prejudice to one of  
20 the parties.

21 **Comment.** Section 5950 continues former Section 1369.560 without change.

22 **§ 5955 (UNCHANGED). Stay of litigation for dispute resolution**

23 5955. (a) After an enforcement action is commenced, on written stipulation of  
24 the parties, the matter may be referred to alternative dispute resolution. The  
25 referred action is stayed. During the stay, the action is not subject to the rules  
26 implementing subdivision (c) of Section 68603 of the Government Code.

27 (b) The costs of the alternative dispute resolution shall be borne by the parties.

28 **Comment.** Section 5955 continues former Section 1369.570 without change.

29 **§ 5960 (REVISED). Attorney's fees**

30 5960. In an enforcement action in which fees and costs may be awarded, the  
31 court, in determining the amount of the award, may consider whether a party's  
32 refusal to participate in alternative dispute resolution before commencement of the  
33 action was reasonable.

34 **Comment.** Section 5960 generalizes former Section 1369.580 so that it applies to any  
35 enforcement action in which fees and costs may be awarded and not just to an action to enforce  
36 the governing documents.

37 **Staff Note.** Existing Section 1369.580 authorizes the court to consider refusal to participate  
38 in ADR in determining the amount of a fee or cost award, but only in an action under existing  
39 Section 1354(a) (enforcement of covenants and restrictions in declaration). Proposed Section  
40 5960 would expand the court's authority to consider ADR nonparticipation in setting a fee or cost  
41 award, so that it would apply to any enforcement action in which fees or costs may be awarded.

1 **§ 5965 (REVISED). Notice in annual policy notice**

2 5965. (a) An association shall annually provide its members a summary of the  
3 provisions of this article that specifically references this article. The summary  
4 shall include the following language:

5 “Failure of a member of the association to comply with the alternative dispute  
6 resolution requirements of Section 5930 of the Civil Code may result in the loss of  
7 your right to sue the association or another member of the association regarding  
8 enforcement of the governing documents or the applicable law.”

9 (b) The summary shall be included in the annual policy notice prepared pursuant  
10 to Section 5310.

11 **Comment.** Subdivision (a) of Section 5965 continues former Section 1369.590(a) without  
12 change, except that a cross-reference is updated to reflect the new location of the referenced  
13 provision.

14 Subdivision (b) is similar to the first sentence of former Section 1369.590(b).

15 **Staff Note.** Proposed Section 5965 would supersede the first sentence of Section  
16 1369.590(b), which provided: “The summary shall be provided either at the time the pro forma  
17 budget required by Section 1365 is distributed or in the manner prescribed in Section 5016 of the  
18 Corporations Code.” The substance of the second sentence of Section 1369.590(b) would be  
19 continued in proposed Section 5920.

20 **Article 4. Civil Actions**

21 **§ 5975 (UNCHANGED). Enforcement of governing documents**

22 5975. (a) The covenants and restrictions in the declaration shall be enforceable  
23 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind  
24 all owners of separate interests in the development. Unless the declaration states  
25 otherwise, these servitudes may be enforced by any owner of a separate interest or  
26 by the association, or by both.

27 (b) A governing document other than the declaration may be enforced by the  
28 association against an owner of a separate interest or by an owner of a separate  
29 interest against the association.

30 (c) In an action to enforce the governing documents, the prevailing party shall be  
31 awarded reasonable attorney’s fees and costs.

32 **Comment.** Section 5975 continues former Section 1354 without change.

33 **§ 5980 (NEW). Enforcement of this part**

34 5980. In addition to any other remedy provided by law, a member may bring an  
35 action in superior court to enforce a provision of this part.

36 **Comment.** Section 5980 is new. Relief under this section may include a writ of mandate, an  
37 injunction, or other appropriate relief.

38 **Staff Note.** Proposed Section 5980 would make clear that a member may bring a civil action  
39 to enforce any requirement of the Davis-Stirling Act.

1

CHAPTER 9. CONSTRUCTION DEFECT LITIGATION

2 § 6000 (UNCHANGED). **Actions for damages**

3 6000. (a) Before an association files a complaint for damages against a builder,  
4 developer, or general contractor (“respondent”) of a common interest development  
5 based upon a claim for defects in the design or construction of the common  
6 interest development, all of the requirements of this section shall be satisfied with  
7 respect to the builder, developer, or general contractor.

8 (b) The association shall serve upon the respondent a “Notice of  
9 Commencement of Legal Proceedings.” The notice shall be served by certified  
10 mail to the registered agent of the respondent, or if there is no registered agent,  
11 then to any officer of the respondent. If there are no current officers of the  
12 respondent, service shall be upon the person or entity otherwise authorized by law  
13 to receive service of process. Service upon the general contractor shall be  
14 sufficient to initiate the process set forth in this section with regard to any builder  
15 or developer, if the builder or developer is not amenable to service of process by  
16 the foregoing methods. This notice shall toll all applicable statutes of limitation  
17 and repose, whether contractual or statutory, by and against all potentially  
18 responsible parties, regardless of whether they were named in the notice, including  
19 claims for indemnity applicable to the claim for the period set forth in subdivision

20 (c). The notice shall include all of the following:

21 (1) The name and location of the project.

22 (2) An initial list of defects sufficient to apprise the respondent of the general  
23 nature of the defects at issue.

24 (3) A description of the results of the defects, if known.

25 (4) A summary of the results of a survey or questionnaire distributed to  
26 homeowners to determine the nature and extent of defects, if a survey has been  
27 conducted or a questionnaire has been distributed.

28 (5) Either a summary of the results of testing conducted to determine the nature  
29 and extent of defects or the actual test results, if that testing has been conducted.

30 (c) Service of the notice shall commence a period, not to exceed 180 days,  
31 during which the association, the respondent, and all other participating parties  
32 shall try to resolve the dispute through the processes set forth in this section. This  
33 180-day period may be extended for one additional period, not to exceed 180 days,  
34 only upon the mutual agreement of the association, the respondent, and any parties  
35 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any  
36 extensions beyond the first extension shall require the agreement of all  
37 participating parties. Unless extended, the dispute resolution process prescribed by  
38 this section shall be deemed completed. All extensions shall continue the tolling  
39 period described in subdivision (b).

40 (d) Within 25 days of the date the association serves the Notice of  
41 Commencement of Legal Proceedings, the respondent may request in writing to

1 meet and confer with the board of directors of the association. Unless the  
2 respondent and the association otherwise agree, there shall be not more than one  
3 meeting, which shall take place no later than 10 days from the date of the  
4 respondent's written request, at a mutually agreeable time and place. The meeting  
5 shall be subject to subdivision (a) of Section 4925 and subdivisions (a) and (b) of  
6 Section 4935. The discussions at the meeting are privileged communications and  
7 are not admissible in evidence in any civil action, unless the association and the  
8 respondent consent in writing to their admission.

9 (e) Upon receipt of the notice, the respondent shall, within 60 days, comply with  
10 the following:

11 (1) The respondent shall provide the association with access to, for inspection  
12 and copying of, all plans and specifications, subcontracts, and other construction  
13 files for the project that are reasonably calculated to lead to the discovery of  
14 admissible evidence regarding the defects claimed. The association shall provide  
15 the respondent with access to, for inspection and copying of, all files reasonably  
16 calculated to lead to the discovery of admissible evidence regarding the defects  
17 claimed, including all reserve studies, maintenance records and any survey  
18 questionnaires, or results of testing to determine the nature and extent of defects.  
19 To the extent any of the above documents are withheld based on privilege, a  
20 privilege log shall be prepared and submitted to all other parties. All other  
21 potentially responsible parties shall have the same rights as the respondent  
22 regarding the production of documents upon receipt of written notice of the claim,  
23 and shall produce all relevant documents within 60 days of receipt of the notice of  
24 the claim.

25 (2) The respondent shall provide written notice by certified mail to all  
26 subcontractors, design professionals, their insurers, and the insurers of any  
27 additional insured whose identities are known to the respondent or readily  
28 ascertainable by review of the project files or other similar sources and whose  
29 potential responsibility appears on the face of the notice. This notice to  
30 subcontractors, design professionals, and insurers shall include a copy of the  
31 Notice of Commencement of Legal Proceedings, and shall specify the date and  
32 manner by which the parties shall meet and confer to select a dispute resolution  
33 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its  
34 obligation to participate in the meet and confer or serve a written acknowledgment  
35 of receipt regarding this notice, advise the recipient that it will waive any  
36 challenge to selection of the dispute resolution facilitator if it elects not to  
37 participate in the meet and confer, advise the recipient that it may be bound by any  
38 settlement reached pursuant to subdivision (d) of Section 6050, advise the  
39 recipient that it may be deemed to have waived rights to conduct inspection and  
40 testing pursuant to subdivision (c) of Section 6050, advise the recipient that it may  
41 seek the assistance of an attorney, and advise the recipient that it should contact its  
42 insurer, if any. Any subcontractor or design professional, or insurer for that  
43 subcontractor, design professional, or additional insured, who receives written

1 notice from the respondent regarding the meet and confer shall, prior to the meet  
2 and confer, serve on the respondent a written acknowledgment of receipt. That  
3 subcontractor or design professional shall, within 10 days of service of the written  
4 acknowledgment of receipt, provide to the association and the respondent a  
5 Statement of Insurance that includes both of the following:

6 (A) The names, addresses, and contact persons, if known, of all insurance  
7 carriers, whether primary or excess and regardless of whether a deductible or self-  
8 insured retention applies, whose policies were in effect from the commencement  
9 of construction of the subject project to the present and which potentially cover the  
10 subject claims.

11 (B) The applicable policy numbers for each policy of insurance provided.

12 (3) Any subcontractor or design professional, or insurer for that subcontractor,  
13 design professional, or additional insured, who so chooses, may, at any time, make  
14 a written request to the dispute resolution facilitator for designation as a peripheral  
15 party. That request shall be served contemporaneously on the association and the  
16 respondent. If no objection to that designation is received within 15 days, or upon  
17 rejection of that objection, the dispute resolution facilitator shall designate that  
18 subcontractor or design professional as a peripheral party, and shall thereafter seek  
19 to limit the attendance of that subcontractor or design professional only to those  
20 dispute resolution sessions deemed peripheral party sessions or to those sessions  
21 during which the dispute resolution facilitator believes settlement as to peripheral  
22 parties may be finalized. Nothing in this subdivision shall preclude a party who  
23 has been designated a peripheral party from being reclassified as a nonperipheral  
24 party, nor shall this subdivision preclude a party designated as a nonperipheral  
25 party from being reclassified as a peripheral party after notice to all parties and an  
26 opportunity to object. For purposes of this subdivision, a peripheral party is a party  
27 having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

28 (f) (1) Within 20 days of sending the notice set forth in paragraph (2) of  
29 subdivision (e), the association, respondent, subcontractors, design professionals,  
30 and their insurers who have been sent a notice as described in paragraph (2) of  
31 subdivision (e) shall meet and confer in an effort to select a dispute resolution  
32 facilitator to preside over the mandatory dispute resolution process prescribed by  
33 this section. Any subcontractor or design professional who has been given timely  
34 notice of this meeting but who does not participate, waives any challenge he or she  
35 may have as to the selection of the dispute resolution facilitator. The role of the  
36 dispute resolution facilitator is to attempt to resolve the conflict in a fair manner.  
37 The dispute resolution facilitator shall be sufficiently knowledgeable in the subject  
38 matter and be able to devote sufficient time to the case. The dispute resolution  
39 facilitator shall not be required to reside in or have an office in the county in which  
40 the project is located. The dispute resolution facilitator and the participating  
41 parties shall agree to a date, time, and location to hold a case management meeting  
42 of all parties and the dispute resolution facilitator, to discuss the claims being  
43 asserted and the scheduling of events under this section. The case management

1 meeting with the dispute resolution facilitator shall be held within 100 days of  
2 service of the Notice of Commencement of Legal Proceedings at a location in the  
3 county where the project is located. Written notice of the case management  
4 meeting with the dispute resolution facilitator shall be sent by the respondent to  
5 the association, subcontractors and design professionals, and their insurers who are  
6 known to the respondent to be on notice of the claim, no later than 10 days prior to  
7 the case management meeting, and shall specify its date, time, and location. The  
8 dispute resolution facilitator in consultation with the respondent shall maintain a  
9 contact list of the participating parties.

10 (2) No later than 10 days prior to the case management meeting, the dispute  
11 resolution facilitator shall disclose to the parties all matters that could cause a  
12 person aware of the facts to reasonably entertain a doubt that the proposed dispute  
13 resolution facilitator would be able to resolve the conflict in a fair manner. The  
14 facilitator's disclosure shall include the existence of any ground specified in  
15 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any  
16 attorney-client relationship the facilitator has or had with any party or lawyer for a  
17 party to the dispute resolution process, and any professional or significant personal  
18 relationship the facilitator or his or her spouse or minor child living in the  
19 household has or had with any party to the dispute resolution process. The  
20 disclosure shall also be provided to any subsequently noticed subcontractor or  
21 design professional within 10 days of the notice.

22 (3) A dispute resolution facilitator shall be disqualified by the court if he or she  
23 fails to comply with this paragraph and any party to the dispute resolution process  
24 serves a notice of disqualification prior to the case management meeting. If the  
25 dispute resolution facilitator complies with this paragraph, he or she shall be  
26 disqualified by the court on the basis of the disclosure if any party to the dispute  
27 resolution process serves a notice of disqualification prior to the case management  
28 meeting.

29 (4) If the parties cannot mutually agree to a dispute resolution facilitator, then  
30 each party shall submit a list of three dispute resolution facilitators. Each party  
31 may then strike one nominee from the other parties' list, and petition the court,  
32 pursuant to the procedure described in subdivisions (n) and (o), for final selection  
33 of the dispute resolution facilitator. The court may issue an order for final  
34 selection of the dispute resolution facilitator pursuant to this paragraph.

35 (5) Any subcontractor or design professional who receives notice of the  
36 association's claim without having previously received timely notice of the meet  
37 and confer to select the dispute resolution facilitator shall be notified by the  
38 respondent regarding the name, address, and telephone number of the dispute  
39 resolution facilitator. Any such subcontractor or design professional may serve  
40 upon the parties and the dispute resolution facilitator a written objection to the  
41 dispute resolution facilitator within 15 days of receiving notice of the claim.  
42 Within seven days after service of this objection, the subcontractor or design  
43 professional may petition the superior court to replace the dispute resolution

1 facilitator. The court may replace the dispute resolution facilitator only upon a  
2 showing of good cause, liberally construed. Failure to satisfy the deadlines set  
3 forth in this subdivision shall constitute a waiver of the right to challenge the  
4 dispute resolution facilitator.

5 (6) The costs of the dispute resolution facilitator shall be apportioned in the  
6 following manner: one-third to be paid by the association; one-third to be paid by  
7 the respondent; and one-third to be paid by the subcontractors and design  
8 professionals, as allocated among them by the dispute resolution facilitator. The  
9 costs of the dispute resolution facilitator shall be recoverable by the prevailing  
10 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil  
11 Procedure, provided however that any nonsettling party may, prior to the filing of  
12 the complaint, petition the facilitator to reallocate the costs of the dispute  
13 resolution facilitator as they apply to any nonsettling party. The determination of  
14 the dispute resolution facilitator with respect to the allocation of these costs shall  
15 be binding in any subsequent litigation. The dispute resolution facilitator shall take  
16 into account all relevant factors and equities between all parties in the dispute  
17 resolution process when reallocating costs.

18 (7) In the event the dispute resolution facilitator is replaced at any time, the case  
19 management statement created pursuant to subdivision (h) shall remain in full  
20 force and effect.

21 (8) The dispute resolution facilitator shall be empowered to enforce all  
22 provisions of this section.

23 (g) (1) No later than the case management meeting, the parties shall begin to  
24 generate a data compilation showing the following information regarding the  
25 alleged defects at issue:

26 (A) The scope of the work performed by each potentially responsible  
27 subcontractor.

28 (B) The tract or phase number in which each subcontractor provided goods or  
29 services, or both.

30 (C) The units, either by address, unit number, or lot number, at which each  
31 subcontractor provided goods or services, or both.

32 (2) This data compilation shall be updated as needed to reflect additional  
33 information. Each party attending the case management meeting, and any  
34 subsequent meeting pursuant to this section, shall provide all information available  
35 to that party relevant to this data compilation.

36 (h) At the case management meeting, the parties shall, with the assistance of the  
37 dispute resolution facilitator, reach agreement on a case management statement,  
38 which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive,  
39 except that the parties may dispense with one or more of these elements if they  
40 agree that it is appropriate to do so. The case management statement shall provide  
41 that the following elements shall take place in the following order:

42 (1) Establishment of a document depository, located in the county where the  
43 project is located, for deposit of documents, defect lists, demands, and other

1 information provided for under this section. All documents exchanged by the  
2 parties and all documents created pursuant to this subdivision shall be deposited in  
3 the document depository, which shall be available to all parties throughout the  
4 pre-filing dispute resolution process and in any subsequent litigation. When any  
5 document is deposited in the document depository, the party depositing the  
6 document shall provide written notice identifying the document to all other parties.  
7 The costs of maintaining the document depository shall be apportioned among the  
8 parties in the same manner as the costs of the dispute resolution facilitator.

9 (2) Provision of a more detailed list of defects by the association to the  
10 respondent after the association completes a visual inspection of the project. This  
11 list of defects shall provide sufficient detail for the respondent to ensure that all  
12 potentially responsible subcontractors and design professionals are provided with  
13 notice of the dispute resolution process. If not already completed prior to the case  
14 management meeting, the Notice of Commencement of Legal Proceedings shall be  
15 served by the respondent on all additional subcontractors and design professionals  
16 whose potential responsibility appears on the face of the more detailed list of  
17 defects within seven days of receipt of the more detailed list. The respondent shall  
18 serve a copy of the case management statement, including the name, address, and  
19 telephone number of the dispute resolution facilitator, to all the potentially  
20 responsible subcontractors and design professionals at the same time.

21 (3) Nonintrusive visual inspection of the project by the respondent,  
22 subcontractors, and design professionals.

23 (4) Invasive testing conducted by the association, if the association deems  
24 appropriate. All parties may observe and photograph any testing conducted by the  
25 association pursuant to this paragraph, but may not take samples or direct testing  
26 unless, by mutual agreement, costs of testing are shared by the parties.

27 (5) Provision by the association of a comprehensive demand which provides  
28 sufficient detail for the parties to engage in meaningful dispute resolution as  
29 contemplated under this section.

30 (6) Invasive testing conducted by the respondent, subcontractors, and design  
31 professionals, if they deem appropriate.

32 (7) Allowance for modification of the demand by the association if new issues  
33 arise during the testing conducted by the respondent, subcontractor, or design  
34 professionals.

35 (8) Facilitated dispute resolution of the claim, with all parties, including  
36 peripheral parties, as appropriate, and insurers, if any, present and having  
37 settlement authority. The dispute resolution facilitators shall endeavor to set  
38 specific times for the attendance of specific parties at dispute resolution sessions.  
39 If the dispute resolution facilitator does not set specific times for the attendance of  
40 parties at dispute resolution sessions, the dispute resolution facilitator shall permit  
41 those parties to participate in dispute resolution sessions by telephone.

42 (i) In addition to the foregoing elements of the case management statement  
43 described in subdivision (h), upon mutual agreement of the parties, the dispute

1 resolution facilitator may include any or all of the following elements in a case  
2 management statement: the exchange of consultant or expert photographs; expert  
3 presentations; expert meetings; or any other mechanism deemed appropriate by the  
4 parties in the interest of resolving the dispute.

5 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the  
6 time the case management statement is established, set deadlines for the  
7 occurrence of each event set forth in the case management statement, taking into  
8 account such factors as the size and complexity of the case, and the requirement of  
9 this section that this dispute resolution process not exceed 180 days absent  
10 agreement of the parties to an extension of time.

11 (k) (1) (A) At a time to be determined by the dispute resolution facilitator, the  
12 respondent may submit to the association all of the following:

13 (i) A request to meet with the board to discuss a written settlement offer.

14 (ii) A written settlement offer, and a concise explanation of the reasons for the  
15 terms of the offer.

16 (iii) A statement that the respondent has access to sufficient funds to satisfy the  
17 conditions of the settlement offer.

18 (iv) A summary of the results of testing conducted for the purposes of  
19 determining the nature and extent of defects, if this testing has been conducted,  
20 unless the association provided the respondent with actual test results.

21 (B) If the respondent does not timely submit the items required by this  
22 subdivision, the association shall be relieved of any further obligation to satisfy  
23 the requirements of this subdivision only.

24 (C) No less than 10 days after the respondent submits the items required by this  
25 paragraph, the respondent and the board of directors of the association shall meet  
26 and confer about the respondent's settlement offer.

27 (D) If the association's board of directors rejects a settlement offer presented at  
28 the meeting held pursuant to this subdivision, the board shall hold a meeting open  
29 to each member of the association. The meeting shall be held no less than 15 days  
30 before the association commences an action for damages against the respondent.

31 (E) No less than 15 days before this meeting is held, a written notice shall be  
32 sent to each member of the association specifying all of the following:

33 (i) That a meeting will take place to discuss problems that may lead to the filing  
34 of a civil action, and the time and place of this meeting.

35 (ii) The options that are available to address the problems, including the filing of  
36 a civil action and a statement of the various alternatives that are reasonably  
37 foreseeable by the association to pay for those options and whether these payments  
38 are expected to be made from the use of reserve account funds or the imposition of  
39 regular or special assessments, or emergency assessment increases.

40 (iii) The complete text of any written settlement offer, and a concise explanation  
41 of the specific reasons for the terms of the offer submitted to the board at the  
42 meeting held pursuant to subdivision (d) that was received from the respondent.

1 (F) The respondent shall pay all expenses attributable to sending the settlement  
2 offer to all members of the association. The respondent shall also pay the expense  
3 of holding the meeting, not to exceed three dollars (\$3) per association member.

4 (G) The discussions at the meeting and the contents of the notice and the items  
5 required to be specified in the notice pursuant to paragraph (E) are privileged  
6 communications and are not admissible in evidence in any civil action, unless the  
7 association consents to their admission.

8 (H) No more than one request to meet and discuss a written settlement offer may  
9 be made by the respondent pursuant to this subdivision.

10 (I) Except for the purpose of in camera review as provided in subdivision (c) of  
11 Section 6050, all defect lists and demands, communications, negotiations, and  
12 settlement offers made in the course of the prelitigation dispute resolution process  
13 provided by this section shall be inadmissible pursuant to Sections 1119 to 1124,  
14 inclusive, of the Evidence Code and all applicable decisional law. This  
15 inadmissibility shall not be extended to any other documents or communications  
16 which would not otherwise be deemed inadmissible.

17 (m) Any subcontractor or design professional may, at any time, petition the  
18 dispute resolution facilitator to release that party from the dispute resolution  
19 process upon a showing that the subcontractor or design professional is not  
20 potentially responsible for the defect claims at issue. The petition shall be served  
21 contemporaneously on all other parties, who shall have 15 days from the date of  
22 service to object. If a subcontractor or design professional is released, and it later  
23 appears to the dispute resolution facilitator that it may be a responsible party in  
24 light of the current defect list or demand, the respondent shall renote the party as  
25 provided by paragraph (2) of subdivision (e), provide a copy of the current defect  
26 list or demand, and direct the party to attend a dispute resolution session at a stated  
27 time and location. A party who subsequently appears after having been released by  
28 the dispute resolution facilitator shall not be prejudiced by its absence from the  
29 dispute resolution process as the result of having been previously released by the  
30 dispute resolution facilitator.

31 (n) Any party may, at any time, petition the superior court in the county where  
32 the project is located, upon a showing of good cause, and the court may issue an  
33 order, for any of the following, or for appointment of a referee to resolve a dispute  
34 regarding any of the following:

35 (1) To take a deposition of any party to the process, or subpoena a third party for  
36 deposition or production of documents, which is necessary to further prelitigation  
37 resolution of the dispute.

38 (2) To resolve any disputes concerning inspection, testing, production of  
39 documents, or exchange of information provided for under this section.

40 (3) To resolve any disagreements relative to the timing or contents of the case  
41 management statement.

42 (4) To authorize internal extensions of timeframes set forth in the case  
43 management statement.

1 (5) To seek a determination that a settlement is a good faith settlement pursuant  
2 to Section 877.6 of the Code of Civil Procedure and all related authorities. The  
3 page limitations and meet and confer requirements specified in this section shall  
4 not apply to these motions, which may be made on shortened notice. Instead, these  
5 motions shall be subject to other applicable state law, rules of court, and local  
6 rules. A determination made by the court pursuant to this motion shall have the  
7 same force and effect as the determination of a postfiling application or motion for  
8 good faith settlement.

9 (6) To ensure compliance, on shortened notice, with the obligation to provide a  
10 Statement of Insurance pursuant to paragraph (2) of subdivision (e).

11 (7) For any other relief appropriate to the enforcement of the provisions of this  
12 section, including the ordering of parties, and insurers, if any, to the dispute  
13 resolution process with settlement authority.

14 (o) (1) A petition filed pursuant to subdivision (n) shall be filed in the superior  
15 court in the county in which the project is located. The court shall hear and decide  
16 the petition within 10 days after filing. The petitioning party shall serve the  
17 petition on all parties, including the date, time, and location of the hearing no later  
18 than five business days prior to the hearing. Any responsive papers shall be filed  
19 and served no later than three business days prior to the hearing. Any petition or  
20 response filed under this section shall be no more than three pages in length.

21 (2) All parties shall meet with the dispute resolution facilitator, if one has been  
22 appointed and confer in person or by the telephone prior to the filing of that  
23 petition to attempt to resolve the matter without requiring court intervention.

24 (p) As used in this section:

25 (1) “Association” shall have the same meaning as defined in Section 4080.

26 (2) “Builder” means the declarant, as defined in Section 4130.

27 (3) “Common interest development” shall have the same meaning as in Section  
28 4100, except that it shall not include developments or projects with less than 20  
29 units.

30 (q) The alternative dispute resolution process and procedures described in this  
31 section shall have no application or legal effect other than as described in this  
32 section.

33 (r) This section shall become operative on July 1, 2002, however it shall not  
34 apply to any pending suit or claim for which notice has previously been given.

35 (s) This section shall become inoperative on July 1, 2010, and as of January 1,  
36 2011, is repealed, unless a later enacted statute, that is enacted before January 1,  
37 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

38 **Comment.** Section 6000 continues former Section 1375 without change, except that cross-  
39 references are updated to reflect the new location of the referenced provisions.

40 **§ 6050 (UNCHANGED). Action following pre-filing dispute resolution**

41 6050. (a) Upon the completion of the mandatory pre-filing dispute resolution  
42 process described in Section 6000, if the parties have not settled the matter, the

1 association or its assignee may file a complaint in the superior court in the county  
2 in which the project is located. Those matters shall be given trial priority.

3 (b) In assigning trial priority, the court shall assign the earliest possible trial  
4 date, taking into consideration the pretrial preparation completed pursuant to  
5 Section 6000, and shall deem the complaint to have been filed on the date of  
6 service of the Notice of Commencement of Legal Proceedings described under  
7 Section 6000.

8 (c) Any respondent, subcontractor, or design professional who received timely  
9 prior notice of the inspections and testing conducted under Section 6000 shall be  
10 prohibited from engaging in additional inspection or testing, except if all of the  
11 following specific conditions are met, upon motion to the court:

12 (1) There is an insurer for a subcontractor or design professional, that did not  
13 have timely notice that legal proceedings were commenced under Section 6000 at  
14 least 30 days prior to the commencement of inspections or testing pursuant to  
15 paragraph (6) of subdivision (h) of Section 6000.

16 (2) The insurer's insured did not participate in any inspections or testing  
17 conducted under the provisions of paragraph (6) of subdivision (h) of Section  
18 6000.

19 (3) The insurer has, after receiving notice of a complaint filed in superior court  
20 under subdivision (a), retained separate counsel, who did not participate in the  
21 Section 6000 dispute resolution process, to defend its insured as to the allegations  
22 in the complaint.

23 (4) It is reasonably likely that the insured would suffer prejudice if additional  
24 inspections or testing are not permitted.

25 (5) The information obtainable through the proposed additional inspections or  
26 testing is not available through any reasonable alternative sources.

27 If the court permits additional inspections or testing upon finding that these  
28 requirements are met, any additional inspections or testing shall be limited to the  
29 extent reasonably necessary to avoid the likelihood of prejudice and shall be  
30 coordinated among all similarly situated parties to ensure that they occur without  
31 unnecessary duplication. For purposes of providing notice to an insurer prior to  
32 inspections or testing under paragraph (6) of subdivision (h) of Section 6000, if  
33 notice of the proceedings was not provided by the insurer's insured, notice may be  
34 made via certified mail either by the subcontractor, design professional,  
35 association, or respondent to the address specified in the Statement of Insurance  
36 provided under paragraph (2) of subdivision (e) of Section 6000. Nothing herein  
37 shall affect the rights of an intervenor who files a complaint in intervention. If the  
38 association alleges defects that were not specified in the prefiling dispute  
39 resolution process under Section 6000, the respondent, subcontractor, and design  
40 professionals shall be permitted to engage in testing or inspection necessary to  
41 respond to the additional claims. A party who seeks additional inspections or  
42 testing based upon the amendment of claims shall apply to the court for leave to  
43 conduct those inspections or that testing. If the court determines that it must

1 review the defect claims alleged by the association in the prefiling dispute  
2 resolution process in order to determine whether the association alleges new or  
3 additional defects, this review shall be conducted in camera. Upon objection of  
4 any party, the court shall refer the matter to a judge other than the assigned trial  
5 judge to determine if the claim has been amended in a way that requires additional  
6 testing or inspection.

7 (d) Any subcontractor or design professional who had notice of the facilitated  
8 dispute resolution conducted under Section 6000 but failed to attend, or attended  
9 without settlement authority, shall be bound by the amount of any settlement  
10 reached in the facilitated dispute resolution in any subsequent trial, although the  
11 affected party may introduce evidence as to the allocation of the settlement. Any  
12 party who failed to participate in the facilitated dispute resolution because the  
13 party did not receive timely notice of the mediation shall be relieved of any  
14 obligation to participate in the settlement. Notwithstanding any privilege  
15 applicable to the prefiling dispute resolution process provided by Section 6000,  
16 evidence may be introduced by any party to show whether a subcontractor or  
17 design professional failed to attend or attended without settlement authority. The  
18 binding effect of this subdivision shall in no way diminish or reduce a nonsettling  
19 subcontractor or design professional's right to defend itself or assert all available  
20 defenses relevant to its liability in any subsequent trial. For purposes of this  
21 subdivision, a subcontractor or design professional shall not be deemed to have  
22 attended without settlement authority because it asserted defenses to its potential  
23 liability.

24 (e) Notice of the facilitated dispute resolution conducted under Section 6000  
25 must be mailed by the respondent no later than 20 days prior to the date of the first  
26 facilitated dispute resolution session to all parties. Notice shall also be mailed to  
27 each of these parties' known insurance carriers. Mailing of this notice shall be by  
28 certified mail. Any subsequent facilitated dispute resolution notices shall be served  
29 by any means reasonably calculated to provide those parties actual notice.

30 (f) As to the complaint, the order of discovery shall, at the request of any  
31 defendant, except upon a showing of good cause, permit the association's expert  
32 witnesses to be deposed prior to any percipient party depositions. The depositions  
33 shall, at the request of the association, be followed immediately by the defendant's  
34 experts and then by the subcontractors' and design professionals' experts, except  
35 on a showing of good cause. For purposes of this section, in determining what  
36 constitutes "good cause," the court shall consider, among other things, the goal of  
37 early disclosure of defects and whether the expert is prepared to render a final  
38 opinion, except that the court may modify the scope of any expert's deposition to  
39 address those concerns.

40 (g) (1) The only method of seeking judicial relief for the failure of the  
41 association or the respondent to complete the dispute resolution process under  
42 Section 6000 shall be the assertion, as provided for in this subdivision, of a  
43 procedural deficiency to an action for damages by the association against the

1 respondent after that action has been filed. A verified application asserting a  
2 procedural deficiency shall be filed with the court no later than 90 days after the  
3 answer to the plaintiff's complaint has been served, unless the court finds that  
4 extraordinary conditions exist.

5 (2) Upon the verified application of the association or the respondent alleging  
6 substantial noncompliance with Section 6000, the court shall schedule a hearing  
7 within 21 days of the application to determine whether the association or  
8 respondent has substantially complied with this section. The issue may be  
9 determined upon affidavits or upon oral testimony, in the discretion of the court.

10 (3) (A) If the court finds that the association or the respondent did not  
11 substantially comply with this paragraph, the court shall stay the action for up to  
12 90 days to allow the noncomplying party to establish substantial compliance. The  
13 court shall set a hearing within 90 days to determine substantial compliance. At  
14 any time, the court may, for good cause shown, extend the period of the stay upon  
15 application of the noncomplying party.

16 (B) If, within the time set by the court pursuant to this paragraph, the association  
17 or the respondent has not established that it has substantially complied with this  
18 section, the court shall determine if, in the interest of justice, the action should be  
19 dismissed without prejudice, or if another remedy should be fashioned. Under no  
20 circumstances shall the court dismiss the action with prejudice as a result of the  
21 association's failure to substantially comply with this section. In determining the  
22 appropriate remedy, the court shall consider the extent to which the respondent has  
23 complied with this section.

24 (h) This section is operative on July 1, 2002, but does not apply to any action or  
25 proceeding pending on that date.

26 (i) This section shall become inoperative on July 1, 2010, and, as of January 1,  
27 2011, is repealed, unless a later enacted statute that is enacted before January 1,  
28 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

29 **Comment.** Section 6050 continues former Section 1375.05 without change, except that cross-  
30 references are updated to reflect the new location of the referenced provisions.

31 **§ 6100 (UNCHANGED). Notice of resolution**

32 6100. (a) As soon as is reasonably practicable after the association and the  
33 builder have entered into a settlement agreement or the matter has otherwise been  
34 resolved regarding alleged defects in the common areas, alleged defects in the  
35 separate interests that the association is obligated to maintain or repair, or alleged  
36 defects in the separate interests that arise out of, or are integrally related to, defects  
37 in the common areas or separate interests that the association is obligated to  
38 maintain or repair, where the defects giving rise to the dispute have not been  
39 corrected, the association shall, in writing, inform only the members of the  
40 association whose names appear on the records of the association that the matter  
41 has been resolved, by settlement agreement or other means, and disclose all of the  
42 following:

1 (1) A general description of the defects that the association reasonably believes,  
2 as of the date of the disclosure, will be corrected or replaced.

3 (2) A good faith estimate, as of the date of the disclosure, of when the  
4 association believes that the defects identified in paragraph (1) will be corrected or  
5 replaced. The association may state that the estimate may be modified.

6 (3) The status of the claims for defects in the design or construction of the  
7 common interest development that were not identified in paragraph (1) whether  
8 expressed in a preliminary list of defects sent to each member of the association or  
9 otherwise claimed and disclosed to the members of the association.

10 (b) Nothing in this section shall preclude an association from amending the  
11 disclosures required pursuant to subdivision (a), and any amendments shall  
12 supersede any prior conflicting information disclosed to the members of the  
13 association and shall retain any privilege attached to the original disclosures.

14 (c) Disclosure of the information required pursuant to subdivision (a) or  
15 authorized by subdivision (b) shall not waive any privilege attached to the  
16 information.

17 (d) For the purposes of the disclosures required pursuant to this section, the term  
18 “defects” shall be defined to include any damage resulting from defects.

19 **Comment.** Section 6100 continues former Section 1375.1 without change.

20 **§ 6150 (UNCHANGED). Notice of civil action**

21 6150. (a) Not later than 30 days prior to the filing of any civil action by the  
22 association against the declarant or other developer of a common interest  
23 development for alleged damage to the common areas, alleged damage to the  
24 separate interests that the association is obligated to maintain or repair, or alleged  
25 damage to the separate interests that arises out of, or is integrally related to,  
26 damage to the common areas or separate interests that the association is obligated  
27 to maintain or repair, the board of directors of the association shall provide a  
28 written notice to each member of the association who appears on the records of the  
29 association when the notice is provided. This notice shall specify all of the  
30 following:

31 (1) That a meeting will take place to discuss problems that may lead to the filing  
32 of a civil action.

33 (2) The options, including civil actions, that are available to address the  
34 problems.

35 (3) The time and place of this meeting.

36 (b) Notwithstanding subdivision (a), if the association has reason to believe that  
37 the applicable statute of limitations will expire before the association files the civil  
38 action, the association may give the notice, as described above, within 30 days  
39 after the filing of the action.

40 **Comment.** Section 6150 continues former Section 1368.5 without change.

- 1 **Uncodified (added). Operative date**  
 2 This act becomes operative on January 1, 2013.

DISPOSITION OF FORMER LAW

The table below shows the relationship between each provision of the existing Davis-Stirling Common Interest Development Act and the corresponding provision of the proposed law.

Existing Provision	Proposed Provision(s)	Existing Provision	Proposed Provision(s)
1350	4000	1357.110	4350
1350.5	4005	1357.120	4355
1350.7	omitted, but see 4040, 4045, 4050	1357.130	4360
1351 (intro.)	4075	1357.140	4365
1351(a)	4080	1357.150	4370
1351(b)	4095	1358(a)	4625
1351(c)	4100	1358(b)	4630
1351(d)	4105	1358(c)	4635
1351(e)(1)-(2)	4120	1358(d)	4640
1351(e)(3) (except last ¶)	4290	1358 (last ¶)	4650
1351(e)(3) (last ¶)	4295	1358 (next to last ¶)	4645
1351(f)	4125	1359	4610
1351(g)	4130	1360	4760
1351(h)	4135	1360.5	4715
1351(i)	4145	1361	4505
1351(j)	4150	1361.5	4510
1351(k)	4175	1362	4500
1351(l)	4185	1363(a)	4800
1351(m)	4190	1363(b)	omitted
1352	4030(a)	1363(c)	4805
1352.5	4225(a)-(b), (d)	1363(d)	5000(a)
1353(a)(1) (1st & 2d sent.)	4250(a)	1363(e)	5000(b)
1353(a)(1)-(4) (except 1st & 2d sent.)	4255	1363(f) (1st sent.)	5240(b)
1353(b)	4250(b)	1363(f) (2d sent.)	omitted
1353.5	4705	1363(g) (1st sent.)	5850
1353.6	4710	1363(g) (2d sent.)	omitted
1353.7	4720	1363(h)	5855
1353.8	4755	1363(i)	4820
1354	5975	1363(j)	5865
1355(a)	4270(a)	1363.001	5400
1355(b) (1st sent.)	4260	1363.03(a)	5105(a)
1355(b) (except 1st sent.)	omitted	1363.03(b) (1st sent.)	5100(a)
1355.5	4230	1363.03(b) (2d & 3d sents.)	5115(b)
1356	4275	1363.03(b) (4th sent.)	5115(c)
1357(a)	4265(a)	1363.03(c)	5110
1357(b) (except part of 1st sent.)	omitted	1363.03(d)	5130
1357(b) (part of 1st sent.)	4265(b)	1363.03(e)	5115(a)
1357(c)	omitted	1363.03(f)	5120(a)
1357(d)	4265(c)	1363.03(g)	5120(b)
1357.100(a)	4165	1363.03(h)	5125(a)
1357.100(b)	4180	1363.03(i)	5125(b)

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1363.03(j).....	5105(b)	1365(f)(2) .....	5810
1363.03(k).....	5115(d)	1365(f)(3) .....	5300(b)(8) (3d sent.)
1363.03(l).....	5100(c)	1365(f)(4) .....	5300(b)(8) (4th sent. & 2d ¶)
1363.03(m) .....	5100(d)	1365.1 .....	5730
1363.03(n).....	5100(e)	1365.2(a)(1) (except (I)(ii)-(iii)) .....	5200(a)
1363.03(o).....	omitted	1365.2(a)(1)(I)(ii) .....	5225
1363.04.....	5135	1365.2(a)(1)(I)(iii) .....	5220
1363.05(a) .....	4900	1365.2(a)(2) (except last cl.) .....	5200(b)
1363.05(b) (1st part of 1st sent.) .....	4925(a)	1365.2(a)(2) (last cl.) .....	5205(g) (2d sent.)
1363.05(b) (2d part of 1st sent.) .....	4935(a)	1365.2(b) .....	5205(a)-(b)
1363.05(b) (2d sent.) .....	4935(b)	1365.2(c)(1)-(4) .....	5205(c)-(f)
1363.05(c) .....	4935(e)	1365.2(c)(5).....	5205(g) (1st & 3d sents.)
1363.05(d).....	4950(a)	1365.2(d) .....	5215
1363.05(e).....	4950(b)	1365.2(e) .....	5230
1363.05(f) .....	4920(a)	1365.2(f).....	5235
1363.05(g).....	4920(b)	1365.2(g).....	5240(c)
1363.05(h).....	4925(b)	1365.2(h) .....	5205(h)
1363.05(i).....	4930	1365.2(i)-(j) .....	5210(a)-(b)
1363.05(j).....	4090	1365.2(k) .....	5210(c)
1363.07 (except (a)(3)(f)) .....	4600	1365.2(l) .....	5240(a)
1363.07(a)(3)(F) .....	4025(a)(4)	1365.2(m) .....	5240(d)
1363.09 (re elections).....	5145	1365.2(n) .....	omitted
1363.09(a)-(b) (re exclusive use grant).....	4605	1365.2.5 .....	5570
1363.09(a)-(b) (re open meetings) .....	4955	1365.2.5(b)(3) .....	5300(e)
1363.1(a).....	5375	1365.3 .....	5580
1363.1(b).....	4155(a), (b)(1)-(2)	1365.5(a) .....	5500
1363.2(a)-(e) .....	5380(a)-(e)	1365.5(b) .....	5510(a)
1363.2(f) .....	4155	1365.5(c)(1).....	5510(b)
1363.2(g).....	5380(f)	1365.5(c)(2).....	5515
1363.5.....	4280	1365.5(d) .....	5520
1363.6.....	5405	1365.5(e) (1st ¶) .....	5550
1363.810 .....	5900(a)-(b)	1365.5(e)(1)-(4) (except 1st ¶) .....	5555(a)-(d)
1363.820 .....	5905	1365.5(e)(5) (1st sent.) .....	5555(e)
1363.830 .....	5910	1365.5(e)(5) (except 1st sent.) .....	5560
1363.840 .....	5915	1365.5(f).....	4177
1363.850 .....	5920	1365.5(g) .....	4178
1364(a) .....	4775(a)	1365.5(h) .....	omitted
1364(b).....	4780	1365.6 .....	5350(a)
1364(c) .....	4775(b)	1365.7 .....	5800
1364(d)-(e).....	4785	1365.9 .....	5805
1364(f).....	4790	1366(a) (1st sent.) .....	5600(a)
1365(a)(1) .....	5300(b)(1)	1366(a) (2d sent.) .....	5605(a)
1365(a)(2) (intro. cl.) .....	5300(b)(2)	1366(a) (3d sent.) .....	5605(c)
1365(a)(2)(A)-(D) .....	5565	1366(b) (1st sent.) .....	5605(b)
1365(a)(3)(A) .....	5300(b)(4)	1366(b) (2d sent.).....	5605(c)
1365(a)(3)(B).....	5300(b)(5)	1366(b) (3d & 4th sent.) .....	5610 (intro.)
1365(a)(3)(C).....	5300(b)(6)	1366(b)(1)-(3) .....	5610(a)-(c)
1365(a)(3)(D) .....	5300(b)(8)	1366(c).....	5620
1365(a)(4) (1st ¶).....	5300(b)(7)	1366(d) .....	5615
1365(a)(4) (2d ¶) .....	5300(d)	1366(e).....	5650(b)
1365(a)(4) (3d ¶) .....	5300(a)	1366(f) .....	5650(c)
1365(b).....	5300(b)(3)	1366.1 .....	5600(b)
1365(c) .....	5305(a)	1366.2 .....	4205
1365(d).....	5320	1367 .....	omitted, but see 5740
1365(e) .....	5310(a)(7)	1367.1(a) (1st sent.) .....	5650(a)
1365(f)(1).....	5300(b)(9) (1st & 2d sent.)	1367.1(a) (2d sent.).....	5660 (intro.)

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1367.1(a)(1)-(6).....	5660(a)-(f)	1368(a).....	4525(a)-(h)
1367.1(b).....	5655	1368(b).....	4530
1367.1(c)(1)(A).....	5670	1368(c)(1).....	4575
1367.1(c)(1)(B).....	omitted, but see 5705(b)	1368(c)(2).....	4580
1367.1(c)(2).....	5673	1368(c)(3).....	4110
1367.1(c)(3).....	5665	1368(d).....	4540
1367.1(d) (1st - 5th sent.).....	5675(a)-(e)	1368(e).....	4545
1367.1(d) (6th sent.).....	5685(a)	1368(f).....	4535
1367.1(d) (7th & 8th sent.).....	5725(a)	1368(g).....	omitted
1367.1(e).....	5725(b)	1368.1.....	4730
1367.1(f).....	5680	1368.3.....	4810
1367.1(g) (1st sent.).....	5735	1368.4.....	4815
1367.1(g) (2d sent.).....	5700(a)	1368.5.....	6150
1367.1(g) (3d sent.).....	5710(a)	1369.....	4615
1367.1(g) (4th sent.).....	5710(c) (intro.)	1369.510.....	5925
1367.1(g)(1)-(2).....	5710(c)(1)-(2)	1369.520.....	5930
1367.1(h).....	5700(b)	1369.530.....	5935
1367.1(i).....	5685(b)	1369.540.....	5940
1367.1(j).....	5710(b)	1369.550.....	5945
1367.1(k).....	5675(f)	1369.560.....	5950
1367.1(l).....	5675(g)	1369.570.....	5955
1367.1(m).....	omitted, but see 5740	1369.580.....	5960
1367.1(n).....	omitted	1369.590.....	5965
1367.4(a).....	5705(a), 5715(a), 5720(a)	1370.....	4215
1367.4(b).....	5720(b)	1371.....	4220
1367.4(c) (intro.) ....	omitted, but see 5705, 5715	1372.....	4020
1367.4(c)(1).....	5705(b)	1373.....	4025
1367.4(c)(2).....	5705(c)	1374.....	4015
1367.4(c)(3).....	5705(d)	1375.....	6000
1367.4(c)(4).....	5715(b)	1375.05.....	6050
1367.4(d).....	5720(c)(2)-(3)	1375.1.....	6100
1367.5.....	5685(c)	1376.....	4725
1367.6.....	5658	1378.....	4765